

M e m o r a n d u m**275.0080**

To: San Bernardino - Compliance (JLB)

Date: July 20, 1959

From: Headquarters - Sales Tax Counsel (JJD)

Subject: Sales of Propane & Butane

Our letter of June 10 to [X] stated that we believed the exemption contained in Section 6353 applied to the factual situation presented for our opinion.

We understood from Mr. [K]'s letter that propane gas was delivered by a tank truck into a tank, which was placed on the consumer's premises, but which was the property of the vendor of the propane. We also understood that the meter was owned by the vendor, but that the pipe lines were owned by the consumer. Since there was no other indication, we presumed that the meter mentioned was used to record the amount of vaporized gas supplied through the pipes.

From Mr. [Unknown]'s letter of June 24, it now appears that the meter does not measure directly the amount of vaporized gas consumed, but is instead a gage which measures the amount of liquified petroleum gas in the storage tank. The manner in which the consumer is billed was not stated.

This matter has been brought to the attention of Mr. Stetson and he has agreed that the existence of a meter of any type is not essential to the obtaining of the benefits of the statutory exemption but is an evidentiary aid in determining who has title at any particular time. You will notice that Section 6353 merely states that there are exempted from sales tax gross receipts from sales, furnishing, or service of and the storage, use, or other consumption in this State of gas, electricity, and water when delivered to consumers through mains, lines, or pipes. There is no mention of meters.

Attorney General's Opinion NS-4782, dated March 18, 1943, was concerned primarily with the problem of whether or not the statute required any particular type system of pipes and/or whether or not it was necessary that the vendor be a public utility in order to come within the terms of the exemption. The opinion concluded with a statement which went beyond the question in issue to the effect that, "If the seller of the gas merely attached the tank to pipelines owned by the consumer and received payment for the tank of gas, the sale would then be complete and would, in my opinion, be a taxable sale, since the seller does not make delivery of the gas to the consumer through mains, lines, or pipes. The consumer controls the delivery of the gas from the tank to his house appliances and with this delivery, the seller has no connection whatever."

We believe that the above-quoted portion of the Attorney General's opinion merely states that if the vendor transfers title to the liquified gas, tax applies. However, if the vendor retains title to the liquified gas, which gas is vaporized and delivered through pipes to the consumer, we believe that the placement of the meter or gage should not be the sole criteria for determining the taxability of the gross receipts received.

The correct manner in which to handle this matter would seem to be to determine when title to the property actually passes. The existence of a meter which measures vaporized gas would seem to indicate that an exempt sale of vapor gas was intended. However, if the contract and billing indicate a present sale of liquified gas the existence of a meter would not prevent the tax from applying. On the other hand the absence of a vapor measuring meter does not by itself indicate a taxable sale but should be only one of the factors considered.

J. J. Delaney

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