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GENERAL MILLS

October 12, 2009

Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike, Ste 305
Nashville, TN 37215

RE: Interpretation Requests RI09012 and RI09010

Dear Scott,

Please accept these comments on Interpretation Requests RI09012 and RI09010 on behalf of General Mills.

General Mills is the world's sixth largest food company, and a leader in the U.S. ready-to-eat cereal category. Our products are sold in every U.S. state, and we work with retailers across the country to deliver our products to consumers.

In general, General Mills opposes any interpretation of the Streamlined Sales Tax Agreement definition of "candy" that would apply to ready-to-eat cereal, cereal bars, or any other grain based products. It is clear from any plain reading of the Agreement that the candy definition was not intended to apply to ready-to-eat cereals or grain based products.

We recommend that the SSTP Governing Board adopt an Interpretation that clearly states that cereal is food and not candy, without any regard to the candy definition. Cereal bars and other breakfast bars should be found as not candy for reasons noted below.

- **By any reasonable measure, cereal is not "candy."**
 - Cereal is a separate and distinct category from candy, and there is no confusion among consumers about the difference between the two.
 - Cereal is a grain-based product – literally it *is* grain. Webster's defines "cereal" as "relating to grain or to the plants that produce it; *also*: made of grain."
 - Ready-to-eat cereals deliver key nutrients to millions of consumers daily and are one of the most nutrient-dense foods a consumer can choose. Some key facts about cereal:
 - Most cereals – including pre-sweetened cereals – have about 100-130 calories per serving and provide at least 10 key nutrients.

- Cereal is a top source of key nutrients in children's diets.
 - Cereal – including pre-sweetened cereals – provide less than 5 percent of a child's calorie intake on average.
 - Cereal – including pre-sweetened cereals – provide only 5 percent of a child's sugar intake on average.
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- **The SSTP definition of “candy” should only be applied to products that are questionably candy, not to other food that is clearly not candy.**
 - The SSTP agreement provides two definitions that must be considered here – one for “food and food ingredients,” and one for “candy.”
 - The definition of food clearly encompasses cereal.
 - Cereal is clearly not candy.
 - Therefore, it is not necessary to consider whether cereal is candy.
 - The SSTP definition of “candy” should only be applied to products that are questionably candy, not to other food that is clearly not candy
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- **Several SSTP states already clarify that cereal is a food and not candy**
 - Whether using the analysis above implicitly or directly, several SSTP states (full and associate) already provide guidance that cereal is food and not candy, including:
 - Indiana – see [Sales Tax Information Bulletin #29](#) (listing “cereal” as tax-exempt food item);
 - Iowa – see [IDOR website](#) (listing “cereal and cereal products” as generally exempt products and specifically listing “breakfast cereals” as “...not considered candy, and the sales of them are not subject to tax...”)
 - Minnesota – see [Food fact sheet](#) (listing “cereal” as tax-exempt food item) and [Candy fact sheet](#) (cereal not included because it is not candy)
 - New Jersey – see [New Jersey Sales Tax guide](#) (page 7 – “cereals” listed as exempt).
 - North Dakota – see [Sales Tax Guideline](#) (“cereal products” listed as nontaxable food product)
 - Tennessee – see [Sales and Use Tax Guide](#) (page 15 - “cereal” listed as example of “food or food ingredients”; not listed under examples of “candy”)
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- **Even if one errs on the key step of identifying cereal as not candy, there is no basis in the definition of candy to include cereal.**
 1. **Ready-to-eat cereal is does not meet the format definition of “candy”**
 - The candy definition says that the preparation must be “in the form of bars, drops, or pieces regardless of size.”
 - Ready-to-eat cereal comes in many shapes and sizes, but not in bars, drops or pieces.
 - Under FDA rules ([21CFR101.3](#)), each food product must bear on its label a “statement of identity.”
 - Many ready to eat cereals are identified clearly as “cereal” with other adjectives describing the cereal.

