

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

**Interpretative Opinion 2013-2**

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 1st day of August, 2013, in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

Mr. Timothy Larsen of Scentsy, Inc. requested the interpretation on June 27, 2013. Mr. Larsen requested expedited consideration under Streamlined Sales Tax Governing Board (SSTGB) Rule 902, subsection H.

**Issue:**

Scentsy, Inc. sells fondue chocolate pouches branded as "Velata, Fun fondue" through home parties held by its direct selling consultants (see [www.velata.net](http://www.velata.net)). The Company believes the classification of the fondue chocolate to be a food item and that it is not considered candy or a confectionary since it is not readily consumable without additional preparatory steps which cause it to be treated as a food item for home consumption. A ruling is sought for verification. The fact pattern outlining the manufacturing, distribution, and marketing of the chocolate is below:

The raw chocolate is made in a wafer form by a Belgium chocolate manufacturer and shipped to New Jersey for insertion in a microwaveable pouch by a third party in amounts of 170g and shipped to Scentsy distribution centers. Scentsy direct sales consultants selling under the brand Velata order the chocolate along with a warmer for use at a home party designed to enjoy the chocolate, while encouraging participants to also purchase the chocolate and warming devices for their own use and satisfaction.

When a home party is held at which the chocolate will be enjoyed, the pouch must be microwaved for 1 minute so that the wafers are melted and able to be released in a liquid form through the pouch spout into a warming dish. The warming dish maintains the chocolate in a liquid form so that home party participants can dip and enjoy fruit, pretzels, or other items.

Specific instructions on the pouch read as follows:

- 1) Switch on your Velata warmer
- 2) Microwave Velata pouch for one minute
- 3) Knead pouch until chocolate becomes smooth. If lumps remain, reheat for 15 seconds.
- 4) If necessary, repeat Step 3. Empty pouch contents into preheated Velata warmer.

The Company seeks confirmation of its interpretation of the fondue chocolate being classified as food for home consumption.

**Public Comment**

No state or public written comments were received.

**Recommendation**

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

**Rationale**

The central question before the Compliance Review and Interpretations Committee is whether the products discussed are “food and food ingredients” or “candy” as defined by the Agreement. The Agreement defines “candy” to mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces that do not include flour and require no refrigeration. The definitions in the Agreement are meant to be objective tests to determine the classification of an item and the intent of the user is not relevant. Chocolate fondue meets the definition of candy because it contains a sweetener, is combined with chocolate or other ingredients or flavorings, does not contain flour, does not require refrigeration and is sold in the form of bars, drops or pieces. The wafers are “pieces” of chocolate.

**Participating Committee Members**

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