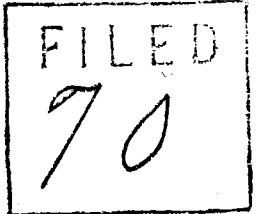


TAXATION:  
MANUFACTURER:  
MERCHANT:

Companies selling wood for fuel are cooperage companies; cooperage companies manufacturing completed staves and headings are manufacturers; companies making rough staves and headings under contract for other companies which complete manufacturing are manufacturers; companies offering for sale, generally, rough staves and headings are merchants.

July 29, 1947



Honorable John P. Peters  
Prosecuting Attorney  
Osage County  
Linn, Missouri

Dear Sir:

This is in reply to your letter of recent date requesting an official opinion from this department, and reading as follows:

"Our Board of Equalization is in session, and is considering tax problems in general and here is one on which I would very much appreciate the advice of your honorable department, in trying to advise and assist the Board in the varied things that come up for its consideration.

"We have in this county, and there are many in other counties, in the timbered sections of the state, what are commonly called 'Stave Mills.' These are operated by corporations, foreign and domestic. One just west of Linn is now operated by 'St. Louis Cooperage Co., Division of Five Counties Lumber Corporation.' This was formerly operated by St. Louis Cooperage Co. (A Missouri Corporation, I believe), but last December there was a merger of some sort winding up with the new and lengthy designation. The Five Counties concern, being a Delaware corporation.

"These companies buy of men owning tracts of timber, on the stump, and pay attractive prices, specifying the type of trees and

dimensions of same, and sometime thereafter their employees cut these trees and saw them in the wood that is called 'stave bolts,' and others haul them to the 'Mill' or Yard. There they are processed by sawing into the rough barrel or keg staves which are stacked up to dry. They also make out of some of this timber what they term 'headings.' This is really the tops and bottoms of the material for the kegs and staves. In the yard in question there is now thousands upon thousands of these staves stacked up and drying, great piles of the 'bolts' yet unprocessed, and the parts cast off in these processes are sold locally for fuel.

"These staves, I am reliably informed, are yet unfinished and must be further processed, at some other place, whether by the same interests or not I am not informed, but rather think they are finished by the same interests or affiliated ones. This further processing gives them the bulge and cuts grooves at both ends so as to fit in the tops and bottoms, for all of which the local equipment and machinery is not suited.

"They pay thousands of dollars for the timber on the stump. One deal southeast of here, with rather restricted limitations on size and type of trees to be cut, was \$6,500.00, and this is only one, there have been many.

"My opinion is that these interests are 'Manufacturers' and come within the purview of the law of 1945, at page 1954, and which repeals a previous law in the same volume (Laws 1945) found at page 1855, which is in six sections, one of which was a definition of 'Manufacturer,' but left out of the later act repealing the said six sections.

"I am surely impressed that these interests are 'manufacturers' and in the 'manufacturing' business, and if I am right their first duty was to apply for and take out a license, as

such, and from then on be governed by the tax law affecting merchants. The one question with our Board is, 'Are they not manufacturers, simply because they do not completely finish the output?' They carve it out of the raw material, improve its form and value, etc., and the process begins when their woodsmen begin to saw down the trees off the stump.

"I would be glad to hear from your honorable department as to their liability to being assessed and taxed. They have been operating in this county for years and have never applied for a license, either as a merchant or a manufacturer, nor have they been taxed under a straight personal property tax."

At the outset, we wish to point out that House Bill No. 975, found at page 1954 of Laws of Missouri 1945, repeals and reenacts only Section 1 of House Bill No. 539, Laws of Missouri 1945, page 1855, and that Sections 2 to 6, inclusive, of House Bill No. 539 are still in effect and have never been repealed. Secondly, we have been informed by the Corporation Department of this State that the St. Louis Cooperage Company is still in existence and has never been dissolved.

