

[BIR REVENUE MEMORANDUM CIRCULAR NO. 7-94, February 18, 1994]

VALUE-ADDED TAX (VAT) ON SALE OF WATER

In BIR Ruling No. 017-88, dated February 1, 1988, it was held that sale of fresh water is exempted from the 10% VAT, pursuant to Section 103(b) of the National Internal Revenue Code, as amended by Executive Order No. 273, otherwise known as the VAT Law, the pertinent portion of which reads as follows:

"In reply, please be informed that fresh water comes within the purview of agricultural food products; hence, the sale thereof in all stages of distribution is exempt from the value-added tax pursuant to Section 103(b) of the Tax Code as amended by Executive Order No. 273."

In view of the criticisms against the validity of the aforementioned BIR Ruling 017-88 and in light of the policy to strengthen and to improve enforcement of the national internal revenue tax laws, a re-study thereof is imperative.

Section 103(d), NIRC, provides:

"Sale or importation in their original state of **agricultural** x x x food products x x x " shall be exempted from VAT.

Water is not agricultural product. Rather, it is a mineral. Thus -

Definition of **minerals**. - "The term 'minerals' shall mean all naturally occurring inorganic substances (found in nature) whether in solid, liquid, gaseous, or any intermediate state." (Sec. 257(b), NIRC, as amended by Batas Pambansa Blg. 84).

Definition of **mineral products**. - "The term mineral products' shall mean things produced and prepared in a marketable state by simple treatment such as washing or drying, but without undergoing any chemical change or process or manufacturing, by the lessee, concessionaire or owner of mineral lands." (ibid).

Definition of **agriculture**. - "The cultivation of soil for food products or any other useful or valuable growths of the field or garden x x x" (Bouvier's Law Dictionary, p. 167)

Definition of **agricultural product**. - "That which is the direct result of husbandry and the cultivation of the soil x x x " (ibid)

It is clear from the foregoing that the term agricultural product pertains to **organic** products through cultivation of the soil, whereas the term mineral product pertains