

TAXATION (SALES & USE): Only certain activities of sawmills and stave mills constitute manufacturing. The cutting of logs into various lengths and widths, the subsequent air or kiln drying of this lumber, and the planing of lumber for boards, without further finishing for specific product adaptations, do not constitute manufacturing. Other commercially useful by-products of this process, such as chips and sawdust are not manufactured articles. The foregoing activities are processing and are not encompassed by the sales tax exemptions of Section 144.030.3(3) and (4), RSMo 1969, that exempt from the imposition of sales or use tax machinery and equipment replacing equipment used directly for manufacturing or fabricating a product, or machinery and equipment purchased for direct use in manufacturing, mining or fabricating a product. In cases in which a substantial transformation of the original raw material occurs, such as the milling of bolts to produce barrel and heading staves, manufacturing occurs. The machinery used in such an operation is exempt from sales tax, pursuant to Section 144.030.3(3) and (4), RSMo 1969, if it is used directly in manufacturing a product which is intended to be sold ultimately for final use or consumption.

OPINION NO. 38

January 23, 1974

Honorable James R. Strong
Representative, District 119
Room 101E, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Strong:

You asked the following question of this office:

"Are sawmills and stave mills performing the operations enumerated in paragraph 4 hereof engaged in 'manufacturing or fabricating a product which is intended to be sold ultimately for final use or consumption' within the meaning of Section 144.030 R.S.Mo., 1969, paragraph 3, subparagraph 3 or 4?"

Paragraph 4 of your opinion request describes the sawmill and stave mill operations, as follows: Logs are received fresh from the woods. These logs are cut into lengths, the limbs are removed, and then channeled into the stave mill or sawmill to be sawed. At the initial process, stave and heading bolts, already cut and split are received. Logs for the sawmill are taken to the mill, the bark

Honorable James R. Strong

removed, and are cut into lumber of random widths, lengths, and dimension thickness. The lumber is then graded as to the quality of the board and forwarded to concrete pads to be air dried. After the lumber is air dried, it is shipped to customers unless the customer specifies that it is to be planed or kiln dried.

You note that dry kilned or planed lumber has more value than green air dried lumber. You further state that lumber is then shipped to furniture factories or wholesale lumber brokers to be further processed and sold to an ultimate consumer. During all of this sawing and milling, slabs are accumulated which are converted into chips and sold to box board companies. Bark is accumulated which is sold to nursery companies for mulch or for resale. Sawdust is also accumulated and sold to briquette manufacturers. Stave and heading logs and stave and heading bolts are milled through the stave mill and the end products are barrel and heading staves which are sold to distilleries.

Section 144.030, RSMo 1969, referred to in your question, provides:

"3. There are also specifically exempted from the provisions of sections 144.010 to 144.510 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable under sections 144.010 to 144.510 and 144.600 to 144.745:

* * *

(3) Machinery and equipment, replacing and used for the same purposes as the machinery and equipment replaced by reason of design or product changes, which is purchased for and used directly for manufacturing or fabricating a product which is intended to be sold ultimately for final use or consumption;

(4) Machinery and equipment purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption;"

Your question is, in short, whether the machinery and equipment used in sawmills and stave mills performing the previously described operations is exempt from the Missouri sales/use tax law

Honorable James R. Strong

because it is used in manufacturing or fabricating a product to be sold ultimately at retail.

In Opinion No. 165 issued November 21, 1972, to Henry Maddox, we dealt with a similar question involving the activities of meat packing plants. A copy of that opinion is attached for your reference. Many of the considerations expressed in that opinion are applicable to the question presented herein.

In responding to your question, we must characterize the operations described as either processing or manufacturing. It is clear that the legislature of Missouri intended to distinguish between processing and manufacturing as an examination of the exemption provisions of the sales and use tax law reveals that these terms are not used interchangeably. Much of what is now Section 144.030, subsection 3, was enacted in 1961. See Laws of Missouri 1961, page 623. Subparagraphs (1) and (5) of this same enactment grant an exemption for materials used in manufacturing, processing, compounding, mining, producing or fabricating (subparagraph (1)) "or manufacturing, processing, modification or assembly" (subparagraph (5)). The insertion of the term "processing" in these two subparagraphs and its exclusion from subparagraphs (3) and (4) and certain other subparagraphs indicates clearly that the legislature intended a different meaning be assigned to each term. As we noted in our prior opinion, to distinguish manufacturing from processing, "a substantial transformation of the original raw material" must occur. A mere rearrangement of the raw materials and not a significant change in form, quality and adaptability, would prevent an operation from being characterized as manufacturing. Thus the exemptions provided by subsections 3 and 4 would not be applicable to machinery used in such processing.