- For example, the Statement of Identity on a box of [Cheerios](#) is “Toasted Whole Grain Oat Cereal.” [Kix](#) is identified as “Crispy Corn Puffs.”
- Other indentifying terms for cereal used on Statements of Identity include “flakes,” “puffs,” “clusters,” “squares” and “granola.”
- None of these items is a “bar, drop or piece.”
- By contrast, many common candy products’ labels clearly identify them as either “candy” ([M&M’s](#) – “chocolate candies”) or a “bar” (“[Butterfinger](#) bar”), “drop” (“[Sathers Gum Drops](#)”) or “piece” ([Reese’s Pieces](#) candy).
- As such, any cereal product can clearly be considered food and not candy, as it does not come in the identified forms of candy.

2. **Cereal and grain products are included within the intent of the flour exception.**

- As noted above, cereal *is* grain.
- Flour *is* grain too. It is grain that has been ground to a fine powder. There are different types of flour, based on the way it is ground, and different types of grain (e.g., wheat, oat, corn, rice, etc.), but in any case, flour is grain.
- An industry standard allowed by FDA is to label all parts of a grain in cereal in one listing.
 1. For example, the first ingredient in Cheerios is “whole grain oats.” This listing includes several different forms of oats – oat flour, rolled oats (oatmeal), etc.
 2. There is no requirement to list each form separately, and consumers benefit from a simpler listing that recognizes that an oat has been processed (ground, milled, etc.) and that several parts of the oat now are included in the product.
- In Interpretation 2007-03, the SSTP Governing Board adopted the reasoning that a product label must specifically list “flour” as an ingredient to be considered as not candy.
- The Rationale adopted in the Interpretation recognized that the food industry’s labeling standards should be accepted:
 - *“It is reasonable to accept the food industry’s labeling standards and not consider any ingredient to be flour unless it is listed as such on the product label.”* (emphasis added)
- As noted above, in the case of cereal, the industry standard is to *not* list flour separately and to include flour in the grain listing.
- Therefore, to apply a consistent rationale, the cereal industry’s labeling standard should be accepted, and a listing of grain should be recognized to include flour.

Applying these facts specifically to the questions raised in RI09012:

- Do breakfast cereals, breakfast bars, rice cakes and Rice Krispies Treats meet the definition of candy?
 - No. Cereal is food and should not be considered as candy. The SLAC should affirmatively find that all cereals are food and not candy. Cereal bars and other

breakfast bars should be found as not candy, because the flour exclusion should follow industry standard and recognize that flour is included in the grains listed on the ingredient label.

- Is a high percentage of sugar content a determinative factor whether a food is considered candy?
 - No. There is no justification for this method. The whole genesis of taxing products like candy is really about nutritional value. Cereal is one of the most low-calorie, nutrient dense foods consumed. The official U.S. government guidance on diet is the [Dietary Guidelines for Americans](#), which recognizes that it is more important to improve nutrient intake in low-calorie foods than be concerned with small amounts of sugar (page 36-37: “In some cases, small amounts of sugars added to **nutrient dense foods, such as breakfast cereals** and reduced fat milk products, may increase a person’s intake of such foods by enhancing the palatability of these products, **thus improving nutrient intake without contributing excessive calories.**” (emphasis added)). Also, if a sugar standard was applied, then a sack of sugar itself would be found to be candy. Applying a sugar standard has no basis in fact and should be rejected.

Lucky Charms is not a bundled product and not candy

Addressing RI09010, Lucky Charms is not a bundled product. The marshmallows are an ingredient in the product, not a product separate from the oat pieces. Neither the oat pieces nor the marshmallows in Lucky Charms are sold as separate items. Together, they are ingredients in a single product. They are not distinct and identifiable in that neither item is purchased by any retailer separately. Therefore, the STTP should find that Lucky Charms, as well as any other cereal that contains marshmallow pieces, should not be taxed as candy.

Please feel free to contact me if you have any questions.

Sincerely,



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