



June 10, 2013

Sharon Tolbert-White, Executive Assistant
Streamlined Sales Tax Governing Board
4219 Hillsboro Pike, Suite 234
Nashville, TN 37215

Via e-mail: sharon.tolbert@sstgb.org

RE: CI13001 Soft Drink Interpretation Request

Dear Ms. Tolbert-White:

In response to your request for public comment on the proposed interpretation request cited above, the American Beverage Association (ABA) would like to submit comments in support of the proposed interpretation – that the types of unsweetened flavored waters referenced in the request remain outside the “soft drink” definition for the purposes of the Streamlined Sales and Use Tax Agreement (SSUTA).

ABA is the trade association representing the non-alcoholic beverage industry. ABA represents hundreds of beverage producers, distributors, franchise companies, and supporting businesses that employ more than 217,000 people across the country. ABA members offer consumers myriad brands, flavors and packaging choices and a full range of drink options including soft drinks, diet soft drinks, ready-to-drink teas, bottled waters, water beverages, 100 percent juice, juice drinks, sports drinks, and energy drinks.

General Observations about Seltzers and Flavored Waters

Many of our member companies produce a wide range of flavored waters, both sparkling and still. These are produced under familiar company trademarks from our largest members, but also a broad selection of regional brands and private label seltzers sold under retail store brand names. This segment of the still water market represents newer brand extensions from unflavored water brands, while many of the sparkling waters are well-established brands dating back decades or more. Within both the still water and sparkling beverage categories, flavored waters represent a niche market; these products have strong markets, but their sales are dwarfed by conventional carbonated soft drinks and plain bottled water.

Classification of these Products in the SSUTA

Soft drinks are “non-alcoholic beverages that contain natural or artificial sweeteners.”¹ The sample beverages listed in the Interpretation/Definition Request and others in the seltzer and flavored water categories produced by our members do not contain sweeteners. This is an essential product attribute of these beverages and one that defines them in the minds of consumers.

We cannot construe a rationale by which water, to which flavors, essences, or spices (*but no sweetener*) are added, could be called a soft drink under the SSUTA definition. This interpretation (advanced by the state referenced in the Request) does not make sense.

Further, many of these products clearly fall within the definition of “bottled water” found in the SSUTA:

“Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extract, or essences derived from a spice or fruit.”

Since a significant fraction of flavored still waters and seltzers meet the bottled water definition, they clearly cannot be defined as soft drinks.

Support of the Proposed Interpretation

The existing soft drink definition is clear that a product must contain sweeteners, whether natural or artificial, to be considered a soft drink. The sample products listed in the Request and a substantial number of similar products do not contain sweeteners and are therefore not soft drinks.

ABA supports clarifying the definition further to address this Request and to avoid misinterpretations such as the ones that necessitated this action. Our edits to the proposed interpretation are stylistic and grammatical, not substantive:

“The ‘soft drink’ definition includes those products whose list of ingredients specifically include natural sweeteners, artificial sweeteners, or fruit juices. Products containing no specifically listed sweetener but including ‘natural flavor,’ ‘essence,’ or ‘spice’ among their list of ingredients shall not be deemed includable under the ‘soft drink’ definition.”

¹ Streamlined Sales and Use Tax Agreement amended through May 24, 2012, Appendix C.

We appreciate the opportunity to comment on the Request and would be happy to answer questions or provide additional clarification. We do plan as well to call in for the June 13 meeting of the CRIC.

Very truly yours,

A handwritten signature in black ink that reads "Stephen G. Lodge". The signature is written in a cursive, flowing style.

Stephen G. Lodge

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