

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

Interpretative Opinion 2013-1

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 13th day of June, 2013, in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

Mr. Thomas Haines of Avalara requested the interpretation on May 28, 2013. Mr. Haines requested expedited consideration under Streamlined Sales Tax Governing Board (SSTGB) Rule 902, subsection H.

Issue:

Are beverages that contain “natural flavor,” “essence,” or “spice” but no sweeteners includable within the definition of “soft drink?” 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 contain 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

All of these products, at the time this request was considered, were labeled as containing 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. The term “natural flavor” is defined in 21 CFR 101.22(a)(3). In short, “natural flavors” are concentrated additives to food “Whose significant function in food is flavoring rather than nutritional” (emphasis added). The term “spice” is defined in 21 CFR 101.22(a)(2). “Spices” function in a similar manner to natural flavor; 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, 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).

The “soft drink” definition includes those products wherein the list of ingredients specifically list natural sweeteners, artificial sweeteners, or fruit juices. Mr. Haines requests a ruling that 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.

Public Comment:

The American Beverage Association submitted comments in support of the proposed interpretation that the types of unsweetened flavored water referenced in the request do not fall within the definition of “soft drinks.” The comments highlighted the Streamlined Sales and Use Tax Agreement’s “bottled water” definition that applies to beverages with flavors, spices, or essences without sweeteners as follows: “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, extracts, or essences derived from a spice or fruit.”

Recommendation:

By a unanimous vote of the members present, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requestor be accepted. Beverages that do not include natural or artificial sweeteners, including juices, do not fit the definition of soft drinks.

Rationale:

Appendix C, Library of Definitions, Part II Product Definitions defines “soft drinks” to mean “non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.” “Natural flavors” are concentrated additives to food whose significant function in food is flavoring rather than nutritional. “Spices” function in a similar manner; they are a “seasoning” rather than a nutritional element in food. Natural flavors and spices are not sweeteners. Both the Streamlined definitions for “candy” and “soft drinks” use the term “natural or artificial sweeteners.” SSTGB Rule 327.8 addresses “natural and artificial sweeteners” in the context of “candy”. The recommendation is consistent with SSTGB Rule 327.8. The FDA requires all ingredients to be listed on the label. If the label does not list a natural or artificial sweetener, the product is not a soft drink under the Agreement definition. None of the products listed in Mr. Haines request lists a natural or artificial sweetener as an ingredient as labeled at the time of this recommendation. Therefore, none of these products are considered to be a soft drink.

Participating Committee Members:

Myles Vosberg, Tom Atchley, Richard Cram, Larry Paxton, Harry Fox, and Tim Jennrich