

1982 S.C. Op. Atty. Gen. 64 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-64, 1982 WL 155033

Office of the Attorney General

State of South Carolina

Opinion No. 82-64

October 15, 1982

**\*1 SUBJECT: Taxation—Soft Drink Tax Exemption**

The addition of carbon dioxide to a bottled natural fruit juice would not be the addition of artificial flavoring so as to preclude the juice from qualifying for the soft drink tax exemption provided by Section 12–21–1880.

TO: Mr. J. W. Lawson

Director

License Tax Division

South Carolina Tax Commission

**QUESTION:**

Would the addition of carbon dioxide to a bottled natural fruit juice be considered as an addition of artificial flavoring and thus disqualify such juice from the soft drink tax exemption as provided for by Section 12–21–1880?

**APPLICABLE LAW:**

[Section 12–21–1880, Code of Laws of South Carolina, 1976.](#)

**DISCUSSION:**

[Section 12–21–1880](#) grants an exemption from the soft drink tax to:

‘All bottled soft drinks containing thirty per cent or more natural fruit or natural vegetable juice as hereinafter defined, and all bottled natural liquid milk drinks containing thirty per cent or more of natural liquid milk, as hereinafter defined, shall be exempt from the tax imposed by this article. Provided, that this exemption shall not apply to any fruit, or vegetable juice drink, to which is added any one or more of the following: Any coloring, artificial flavoring or preservative. Sugar or salt or vitamins shall not be construed as an artificial flavor or preservative.’

The question presented is whether a soft drink containing over 30% natural fruit juice would be entitled to the above exemption if carbon dioxide was added to the drink. To resolve this question, it must be determined whether carbon dioxide is an artificial flavoring.

It has been held that ‘artificial’ means to produce or modify by human skill or labor. [Foley v. Miller](#), 24 F.2d 727; [Herring Magic v. United States](#), 258 F.2d 197. In the instant case, the bulk of the carbon dioxide present in the drink is placed there by the producer. It is thus obvious that the addition of such is artificial.

There remains, however, the question of whether carbon dioxide is flavoring. ‘Flavoring’ has been defined by [The American Heritage Dictionary, New College Edition](#) as meaning, ‘A substance that imparts flavoring as an extract or spice.’ Rather than

being an extract, spice or something that imparts flavor, carbon dioxide is a colorless, odorless gas that imparts nothing more to soft drinks than effervescence.

Support for this position can be found in Publication 1274 of National Academy of Science. That publication, entitled Chemicals Used in Food Processing, includes a section that lists and categorizes flavoring agents. Carbon dioxide is not listed or categorized in that section thus indicating that such is not a flavoring agent.

CONCLUSION:

The addition of carbon dioxide to a bottled natural fruit juice would not be the addition of artificial flavoring so as to preclude the juice from qualifying for the soft drink tax exemption provided by [Section 12-21-1880](#).

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