



## Dietary Foods and Health Supplements

### Introduction

In general, food and food products sold by food stores are not taxable. This includes products that are used as *dietary foods* and *health supplements*. This bulletin provides information on and gives examples of the types of products that qualify as dietary foods and health supplements, and also gives some examples of products that don't qualify.

### Dietary foods and health supplements

*Dietary foods* include any food labeled for special dietary use by people. Dietary foods are intended to substitute for or supplement an ordinary diet, or substitute for natural foods. The label of a dietary food must have a statement describing the product's nutritional and dietary properties.

*Health supplements*, such as vitamins and minerals, are products that are intended to substitute for or supplement natural food in an ordinary diet.

If a product qualifies as a dietary food or health supplement, it's exempt from sales tax regardless of the form in which it's sold (i.e., sold as a solid, liquid, pill, or powder).

Carbonated beverages, sports drinks, and energy drinks don't qualify as dietary foods or health supplements. However, products that supplement and replenish the body after intense exercise may qualify as nontaxable dietary foods if they're labeled and sold as a nutritional shake, protein drink, or similar product. (**Note:** Any brand name product shown in italics is included as an example and is not to be construed as an endorsement of the product.)

Examples of products that are exempt <sup>1</sup>	Examples of products that are taxable
<ul style="list-style-type: none"> <li>• antioxidant supplements</li> <li>• <i>Carnation® Instant Breakfast™</i></li> <li>• <i>Ensure®</i></li> <li>• fiber bars or wafers</li> <li>• health, energy or protein bars</li> <li>• herbal supplements</li> <li>• meal replacement mixes</li> <li>• mineral supplements</li> <li>• nutritional or protein powders</li> <li>• protein bars</li> <li>• <i>Slim-Fast®</i></li> <li>• vitamins and multivitamins</li> </ul>	<ul style="list-style-type: none"> <li>• <i>5-Hour Energy®</i></li> <li>• <i>Gatorade®</i></li> <li>• <i>Monster Energy Drink®</i></li> <li>• <i>Powerade®</i></li> <li>• <i>Red Bull®</i></li> <li>• <i>Rockstar Energy Drink®</i></li> <li>• <i>smartwater™</i></li> <li>• <i>vitaminwater™</i></li> </ul>

<sup>1</sup> *Pedialyte®* was found to be exempt from tax as a drug or medicine. See [TSB-A-10\(5\)S](#).

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

#### **References and other useful information**

**Tax Law:** Sections 1105(a); 1105(d); 1115(a)(1); and 1132(c)(1)

**Regulations:** Sections 527.8 and 528.2

**Publications:**

[Publication 750](#), *A Guide to Sales Tax in New York State*

[Publication 840](#), *A Guide To Sales Tax For Drugstores and Pharmacies*

**Bulletins:**

[Listings of Taxable and Exempt Foods and Beverages Sold by Food Stores and Similar Establishments \(TB-ST-525\)](#)