

# Memorandum

**245.0370**

To : Ms. Charlotte Paliani  
Program Planning Manager

Date: December 1, 2000

From : David H. Levine  
Tax Counsel IV

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Subject: Sales of Distilled Water

This is in response to your memorandum dated November 14, 2000 regarding sales of distilled water, and supersedes our previous writings on this subject.

Subdivision (a) of section 6359 exempts sales of food products for human consumption. Subdivision (b)(3) of section 6359 defines "bottled water" as a food product. Accordingly, distilled water sold in bottles, such as in grocery stores, is a food product for purposes of the exemption. However, sales of distilled water qualify for exemption under section 6359 only if sold for human consumption. If not sold for human consumption, the sale does not qualify for the section 6359 exemption.

Distilled water traditionally has been sold primarily for purposes other than for human consumption, and we have traditionally regarded sales of distilled water as not being for human consumption. However, there has been an increase in sales of bottled distilled water for human consumption. Contrary to our prior view, we should thus recognize that some sales of distilled water are exempt sales of food products for human consumption. Nevertheless, a significant portion of distilled water sales (probably the substantial portion) is sold for other uses and cannot be regarded as qualifying for the exemption. The question to be resolved is how to distinguish between these sales of distilled water. This question must be answered based on the manner in which the bottled distilled water is labeled.

We have found various types of labels on distilled water, with different indications of the water's intended use. When the label on a bottle of distilled water includes no reference to intended use, the distilled water should not be regarded as sold for human consumption. Sales of such distilled water do not qualify for exemption under section 6359. Similarly, when a bottle of distilled water is labeled only for non-food purposes, its sale cannot qualify for exemption under section 6359. On the other hand, when a bottle of distilled water is labeled only for drinking, the sale of that bottle clearly should qualify for exemption under section 6359. Finally we reach the issue of a label that includes references to both food and non-food uses. We could distinguish further with respect to such mixed-use labels based upon the prominence of the references to

food uses compared to the references to non-food uses. However, such a practice, though legitimate and supportable, is difficult to administer for both the Board and taxpayers. Thus, we believe that for the administrative convenience of all, we should adopt the simple rule that if the label of a bottle of distilled water includes a reference that the distilled water is intended for human consumption, the sale of that bottle of distilled water should qualify for exemption under section 6359 without regard to the prominence of that reference to human consumption vis-à-vis any reference(s) to non-food uses.

If you have further questions, please write again.

DHL/cmm

cc: Mr. John L. Waid (MIC:82)