

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 21, 1964

To Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

From Jon R. Doyle, Asst. Atty. General

Dept. " " "

Subject American Propane Corporation Reg. #38860 Taxability of Sales of Bottled Gas

FACTS

American Propane Corporation, which manufactures L.P. gas, argues that the exemption for sales of domestic fuel, found in subsection IX of section 10 of the Sales and Use Tax Law, which excepts "gas and electricity," should not be construed, insofar as the exception is concerned, to apply to L.P. gas. American Propane Corporation contends that liquified petroleum gas, which comes out of the ground or manufacturing facility as a liquid, and which is sold to the consumer as a liquid, is "other fuel" rather than "gas" according to the terms of section 10, subsection IX of the Act.

American Propane further argues that the circumstances surrounding the sale and use of L.P. gas are so dissimilar to those surrounding the sale and use of electricity in ordinary manufactured gas that to treat sales of L.P. gas in the same manner as sales of manufactured gas or electricity violates the provisions of both State and Federal constitutions.

QUESTION

The question is whether the words "except gas and electricity" as found in subsection IX of section 10 of the Sales and Use Tax Law apply to L.P. gas or bottled gas, as well as to manufactured gas delivered through mains.

LAW

"Exemptions. No tax on sales, storage or use shall be collected upon or in connection with:"

"Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in homes, hotels and apartment houses, and other buildings designed both for human habitation and sleeping." R.S. 1954, Ch. 17, sec. 10, IX.

Ernest H. Johnson, State Tax Assessor

October 21, 1964

REASONS

There is no definition of gas contained in the Sales and Use Tax Law.

The general rules of construction which are found in Chapter 10, section 22 of the Revised Statutes of 1954 provide:

"Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases and such as have a peculiar meaning convey such technical or peculiar meaning"

"Gas" is defined in Black's Law Dictionary, 4th Edition, as:

"An aeriform fluid."

Aeriform is defined as "having the form or nature of air; gaseous."

The gas in question although called "L.P. gas" is really a propane gas.

"Propane" is the name given to a liquid which is really natural gas compressed at a low temperature." Words and Phrases, Fern. Ed. Vol. 34, p. 598.

Propane gas can take either a liquid or gaseous form.

"Propane gas" takes a gaseous form at normal temperatures and is kept in liquid form at such temperatures by application of pressure and in its pure form it is colorless and odorless." Words and Phrases, Fern. Ed. Vol. 34, p. 25 (Supp.).

The above quotation is taken from the case of Gable v. Tennessee Liquefied Gas Co. 325 S.W. 2d 657 (Tenn. 1957). The Gable case was a damage case arising as a result of the explosion of butane gas. The Court discussed the properties of propane gas referred to in the quotation above and further discussed the properties of butane gas saying:

"Butane gas is a manufactured product, a liquefied petroleum gas which is between gasoline and natural gas. It is inflammable, explosive, has a distinct odor and is very volatile."

Ernest H. Johnson, State Tax Assessor

October 21, 1964

The Court in referring to both butane and propane gases said that the gases were heavier than air and tended to settle down or seek a low level.

Case of Balthazor v. B & B Boiler & Supply Co., 217 Pac. 2d, 906 (Kansas, 1950) is helpful. The Court said there:

" . . . propane is a name given to a liquid which is really natural gas compressed at a low temperature and when released by means of the regulator to a small vent it becomes an inflammable gas which flows through pipes to stoves . . . while the propane itself is a liquid that has no H₂O content, it forms a liquid under heavy pressure and at a low temperature."

It would therefore seem that propane or L.P. gas is only in a liquid state when it is in storage; it is in a gaseous state just prior to manufacture; before it can be successfully used for heating purposes it must again revert to a gaseous state.

I would therefore conclude for the purposes of subsection IX, section 10 that L.P. gas should be treated as a "gas" rather than a liquid. Ascribing both the normal meaning of the word "gas" and its technical meaning I do not believe another conclusion can be reached. The ultimate use of the product is as a "gas" and we must reach the conclusion that the Legislature intended it to be taxed.

I do not believe that it would be proper for this office to rule on the constitutional question; this is a matter properly left for determination by our courts.

JRB:cpd

STATE OF MAINE

Inter-Departmental Memorandum Date October 12, 1964

To Gen. E. Taylor, Assistant Attorney General Dept. Bureau of Taxation
From Bruce H. Johnson, State Tax Assessor Dept. Bureau of Taxation
Subject American Propane Corporation Reg. #98860 - Exemption of sales of bottled gas

Please rate the attached letter, dated October 9, 1964, from Donald W. Perkins, Esq.

On page 2 of this letter, in the section numbered 5, Mr. Perkins argues that the exemption for sales of domestic fuel, found in subsection IX of section 10 of the sales and use tax law, which exempts "gas and electricity", should not be construed, insofar as the exemption is concerned, to apply to L.P. gas. As I understand Mr. Perkins' argument, we should look upon L.P. gas as a liquid, rather than a gas, since it is sold in liquid form and in any event I understand Mr. Perkins to argue that the circumstances surrounding the sale and use of L.P. gas are so dissimilar to those surrounding the sale and use of electricity and ordinary manufactured gas that to treat sales of L.P. gas in the same manner as sales of manufactured gas and electricity would violate the provisions of both state and Federal constitutions.

An assessment against American Propane Corporation is presently pending reconsideration. This assessment included tax on sales of bottled gas, in that the company had been charging and accounting for tax on such sales, which was considered to be proper so that no credit with respect to such transactions was included in the audit leading to the assessment. Will you please advise whether we should consider the words "except gas and electricity", as found in subsection IX of section 10 of the sales and use tax law, to apply to L.P. gas or bottled gas, as well as to manufactured gas delivered through mains.

BHJ:j