Interpretative Opinion 2009-6

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of November 12, 2009 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 James Tilton. The request was made on August 18, 2009.

Issue:

Mr. Tilton raises an issue with regard to the definition of candy. Cereal and breakfast bars contain sugar and some contain flour. The example given was Honey Smacks, Rice Krispie Treats, Coco Krispies, Golden Crisp, Special K, Fruity Pebbles, Carmel Corn Rice Cakes, Kelloggs Raisin Bran, Wheaties, and Cheerios which all contain sugar but no flour. The issue presented is whether cereals like these meet the definition of candy under the Agreement definitions. The requester proposes that an interpretation be made that such cereals are candy.

Public Comment:

The Compliance Review and Interpretations Committee (CRIC) asked the State and Local Advisory Council (SLAC) to conduct research and to make a recommendation. There were state and public comments received by SLAC which resulted in a paper that was submitted to CRIC on November 12, 2009.

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 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. 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.

(1) Breakfast cereals are **not** candy because they are not sold in the form of bars, drops or pieces.
(2) Natural or artificially sweetened breakfast bars, Carmel Corn Rice Cakes, and Rice Krispie Treats that do **not** have ingredient labeling specifying flour and do **not** require refrigeration are candy. These products are sold in the form of bars and meet the objective test in the definition of candy.
(3) Lightly Salted Rice Cakes that do not contain natural or artificial sweeteners according to the ingredient labeling are food and food ingredients and are not classified as candy.

Participating Committee Members:

Cathy Wicks for Larry Wilkie, Myles Vosberg, Tony Mastin, Tom Atchley, Rep. Deb Peters and Senator Luke Kenley.