

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

TSB-A-14(20)S
Sales Tax
July 14, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140605A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether sales of Starbucks Doubleshot® Energy coffee drinks are subject to New York State and local sales and use taxes.

Facts

Petitioner's stores sell Starbucks Doubleshot® Energy coffee drinks in cans for off-premises consumption. Product labels supplied by Petitioner for the coffee, mocha and vanilla flavored Starbucks Doubleshot® Energy coffee drinks list as the primary ingredients:

- Starbucks® coffee (water, coffee);
- reduced fat milk;
- skim milk;
- sugar;
- and various other ingredients.

For all of these products, Starbucks® coffee is the first ingredient listed.

Analysis

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(1) Food, food products, beverages, dietary foods and health supplements, sold for human consumption but not including (i) candy and confectionery, (ii) fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa) and (iv) beer, wine or other alcoholic beverages, all of which shall be subject to the retail sales and compensating use taxes, whether or not the item is sold in liquid form. . . .

The US Food and Drug Administration regulations provide that ingredients must be listed by common or usual name in descending order by predominance of weight on either the principal display panel or the information panel of the product. 21 CFR § 101.4 Starbucks Doubleshot® Energy coffee drinks are marketed as a coffee and coffee is listed as the first ingredient on the label Petitioner provided. Petitioner's stores sell Starbucks Doubleshot® Energy coffee drinks in cans for off-premises consumption. Coffee is exempt from sales tax pursuant to §§ 1115(a)(1) and 1110(a) of the Tax Law. Accordingly, sales of Starbucks Doubleshot® Energy coffee drinks as described in this Opinion are exempt from sales and use taxes when sold for off-premises consumption.

DATED: July 14, 2014

/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.