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OPINION	:	No. 82-1204
	:	
of	:	<u>JANUARY 27, 1983</u>
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THE HONORABLE JIM ELLIS, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following question:

Would the sale of a three gallon case package containing six one-half gallon bottles of drinking water be exempt from sales tax?

CONCLUSION

The sale of a three gallon case package containing six one-half gallon bottles of drinking water is not exempt from sales tax.

ANALYSIS

Revenue and Taxation Code¹ section 6359 provides in pertinent part:

"There are exempted from the taxes imposed by this part ² the gross receipts from the sale of and the storage, use, or other consumption in this state of food products for human consumption.

"Food products' include cereals and cereal products, oleo-margarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products, and nonmedicated chewing gum.

"Food products' include milk and milk products, milkshakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

"Food products' include all fruit juices, vegetable juices, and other beverages, whether liquid or frozen, *except bottled water*, spirituous, malt or vinous liquors or carbonated beverages.

"Food products' do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

"." (Emphasis added.)

By the Statutes of 1980, chapter 1348, section 1, section 6359.6 was added as follows:

"Notwithstanding Section 6359, there are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of noncarbonated and noneffervescent bottled water sold in *individual containers of one gallon or more in size*." (Emphasis added.)

¹ Hereinafter, all section references are to the Revenue and Taxation Code.

² "Exempted from the taxes imposed by this part" means, in case of the sales tax, exempted from the computation of the amount of tax imposed. (§ 6351.)

The question presented is whether the sale of a three gallon case package containing six one-half gallon bottles of drinking water³ would be exempt from sales tax. The inquiry contemplates only a sale by the case as distinguished from its individual containers. Notwithstanding the general exclusion of bottled water from the exemptions set forth in section 6359, the later enacted and specific provisions of section 6359.6 expressly exempt water sold in individual containers of one gallon or more.

The source of the problem is the plural form of the word "containers." Had the Legislature exempted water sold "in an individual container of one gallon or more," there would be no doubt that one or more gallons of water would have to be contained in a single bottle in order to qualify for exemption. Thus, it may be argued that the use of the plural form was intended to qualify for exemption any sale of one or more gallons of water "in individual containers." Under this theory, the sale of a three gallon case package containing six one-half gallon bottles of water would be exempt.

On the other hand, a reference to one or more gallons of bottled water in individual containers of unspecified capacity is easily expressed without any reference to a container or containers. If the amount of water were the sole criterion, the reference to containers, much less *individual* containers, would be wholly superfluous. It is obvious that water, and more particularly *bottled* water, is sold in containers. Further, it is apparent that the phrase "one gallon or more in size" more specifically modifies "containers" than "water" since the former may be measured by volume capacity or *size*, while the latter is not ordinarily quantified by size, but rather by volume or weight. A perceived weakness of this argument is the possible inference that any amount of water in a one or more gallon container would qualify for exemption. In our view, however, such is clearly not the legislative intent. Rather, the only rational inference based upon any reasoned hypothesis of legislative purpose⁴ is that the containers must be full. Under this theory, then, the sale of a three gallon case package containing six one-half gallon bottles of water would not be exempt. We so conclude, based upon the principles hereinafter set forth.

First, every word, phrase and provision in a statute is intended to have meaning and to perform a useful function; a construction rendering some words surplusage should be avoided. (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 681; *Moyer v. Workmen's Comp. App. Bd.* (1973) 10 Cal.3d 222, 230.) As previously noted, the statutory reference to "individual containers" would, in the absence of specification as to size or

³ The inquiry pertains to noncarbonated and noneffervescent water.

⁴ We are asked only to interpret the statute and not to identify its substantive due process base or to examine its classifications. Hence, we do not examine and express no opinion respecting a conceivable legitimate governmental purpose for the distinction between sales of more or less than one gallon of water.

other characteristic, be insignificant. Further, a clause of exemption from a general provision is ordinarily construed strictly. (*People ex rel. S.F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 543; 58 Ops.Cal.Atty.Gen. 487, 490 (1975).) It is often stated in this regard that statutory exceptions should be narrowly construed. (*Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 189; 61 Ops.Cal.Atty.Gen. 335, 338 (1978).) Even more precisely, exemptions from taxes are to be strictly construed against the taxpayer. (*Good Humor Co. v. State Board of Equal.* (1957) 152 Cal.App.2d 873, 879; 63 Ops.Cal.Atty.Gen. 147, 151 (1980).) Consequently, that interpretation which limits the effect of the exemption as to both the amount of water and the size of the container should be favored.

It is concluded that the sale of a three gallon case package containing six one-half gallon bottles of drinking water is not exempt from sales tax.
