

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] (Petitioner). Petitioner asks whether its coffee-based beverage mix is subject to New York State sales tax.

We conclude that Petitioner's product is a flavored coffee beverage that is exempt from New York State and local sales tax.

Facts

Petitioner plans to sell a coffee-based beverage mix. The main ingredient in Petitioner's product is coffee bean caffeine. The product also contains other ingredients such as natural flavors and a sugar substitute. It is to be sold unheated and is meant to be mixed with water before consumption. The product will be marketed as an alternative to normal coffee. The product will be sold online and in grocery stores, to be consumed off-premises.

Analysis

Tax Law § 1105(a) imposes tax on retail sales of tangible personal property, unless an exemption applies. Food and beverages are generally exempt from tax. However, this exemption does not include fruit drinks that contain less than 70% natural fruit juice, soft drinks, sodas and beverages that are ordinarily dispensed at soda fountains (other than coffee, tea and cocoa) and beer, wine or other alcoholic beverages. Tax Law § 1115(a)(1). A beverage is a drink, whether sold in liquid form or otherwise. 20 NYCRR 528.2(b)(2). Petitioner's product is a beverage sold for human consumption, and is not a soda or fountain drink, a fruit drink with less than 70% natural juice, or an alcoholic beverage. Therefore, it is exempt from sales tax under Tax Law § 1105(a). See TSB-A-08(16)S.

Sales tax is also imposed on the receipts from sales, other than sales for resale of beverages of any type sold by restaurants, taverns or other establishments or through vending machines, unless sold for off-premises consumption in an unheated state, "in the same form and condition, quantities and packaging commonly used by food stores not principally engaged in selling foods prepared and ready to be eaten." 20 NYCRR 527.8(a)(3). See Tax Bulletin ST-65 - *Beverages Sold by Food Stores, Beverage Centers and Similar Establishments*; Tax Bulletin ST-525 - *Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments*.

Petitioner states that its product will be sold unheated for off-premises consumption both online and in grocery stores. When sold in this manner, Petitioner's product is not subject to sales tax under Tax Law § 1115(d). However, Petitioner's product will be subject to tax under Tax Law § 1105(d) if the product is sold by a restaurant, tavern or similar establishment, or through a vending machine, unless it is sold in an unheated state for off-premises consumption in the same form, condition, quantities or packaging as it is sold in grocery stores.

DATED: August 14, 2024

/s/
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.