

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], located at [REDACTED] (Petitioner). Petitioner asks whether receipts from the sales of various products that it markets and distributes as energy enhancing gels and chews are subject to State and local sales and use taxes.

We conclude that the products Petitioner sells as energy enhancing gels and chews that are packaged, labeled and sold as dietary foods and health supplements are exempt from State and local sales and use taxes.

**Facts**

Petitioner sells a variety of products used in athletic and recreational activities. Petitioner sells a variety of products packaged and labeled as energy enhancement gels and/or chews. Petitioner included with its Advisory Opinion Request the packaging and labels of the energy gels and chews at issue. In varying ways, all of the products are packaged and sold as portable energy enhancement products for consumption before, during or after intense physical activity and exercise. Each product's packaging lists its ingredients and, depending on the product, either a "Nutrition Facts" or a "Supplement Facts" panel that states the recommended daily percentage values of the ingredients contained in the product.

**Analysis**

All retail sales of tangible personal property are subject to sales tax pursuant to Tax Law § 1105(a), unless otherwise exempted. Tax Law § 1115(a)(1) provides an exemption for "[f]ood, food products, beverages, dietary foods and health supplements, sold for human consumption ...." A dietary food is a food for a special dietary use for humans that bears on the label a statement of the dietary properties upon which its use is based in whole or in part. *See* NYCRR 528.2(c)(1). Products that are intended to substitute for the ordinary diet, supplement the ordinary diet, or substitute for natural foods are exempt when sold for human consumption. Among these are liquid diet products, artificial sweeteners and vitamins. 20 NYCRR 528.2(c)(2). The labels of products Petitioner sells that are the subject of this Petition highlight their dietary properties (e.g. energy-dense carbohydrates, electrolytes, and/or vitamins, etc.), and that they are intended to increase the user's energy. Accordingly, these particular products are considered dietary foods or supplements exempt from State and local sales tax pursuant to Tax Law § 1115(a)(1).

DATED: July 30, 2024

/s/

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MARY ELLEN LADOUCEUR

Principal Attorney

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.