

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

TSB-A-10(5)S
Sales Tax
February 16, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091117A

Petitioner ██████████ requested an advisory opinion as to whether Pedialyte®, a product used by children when ill to replenish fluids and minerals (electrolytes) that are lost due to vomiting and diarrhea, is subject to sales tax.

We conclude that receipts from sales of Pedialyte® are exempt from sales tax.

Facts

Abbott Laboratories, the company that distributes Pedialyte® products, states on its Web site that the product is used: “To quickly replace fluids and electrolytes lost during diarrhea and vomiting and to help prevent dehydration in infants and children, for maintenance of water and electrolytes following corrective parenteral therapy for diarrhea. Pedialyte® is designed to promote fluid absorption more effectively than common household beverages.”

Abbott Laboratories’ Web site, in promoting the use of Pedialyte®, explains that it is specially formulated to quickly replace lost fluids and electrolytes due to diarrhea and vomiting so a child can rehydrate quickly and feel better fast. The Web site notes “that sports drinks, sweetened sodas, and juices don’t meet medical guidelines for helping prevent dehydration due to diarrhea and vomiting in kids” claiming that those “drinks are too high in carbohydrates (sugar) and too low in sodium - an important electrolyte that is lost during diarrhea and vomiting.” In contrast, the Web site states that: “Pedialyte is designed with ... precise combination of sugars and electrolytes to promote quick fluid and electrolyte absorption” and that it “. . . contains the quantity and ratio of sugars (dextrose and fructose) and minerals (electrolytes) recommended by the American Academy of Pediatrics. This precise balance of sugar and electrolytes makes Pedialyte effective in the management and treatment of diarrhea with or without vomiting.”

Abbott’s “Abbott Nutrition” Web site also cautions that the Pedialyte® should not be diluted and that it should be used under medical supervision.

It is also noted on the Abbott Laboratories’ Web site that: “Pedialyte® is not nutritionally complete and is therefore not recommended as the sole source of nutrition for more than a few days without the recommendation of a physician.”

Analysis

Section 1115(a)(3) of the Tax Law provides an exemption from the sales and use tax for drugs and medicines used internally or externally in the cure, mitigation, treatment or prevention of illness and disease in human beings; supplies required for such use or to correct or alleviate physical incapacity; and products consumed by humans for the preservation of health.

Section 528.4(a)(3) of the Sales and Use Tax Regulations in discussing that exemption in pertinent part provides:

Products consumed by humans for the preservation of health include other substances used internally or externally, which are not ordinarily considered drugs or medicines.

Example 1: Analgesics, antiseptics, antacids, cough and cold remedies, laxatives, aspirin, boric acid ointment, cod liver oil and castor oil are exempt.

Pedialyte® is not represented to be a drug, or medicine that may cure a child's vomiting and diarrhea. However, it is specifically formulated for use with children who have lost fluids due to vomiting or diarrhea. Pedialyte® is marketed and sold for use under a physician's supervision for a child who is ill and vomiting or suffering diarrhea due to illness. It is not marketed or sold as being nutritionally beneficial or useful other than in alleviating the effects the loss of fluids and nutrients due to vomiting and diarrhea have on an ill child.

Pedialyte® is clearly for use as indicated for sick children. As such, it is a product used and consumed in the preservation of health of an ill child and, thus, is exempt from sales tax under section 1115(a)(3) of the Tax Law.

DATED: February 16, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of 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.