

I006011

STREAMLINED SALES AND USE TAX AGREEMENT
COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE

Interpretative Opinion Recommendation

2006-11

This Interpretation Recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this 26th day of October 2006 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 Mr. John Nugent of the Rhode Island Division of Taxation. The request was made on the prescribed form dated October 6, 2006, and was made pursuant to the provisions for expedited consideration contained in Rule 902 H.

Issue

The issue presented is an interpretation of Interpretation 2006-04 adopted on April 18, 2006 by the Governing Board defining the term "food sold with eating utensils provided by the seller" for purposes of the prepared food definition in the Agreement. The specific issue involves the following language which is referred to as a "bulk serving" in the remainder of this document:

"For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item does not become prepared food due to the seller having utensils available."

The questions presented was whether the packaging by a seller of four or more bakery products individually selected by a purchaser and sold for a single price meets the definition of "bulk serving" as defined above.

Public Comment

Written public comments were received and are incorporated herein.

Recommendation

By unanimous consent the Compliance Review and Interpretations Committee submits to the Governing Board the recommendation that packaging by a seller of four or more bakery products individually selected by the purchaser and sold for a single price constitutes a bulk serving.

Rationale

Section VI of Interpretation 2006-04 provides, in part, the following:
"For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item does not become prepared food due to the seller having utensils available..."

The "bulk servings" of Interpretation 2006-04 does not provide by whom the item must be packaged, or that the item must be pre-packaged. Thus, for bakery products, all that is required is that the item ultimately sold to the purchaser be a package of bakery products consisting of four or more servings sold for a single price. The fact that the servings are individually selected by the

purchaser and packaged by the seller or the purchaser does not affect the transaction. The item does not constitute prepared food even when sold by a seller whose sales percentage is greater than 75% and who makes eating utensils available.

The Committee wishes to note that if the seller charges for each individual serving in the package, the sale would not be of "one item sold for a single price." It should be noted that the same provision in Section VI of Interpretation 2006-04, which we are referring to as "bulk serving," does treat "bulk servings" as prepared food when the seller's practice for the item (as represented by the seller) is to physically hand the utensil to the purchaser, except that plates, bowls, glasses, or cups necessary for the purchaser to receive food need only be made available.

Committee Members

Larry Wilkie, Committee Chair, Tom Conley, representing Joe Van Devender, Tony Mastin, Dan Noble, Andy Sabol, Dale Vettel, and Myles Vosberg