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

TSB-A-15(33)S Sales Tax July 20, 2015

# STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

### ADVISORY OPINION

PETITION NO. S141202A

The Department of Taxation and Finance received a Petition for Advisory Opinion from (Petitioner). Petitioner asks whether its organic juice drinks are subject to New York State and local sales tax. Petitioner also asks if the Department finds the juice drinks not to be taxable, whether the sale of the juice drink along with an insulated bag for a single price, would cause the entire charge to be taxable. We conclude that neither the juice drinks themselves, nor the combination of the juice drink and the bag for a single price, are taxable.

#### **Facts**

Petitioner makes and sells cold nutritional and cleansing juice drinks. The drinks are made with organic fresh fruits and vegetables, without any additional supplements, and are unpasteurized. The materials are blended, not juiced, so that the fruit and vegetable fiber is retained. A copy of one of Petitioner's product labels was included with the petition. The label lists the contents of the drink, which consists solely of fruits, vegetables and water. The drinks are packed in plastic jugs, delivered in insulating bags and sold for a single price. Each bag is black, is approximately 13" x 10" x 15", and is made from a non-woven fabric filled with an insulating material approximately 2mm thick. The bags have handles, but are not durable; they tear easily at the handles and through the bottom of the bag. Petitioner states that the bags are not intended for reuse.

#### **Analysis**

Tax Law §1115(a)(1) specifically exempts "food and food products" from sales and use tax, provided the food is sold for human consumption. See Tax Law § 1115(a)(1); see also TB-ST-525. "Vegetable juices, whether made of a single vegetable, or a combination of vegetables, or a combination of a vegetable and other food product" are exempt from sales tax, provided they consist of at least 70 percent natural fruit or vegetable juice. See 20 NYCRR § 528.2(b)(1)(i). From the information provided, it appears that Petitioner's products satisfy this standard. Therefore, Petitioner's fruit and vegetable drinks qualify as food or food products and are exempt from New York State and local sales taxes. See Tax Law § 1115(a)(1).

Petitioner also asks whether the sale of the juice drinks along with an insulating bag for a single price would cause the entire charge to be subject to tax. Although the bag comes with the product, it is provided to the customer without charge. The bag is not required to be returned and no "bag deposit" is imposed. The bag is flimsy, and tears easily. While the bag is tangible

personal property, because it appears to be merely incidental to the sale of the juice, it is not considered to be the sale of tangible personal property for purposes of sales tax. *See* TSB-A-09(54)S. Accordingly, the sale of the juice in the insulating bag for a single charge is not subject to tax.

DATED: July 20, 2015

/S/

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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.