

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-83(28)S  
Sales Tax  
June 24, 1983

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820915A

On September 15, 1982 a Petition for Advisory Opinion was received from Crystal Clear Water, Ltd., 303 Bewley Building, Lockport, New York 14094.

The issue raised is whether sales of water through vending machines are subject to State and local sales taxes.

Petitioner's vending units are placed at major supermarkets. The units are connected to the supermarkets' plumbing systems. Each vending unit filters and sterilizes the water before vending it to the customer. Each unit vends one gallon of water per transaction. Petitioner does not provide containers for the water. Rather, the customers purchase empty containers from the supermarkets.

Section 1105(a) of the Tax Law imposes the State sales tax on receipts from the retail sale of tangible personal property. Section 1115(a)(2) of the Tax Law exempts from such tax receipts from the sale of "water, when delivered to the consumer through mains or pipes." Similar provisions apply with respect to locally imposed sales taxes.

In applying section 1115(a)(2) to the present matter, it is to be recalled that "a tax statute should be interpreted as the ordinary person reading it would interpret it," and that where common words are used "they are to be given their commonly understood meanings unless another meaning is obviously intended." Wein v. Murphy, 289 N.Y.S. 2d 303. Coupling those strictures with the generally accepted precept that tax exemption statutes are to be strictly construed (McKinney's Statutes § 294), it must be concluded that the sales at issue herein do not qualify for the exemption provided for in section 1115(a)(2) of the Tax Law. To construe the sale of water through the vending machines to constitute delivery to the consumer through mains or pipes would strain the meaning of the terms employed in the statute, and constitute a rejection of their normal acceptance. Thus, the exempt provision is generally aimed at, and has in practice been applied to, the sale of water by public-utilities and the like where the water is brought from a distant location to the customer's home or place of business by mains or pipes. While the exemption could properly be extended to situations sufficiently similar to that just described, Petitioner does not present such a situation. Accordingly, Petitioner is required to collect sales tax on its sales of water through vending machines in the manner described above.

DATED: June 8, 1983

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau