
Opinion of the Tax Commissioner

Date Issued: September 26, 1995

Opinion No: 94-0013

Tax: Sales

XXXX
XXXX
XXXX

Subject: Tea

This request for an Opinion of the Tax Commissioner was received on September 30, 1994. Specifically it concerns the applicability of the Ohio sales tax to sales of bottled and canned tea products.

FACTUAL BACKGROUND

The XXXX (Vendor) set forth the following facts:

- 1) Vendor is a retail grocery chain.
- 2) Vendor sells bottled and canned tea beverages in its stores and in vending machines.
- 3) The tea beverages contain little tea and some contain no tea at all.

QUESTIONS PRESENTED

1) Does the fact that tea is listed as an ingredient of a liquid tea product exempt that product from taxation?

2) If this is not sufficient to qualify for exemption, what is the standard to determine if a liquid tea product qualifies for exemption?

OPINION

Liquid tea products, brewed and marketed as tea, are food and sales of these products are exempt from sales tax if sold for consumption off the premises.

DISCUSSION

Section 5739.02(B)(2) of the Revised Code exempts from the sales tax, "Sales of food for human consumption off the premises where sold". Section 5739.02(B) after division (38) defines "food" as follows:

"As used in this section. *** 'food' includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit

products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: *** soda and beverages which are ordinarily dispensed at bars and soda fountains or in connection therewith other than coffee, tea, and cocoa ***.”

The first sentence of the definition includes tea as food. In case there is confusion as to whether brewed tea is included, the second sentence excludes tea from the beverages that are not to be considered food. Therefore, tea is food for Ohio sales tax purposes in both its leaf and brewed forms. There is no exclusion in the definition of food for brewed teas that may be flavored or sweetened.

With regard to the beverages mentioned by the vendor that contain no tea, there is insufficient information presented to render an opinion on whether those are food or not.

While it is possible that tea could be used to flavor a beverage that did not qualify as food, for example a carbonated soft drink, that is not the situation described by the vendor in the request. The items inquired about are brewed and sold as tea drinks. As such, they are food and not subject to Ohio sales tax when sold for consumption off the premises.

The tax consequences stated in this opinion may be subject to change for any of the reasons stated in section 5703.53(C) of the Revised Code. It is the duty of the taxpayer to be aware of such changes.

Sincerely,

Roger W. Tracy
Tax Commissioner