NEW JERSEY DIVISION OF TAXATION
REGULATORY SERVICES BRANCH
TECHNICAL BULLETIN

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TAX: **SALES AND USE TAX**

TOPIC: **SALES OF FOOD AND FOOD INGREDIENTS, CANDY, DIETARY SUPPLEMENTS, AND SOFT DRINKS SOLD BY A GROCERY STORE**

Note: Please be aware that sales of prepared food are subject to tax. Thus, the taxation of products discussed herein may change if sold by sellers other than grocery stores. Please see TB-71 "Sales of Prepared Food by Food Service Providers" for more information on sales of prepared food.

Food and Food Ingredients

In general, the sales of food and food ingredients purchased for human consumption are exempt from sales and use tax. "Food and food ingredients" are defined in the Sales and Use Tax Act as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. This term does not include tobacco, alcoholic beverages, candy, or soft drinks.

As a member of the Streamlined Sales and Use Tax Agreement ("SSUTA"), New Jersey is required to adopt the SSUTA's definitions. The information in this Bulletin is derived from the SSUTA's Rules and Procedures**.**

Candy

The sales of candy are subject to tax. Candy is defined as any "preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces." Candy does not include any preparation containing flour as an ingredient and does not require refrigeration.

The definition of candy is intended to be used when a person is trying to determine if a product that is commonly thought of as candy is taxable as candy for sales and use tax purposes. For example, the definition would be applied in a situation where a person is trying to determine if a product is candy as opposed to a cookie. The definition is not intended to be applied to every type of food product sold. Many products, such as meat products, breakfast cereals, and canned fruits and vegetables are not commonly thought of as candy. For that reason, the candy definition is not applicable to products such as these. Items covered in chocolate, such as chocolate covered raisins and chocolate covered potato chips, are commonly thought of as candy.

For a list of items that are classified as candy or food and food ingredients, please see Appendix N of the SSUTA's Rules and Procedures.

Examples
Naturally or artificially sweetened breakfast bars, caramel corn rice cakes, and Rice Krispies Treats that do not require refrigeration are candy unless flour is listed as an ingredient on the product label. These products are sold in the form of bars and meet the definition of candy.

A frozen ice cream bar which requires refrigeration is not considered candy.

Preparation
Candy must be a "preparation" that contains certain ingredients, other than flour. A preparation is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the candy definition. For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

Bars, Drops or Pieces
Candy must be sold in the form of bars, drops, or pieces.

A "bar" is a product that is sold in the form of a square, oblong, or similar form.

Example: One pound square blocks of chocolate are candy because the blocks of chocolate are bars.

A "drop" is a product that is sold in a round, oval, pear-shaped, or similar form.

Example: Each individual chip in a bag of chocolate chips contains all of the ingredients indicated on the label. The chocolate chips are candy because they are drops.

A "piece" is a portion that has the same make-up as the product as a whole. Individual ingredients and loose mixtures of items that make-up the product as a whole are not pieces. If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

Examples
Each individual jellybean in a bag of jellybeans is made up of the ingredients indicated on the label. The jellybeans are candy because each is a piece or a drop.

A bag of trail mix is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make-up the trail mix are not pieces, but instead are the ingredients, which when combined, make up the trail mix. The trail mix is not candy because it is not sold in the form of bars, drops, or pieces.

A product called candy lover's mix is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The mixture is candy since all of the individual items that make up the product are individually considered to be candy.

Flour
The definition of candy excludes products which contain flour. The ingredient's product list must specifically identify flour as an ingredient. The type of flour is irrelevant.

Because many products commonly thought of as candy contain flour, ingredient labels must be examined to determine which items are taxable candy or exempt food products. Examples of items which are commonly thought of as candy but which are not taxed as such because flour is listed as an ingredient include KitKat, Twix, Tootsie Roll, Nestle Crunch, Milky Way, and some licorice.

Examples
The ingredient list for a breakfast bar that otherwise meets the definition of candy lists flour as one of the ingredients. This breakfast bar is not candy because it contains flour.

The ingredient list for a breakfast bar that otherwise meets the definition of candy lists peanut flour as one of the ingredients. This breakfast bar is not candy because it contains flour.

The ingredient list for a breakfast bar that otherwise meets the definition of candy lists whole grain as one of the ingredients, but does not specifically list flour as one of the ingredients. This breakfast bar is candy because the word flour is not included in the ingredient list.

The ingredient list on the label of a box of chocolates that are not individually wrapped identifies flour as one of the ingredients. The box of chocolates is not candy because it contains flour.

The ingredient list on the label of a box of chocolates that are not individually wrapped does not identify flour as one of the ingredients. The box of chocolates is candy because the word flour is not included in the ingredient list.

Other Ingredients or Flavorings
"Other ingredients or flavorings" mean ingredients or flavorings that are similar to chocolate, fruits, or nuts. This phrase includes candy coatings such as carob, vanilla, and yogurt, flavorings or extracts such as vanilla, maple, mint, and almond, and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs which are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of candy.

Examples
The ingredient label for barbeque flavored peanuts indicates that the product contains peanuts, sugar, and various other ingredients, including barbeque flavoring. The barbecue flavored peanuts are taxed as candy because it contains a combination of sweeteners and nuts, flour is not listed on the label, and the nuts do not require refrigeration.

The ingredient label for barbeque potato chips indicates that the product contains barbeque seasoning which contains a sweetener. Potato chips are potatoes (which are a vegetable) and are not commonly thought of as candy. The barbeque potato chips are food and food ingredients and

not candy. The fact that the barbeque potato chips contain a sweetener does not change the fact that potato chips are not commonly thought of as candy.

