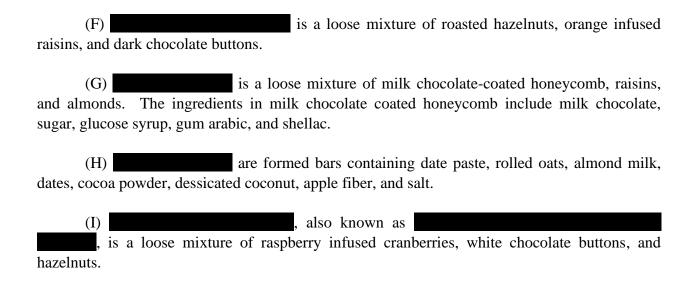
TSB-A-20(20)S Sales Tax June 23, 2020

STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from
("Petitioner"). Petitioner asks whether ten of its products should be classified as candy or confectionery subject to sales tax. We conclude that nine of these products are candy.
Facts
Petitioner is an on-line retailer of snack products. Petitioner markets these products as healthy alternatives to traditional snacks. Petitioner asks whether the following snacks are considered candy or confectionery for sales tax purposes: (A) ; (B) ; (C) ; (D) ; (E) ; (F) ; (F) ; (G) ; (H) ; (I) ;
(A) is a loose mixture of milk chocolate drops, dried coconut flakes, and sweetened dried cranberries. The ingredients in milk chocolate drops include sugar, cocoa butter, whole milk, cocoa mass, soy lecithin extract, and natural vanilla flavoring. The milk chocolate drops are shaped as discs and appear to be the size of the dried cranberries.
(B) is a loose mixture of mini chocolate cookies, roasted hazelnuts, white chocolate buttons, and sunflower seeds.
(C) is a loose mixture of pecans, dark chocolate buttons, sugar, and sweetened dried cranberries.
consists of ginger fudge, walnuts, cinnamon-flavored raisins, and carrot chews. Ginger fudge consists of sugar, glucose syrup, sweetened condensed milk, palm oil, ginger crush, butter, soy lecithin, natural ginger flavoring, and salt. Carrot chews consist of apple juice concentrate, apple puree concentrate, carrot juice concentrate, orange juice concentrate, pectin, ascorbic acid, and citrus fiber.
(E) is a loose mixture of pumpkin seeds, dark chocolate buttons, and sweetened dried cranberries.



White chocolate buttons and dark chocolate buttons are ingredients in a number of Petitioner's products. White chocolate buttons consist of sugar, cocoa butter, whole milk, soy

is a loose mixture containing roasted sunflower seeds, roasted

lecithin, and natural vanilla flavoring. Dark chocolate buttons consist of cocoa mass, sugar, cocoa butter, soy lecithin, and natural vanilla flavoring. Both types of buttons are shaped as discs and appear to be larger in size than a hazelnut and approximately the size of a pecan.

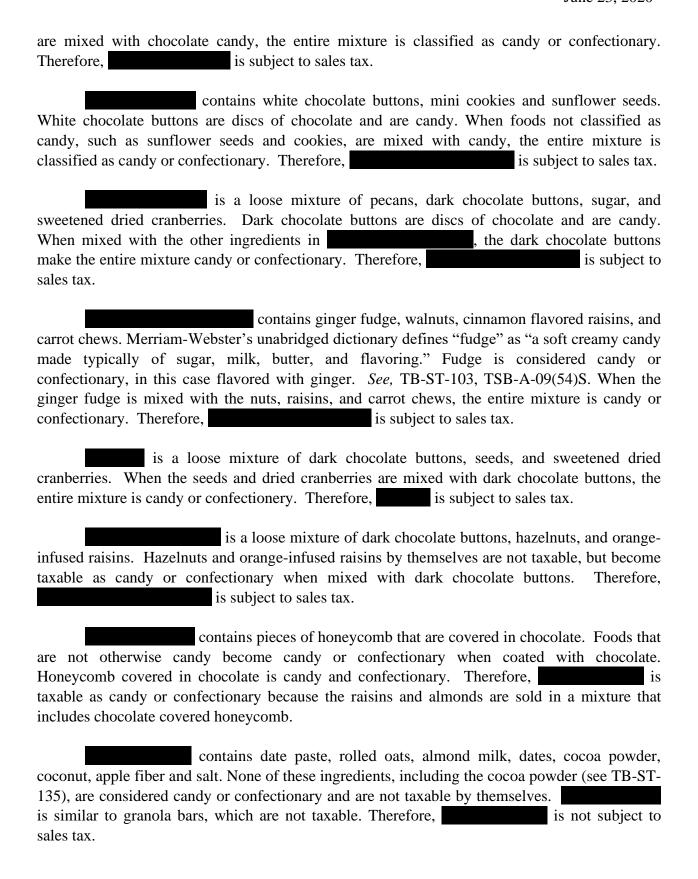
pumpkin seeds, sugar, honey, and natural vanilla flavoring.

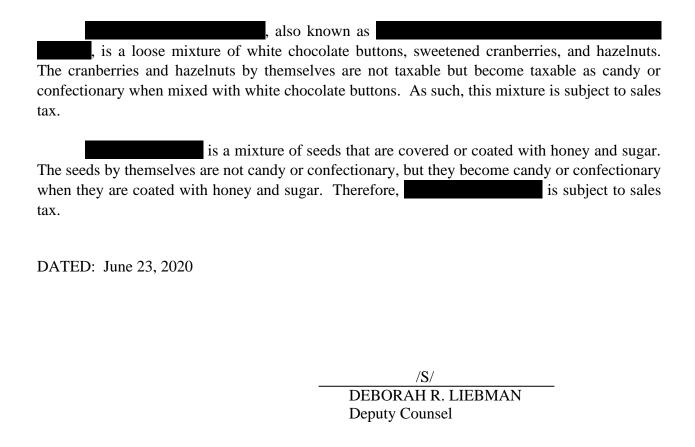
Analysis

(J)

Food and food products, except candy and confectionery, when sold for human consumption, are exempt from sales tax. *See* Tax Law § 1115; 20 NYCRR 528.2(a)(1). Candy and confectionery include, as relevant here, candy of all types, but, not: chocolate (plain or mixed with other products), glazed or sugar-coated fruits, nuts, peanuts, and any other product regarded as candy or confectionery based on its normal use or as indicated on the label or in the advertising thereof. *See* 20 NYCRR 528.2(a)(4). The mere presence of sugar or honey in a product does not make it candy or confectionary for sales tax purposes. However, fruit, nuts, and seeds covered with honey, caramel, chocolate, or other similar coatings are considered candy or confectionery. *See* 20 NYCRR 528.2(a)(4); TB-ST-103; TB-ST-283. When food that is exempt from tax is sold in combination with a taxable item for a single charge, such as trail mix containing chocolate, the entire charge is subject to sales tax. *See* TB-ST-283.

contains milk chocolate drops, which are discs of chocolate and are candy. When foods not classified as candy, such as dried coconut flakes and dried cranberries,





NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.