

275.0000 GAS, ELECTRICITY AND WATER

(a) DELIVERY THROUGH MAINS, LINES OR PIPES

[275.0020](#) **Air for Aqua Lung.** Although the tax applies to sales of air previously compressed into cylinders delivered to the purchaser, the tax does not apply to the charge for servicing aqua lungs with compressed air where the customer furnishes the aqua lung and the taxpayer merely furnishes the services of his compressor. 7/17/59.

[275.0021](#) **Air for Aqua Lung.** The taxpayer purifies air by using a compressor to pump air through several processing steps, and then stores the purified air in storage tanks. The taxpayer then fills its customer's empty scuba tank with the purified air from its storage tank. The taxpayer is not providing a nontaxable service of merely compressing air, which is free to all, into the customer's scuba tank. Rather, it is selling tangible personal property, that is, air that it has captured and which it owns. The sale is subject to tax. 8/24/72. (Am. M98-3).

275.0030 Air and Water Through Vending Machines. A taxpayer is engaged in operating self-service gas stations. On the business premises, taxpayer has coin operated vending machines attached to an air compressor and water line. The air and water are not purified or filtered in any way nor are there storage tanks to hold water or air. The machines will dispense either air or water for approximately three and one-half minutes on the insertion of 25 cents.

The sale of the air and water through the coin operated vending machine is nontaxable. The sale of the water is within the exemption provided by section 6353. The sale of the air, in this factual situation, is incidental to the furnishing of the services of the air compressor. (See Annotation 275.0020.) 8/10/87. (Am. 2004-2).

275.0040 Bottled Water. The exemption in section 6353 pertains only to water delivered through mains or pipes and so does not apply to bottled water. 8/26/64.

275.0060 Butane and Propane Gas. Sales of butane and propane gas delivered through pipes come within the exemption of section 6353. If, however, the property sold is in liquid form when it passes through a meter to a consumer, the exemption does not apply even though the meter might show the amount passing through the meter in terms of an equivalent quantity of gas. 3/28/55.

275.0080 Butane and Propane—Meters. When liquefied butane or propane gas is delivered by a vendor into his tank located on the customer's premises and the tank is attached to the customer's pipes, the existence of a meter of any type is not essential to the obtaining of the exemption provided in section 6353, but is an evidentiary aid in determining who has title to any particular time.

The existence of a meter which measures gas flow would indicate an exempt sale, but if the contract and billing indicate a sale of liquefied gas, the existence of a meter would not prevent the tax from applying. 7/20/59.

[275.0085](#) **Butane Produced During Refining Process.** During the refining process, a taxpayer produces butane and propane from crude oil which it has purchased. Some of the butane and propane is transported back inside the refinery through pipes for use as fuel in the refining process.

The mere fact that the butane and propane is transported back in house through pipes does not qualify the gasses for exemption. The taxpayer is not delivering the gas to a consumer as required by section 6353. Also, the crude oil which petitioner purchased is a liquid not a gas. 5/6/93.

275.0100 Butane-Propane Gas. Sales of butane-propane gas, which flows from the vendor's storage tanks and meters belonging to vendor but installed on vendee's premises are exempt sales where gas subsequently flows through customer's pipes. 1/30/52.

275.0120 **Compressed Air.** Air compressed in cylinders or tanks and sold for use in diving operations is subject to tax. If a separate rental is charged for the cylinders or tanks, the amount of such separate charge is not taxable upon the assumption that the tax was paid when such containers were originally purchased. 5/19/55.

[275.0127](#) **Compressed Natural Gas.** A utility delivers natural gas through its lines to a gas compressor which boosts the pressure and pumps the gas into high pressure storage cylinders, thus creating Compressed Natural Gas (CNG). The CNG subsequently is injected directly into vehicles through a fueling post. The sale of the CNG is exempt pursuant to section 6353. 12/20/90.

[275.0133](#) **Compressed Natural Gas (CNG).** The sale of Compressed Natural Gas delivered through a distribution system to a fueling station (from gas line to public dispenser) for sale to consumers as motor vehicle fuel is exempt from sales tax under section 6353. 5/9/91.

275.0136 **Container Furnished by Customers.** A person selling water from a water system to customers who furnish their own containers is not selling taxable bottled water but water sold through mains, lines, or pipes within the exemption in section 6353. 9/27/91.

275.0140 **Delivery into Customers' Tank Trucks.** Where a water company delivers water from its system through a meter on a hydrant into customers' tank trucks, the exemption of section 6353 applies. The water is being delivered to the customers through mains, lines or pipes. It is immaterial that the customers take delivery into tank trucks rather than into household piping systems. 1/24/78.

275.0150 **Delivery of Water Through Vending Machine.** The delivery of water through a vending machine qualifies as a sale through a water main without regard to whether the premises where the vending machine may be located is or is not served by water mains and without regard to the fact that the person selling through the vending machine may or may not be the utility servicing the vending machine. 4/6/92.

