

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

TSB-A-10(30)S
Sales Tax
July 13, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091103A

Petitioner [REDACTED], asks whether sales of pumpkins by supermarkets are subject to New York State sales taxes. We conclude that, while pie pumpkins are an exempt food, pumpkins sold for decorative or carving purposes are not food sold for human consumption and thus are not exempt under section 1115(a)(1) of the Tax Law.

Facts

Petitioner is a retail food store engaged in sales of food and food products sold for human consumption (both taxable and exempt) and various other taxable and exempt tangible personal property. Petitioner asks whether its sales of pumpkins are subject to sales and use tax.

Analysis

Section 1115(a)(1) of the Tax Law provides an exemption from the tax imposed on sales of tangible personal property for food sold for human consumption. The sales and use tax regulations provide that “[t]he phrase *sold for human consumption* means that the items sold are, in their normal use, regarded as being for human consumption.” Pie pumpkins (i.e., sugar, deep red, golden cushaw, etc.) and similar gourds generally used by a purchaser in cooking pies, cakes, breads, cookies, etc. constitute food sold for human consumption and are not subject to sales tax. (*See* section 1115(a)(1) of the Tax Law) (Regulations section 528.2(a)(3)) Decorative and carving pumpkins (e.g., Connecticut field, etc.), like other decorative gourds, are not being marketed or sold, in their normal or intended use, for human consumption. Thus, decorative and carving pumpkins and other decorative gourds whether sold at supermarkets, farm stands, nurseries, or other businesses, are not sold as food, and constitute tangible personal property subject to sales tax under section 1105(a) of the Tax Law.

DATED: July 13, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
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