First, the question arises as to the status of the St. Louis Cooperage Company with regard to its selling that part of the wood cast off in the process you have described, which is sold locally for fuel. With regard to such sales, the St. Louis Cooperage Company comes under the provisions of the statute with regard to taxation of merchants. Section 11303, Laws of Missouri 1945, page 1839, provides as follows:

"Every person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be

deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller."

Since the St. Louis Cooperage Company is selling these parts cast off during the processing of the staves and headings as fuel, the cooperage company comes within the definition of merchant, as contained in Section 11303, above quoted, and does not come within the exception, since the company is not a commission merchant selling unmanufactured articles. The company is selling its own articles, and, as such, is taxable as merchant.

Section 4, Laws of Missouri 1945, page 1858, provides as follows:

"Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purposes of the foregoing section."

The word "manufacture" is defined by Webster's New International Dictionary, Second Edition, as follows:

"To make (wares or other products) by hand, by machinery, or by other agency;  
\* \* \* \*"

The general rule with regard to the question of whether or not lumber is manufactured is found in 38 C. J., page 985, as follows:

"Lumber has given rise to some doubt as to whether its production, in early stages, is manufacture or not. The weight of authority seems to be that such production is in general manufacture. A sawmill is usually considered

as a manufacturing establishment, manufactory, or factory."

The cases cited under the quoted portion of Corpus Juris, supra, refer generally to the production of lumber which is a completed product suitable for use as for building, even though such lumber may be further processed to make other articles.

If, as a matter of fact, the St. Louis Cooperage Company completes the manufacture of barrel staves at another place than Osage County, the cooperage company is a manufacturing corporation and is taxable as a manufacturer in Osage County, under the provisions of Section 9, Laws of Missouri 1945, page 1801, which provides as follows:

"All tangible personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the first day of January of the year for which such taxes may be assessed, and every business or manufacturing corporation having or owning tangible personal property on the first day of January in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county or township where situated, in the same manner as other tangible personal property is required by law to be returned."

Since the production of a completed barrel stave is undoubtedly manufacturing, under the provisions of Section 9, supra, the property of such a corporation is taxable in the county or township where situated.

If, as a matter of fact, the St. Louis Cooperage Company is making rough staves and headings which are to be delivered to another company or companies which complete the manufacture of the staves or headings, and which companies contract for the rough staves and headings with the St. Louis Cooperage Company, the St. Louis Cooperage Company is a manufacturer. In such cases it is immaterial whether or not the rough staves and headings are completely manufactured products immediately ready for use when delivered by the St. Louis Cooperage Company.

In the case of *Worth Bros. Co. v. Lederer*, 256 Fed. 116, District Court, Eastern District of Pennsylvania, affirmed in 258 Fed. 533, Third Circuit Court of Appeals, affirmed in 251 U.S. 507, United States Supreme Court, the District Court held that where the Worth Bros. Company, under contract with the Midvale Steel Company, delivered to and were paid by the Midvale Steel Company for delivery to the Midvale Steel Company of shell forgings which were completed by such Midvale Steel Company, that the Worth Bros. Company was liable for a tax imposed on:

"every person manufacturing \* \* \* (c) \* \* \* shells \* \* \* of any kind, \* \* \* loaded or unloaded, \* \* \* or (f) any part of the articles mentioned in \* \* \* (c) \* \* \* shall pay for each taxable year \* \* \*"

The District Court said, l.c. 118:

"The product of manufacture by the plaintiff was a rough steel forging, cylindrical in shape, hollow, having one closed end. In order to fit it for delivery to the French government, it was necessary for it to go through a large number of heating, forging, and machining processes before it became a finished, completed, shell body. These processes were carried on after delivery to the Midvale Steel Company at its plant, and were 29 in number. \* \* \*"

At l.c. 121 it was further said:

"In view of the physical changes through the application of labor, skill, and science in manufacturing necessary to develop the shell forging into the finished shell body, it cannot be contended that the shell forging delivered to the Midvale Steel Company was a 'part' of a shell, in the sense of being adapted and ready for assembling with other parts to make a complete shell. It could not be used as a shell body until it underwent at least a large part of the steps of manufacture which the Midvale Steel Company put upon it. If 'manufacturing' is used in the sense of

completing manufacture, the plaintiff was not manufacturing shell bodies, which were at the completion of its work parts of shells.