275.0160 **Fuel Oil.** Fuel oil delivered through pipes and used for the same purpose as gas, is not included in the term "gas" and accordingly is subject to sales tax. 5/29/53.

275.0170 **Fuel Oil Exchanged for Steam.** The exemption under section 6353 does not extend to the sale of fuel oil when transferred to acquire exempt steam and electricity. This type of transfer is an exchange sale of the fuel oil in which the measure of the sale cannot be less than the amount of credit allowed for the refinery fuel provided. The fact that the product received in exchange was steam or electricity, the sale of which is exempt under the provisions of Revenue and Taxation Code section 6353 is of no consequence. 6/25/91.

275.0171 **Geothermal Energy.** A natural resource development company owns geothermal resources. The company drills the wells and supplies the geothermal fluid to the power plant operator. This is accomplished in the following manner.

The fluid in the ground is brought to the surface through pipes and is delivered by the resource company to the power plant operator. The fluid, in the form of hot brine, remains in liquid form ("binary technology") and flows through a heat exchanger to heat and vaporize a "working fluid," typically hydrocarbon. The vaporized working fluid then turns the turbine generator which produces electricity.

The geothermal fluid that is used to vaporize the working fluid is passed to the resource company which injects it into the reservoir through another well.

The piping and pumps on the land of the resource company are owned by the resource company, and piping and pumps on the land of the power plant operator are owned by the power plant operator.

Under these circumstances, sales tax does not apply to charges made by the resource company to the power plant operator pursuant to provisions of section 6353. 2/10/81.

[275.0175](#) **Oxygen Sold via Pipes.** Taxpayer owns and operates an oxygen production facility located on real property owned by a manufacturer of glass containers. The taxpayer produces oxygen and sells it in vapor form to the glass manufacturer via pipeline. The taxpayer owns a segment of the pipeline from the junction point to the glass manufacturer's building. Title to the oxygen furnished is transferred to the glass manufacturer at the junction point. The taxpayer meters the oxygen as it enters the pipeline on its way to the glass manufacturer's furnace.

In this case, the taxpayer is making sales of gaseous oxygen by delivering that oxygen to the purchaser via pipes. Such sales are exempt from sales tax under section 6353. 9/11/95.

[275.0175.100](#) **Oxygen Used as a Fuel.** The sale of oxygen used as fuel in a coal gasification plant delivered through a metered pipeline from an oxygen generating facility outside of, but near, the gasification plant qualifies for exemption under section 6353 provided the customer is billed only for the metered amount and the oxygen is in gaseous form when delivered to the customer. 7/31/84.

[275.0175.500](#) **Propane.** A sale of propane delivered to the customer through a tank at the customer's location qualifies for the exemption provided by section 6353 only if the seller retains title to and possession of the propane until the propane is delivered in vapor form to the customer's premises through mains or pipes. This occurs only where the seller controls the tank, as discussed below, and where the contract contains an explicit provision whereby the seller retains title to the propane until it is delivered into the customer's premise in a gaseous form. When the sale satisfies these conditions, it is exempt from tax.

Where a customer leases the tank from either the seller or some other person, or where the customer owns the tank (and does not lease it to the seller as discussed below), the sale of propane is subject to tax because the sale of the propane occurs upon delivery into the tank, while in liquid form. A seller controls the tank only where it owns the tank (and does not lease it to the customer or a third party) or it leases the tank from the customer. If the seller leases the tank from the customer, it must be a bona fide lease, and the seller cannot increase its charge for the propane to recover its cost of leasing the customer's tank. If it does so, the "lease" will be disregarded and the sale will be regarded as having occurred no later than when the propane is placed in the tank in liquid form, regardless of any title provision in the contract to the contrary.

If the sale satisfies the conditions for exemption discussed above, pre-billing the customer for the amount of liquid propane delivered into the tank, with a credit upon termination of the contract for any propane remaining in the tank, will not affect that exemption, nor will calculating the charge for the propane by converting the amount of liquid gallons delivered into the tank to cubic feet for purposes of billing. 2/6/97.

[275.0175.750](#) **Residential Use.** The phrase "for general household use in his or her residence . . ." in section 6353 is a restriction for the exemption pertaining to sales of water sold in quantities of 50 gallons or more and does not similarly restrict the exemption pertaining to the sale or use of propane or any other type of gas. 7/31/97. (M98-3).

[275.0180](#) **Steam.** Sales of steam delivered through pipes or mains are exempt under section 6353. 1/18/65.

[275.0200](#) **Water Carried by Barges.** Water delivered to ships at anchor by means of barges is not delivered through mains, lines or pipes within the meaning of section 6353 merely because the water is pumped through a hose or other connecting link between the barge and the ship at anchor. 4/6/51.

