

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(4)S
Sales Tax
January 8, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070719A

On July 19, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Mountain Valley Water Company of WNY Inc., PO Box 95, 333 Delaware Avenue, Tonawanda, NY 14151.

The issue raised by Petitioner, Mountain Valley Water Company of WNY Inc., is whether the sale of glass-bottled spring water purchased under a physician's prescription is exempt from sales tax under section 1115(a)(3) of the Tax Law.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner's customers purchase glass-bottled water under a physician's prescription to avoid contact with chemicals that are present in plastic-bottled water. Petitioner's glass-bottled water is much more expensive than water bottled in plastic. Chemically sensitive people need glass-bottled water to assist in the mitigation, treatment, or prevention of illness and may receive prescriptions from their physicians for such glass-bottled water.

Petitioner provided a statement from a licensed physician practicing environmental medicine that reads, in part, as follows:

I have a strong opinion that any and all chemically sensitive patients must drink glass bottled spring water to remain symptom free and reduce their total toxic load in the body. . . . These patients have suppressed immune and detoxification systems. . . . Avoidance is the treatment of choice for these patients. It is a commonly accepted practice to avoid chemicals from air, food and water. Special types of air purifiers are used by these patients as well as use of organic food and glass bottled spring water. . . .Very often when the patient practices these recommendations and modifies their environment they feel better.

Applicable law and regulations

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(2) Water, when delivered to the consumer through mains or pipes.

(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein

Section 528.3(b) of the Sales and Use Tax Regulations provides:

Water sold in bottles or by any means other than through mains or pipes is taxable.

Section 528.4 of the Sales and Use Tax Regulations provides, in part:

(a) Exemption. (1) Drugs and medicines intended for the use, internally or externally in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health are exempt.

Opinion

Petitioner sells spring water bottled in glass as well as plastic. Some of the spring water bottled in glass is sold to customers pursuant to prescriptions from their physicians. Petitioner states that physicians prescribe spring water bottled in glass containers for patients who need to avoid contact with chemicals that are present in water bottled in plastic containers.

Water sold in bottles or by any means other than through mains or pipes is taxable under section 1105(a) of the Tax Law. See section 528.3(b) of the Sales and Use Tax Regulations. Section 1115(a)(3) of the Tax Law provides an exemption from the sales tax imposed by section 1105(a) of the Tax Law for purchases of drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment, or prevention of illnesses or diseases in human beings and products consumed by humans for the preservation of health. Spring water is generally not considered to be a drug or medicine used and consumed in the treatment of illness or disease. Further, spring water is not considered to be consumed for the preservation of health in a manner similar to drugs or other medicines. Therefore, Petitioner's receipts from the sale of bottled spring water, whether sold in glass, plastic, or other containers, are not exempt under

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section 1115(a)(3) of the Tax Law. See *Jandi's Nature Way, Inc.*, Adv Op Comm T&F, July 11, 2002, TSB-A-02(25)S.

DATED: January 8, 2008

/s/
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Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.