"It should be borne in mind, however, that the tax is laid, not as a tax upon the shell, or any part of the shell, but is laid as an excise tax upon the business or occupation of manufacturing shells, or any parts of shells, the amount of the tax to be measured by the entire net profits received from the sale of such articles manufactured in the conduct of that business or occupation. That was the construction put upon section 27 of the War Revenue Act of 1898 (Act June 13, 1898, c. 448, 30 Stat. 464), imposing a tax upon persons carrying on the business of refining sugar equivalent to one-fourth of 1 per cent. on the gross amount of their receipts in excess of \$250,000, in the case of Spreckle Sugar Refining Co. v. McClain, 192 U.S. 397, at page 411, 24 Sup. Ct. 376, 48 L. Ed. 496. As the tax is laid upon the business or occupation of manufacturing, the inquiry therefore is whether 'any person manufacturing' includes only such persons manufacturing as bring the article manufactured to the finished condition, where it is adapted for use as part of a shell, or whether the term includes any person manufacturing the article in any one or more of the successive steps substantially necessary to bring it to that condition.

"If the former construction is to prevail, at which of the steps does the manufacture begin? If it is held that it does not begin until the manufacturer who brings it to its finished state commences his work, it would follow that, if the process of manufacture were distributed among a number of manufacturers, each doing a part of the manufacturing, the payment of the tax would be confined to that manufacturer who contributed such final steps as would bring the article

to its completed state of adaptability to the purpose intended. I do not think the language of the section justifies an interpretation which would lead to nullifying its purpose, or would lead to a different measure of liability for the tax assessed against different manufacturers, or against the same manufacturer of different lots of shells, dependent upon what part of the prior stages of manufacture might be done under contract or otherwise by others."

At l. c. 122 and 123 it was further said:

"It is true that, under the Midvale Steel Company's contract, the specifications of which were to be adhered to by the plaintiff, the chemical composition of the steel was prescribed, and it was subject to the inspection of the representatives of the French government. There is nothing in the case, however, to show that the ingots, the blooms or rounds, or the billets were not of such composition as to be used generally in the trade for other purposes. When, however, in the next step the heated billet was forged by the piercing process, it became a hollow forging, closed at its base and open at its top, and destined to become a shell body. There was further progress towards that destination in the next stop of manufacture, when the pierced forging was drawn into a shell forging. The article then manufactured was peculiarly adapted and exclusively intended by further manufacture to become a shell body, and had no other use to which it was peculiarly adapted.

\* \* \* \* \*

"That rule has been settled beyond dispute by the multitude of decisions cited on behalf of the plaintiff, where the courts have ruled that a manufactured article does not become such until its manufacture is complete; that is, it must be so changed from



the material of which it is composed by the application of labor skill, and science as to be put into a form that is suitable for use and adapted with a design to be used as such article. The rule has been applied in the classification of articles of merchandise imported and subject to customs duties, or upon which drawback is allowed. There are decisions as to what constitutes a manufactured article, what constitutes a part of a manufactured article, what constitutes a partially manufactured article, what constitutes a manufacture of certain material, and what constitutes a wholly manufactured article, dependent upon the terms of the law under which a tax is laid upon the article itself, or under which a drawback or other privilege is allowed.

"I cannot perceive that these cases have any bearing upon the question arising in this case, unless the terms of the act imply that the tax is to be imposed only upon the business of manufacturing to completion shells, or parts of shells, and there is no such limitation in its terms. The clear purpose of the act is, through taxation of the business or occupation of manufacturing munitions of war, to reach the profits of all those engaged in such manufacture, whether engaged in manufacturing to completion, or engaged in any part of such manufacturing."

