for gross income tax on such receipts to and including June 30, 1963. Further, a taxpayer receiving payments under a conditional sales contract during any portion of 1963 would additionally be liable for adjusted gross income tax on any such adjusted gross income at the rates provided in the "Adjusted Gross Income Tax Act of 1963."

2. When a conditional sales contract for the sale of real estate is executed after July 1, 1963, the applicable provisions of the Federal Internal Revenue Code, as incorporated and applied by the "Adjusted Gross Income Tax Act of 1963," will apply to the receipt of income under the terms of said contract.

3. Nonexempt corporations are required to pay gross income tax on proceeds from the sale of real estate conditionally or otherwise; therefore, if such tax has not been entirely prepaid, the necessary stamps must be affixed to the deed of transfer.

OFFICIAL OPINION NO. 20
April 14, 1964

Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

This is in reply to your letter requesting an Official Opinion on the following questions:

"(1) At what point or under what circumstances do imports lose their characteristic as imports, thus making such property subject to assessment for ad valorem tax?

"(2) Is there any distinction made between imports held for different purposes, specifically with respect to the following property:

"(a) Materials held for use in a manufacturing process;"
The United States Constitution, Art. 1, Sec. 10, clause 2, reads as follows:

"No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress."

Such constitutional provision prohibits the taxation of imports by a state in the absence of congressional consent, except as therein specifically provided with regard to inspection laws. In the case of Low et al. v. Austin (1871), 13 Wall. (U.S.) 29, 20 L. Ed. 517, the United States Supreme Court held that an ad valorem tax levied on imports by a state comes within the scope of the above prohibition.

Thus, the basic inquiry in this area is that which is set forth in your first question—that is, when do imported goods lose their character or status as imports and thus become subject to a state ad valorem tax?

In answer to your first question, please be advised that a distinction exists between two types of imports. The first type of imports consists of those goods imported for sale by the importer. The second type of imports consists of those goods imported for use by the importer.

A. As to the first type of imports—goods imported for sale by the importer—such goods retain their status as imports and are thus exempt from a state ad valorem tax while they remain in their original packages and before such importer sells or consigns them to another.
OPINION 20

Brown v. The State of Maryland (1827), 12 Wheat. (U.S.) 419;
Norfolk & Western Railway Co. v. Sims (1903), 191 U.S. 441, 48 L. Ed. 254, 24 S. Ct. 151;
Waring v. The Mayor (1868), 8 Wall. (U.S.) 110, 19 L. Ed. 342.

This is true even though such packages become part of the importer’s current inventory of goods held for sale.

Tricon, Inc. v. King County; F. L. Hartung Glass Co., Inc. v. King County (1962), — Wash. —, 374 P. 2d 174.

When, however, an importer breaks up the original packages in which the goods were sent to him, such goods thereby lose their status as imports and are thus subject to a state ad valorem tax.

Brown v. The State of Maryland, supra;
Waring v. The Mayor, supra;
May v. New Orleans (1899), 178 U.S. 496, 44 L. Ed. 1165, 20 S. Ct. 976;

Original packages of imported goods have been held to be the boxes, cases, or bales in which the goods are shipped, and not any smaller packages which might be therein contained. When the packages in which the goods are shipped reach their destination for use or trade, and are opened and the separate packages therein exposed or offered for sale, the goods therein contained become subject to local taxation.

May v. New Orleans, supra.

Goods also lose their status as imports and are thus subject to a state ad valorem tax after they have been sold or con-
1964 O. A. G.

signed by the importer to another, even though they may yet remain in their original packages.

Waring v. The Mayor, supra;

State ex rel. H. A. Morton Co. v. Board of Review, City of Milwaukee et al. (1962), 15 Wis. 2d 330, 112 N. W. (2d) 914.

B. As to the second type of imports—goods imported for use by the importer—such goods lose their status as imports and are thus subject to a state ad valorem tax when such goods are put “to the use for which they were imported.”

The landmark decision in this area of state ad valorem taxation is found in the case of Youngstown Sheet & Tube Co. v. Bowers, Tax Commissioner of Ohio (1958), 358 U. S. 534, 3 L. Ed. 2d 490, 79 S. Ct. 383. Therein, the United States Supreme Court refused to hold, as a matter of law, that the following goods had not been put to the use for which they were imported and were thus not subject to a state ad valorem tax:

Imported iron ores received by a steel producing and fabricating company and stored within the wire fence surrounding such company’s plant and adjacent to its manufacturing facilities. Ores were first stored in separate piles according to the respective country of import, the ores from the individual countries being of different types, and, as needed, such ores were then conveyed from such pile or piles to “stock bins” or “stock houses” which were located in close proximity to the furnaces and from which a one or two-days’ supply of ores was available for feeding into the furnaces. The state had determined that one-half of the ores both in the piles and in the “stock bins” or “stock houses” were subject to taxation.