No reported Missouri decision offers significant guidance on the questions presented by your opinion request. The annotation in 17 A.L.R.3d 7, Section 24, indicates a division among other jurisdictions as to whether this activity is manufacturing. Many of the decisions from other jurisdictions are of little value in analyzing your question because their decisions on whether the activities of sawmills constituted manufacturing involve the characterization of such activity as either manufacturing or the activities of a merchant. In cases where a sales or use tax was involved, the laws of the states involved did not present the Missouri dichotomy between the use of the term processing and manufacturing.

It is our opinion that, of the operations described in your factual summary, the only one that can be characterized as manufacturing is the milling of bolts into staves for barrel manufacture. Only in this operation does more than a slight transformation of the original raw material occur. The other operations

Honorable James R. Strong

are almost identical in effect to the cutting of meat carcasses that was held to be processing in Opinion No. 165. Thus the mere cutting of logs, removal of bark, air and kiln drying, planing, conversion of slabs into chips, debarking, and accumulation of sawdust constitute processing and the machinery used for these processes is not exempt from the imposition of the Missouri sales or use tax law.

A number of decisions from other states support the conclusion stated herein. In Commonwealth v. Babcock Lumber Company, 272 A.2d 522 (Pa.Comm. 1971), the court ruled that the taxpayer's activity of kiln drying green lumber did not qualify for a manufacturing exemption. The court viewed such drying as only a superficial change, stating ". . . After kiln drying it [the lumber] is neither new nor different but essentially the same product at the end of the process as it was upon entering the process, namely pre-cut unfinished lumber." (at 525). The lack of sophistication in the production process of pulpwood compelled the Maine Supreme Court in Dead River Co. v. Assessors of Houlton, 103 A.2d 123 (Me. 1953) to conclude that pulpwood was not manufactured timber in any sense. The process for the preparation of pulpwood described in the Dead River case, consisting of the cutting of wood logs into four foot lengths, is not substantially different from most of the processes described herein. It was observed in Ingram v. Cowles, 23 N.E. 48 (Mass. 1889), as follows:

". . . we hesitate to say that sawing logs into boards is a 'branch of manufacture,' and think it doubtful whether something more of a transformation of the raw material is not necessary to bring the employment within the clause. . . ." (at 49)

An operation in which lumber was cut, transported to a saw-mill, cut into boards of varying lengths, stored, dried, and sold to furniture manufacturers was characterized as a process rather than manufacturing in the decision styled Commonwealth v. Hards Lumber Corp., 27 Pa. D. & C.2d 657 (Dauphin Co. 1961). In that decision, the court observed:

"In the last analysis, defendant in its saw-mill operation reduces the logs to lumber, that is it cuts boards of varying sizes from the logs, dries them and sells them to furniture manufacturers. Nothing is added to make the wood any different in its composition. It is the same product in all respects, except that it is cut into smaller sizes and dried. . . ." (at 662)

Honorable James R. Strong

"In none of the defendant's operations was there actually involved such a change as to cause a new product to emerge. When this lumber is sold, it is the same wood in all respects as when it was cut, except for the drying process. . . ." (at 664)

In reaching its decision, this Pennsylvania court relied on the Armour & Co. v. City of Pittsburgh decision, 69 A.2d 405 (Pa. 1949). The Armour decision was one of the many decisions supporting our conclusion in our prior meat packing opinion.

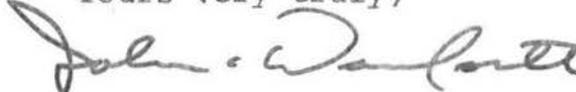
CONCLUSION

It is the opinion of this office that only certain activities of sawmills and stave mills constitute manufacturing. The cutting of logs into various lengths and widths, the subsequent air or kiln drying of this lumber, and the planing of lumber for boards, without further finishing for specific product adaptations, do not constitute manufacturing. Other commercially useful by-products of this process, such as chips and sawdust are not manufactured articles. The foregoing activities are processing and are not encompassed by the sales tax exemptions of Section 144.030.3(3) and (4), RSMo 1969, that exempt from the imposition of sales or use tax machinery and equipment replacing equipment used directly for manufacturing or fabricating a product, or machinery and equipment purchased for direct use in manufacturing, mining or fabricating a product.

In cases in which a substantial transformation of the original raw material occurs, such as the milling of bolts to produce barrel and heading staves, manufacturing occurs. The machinery used in such an operation is exempt from sales tax, pursuant to Section 144.030.3(3) and (4), RSMo 1969, if it is used directly in manufacturing a product which is intended to be sold ultimately for final use or consumption.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 165
11-21-72, Maddox