

**STREAMLINED SALES AND USE TAX AGREEMENT  
COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE**

**Interpretation Recommendation 2006-04**

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 13th day of April 2006 in accordance with Article IX, Rule 902 of Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Brinker International on behalf of the National Association of Convenience Stores, Council on State Taxation, Darden Restaurants, Food Marketing Institute, Indiana Grocery & Convenience Store Association, Marathon Petroleum Company, Marsh Supermarket Pharmacy, Minnesota Grocers Association, Speedway, Starbucks Coffee, Target, Utah Food Industry Association and Yum! Brands, Incorporated. The request was made by letter dated January 9, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 at subsection H.

Issue

The issue presented is an interpretation of definition of “food sold with eating utensils provided by the seller” found in section C of the prepared food definition found in Appendix C, Part II.

Public Comment

Public comments were received from both industry and state agencies.

Recommendation

The Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the definition of “food sold with eating utensils” be interpreted as specified in the State and Local Advisory Council paper on “Prepared Food Re-Visited Updated April 13, 2006.” This paper was distributed with Diane Hardt’s e-mail dated April 13, 2006 with revised documents for the Streamlined Sales Tax Governing Board meeting in Indianapolis, Indiana on April 18, 2006. Committee members have agreed, by a vote of five to one, that they can support the proposal as presented, provided states are given adequate time to promulgate regulations, make legislative changes, or prepare other published guidance as each state determines is necessary to adopt the language proposed.

Rationale

The Compliance Review and Interpretations Committee finds itself in a difficult situation with this request for interpretation and its subsequent determination of support of the proposal.

All members recognize the need to come to agreement on how to interpret the subject language. Committee members, as well as other states and business representatives involved in the discussions, have indicated support for the proposal. The Committee commends business members and state members for their diligent efforts in bringing this proposal to the table.

Concern was expressed by some Committee members that the language in the proposal goes beyond an interpretation of the existing language in the definition and, in some states, would require legislative changes. Committee member, Tony Mastin, noted that using the Black's Law Dictionary definition of the word "provided" would be an allowable interpretation of the current language. Business representatives expressed concern that using a dictionary definition would not provide the necessary guidance to administer the provision and would result in states adopting different interpretations of the meaning of the phrase.

The Committee is seeking advice from the Governing Board on whether this interpretation goes beyond the scope of an interpretation of the current definition. If so, the Committee asks for advice from the Governing Board on how to proceed. The options discussed, if this is not an interpretation, were either an amendment to the Agreement or a rule.

#### Committee Members

Larry Wilkie, Committee Chair; Myles Vosberg, Andy Sabol, Tony Mastin, Dan Noble, Tom Conley representing Joseph Van Devender, and Dale Vettel