

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

TSB-A-13(34)S  
Sales Tax  
September 10, 2013

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130325A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the sale of its beverage is subject to sales tax.

We conclude that the sale of Petitioner's beverage is not subject to sales tax.

**Facts**

Petitioner's beverage is a proprietary blend of water, vegetables, nuts, fruits, seeds and spices with the consistency of a thick puree. The beverage contains the following ingredients, as listed on the product label: water, soybeans, coconut, almonds, pine nuts, millet, quinoa, amaranth, flaxseeds, pumpkin seeds, maize (white corn and purple corn), papaya, bananas, mangos, watermelon, plantains, beets, cactus (Napolitos), mamey, yucca, sweet potatoes, pomegranates, dried figs, agave syrup, flaxseed oil, lecithin, sea moss, ginger, aloe, cinnamon, sea salt, vanilla extract and nutmeg. A second version of the beverage will include peanut butter. The beverage is not carbonated and contains no refined carbohydrates and no cane sugar. It is perishable and must be refrigerated. The beverage will be sold at retail in 16 oz. bottles and is not intended to be consumed on the premises where it is sold.

**Analysis**

Section 1115(a)(1) of the Tax Law generally provides that food, food products, beverages, dietary foods and health supplements sold for human consumption are exempt from sales and use taxes. The beverages that are excluded from this exemption, and therefore taxable, are: fruit drinks which contain less than seventy percent of natural fruit juice; soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea, or cocoa); and beer, wine or other alcoholic beverages. Petitioner's beverage does not appear to be a fruit drink, soft drink, or alcoholic drink as described in the exclusions to § 1115(a)(1). The Department's regulations further provide that, "[v]egetable juices, whether made of a single vegetable, or a combination of vegetables, or a combination of a vegetable and other food product are exempt beverages." See 20 NYCRR § 528.2(b)(5). Petitioner's beverage is made out of a combination of vegetables and other food products, and is similar to various vegetable drinks previously

found to be exempt. *See* TB-ST-525. Therefore, the retail sale of Petitioner's beverage is not subject to sales tax.

DATED: September 10, 2013

/S/  
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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.