

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

Interpretative Opinion 2010-05

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of September 16, 2010 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is David A. Fruchtman. The request was made on August 18, 2010.

**Issue**

Mr. Fruchtman asked, on behalf of a client, whether carbon dioxide used to make seltzer for human consumption qualifies as "food and food ingredients." According to the facts presented, the company represented is a distributor and gas refiller of a table top seltzer making system. The company's customers initially purchase a table top seltzer making kit, which includes a reusable seltzer dispenser weighing less than five pounds, two reusable plastic bottles, flavor samples and a canister filled with beverage-grade carbon dioxide ("canisters"). Customers screw a canister into the table top seltzer dispenser. To make seltzer at any time, a customer fills one of the plastic bottles with tap water, attaches the filled bottle to the dispenser, and pushes a button for one to two seconds, releasing gas into the water. The result is a fresh bottle of seltzer for human consumption. The carbon dioxide changes the taste of water. The taste of carbonated water is different than the taste of noncarbonated water because of the formation of carbonic acid when the carbon dioxide is dissolved in water. The seltzer is ingested as part of the beverage. Customers can add flavorings if they desire. This is the only use for the system. Mr. Fruchtman requests a ruling that the company's sales of its canisters of beverage-grade carbon dioxide qualify as sales of "food and food ingredients" as that phrase is used in the Streamlined Sales and Use Tax Agreement ("SSUTA"), Appendix C.

**Public Comment**

No state or public written comments were received.

**Recommendation**

By a vote of three to one of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester be accepted.

**Rationale**

~~The Agreement defines "food and food ingredients" 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." Definitions for "concentrated" include "clustered or gathered together closely." Beverage grade carbon dioxide is in a compressed form (the molecules are gathered closely together) prior to being released into water. Beverage grade carbon dioxide is used only for human ingestion as part of a home made~~

beverage that the customer makes with the seltzer making system. The carbon dioxide is mixed with water and then is ingested (drunk) by a human. The beverage grade carbon dioxide changes the taste of the water to which it is added. Also, the Federal Food and Drug Administration ("FDA") recognizes carbon dioxide as a food ingredient. *See* 21 C.F.R. section 184.1240 ("Carbon dioxide") stating in subsection (e) that "In accordance with section 184.1(b) (1), the ingredient [carbon dioxide] is used in food with no limitations other than good manufacturing practice." *See also* 21 C.F.R. section 184.1 ("Substances added directly to human food affirmed as generally recognized as safe") stating in subsection (b) that "Any ingredient affirmed as [Generally Recognized as Safe] in this part shall be used in accordance with current good manufacturing practice. For the purpose of this part, current good manufacturing practice includes the requirements that a direct human food ingredient be of appropriate food grade; that it be prepared and handled as a food ingredient; and that the quantity of the ingredient added to food does not exceed the amount reasonably required to accomplish the intended physical, nutritional, or other technical effect in food." Beverage grade carbon dioxide is a substance in concentrated form, is sold for ingestion by humans and is consumed for its taste and as such, meets the definition of "food and food ingredients."

Term "food and food ingredients" means[twj1]:

- 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.

*SSUTA, Appendix C- Library of Definitions, Part II "Product Definitions."*

"Food and food ingredients" are substances. The term gas is in fact defined as a "substance." For example, a gas is "a substance at a temperature above its critical temperature and therefore not liquefiable with pressure alone.[.]" Webster's Third International Dictionary, p. 937 (2002). The definition of "food and food ingredients" identifies various forms in which "substances" can exist. However, the list of described forms is not exclusive. Accordingly, a gas can qualify as a "substance" as contemplated in the definition of "food and food ingredients."

Under the facts presented, the identified beverage grade carbon dioxide gas is sold for ingestion and is consumed for taste.

Based upon the forgoing, the beverage grade carbon dioxide gas qualifies as a "food and food ingredient" because it is a substance, is sold for ingestion, and is consumed for taste.

### **Participating Committee Members**

Myles Vosberg, Rep. Deb Peters, Richard Cram and Tim Jennrich[twj2]