

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 370

S.P. 117

In Senate, January 25, 2005

### **An Act To Amend the Sales and Use Tax Law Regarding the Food Service and Lodging Industries**

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator COWGER of Kennebec.  
Cosponsored by Representative MOODY of Manchester and  
Senator: MAYO of Sagadahoc, Representatives: BISHOP of Boothbay, BROWNE of  
Vassalboro, FISHER of Brewer, JODREY of Bethel, KOFFMAN of Bar Harbor, RECTOR of  
Thomaston, SCHATZ of Blue Hill.

Be it enacted by the People of the State of Maine as follows:

2  
3       **Sec. 1. 36 MRSA §1752, sub-§9-B,** as amended by PL 1997, c.  
4 557, Pt. D, §1 and affected §4 and Pt. G, §1, is further amended  
5 to read:

6  
7       **9-B. Production.** "Production" means an operation or  
8 integrated series of operations engaged in as a business or  
9 segment of a business that transforms or converts personal  
10 property by physical, chemical or other means into a different  
11 form, composition or character from that in which it originally  
12 existed.

13  
14 "Production" includes manufacturing, processing, assembling and  
15 fabricating operations that meet the definitional requisites,  
16 including biological processes that are part of an integrated  
17 process of manufacturing organisms or microorganic materials  
18 through the application of biotechnology. "Production" also  
19 includes the production of prepared foods, as defined in  
20 subsection 8-A.

21  
22 "Production" does not include biological processes except as  
23 otherwise provided by this subsection, wood harvesting  
24 operations, or the severance of sand, gravel, oil, gas or other  
25 natural resources produced or severed from the soil or water, ~~or~~  
26 ~~activities such as cooking or preparing drinks, meals, food or~~  
27 ~~feed products by a retailer for retail sale. The foregoing are~~  
28 ~~examples of activities that are not included within the term~~  
29 ~~"production."~~

30  
31       **Sec. 2. 36 MRSA §1760, sub-§31, ¶A,** as amended by PL 2003, c.  
32 20, Pt. Z, §1, is further amended to read:

33  
34       A. For use by the purchaser directly and primarily in the  
35 production of tangible personal property intended to be sold  
36 or leased ultimately for final use or consumption or in the  
37 production of tangible personal property pursuant to a  
38 contract with the United States Government or any agency  
39 thereof, of the United States Government; for use by the  
40 purchaser in the operation of a hotel or rooming house; or,  
41 in the case of sales occurring after June 30, 2005, for use  
42 in the generation of radio and television broadcast signals  
43 by broadcast stations regulated under 47 Code of Federal  
44 Regulations, Part 73. This exemption applies even if the  
45 purchaser sells the machinery or equipment and leases it  
46 back in a sale and leaseback transaction. This exemption  
47 also applies whether the purchaser agrees before or after  
48 the purchase of the machinery or equipment to enter into the  
49 sale and leaseback transaction and whether the purchaser's

2 use of the machinery or equipment in production commences  
before or after the sale and leaseback transaction occurs;  
and

4  
6 **Sec. 3. 36 MRSA §1760, sub-§74**, as enacted by PL 1989, c. 871,  
§15, is amended to read:

8 **74. Property used in production.** Sales of tangible  
personal property, other than fuel or electricity, that becomes  
10 an ingredient or component part of, or that is consumed or  
destroyed or loses its identity directly and primarily in either  
12 the production of tangible personal property for later sale or  
lease, other than lease for use in this State, or the production  
14 of tangible personal property pursuant to a contract with the  
United States Government or any agency of the United States  
16 Government. Tangible personal property is "consumed or  
destroyed" or "loses its identity" in that production if it has a  
18 normal physical life expectancy of less than one year as a usable  
item in the use to which it is applied. Sales of tangible  
20 personal property used in the production of prepared food or used  
in the operation of a hotel or rooming house are also exempt  
22 under this subsection.

24

## SUMMARY

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28 Under current law, the sale of items to be used in the  
production of certain tangible personal property is not subject  
to the sales tax. This bill extends that treatment to the food  
30 service industry and lodging industry. This bill exempts from  
the sales tax sales of tangible personal property used in the  
32 production of prepared food or used in the operation of a hotel  
or rooming house. It also exempts from the sales tax sales of  
34 machinery and equipment used in the production of prepared food  
or used in the operation of a hotel or rooming house. These  
36 exemptions parallel existing exemptions for property used in  
production and machinery and equipment, respectively.

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