

STATE OF TENNESSEE

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Opinion No. 00-177

Assessment of Privilege Tax on Manufacturing or Producing and Selling Bottled Water

QUESTIONS

Does bottled water fall within the definition of “bottled soft drinks” contained in Tennessee’s privilege tax statutes?

OPINION

Yes, bottled water falls within the definition of “bottled soft drinks” contained in Tennessee’s privilege tax statutes. Thus, a person who manufactures or produces and sells bottled water within this state is required to pay a tax for the privilege of engaging in such business.

ANALYSIS

Tennessee’s privilege tax statutes impose a tax on the privilege of manufacturing or producing and selling bottled soft drinks within this state. *See* Tenn. Code Ann. § 67-4-402(b) (Supp. 1999). The privilege tax statutes contain the following definition of “bottled soft drinks:”

“Bottled soft drinks” includes any and all nonalcoholic beverages, whether carbonated or not, such as soda water, cola drinks, orangeade, grapeade, gingerale and the like, and all bottled preparations commonly referred to as soft drinks of whatever kind or description which are closed and sealed in glass, paper, metal, plastic, or any type of container or bottle, whether manufactured with or without the use of syrup. Fluid milk with or without flavoring, natural undiluted fruit juice or vegetable juice, cider, and pure fruit juice concentrate to which no additive has been made, with only water being necessary to be added to restore the juice to its natural state, are exempted from the provisions of this section.

Tenn. Code Ann. § 67-4-402(a)(1) (Supp. 1999). By its terms, this definition indicates that, in taxing the privilege of manufacturing or producing and selling bottled soft drinks, the legislature did not intend to tax only “bottled preparations commonly referred to as soft drinks.” *Id.* Rather, the legislature broadly defined

“bottled soft drinks” to include “any and all nonalcoholic beverages, whether carbonated or not.” *Id.* A beverage is “a drinkable liquid.” *Merriam-Webster’s Collegiate Dictionary* 109 (10th ed. 1997). Accordingly, bottled water, whether carbonated or not, constitutes a bottled soft drink because it is a nonalcoholic beverage or drinkable liquid.

As your request indicates, some authorities have defined the term “beverage” as a liquid for drinking but have indicated that the term usually excludes water. *See, e.g., Webster’s Third New International Dictionary of the English Language (Unabridged)* 210 (Philip Babcock Gove, ed., 1971) (defining “beverage” as “liquid for drinking; *esp.*: such liquid other than water”); *The American Heritage Dictionary* 174 (2d college ed. 1982) (defining “beverage” as “[a]ny of various liquids for drinking, usually excluding water”). These definitions do not resolve the question posed in your request, however, because the privilege tax statutes themselves indicate that the legislature intended to include water within the definition of bottled soft drinks.

Although the legislature broadly defined “bottled soft drinks” as “any and all nonalcoholic beverages, whether carbonated or not,” the legislature gave several examples of beverages that were included in this definition. Tenn. Code Ann. § 67-4-402(a)(1) (Supp. 1999). One of these examples was “soda water,” also known as “carbonated water.” *The American Heritage Dictionary of the English Language* 1226 (William Morris, ed., new college ed. 1981). In light of the legislature’s specific inclusion of “soda water” or “carbonated water” within the statutory definition of “bottled soft drinks,” and in light of the legislature’s statement that “bottled soft drinks” may be either carbonated or non-carbonated, it follows that the legislature intended to include non-carbonated water within its definition of “bottled soft drinks.”

The statutory definition indicates that the term “bottled soft drinks” does not include “natural undiluted fruit juice or vegetable juice, cider, and pure fruit juice concentrate to which no additive has been made, with only water being necessary to be added to restore the juice to its natural state.” Tenn. Code Ann. § 67-4-402(a)(1) (Supp. 1999). Citing this language, a taxpayer could make the argument that water would not be considered a bottled soft drink. The better-reasoned argument, however, is that, rather than excluding water, this language merely excludes undiluted, pure fruit juices from the general definition of “bottled soft drinks” and makes clear that the exclusion applies regardless of whether the product requires the addition of water. As previously explained, the statute’s general definition indicates that the legislature intended to include water within the term “bottled soft drinks.”

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