

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

TSB-A-98(80)S
Sales Tax
December 2, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980713B

On July 13, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from George Salvi, 40 Ave. F, Ronkonkoma, New York 11779.

The issue raised by Petitioner, George Salvi, is whether sales of Zeppoles, which are a type of food product, are subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner owns a mobile trailer from which he sells Zeppoles to customers at different events, such as festivals or carnivals. Zeppoles are food products consisting of flour, water and yeast, which are made into dough. After the dough rises, it is deep fried in fat, cooled on a rack and placed in a bag and sold. Petitioner will put powdered sugar on Zeppoles at the customer's request. Customers may buy one Zeppole, or more than one, as they wish. There is no seating at the mobile trailer. The customer takes the product from the premises.

Applicable Law and Regulations

Section 1115(a)(1) of the Tax Law exempts from the sales tax imposed by Section 1105(a) of the Tax Law, "Food, food products, beverages, dietary foods and health supplements, sold for human consumption. . ."

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.--On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

* * *

(d)(i) The receipts from every sale of beer, wine or other alcoholic beverages or any drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state. . . .

* * *

(3) in those instances where the sale is made through a coin operated vending machine (except the sale of drinks in a heated state made through a coin operated vending machine) or is for consumption off the premises of the vendor, except where food (other than sandwiches) or drink or both are (A) sold in an unheated state and, (B) are of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten.

Section 527.8 of the Sales and Use Tax Regulations provides, in part:

(c) *Premises*. The term “premises” shall mean, the total space and facilities in or on which the vendor conducts his business, including but not limited to, parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches and similar conveniences.

(d) *Consumption on premises*. The phrase “for consumption on the premises” shall mean that the food or drink sold may be consumed on the premises where the vendor conducts his business.

(e) *Consumption off premises*. The phrase *for consumption off the premises* shall mean that the food, including sandwiches, or drink is intended to be consumed at a place away from the vendor’s premises.

Opinion

Based on the description, Zeppoles are similar to donuts. They constitute a food product exempt from sales and use tax under Section 1115(a)(1) of the Tax Law. The sale of Zeppoles as discussed here, where the Zeppoles are cooled on a rack and then placed in a bag and sold to customers, would also not be subject to tax under Section 1105(d) of the Tax Law. Petitioner does not sell his Zeppoles in a heated state or sell them for on premises consumption, and the Zeppoles are sold in the same form and condition, quantities and packaging as similar products commonly sold by food stores.

DATED: December 2, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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