

New York State Department of Taxation and Finance  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(30)S  
Sales Tax  
July 13, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091103A

Petitioner [REDACTED], asks whether sales of pumpkins by supermarkets are subject to New York State sales taxes. We conclude that, while pie pumpkins are an exempt food, pumpkins sold for decorative or carving purposes are not food sold for human consumption and thus are not exempt under section 1115(a)(1) of the Tax Law.

**Facts**

Petitioner is a retail food store engaged in sales of food and food products sold for human consumption (both taxable and exempt) and various other taxable and exempt tangible personal property. Petitioner asks whether its sales of pumpkins are subject to sales and use tax.

**Analysis**

Section 1115(a)(1) of the Tax Law provides an exemption from the tax imposed on sales of tangible personal property for food sold for human consumption. The sales and use tax regulations provide that “[t]he phrase *sold for human consumption* means that the items sold are, in their normal use, regarded as being for human consumption.” Pie pumpkins (i.e., sugar, deep red, golden cushaw, etc.) and similar gourds generally used by a purchaser in cooking pies, cakes, breads, cookies, etc. constitute food sold for human consumption and are not subject to sales tax. (*See* section 1115(a)(1) of the Tax Law) (Regulations section 528.2(a)(3)) Decorative and carving pumpkins (e.g., Connecticut field, etc.), like other decorative gourds, are not being marketed or sold, in their normal or intended use, for human consumption. Thus, decorative and carving pumpkins and other decorative gourds whether sold at supermarkets, farm stands, nurseries, or other businesses, are not sold as food, and constitute tangible personal property subject to sales tax under section 1105(a) of the Tax Law.

DATED: July 13, 2010

/S/  
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Jonathan Pessen  
Director of Advisory Opinions  
Office of 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.