Imported green lumber received by a manufacturer of veneered wood products who used such lumber in its manufacturing process. Such lumber was located in the company’s storage yard adjacent to its plant and was stacked in the open in such a way as to allow air to freely circulate through the stacks, thereby partially drying the lumber and thus materially reducing the time and expense of the kiln-drying process.
Imported veneers also received by the above-referred to manufacturer of veneered wood products and used in its manufacturing process. Such veneers were imported from three countries, received in bundles and kept in that form in piles, separated as to species, inside such company’s plant.

It should be noted that as to the imported iron ores, the stipulated facts included a stipulation that the steel company endeavored to maintain “a supply of imported ores to meet its estimated requirements for a period of at least three months.” Moreover, it was further stipulated that the ores were not imported “for resale” but “for use in manufacturing * * * [at the plant to which they were delivered].” It was further stipulated that such ores were imported “for ultimate use in [its] open hearth [and] blast furnaces” in its manufacturing processes.

As to the manufacturer of veneered wood products, the lower court found that the “dominant purpose” for stacking the green wood in the particular way in which it was stacked was for the purpose of air-drying the same. Such court also found that air-drying the lumber “was part of * * * [such company’s] manufacturing practices,” and that, when stacked for air drying, the lumber “entered the process of manufacture” and thus lost its character as an “import.” The lower court further found that the lumber and veneers had been imported by such company “for use in manufacturing” at the plant to which it had been delivered; that their importation journeys definitely had ended; that the lumber and veneers that were taxed had been irrevocably committed to “use in manufacturing” at the plant to which they were delivered and were “necessarily required to be kept on hand to meet * * * [such company’s] current operational needs”; and that they were being “used in manufacturing,” and had therefore lost their character as “imports” and were subject to a local ad valorem tax.

As to both the steel company and the manufacturer of veneered wood products, the United States Supreme Court further stated in the Youngstown case, supra, at p. 544 of 358 U. S.:
"* * * the stipulated and found facts show that the imported materials that were taxed by those States were so essential to current manufacturing requirements that they must be said to have entered the process of manufacture * * *"

In commenting on its application of the test as to whether goods imported for use by the importer had been put "to the use for which they were imported," the Supreme Court stated, on p. 545 of 358 U. S.:

"* * * The design of the constitutional immunity was to prevent '[t]he great importing States [from laying] a tax on the non-importing States,' to which the imported property is or might ultimately be destined, which would not only discriminate against them but also 'would necessarily produce countervailing measures on the part of those States whose situation was less favourable to importation.' Brown v. Maryland, supra, at 440. See Madison, Debates in the Federal Convention of 1787, August 28, 1787 (Hunt & Scott ed.). And see, e.g., Cook v. Pennsylvania, 97 U. S. 566, 574; Richfield Oil Corp. v. State Board, 329 U. S. 69, 76-77. The constitutional design was then to immunize imports from taxation by the importing States, and all others through or into which they may pass, so long as they retain their distinctive character as imports. Hence, that design is not impinged by the taxation of materials that were imported for use in manufacturing after all phases of the importation definitely have ended and the materials have been 'put to the use for which they [were] imported' (Hooven & Allison Co. v. Evatt, supra, at 657), for in such a case they have lost their distinctive character as imports and are subject to taxation. And inasmuch as 'the reconciliation of the competing demands of the constitutional immunity and of the state's power to tax, is an extremely practical matter' (Hooven & Allison Co. v. Evatt, supra, at 668), we must approach the question whether these materials had been 'put to the use for which they [were] imported' (id., at 657) with full awareness of realities..."
and treat with them in a practical way.” (Our emphasis)

As to the manufacturer of veneered wood products, the Supreme Court, in referring to the trial court’s findings of fact, stated, at p. 548 of 358 U. S.:

"* * * We think they clearly show that the lumber and veneers that were taxed were not only needed, imported, and irrevocably committed to supply, but were actually being used to supply, the day-to-day manufacturing requirements of the plant. They thus establish that petitioner had ‘so acted upon the [imported materials]’ (Brown v. Maryland, supra, at 441) that were taxed by using them ‘for the purpose for which they [were] imported,’ that—like the ores in the Youngstown case—they must be held ‘to have then entered the manufacturing process’ (Hooven & Allison Co. v. Evatt, supra, at 665, 667) and to have lost their distinctive character as ‘imports’ and all tax immunity as such."

