

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(15)S
Sales Tax
June 9, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S160325A

The Department of Taxation and Finance (“the Department”) received a Petition for Advisory Opinion from [REDACTED] (hereinafter “Petitioner”). Petitioner asks whether orgeat syrup is subject to New York State and local sales taxes. We conclude that orgeat syrup is subject to sales tax.

Facts

Petitioner is a wholesale manufacturer of orgeat almond syrup. Petitioner sells the product online, as well as in grocery stores. The syrup is also sold to bars and restaurants. Orgeat almond syrup consists of water, sugar, almonds, orange flower water, almond extract and rose water, and is used to sweeten soft drinks and alcoholic beverages.

Analysis

Tax Law § 1105(a) imposes tax on retail sales of tangible personal property. 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). “Soft drinks and sodas include carbonated and noncarbonated beverages, carbonated water, dietetic beverages and cocktail and other alcoholic drink mixes.” 20 NYCRR 528.2(b)(2). Petitioner’s product contains no natural fruit juice. It is used as a mixer in both alcoholic and non-alcoholic beverages. Accordingly, we conclude it is a soft drink subject to sales tax. *See id.*; TB-ST-65, *Beverages Sold by Food Stores, Beverage Centers and Similar Establishments*.

Petitioner states that it sells its product online and in grocery stores, as well as to bars and restaurants. Petitioner must collect sales tax on sales of its product to consumers. However, Petitioner will not be required to collect tax from purchasers who will resell its

product, either in its original form or as an ingredient in a beverage, if it receives from the purchaser in good faith a properly completed Form ST-120, *Resale Certificate* within 90 days after the sale of the product.

DATED: June 9, 2020

/S/

DEBORAH R. LIEBMAN

Deputy Counsel

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.