[275.0220](#) **Water Carried by Tank Trucks.** A water company delivers water by its own tank trucks to its storage tanks on a customer's premises with title to the water in the storage tanks retained by the water company. The water is then pumped through demineralization tanks and into the customer's pipe system to outlets, and the customer is charged on the basis of readings on a meter installed on the tanks. Since the water is delivered to the customer through pipes at its premises, the sale of the water is exempt under section 6353. 8/11/66.

275.0245 **Water Through Vending Machines.** Vending machines dispensing water from its own storage tanks, rather than from mains, lines, or pipes connected to the municipal water supply, do not come within the exemption of section 6353. Thus, the sales are subject to tax. 9/30/91.

275.0260 **Water Withdrawn from Canals.** Sales of water which is delivered to contractors by canals are exempt from tax within the meaning of section 6353, since canals and laterals may be considered as mains, lines, or pipes within the meaning of the statute. The withdrawal of the water from a designated location under a water service rate schedule by the contractor is considered a delivery. However, if the water is trucked to the contractor by the seller, the transaction is taxable. 8/5/64.

(b) WATER ADDITIVES

275.0280 **Chemicals.** The following chemicals added to water which is resold remain in the water and may be purchased ex-tax:

calcium hypochlorite	sodium hydroxide
quick lime	hydrated lime
chlorine	sodium hypochlorite
soda ash	lime
copper sulfate 4/9/64	sodium silicofluoride 11/21/62.

275.0300 **Aluminum Sulfate.** Ninety-one percent of the aluminum sulfate used in treating water remains in solution and is sold along with the water, so that sales of the aluminum sulfate to the water supplier are exempt sales for resale. 11/29/62.

275.0320 **Anhydrous Ammonia, Ammonium Sulfate, and Sodium Chlorite.** These chemicals may be purchased ex-tax when purchased for treatment of water by a water service company. 6/19/63.

275.0340 **Chlorine** added by a city to its water supply for the purpose of destroying undesirable micro-organisms and objectionable chemical substances becomes part of the delivered product as chloride ions and is bought for resale; consequently, a resale certificate may be furnished to the chlorine supplier even though the sale of the water itself is exempt from sales tax. 5/4/60.

275.0360 **Diatomaceous Earth.** The sale of diatomaceous earth to a water treatment plant is taxable where the product is used as a filtering agent to remove impurities and does not dissolve or become part of the water. 4/27/64.

275.0400 **Ferric Sulphate** sold for use in treating a water supply, is an exempt sale for resale. 10/4/65.

275.0420 **Sodium Chloride** may be purchased ex-tax for resale where it is used in a water softening process whereby its sodium ions are incorporated in the water. 9/5/62.

275.0440 **Sodium Fluoride and Hexameta Phosphate.** These chemicals are exempt from sales tax when purchased for resale as water additives in a municipal water system. 4/30/63.

275.0460 **Sodium Hexameta Phosphate.** This chemical improves water for consumption in that it prevents calcium from reacting with soap and often is added as a ‘softener’ and as such is a valuable, incorporated component of the water sold and is not subject to tax. Similarly, lime and soda ash are added to water to aid in the removal of calcium and magnesium by raising the pH and since the sodium hydroxide ion has the virtue of keeping the water slightly alkaline it is purchased for resale and not subject to tax. 5/21/62.

(c) COGENERATION TECHNOLOGY

[275.0500](#) **Cogeneration Technology.** The exemption in section 6353 of the Sales and Use Tax Law was expanded to include “. . . exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneration technology, as defined in section 25134 of the Public Resources Code.”

In 1981, the Legislature rewrote section 25134, repealing the definition of “cogeneration technology”, and replacing it with a definition of “cogeneration.”

The rule of statutory construction applicable here is that a statute (Sec. 6353) which adopts by reference another statute (Sec. 25134) is unaffected by amendment or repeal of the latter statute (Sec. 25134) in the absence of express or implied legislative intent to the contrary. There was no express or implied legislative intent to the contrary in the 1981 amendment (Stats. 1981 Ch. 952 Sec. 5).

Therefore, in interpreting section 6353, the Board staff will use the following definition of “cogeneration technology” from section 25134 as originally enacted; no effect will be given to the 1981 amendment.

“Cogeneration technology” means the use for the generation of electricity of exhaust steam, waste steam, heat, or resultant energy from an industrial, commercial, or manufacturing plant or process, or the use of exhaust steam, waste steam, or heat from a thermal powerplant for an industrial, commercial, or manufacturing plant or process. For purposes of this division, the industrial, commercial, or manufacturing plant or process shall not be considered a thermal powerplant or portion thereof. Cogeneration technology shall not include steam or heat developed solely for electrical power generation. 12/29/83.