As to the steel company, the Supreme Court, in commenting on the taxability both of the ores stored in piles and those stored in “stock bins” or “stock houses,” stated, at pp. 546 and 547 of 358 U. S.:

“Youngstown does not deny that so much of the ores as have been conveyed from the ‘piles’ in the ‘ore yards’ to the ‘stock bins’ or ‘stock houses’ have lost their distinctive character as imports. Is there any real basis of distinction? The only possible differences are in the sizes of the piles and their distances from the furnaces. Surely the size of the pile is not material. Just as surely the short distance between the smaller piles in the ‘stock bins’ or ‘stock houses’ and the larger piles in the ore yards is not a real distinction. If the larger piles stood on higher ground adjoining the ‘stock bins’ and ‘stock houses’ so that the ores might feed by gravity from the former to the latter there would be no practical difference from the actual facts involved, but it could not be argued that the ores in the one are any less
certainly being used in the processes of manufacture than the ores in the other. It seems entirely plain that the ores in the smaller piles in the ‘stock bins’ and ‘stock houses’ are no more definitely and irrevocably committed to use, or being used, at the plant than are the ores in the larger piles in the ore yards from which the smaller ones are constantly kept supplied. ‘[R]econciliation of the competing demands of the constitutional immunity and of the state’s power to tax [being] an extremely practical matter’ (Hooven & Allison Co. v. Evatt, supra, at 668), taxability cannot depend upon whether the size of the pile of stored materials or its distance from the place of actual fabrication or consumption is a little more or a little less.’

In a subsequent decision, the Ohio Supreme Court, in the case of Continental Coffee Co. v. Bowers (1963), 174 Ohio 435, 189 N. E. (2d) 901, considered the question as to whether green coffee, delivered from foreign countries to a coffee-processing plant in Ohio and stored therein for use in such plant, retains its character as an import so long as it is in the original package. Such court stated, at p. 905 of 189 N. E. (2d):

“Here the coffee is stored in the plant in a place immediately adjacent to the manufacturing area. A supply for only three weeks duration is all that is maintained at any given time and from this supply is drawn the daily needs of the plant. This falls exactly within the rule promulgated by the Supreme Court of the United States in the Youngstown Sheet & Tube case holding that such material has lost its character as an import.

“In other words, coffee stored by an importer-manufacturer of coffee in an amount sufficient only to meet the manufacturer’s current operating needs and from which is drawn the amount needed daily in its business, is used in business and thus has lost its character as an import even though it is stored in the original package in which it was imported.”
In another recent decision, the Colorado Supreme Court, in the case of The City & County of Denver et al. v. The Denver Publishing Co. (1963), — Colo. —, 387 P. 2d 48, held, at p. 53 of 387 P. 2d:

“There is no rigid and inflexible rule which can be laid down to determine the ‘current operational needs’ of a taxpayer. This is an area wherein the policy of the law dictates ad hoc determinations based on the facts presented in each particular case. The trial court in the instant case held that since it took six days for the taxpayer to replenish its supply of newsprint from Canada and since the taxpayer used 60 tons of newsprint per day, the amount necessary for ‘current operational needs’ was 360 tons and that this amount was taxable even though all the newsprint remained in its original package until actually being made ready for the presses. We approve the formula in the instant case and cannot conclude that as a matter of law the court made an erroneous determination of the ‘current operational needs’ of the taxpayer.”

It is, moreover, interesting to note that although the court upheld the taxability of only 360 tons of newsprint, yet a total of approximately 600 tons of newsprint was stored in the taxpayer’s publishing plant (presumably immediately available for use) while the remainder of a 35 days’ supply of newsprint was stored elsewhere.

In conclusion, in respect to goods imported for use by the importer, it is my opinion that, in the absence of any more definite guidelines having been prescribed by the United States Supreme Court in the Youngstown case, supra, if a reasonable and uniform approach is taken by the State Board of Tax Commissioners in determining how much of any such particular taxpayer’s goods on hand are necessary to meet his “current operational needs,” an assessment and an ad valorem tax based thereon would be constitutional and valid.

C. In answer to your second question, please be advised that the only recognizable distinction as to imports being held for different purposes is the distinction alluded to above—the distinction between goods imported for sale by the importer