

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (69)S
Sales Tax
November 8, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910917A

On September 17, 1991 a Petition for Advisory Opinion was received from Barbara Fader, 23-35 Bell Blvd., Apt. 6G, Bayside, New York 11360.

The issue raised by Petitioner, Barbara Fader, is whether sales tax should be charged on the sale of Planters Honey Roasted Peanuts.

Planters Honey Roasted Peanuts are dry roasted peanuts that contain a light glaze of honey on to which is encrusted grains of sugar. According to the label on the product, its principal ingredients after peanuts are sugar and honey.

Section 1115(a)(1)(i) of the Tax Law provides that:

(a) 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.

Section 528.2(a)(1) of the Sales and Use Tax Regulations provides that:

Food and food products, except candy and confectionery, when sold for human consumption, are exempt from sales and compensating use tax.

Section 528.2(a)(4) of the Sales and Use Tax Regulations provides that:

(4) Candy and confectionery include, without limitation, candy of all types, chocolate (plain or mixed with other products); glazed or sugar-coated fruits, nuts, peanuts, popcorn or other products; chewing gum; mints; lollypops, fruit flavored sticks, fruit drops, licorice, pastilles; cotton candy, marshmallow; marzipan, halvah and similar products regarded as candy or confectionery based on its normal use or as indicated on the label or the advertising thereof. (emphasis added)

Planters Honey Roasted Peanuts are glazed and sugar coated peanuts and thus are candy and confectionery in accordance with the meaning and intent of Section 528.2(a)(4) of the Sales and Use Tax Regulations.

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Since candy and confectionery are not exempt from the imposition of sales tax in accordance with the provisions of Section 1115(a)(1)(i) of the Tax Law and Section 528.2(a)(1) of the Sales and Use Tax Regulations, therefore the sale of Planters Honey Roasted Peanuts is subject to the imposition of the sales tax imposed by Section 1105(a) of the Tax Law.

DATED: November 8, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.