The Circuit Court of Appeals said, l.c. 539 (258 Fed.):

" \* \* \* \* By the sixth step this hollow cylindrical forging was drawn to a length, and to an inside and outside diameter, which enabled the Midvale Steel Company to thereafter carry forward its twenty-nine progressive steps, which, with the six of the Worth Bros. Company, were required by the contract to complete the manufactured shell of the contract. From this it will be seen the Worth Bros. Company selected the material required in the shell; it made the steel which constituted the shell; by work done upon

said steel, it segregated it from the general field of commercial use and limited it to use for shell-making. That some of that material, when imperfect, was scrapped and used for other mechanical purposes only tends the more strongly to show that the work done by the Worth Bros. Company, in accordance with the contract, was shell work distinctively; for, even where it failed by not being up to contract requirements, it was so far removed from the general field of commerce that it was sold, not as an ordinary commercial product, but as scrap, and its subsequent use was only such restricted use for minor objects as scrap heaps permit. It would therefore seem clear that the volume of work done by the Worth Bros. Company -- 40 per cent. of the cost -- and the character of that work -- segregating the steel from the general field of commercial use and narrowing it to shell use -- made its work such as was aptly described by the act, as being 'manufacturing \* \* \* shells \* \* \* of any kind, loaded or unloaded, \* \* \* or any part' of a shell. Indeed, to say that when Worth Bros. Company made the steel which constituted the shell, and when by pressing a cavity in the steel they made an outer rim or shell which gave it such shape as committed and restricted it to shell use, to say that Worth Bros. Company, when they were doing this abnormal work and earning abnormal profits thereby, were making those profits neither from manufacturing shells nor manufacturing any part of shells is to lose sight of substance and of the purpose of Congress in using the plain, broad, inclusive words of this statute.  
\* \* \* \*"

The United States Supreme Court said, l.c. 510 (251 U.S.):

"The progressive processes need not be enumerated. The lower courts have enumerated them, and the Court of Appeals describing them said that the 'steps' six in all, were 'progressive advances

toward the chemical constituents, the shape, and the dimension required by, and essential to, the manufacture of shells in compliance with the contract.' And the court distinguished the effect of the steps. With the fourth, it was said, the inspection by the French Government began; the fifth took the fluid metal (the result of the second step) from the possibility of use for general commercial purposes and by a forging process restricted the steel to the field of use for shells. By the sixth step this forging 'was drawn to a length, and to an inside and outside diameter, which enabled the Midvale Steel Company to thereafter carry forward its twenty-nine progressive steps, which, with the six' of petitioner 'were required . . . to complete the manufactured shell of the contract.'

"Manifestly' as counsel for the Collector says, 'the shell body was not completely manufactured by either of the companies which were engaged in its production' but 'by the two acting together.' And each therefore is liable for the profit it made, and judgment is Affirmed."

If, therefore, the St. Louis Cooperage Company is sawing timber into rough staves and headings, which staves and headings need more work done upon them before becoming completely manufactured staves and headings, and such rough staves and headings are delivered under contract to another company or companies which furnish the work of making completed staves or headings, the St. Louis Cooperage Company is a manufacturer and taxable as such.

If, as a matter of fact, the St. Louis Cooperage Company is not manufacturing rough staves and headings under contract with other companies, but saws the rough staves and headings for sale generally to any one who wishes to buy, the company is a merchant and is taxable as such under the provisions of Section 11303, supra.

#### Conclusion.

It is the opinion of this department that the St. Louis Cooperage Company comes within the definition of "merchant,"

Honorable John P. Peters

-12-

as contained in Section 11303, Laws of Missouri 1945, page 1839, with regard to the sale of wood for fuel; that the St. Louis Cooperage Company is a manufacturer if, as a matter of fact, such company at another place other than Osage County completes the manufacture of rough staves and headings into completely manufactured staves and headings ready for use; that the cooperage company is a manufacturer if such company saws timber into rough staves and headings and delivers such rough staves and headings to other companies for further processing into completely manufactured staves and headings under a contract with such other companies; and that the St. Louis Cooperage Company is a merchant if such company holds out for sale generally rough staves and headings.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

CEB:ml