

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether ten of its products should be classified as candy or confectionery subject to sales tax. We conclude that nine of these products are candy.

Facts

Petitioner is an on-line retailer of snack products. Petitioner markets these products as healthy alternatives to traditional snacks. Petitioner asks whether the following snacks are considered candy or confectionery for sales tax purposes: (A) [REDACTED]; (B) [REDACTED]; (C) [REDACTED]; (D) [REDACTED]; (E) [REDACTED]; (F) [REDACTED]; (G) [REDACTED]; (H) [REDACTED]; (I) [REDACTED]; and (J) [REDACTED]. Petitioner’s petition included pictures of each product and the list of ingredients in each product.

(A) [REDACTED] is a loose mixture of milk chocolate drops, dried coconut flakes, and sweetened dried cranberries. The ingredients in milk chocolate drops include sugar, cocoa butter, whole milk, cocoa mass, soy lecithin extract, and natural vanilla flavoring. The milk chocolate drops are shaped as discs and appear to be the size of the dried cranberries.

(B) [REDACTED] is a loose mixture of mini chocolate cookies, roasted hazelnuts, white chocolate buttons, and sunflower seeds.

(C) [REDACTED] is a loose mixture of pecans, dark chocolate buttons, sugar, and sweetened dried cranberries.

(D) [REDACTED] consists of ginger fudge, walnuts, cinnamon-flavored raisins, and carrot chews. Ginger fudge consists of sugar, glucose syrup, sweetened condensed milk, palm oil, ginger crush, butter, soy lecithin, natural ginger flavoring, and salt. Carrot chews consist of apple juice concentrate, apple puree concentrate, carrot juice concentrate, orange juice concentrate, pectin, ascorbic acid, and citrus fiber.

(E) [REDACTED] is a loose mixture of pumpkin seeds, dark chocolate buttons, and sweetened dried cranberries.

(F) [REDACTED] is a loose mixture of roasted hazelnuts, orange infused raisins, and dark chocolate buttons.

(G) [REDACTED] is a loose mixture of milk chocolate-coated honeycomb, raisins, and almonds. The ingredients in milk chocolate coated honeycomb include milk chocolate, sugar, glucose syrup, gum arabic, and shellac.

(H) [REDACTED] are formed bars containing date paste, rolled oats, almond milk, dates, cocoa powder, dessicated coconut, apple fiber, and salt.

(I) [REDACTED], also known as [REDACTED], is a loose mixture of raspberry infused cranberries, white chocolate buttons, and hazelnuts.

(J) [REDACTED] is a loose mixture containing roasted sunflower seeds, roasted pumpkin seeds, sugar, honey, and natural vanilla flavoring.

White chocolate buttons and dark chocolate buttons are ingredients in a number of Petitioner's products. White chocolate buttons consist of sugar, cocoa butter, whole milk, soy lecithin, and natural vanilla flavoring. Dark chocolate buttons consist of cocoa mass, sugar, cocoa butter, soy lecithin, and natural vanilla flavoring. Both types of buttons are shaped as discs and appear to be larger in size than a hazelnut and approximately the size of a pecan.

Analysis

Food and food products, except candy and confectionery, when sold for human consumption, are exempt from sales tax. *See* Tax Law § 1115; 20 NYCRR 528.2(a)(1). Candy and confectionery include, as relevant here, candy of all types, but, not: chocolate (plain or mixed with other products), glazed or sugar-coated fruits, nuts, peanuts, and any other product regarded as candy or confectionery based on its normal use or as indicated on the label or in the advertising thereof. *See* 20 NYCRR 528.2(a)(4). The mere presence of sugar or honey in a product does not make it candy or confectionery for sales tax purposes. However, fruit, nuts, and seeds covered with honey, caramel, chocolate, or other similar coatings are considered candy or confectionery. *See* 20 NYCRR 528.2(a)(4); TB-ST-103; TB-ST-283. When food that is exempt from tax is sold in combination with a taxable item for a single charge, such as trail mix containing chocolate, the entire charge is subject to sales tax. *See* TB-ST-283.

[REDACTED] contains milk chocolate drops, which are discs of chocolate and are candy. When foods not classified as candy, such as dried coconut flakes and dried cranberries,

are mixed with chocolate candy, the entire mixture is classified as candy or confectionary. Therefore, [REDACTED] is subject to sales tax.

[REDACTED] contains white chocolate buttons, mini cookies and sunflower seeds. White chocolate buttons are discs of chocolate and are candy. When foods not classified as candy, such as sunflower seeds and cookies, are mixed with candy, the entire mixture is classified as candy or confectionary. Therefore, [REDACTED] is subject to sales tax.

[REDACTED] is a loose mixture of pecans, dark chocolate buttons, sugar, and sweetened dried cranberries. Dark chocolate buttons are discs of chocolate and are candy. When mixed with the other ingredients in [REDACTED], the dark chocolate buttons make the entire mixture candy or confectionary. Therefore, [REDACTED] is subject to sales tax.

[REDACTED] contains ginger fudge, walnuts, cinnamon flavored raisins, and carrot chews. Merriam-Webster's unabridged dictionary defines "fudge" as "a soft creamy candy made typically of sugar, milk, butter, and flavoring." Fudge is considered candy or confectionary, in this case flavored with ginger. *See*, TB-ST-103, TSB-A-09(54)S. When the ginger fudge is mixed with the nuts, raisins, and carrot chews, the entire mixture is candy or confectionary. Therefore, [REDACTED] is subject to sales tax.

[REDACTED] is a loose mixture of dark chocolate buttons, seeds, and sweetened dried cranberries. When the seeds and dried cranberries are mixed with dark chocolate buttons, the entire mixture is candy or confectionary. Therefore, [REDACTED] is subject to sales tax.

[REDACTED] is a loose mixture of dark chocolate buttons, hazelnuts, and orange-infused raisins. Hazelnuts and orange-infused raisins by themselves are not taxable, but become taxable as candy or confectionary when mixed with dark chocolate buttons. Therefore, [REDACTED] is subject to sales tax.

[REDACTED] contains pieces of honeycomb that are covered in chocolate. Foods that are not otherwise candy become candy or confectionary when coated with chocolate. Honeycomb covered in chocolate is candy and confectionary. Therefore, [REDACTED] is taxable as candy or confectionary because the raisins and almonds are sold in a mixture that includes chocolate covered honeycomb.

[REDACTED] contains date paste, rolled oats, almond milk, dates, cocoa powder, coconut, apple fiber and salt. None of these ingredients, including the cocoa powder (see TB-ST-135), are considered candy or confectionary and are not taxable by themselves. [REDACTED] is similar to granola bars, which are not taxable. Therefore, [REDACTED] is not subject to sales tax.

██████████, also known as ██████████, is a loose mixture of white chocolate buttons, sweetened cranberries, and hazelnuts. The cranberries and hazelnuts by themselves are not taxable but become taxable as candy or confectionary when mixed with white chocolate buttons. As such, this mixture is subject to sales tax.

██████████ is a mixture of seeds that are covered or coated with honey and sugar. The seeds by themselves are not candy or confectionary, but they become candy or confectionary when they are coated with honey and sugar. Therefore, ██████████ is subject to sales tax.

DATED: June 23, 2020

/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.