Sweeteners
The term "natural or artificial sweeteners" means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

Refrigeration
The term candy does not include any preparation that, according to its label, requires refrigeration. An item that would otherwise meet the definition of candy but which, according to its label, requires refrigeration is an exempt food product. Candy that does not require refrigeration is taxable even if sold in a refrigerated state. For example, a number of candy bars that are regularly sold at room temperature in the candy aisle may also be found in the refrigerated section of a convenience store. These products do not require refrigeration but are refrigerated for customer preference and therefore, are not exempt from sales tax.

Example
The label on a box of truffles indicates that the product should be kept cool and dry, but does not indicate that the product must be refrigerated. The chocolate truffles are candy because they do not require refrigeration.

Packages of Assorted Items
If a package contains individually wrapped bars, drops, or pieces of products commonly thought of as candy and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces for which flour is listed as an ingredient are food and food ingredients and those bars, drops, or pieces for which flour is not listed as an ingredient are candy. The package is not taxable if more than 50 percent of the bars, drops, or pieces are food and food ingredients as compared to the percentage that are candy.

Examples
There are 10 different types of products in a package. Eight of the types of products in the package meet the definition of candy, while two of the types included do not. It is a reasonable presumption that 20 (2/10 times 100) of the pieces (20 percent) are not candy and 80 (8/10 times 100) of the pieces (80 percent) are. Because more than 50 percent of the pieces are candy the entire package is treated as candy and is taxable.

In a store that sells bulk food and food ingredients by the pound a customer selects some items that are candy and some that are not and combines them in one bag. Each item is in a separate bin or container. Some of the items are candy and some of are not because they contain flour. Regardless of the items chosen the seller charges the customer $3.49/lb. Because some of the items in the bag are candy, the seller should treat the entire package as candy and charge tax on the sale of the bag unless the seller is able to ascertain that 50 percent or less of the items in the bag are candy.

A package contains individually wrapped bars, drops, or pieces, some or all of which are commonly thought of as candy. All of the products' ingredients are listed together, as opposed to being listed separately by product. The package is treated as candy (even if the ingredient lists flour as an ingredient) unless the seller is able to ascertain that 50 percent or less of the products in the package are candy. The seller may presume that each bar, drop, or piece contained in the package has the same value. Unless the package clearly indicates otherwise, the seller may presume that there is an equal number of each type of product in the package.

Dietary Supplements
Sales of dietary supplements are exempt from tax. The term dietary supplement is defined as any product, other than tobacco, intended to supplement the diet, that:

1. Contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; a concentrate, metabolite, constituent, extract, or combination of any ingredient described herein;
2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. 101.36.

Soft Drinks
Sales of soft drinks are taxable. Soft drinks are defined as nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products (including soy, rice, or similar milk products) or greater than 50 percent vegetable or fruit juice by volume. As such, juice labeled as containing 50 percent or less fruit or vegetable juice is subject to tax. Conversely, juice containing more than 50 percent fruit or vegetable juice is exempt from tax. Product labels must be examined to determine the percentage of fruit or vegetable juice in a beverage.

Beverage means a liquid. Soft drinks do not include products that may be made into a liquid form by a purchaser such as:

- Powdered fruit drinks
- Powered tea with flavoring and sweeteners
- Frozen fruit drink concentrate

Examples
Concentrated liquid flavorings or enhancers which are intended to be diluted by being added to a beverage and are not meant to be consumed straight from the bottle are not soft drinks.

Frozen concentrated orange juice mix is not a soft drink.

Flavored beverage syrups and liquid soda syrup which are meant to be added to a beverage and are not meant to be consumed straight from the bottle are not soft drinks.

A liquid non-alcoholic drink mix which can either be used to create mixed drinks or that may be consumed straight from the bottle is a soft drink (unless it contains milk or 50 percent or more fruit or vegetable juice).

Sweeteners include, but are not limited to:

- acesulfame-K
- aspartame
- barley malt
- corn syrup
- crystalline fructose
- cyclamate
- dextrose
- glucose
- high fructose corn syrup
- honey
- hydrogenated starch hydrolysate
- malt syrup
- maltitol
- maltose
- maltodextrin
- mannitol
- maple syrup
- molasses
- neotame
- saccharin
- sorbitol
- sucralose
- sucrose
- sugar alcohol
- xylitol

Example
The label on a bottle of cranberry juice states that it contains 10% fruit juice. The sale of the cranberry juice is a soft drink.

Food Bundles
Food bundles, such as gift baskets which may include both taxable and exempt items, are exempt from sales tax if the value of the exempt items is greater than the value of the taxable item. If the value of the taxable items is greater than the value of the exempt items, the sale is subject to sales tax.

Sellers can determine the value of the taxable and exempt items in the bundle by using either their cost of the individual items or the sales price of the individual items sold. To use the sales price option the seller must actually sell the individual items separately in addition to selling them as part of a bundle. If the seller does not make individual sales of the items in the bundle, they must use the cost of each item, including the cost of any packaging used.

Example
A retailer offers a gift basket containing 3 items with individual selling prices as follows:

Basket	$10	(taxable)
Cheese	$8	(exempt)
Crackers	$3	(exempt)
Wine	$15	(taxable)

Total taxable products ($10 + $15) $25
Total exempt products ($8 + $3) $11
Total selling price of all products $36

The total selling price of the gift basket ($36) is subject to tax because the selling price of the taxable products is greater than the selling price of the exempt products.

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. 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 Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.