

Streamlined Sales Tax Governing Board, Inc.
Compliance Review and Interpretations Committee

INTERPRETATION/DEFINITION REQUEST

Complete each section

1. **Name(s) of Requestor(s):** Avalara
2. **Contact Person:** **Name** Thomas Haines, CPA
Address Avalara
1011 Mumma Rd., Ste. 102
Wormleysburg, PA 17043
Telephone 717.260.5339
Email Thomas.Haines@avalara.com
3. **Agreement Section(s) involved:** Appendix C, Part II, "Soft Drinks"

4. **Statement of Background Facts** (be succinct): Two instances arose wherein a Streamline-member state indicated that bottled unsweetened flavored water fell under the "soft drink" definition. In both instances "natural flavor" or "essence" was listed in the product's ingredients. The product did not contain any sweeteners or fruit juice. In both instances the state mentioned that the sweetener is present within the "natural flavor" or "essence."

The following is a sample listing of bottled waters that have flavor but no sweeteners:

- Metromint (all varieties)
- Canada Dry Sparkling Seltzer Water Lemon Lime Twist
- Canada Dry Sparkling Seltzer Water Refreshingly Raspberry
- Vintage Lemon Lime Seltzer
- Vintage Raspberry Seltzer
- Adirondack Lemon Lime Seltzer
- Adirondack Raspberry Lemon Seltzer

You will note that all of these products contain water and "natural flavor" or "essence." The Food and Drug Administration (FDA) issues regulations governing labeling requirement under Title 21 of the Code of Federal Regulation. Section 101.22 of Title 21 defines certain terms that may appear on the product's list of ingredients. Under 21 CFR 101.22(a)(3) the term "natural flavor" is defined. In short, "natural flavors" are concentrated additives to food "Whose significant function in food is flavoring rather than nutritional" (emphasis added). Under 21 CFR 101.22(a)(2) the term "spice" defined. "Spices" function in a similar manner; they are a "seasoning" rather than a nutritional element in food. A listing of approved common spices is provided in 21 CFR 182.10.

Among the products listed above, the Canada Dry, Vintage, and Adirondack bottled waters list water and "natural flavor" in their list of ingredients in compliance with 21 CFR 101.22(a)(3). The Metromint bottled waters list water and "mint" and flavor "essence" in their list of ingredients. Metromint uses the common term "mint" instead of the specific terms "Peppermint" and "Spearmint" which are listed as "spices" in 21 CFR 182.10. The "essence" in Metromint products appears to be similar to "natural flavor" as defined in 21 CFR 101.22(a)(3). Additionally, Metromint states that their products contain "No sugar and no sweeteners of any kind" (see last item on manufacturer's "faq" webpage).

5. **Issue:** Are beverages that contain "natural flavor," "essence," or "spice" but no sweeteners includable within the definition of "soft drink?"

6. Proposed Interpretation: The “soft drink” definition includes those products wherein the list of ingredients specifically list natural sweeteners, artificial sweeteners, or fruit juices. Products containing no specifically listed sweetener but include “natural flavor,” “essence,” or “spice” among its list of ingredients shall not be deemed includable under the “soft drink” definition.

7. Is expedited consideration requested? ___No ___X___Yes **If yes, please explain why expedited review is requested.** A request for interpretation/definition normally requires a minimum 60-day comment period. The comment period may be shortened to 10 days if the Committee grants a request for expedited consideration. See Governing Board Rule 902(D) and (H).

A request for interpretation/definition normally requires a minimum 60-day comment period. The comment period may be shortened to 10 days if the Committee grants a request for expedited consideration. See Governing Board Rule 902(D) and (H).

8. Date this Request is submitted: Originally submitted on February 10, 2010; resubmitted on May 28, 2013

The Compliance Review and Interpretations Committee meets by teleconference at 10:00 am central every other Thursday. Their schedule can be found at: www.streamlinedsalestax.org under the meeting calendar.

Submit to: Craig Johnson, Executive Director
Streamlined Sales Tax Governing Board
4219 Hillsboro Pike, Ste 234
Nashville, TN 37215
(608) 634-6160
Craig.Johnson@SSTGB.org

F0007 Interpretation Definition Request (4/10/08)