



January 19, 2010

Mr. Edward Rose
President, Rocky Mountain Spring Water Co.
5 Pond Park Road, Unit #4
Hingham, MA 02043

Re: Tax Exemption for Water Supply Equipment
Our File # 2009-1529

Dear Mr. Rose:

You have requested an opinion on whether Rocky Mountain Spring Water Co. is entitled to a personal property tax exemption for the equipment it uses in pumping water in its 35 transfer stations for purposes of water supply. You indicate that Rocky Mountain Spring Water, a corporation, is a producer and supplier of bulk spring water in Massachusetts. You also state that the transfer stations are permitted by the Massachusetts Department of Environmental Protection as Public Water Supply sources. You indicate that the equipment in the transfer stations is subject to disparate tax treatment: taxed in some communities and exempted in others.

We conclude that the equipment in the transfer stations is subject to personal property tax under G.L. c. 59, § 18. While certain corporations are exempt from tax on their personal property under G.L. c. 59, § 5, Clause Sixteenth, this exemption is expressly denied to equipment used in conducting a water supply business, in differing terms, by the two potentially applicable sub-sections of Clause Sixteenth. Paragraph (2) of G.L. c. 59, § 5, Clause Sixteenth applies to a “business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation” Corporations described under paragraph (2) are entitled to tax exemption on their personal property, but the exemption expressly excludes “machinery used in the conduct of the business” with certain exceptions not relevant here.

Paragraph (1) of G.L. c. 59, § 5, Clause Sixteenth applies to, *inter alia*, “(c) a Massachusetts corporation subject to taxation under chapter sixty-three other than a corporation mentioned in either paragraph (2) or paragraph (3) of this clause, or (d) a foreign corporation subject to taxation under section twenty, twenty-three, fifty-two A or fifty-eight of said chapter sixty-three . . .” Corporations described in paragraph (1) receive a personal property tax exemption which expressly excludes “machinery used in manufacture or in supplying or distributing water”

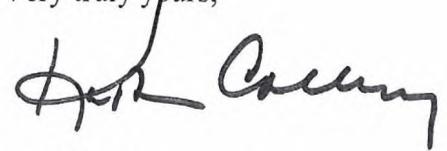
Based on the information you have provided, the equipment in the transfer stations falls within one or the other of the two exclusions from the personal property tax exemption. The equipment is either “machinery used in the conduct of the business” or “machinery used in manufacture or in supplying or distributing water.” We need not determine whether the corporation comes within the scope of paragraph (1) or paragraph (2) of G.L. c. 59, § 5, Clause Sixteenth, *see generally Brown, Rudnick, Freed & Gesmer v. Assessors of Boston*, 389 Mass. 298 (1983), because the equipment is excluded from the scope of the exemption in clear terms in either case.

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The exemption accorded to certain personal property under G.L. c. 59, § 5, Clause Sixteenth is interwoven with the corporate excise imposed by G.L. c. 63. Equipment owned by a corporation and subject to local taxation, such as that contained in the transfer stations, is excluded from the measure of the corporate excise. *See* G.L. c. 63, § 30(8). As a result, personal property owned by a corporation avoids taxation in the scheme of G.L. c. 63 to the extent it is subject to tax at the local level. On the other hand, personal property exempt from local taxation, such as stock in trade, is counted in the measure of the corporate excise. *See Springfield Sugar & Products Co. v. State Tax Commission*, 381 Mass. 587 (1980).

In sum, the equipment situated in the transfer stations which Rock Mountain Spring Water use in its water supply operations is subject to the personal property tax imposed at G.L. c. 59, § 18 because it is excluded from the property tax exemption conferred by G.L. c. 59, § 5, Clause Sixteenth. Please do not hesitate to contact us if we can be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with the first name "Kathleen" written in a larger, more prominent script than the last name "Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG