

**Revenue Ruling
No.12-001
May 17, 2012
Sales Tax**

Taxability of Bulk Sales of Water Put in a Ship's Reservoir

In Louisiana, the sale or use of water is taxable only when it is (1) mineral water, (2) carbonated water, or (3) water put in bottles, jugs, or containers. Article 7, § 2.2 of the Louisiana Constitution provides that no state or local sales and use taxes apply to sales or purchases of water sold directly to the consumer for residential use. La. R.S. 47:305 D(1)(c) and 47:337.9 B(8) exempt from taxation all sales or use of water except for “mineral water or carbonated water or any water put in bottles, jugs, or containers, all of which are not exempted.”

Issue

Questions have arisen concerning the taxability of sales of water which is held in large storage tanks primarily for use on vessels. Taxation of such sales is not prohibited by the Constitution, as the water is not “sold directly to the consumer for residential use.” Are such sales not exempted under the statute because the water is “put in ... containers ...”?

Facts

The taxpayer charters a vessel and crew for one charge. Additionally, fuel, water, and other consumables are purchased by the taxpayer and billed to the taxpayer as separate transactions. The water is pumped into potable water tanks or ballast tanks, which are built into and are part of the vessel.

There are multiple uses for the water. First, the vessel's crew uses the potable water for bathing, cooking, and drinking. The potable water travels from the potable water tank through the vessel's internal plumbing system. Second, it is used in the operation of the vessel itself. In this case, it is pumped into ballast tanks and used to balance the vessel. Third, it is pumped off the vessel to water tanks on rigs, where it is used as potable water or in drilling operations.

Analysis/Discussion

Although the Constitution's prohibition against taxation of water sold directly to the consumer for residential use did not go into effect until 2003, La. R.S. 47:305 has contained a sales and use tax exemption for water since it was enacted in 1948. Originally the wording was a little different. It applied to “water (not including mineral water or carbonated water or any water put up in bottles, jugs, or other containers, all of which are not exempted)”

A 1984 amendment to R.S. 47:305 made numerous “nonsubstantive” changes, including the change of the wording of the water exemption to its present form. In *Gard Limited Liability Company v. Calcasieu Parish School Board*, 96-1520 (La.App. 3 Cir. 4/2/97), 693 So.2d 10, the court held that the exception to the exemption cannot be circumvented by requiring the purchaser to provide the container. The court agreed with the taxing authority that “the exemption does not

apply to water which must be carried from the point of sale in a container,” no matter who supplies the container.

While “container” can have a broad meaning, since February 1987 LAC 61:I.4401 has explained, “Water (but not including mineral or carbonated water) is also exempt provided it is not placed in a *container such as a jug, bottle, or carton*” [emphasis added]. Where a statute is ambiguous, a long-settled contemporaneous construction of the statute by those charged with administering it is given substantial and often decisive weight in its interpretation. The regulation shows that for many years the word “containers” in the R.S. 47:305 water exemption has been interpreted in context to mean containers such as bottles, jugs, and the like.

The water or ballast tanks on a ship are not the type of containers to which the statute refers.

Conclusion

Under the facts as stated above, R.S. 47:305 D(1)(c) does apply to exempt the bulk sale of water to fill a vessel’s tanks for use by the crew, for balance of the vessel, or for use in drilling rig operations. A ship’s tank is not the type of container that causes sales of water to be taxable when put therein.

Cynthia Bridges
Secretary

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