

Compliance Review and Interpretations Committee Minutes

July 11, 2013

Myles Vosberg, Chair called the meeting to order at 10:01 am central. The Committee participants were Co-Chair Tim Jennrich, Richard Cram, Tom Atchley, and Larry Paxton and the quorum was established. Absent were Harry Fox and Dan Noble.

Chair Vosberg reported that the purpose of the teleconference was for determination to accept the Interpretation/Definition Request submitted by Mr. Tim Larsen of Scentsy, Inc.

Mr. Larsen provided an explanation of the request stating they sell fondue pouches with a spout that are microwaveable and have chocolate wafers. He indicated that he would like to know if it should be considered food for consumption due to the food preparation steps or if it is considered candy because it is chocolate.

Chair Vosberg asked if the letter attached to the Interpretation Request was sent to the states. Mr. Larsen said he had sent it to a few states. He said he had performed initial research looking at state language where they said if the product contains cocoa then it would be considered a confectionary. He reported that Scentsy, Inc. had taxed the pouches originally a year ago. In February, several states had contacted Scentsy stating they did not think it was taxable. There were approximately 18-states contacted and the auditors had said these products would actually be considered for home consumption therefore Mr. Larsen said that Scentsy had stopped taxing it in those states. He reported that some of the Streamlined member state contacts included Kentucky, Iowa, and Indiana. He said that Wisconsin had contacted them a month ago and said it was considered candy and they were not taxing it. He added that the Wisconsin contact had recommended the Streamlined Sales Tax lead should be followed and the Interpretation/Definition Request form was provided accordingly.

Tim Jennrich said since asking for expedited review, he assumes that Mr. Larsen could provide the ingredients of the chocolate wafers as it has specific elements to it. Mr. Jennrich requested a description of the ingredients of the wafers and Mr. Larsen agreed to provide that information.

Richard Cram said since they are looking at 4-different kinds of chocolate, the Committee should know the ingredients of all.

Mr. Larsen said they had called every one of the 18-states and in every instance they had said they did not believe it was candy. He said it all depends on the auditor that you are speaking with and Scentsy, Inc. did not feel safe with the various phone conversations. He said if Scentsy, Inc. was audited the Interpretation request would be a better route for documentation and ruling.

Tom Atchley asked if Mr. Larsen had received written legal guidance from Wisconsin. Mr. Larsen said Wisconsin had stated verbally that it was candy, but did not provide legal guidance. However, once they started dialoguing with them, their auditor said this is actually a gray area and had referred him to the Compliance Review and Interpretations Committee.

Mike of Wisconsin said they felt it was candy as it does not require refrigeration and seemed to fit the definition of candy. He said that Mr. Larsen had apparently received verbal information that it was candy.

Chair Vosberg said he felt the Interpretation Request was to determine whether it should fall within the definition of candy or not. Tim Jennrich said he assumed they were talking about food or food ingredients and that should be clarified.

Gloria of Nevada taxation referred the Committee to a website to view the ingredients at <http://fonduedoneright.com/what-are-the-ingredients-in-the-chocolate/>

Larry Paxton of Iowa said their state has not made a determination.

Mr. Larsen said they should have obtained some written rulings initially, however they had simply visited every state website and based the decision based on that information. He said later they had called the state departments and received verbal information.

Tim Jennrich made a motion that the Compliance Review and Interpretations Committee accept the Scentsy, Inc. Interpretation/Definition request. Chair Vosberg said the motion is to accept the request on an expedited position. The Committee roll was called and the motion passed affirmatively on a voice vote of all participants.

Chair Vosberg asked if the Committee was comfortable that they have enough information to review the request with the website ingredients information provided. Committee members responded that they would if the website provides has all of the ingredients. Chair Vosberg said with the expedited request the 10-day public comment period notice would be sent immediately. The Committee will hold the hearing for review on Thursday, August 1, 2013, 10:00 am central if that date meets the notice requirements. Mr. Larsen agreed to join the meeting.

With no further business the meeting adjourned at 10:34 am.