I am unable to attend the Dec 19, 2011 Governing Board Meeting, but would like to make the following statement.

I respectfully disagree with the CRIC Committee’s recommendation that wood chunks used for flavoring do not qualify as a food ingredient. I would like to reiterate the following points:

1. The CRIC committee’s rationale for rejecting the interpretation request noted that the wood when heated created smoke that flavors the food, but that the wood itself is not ingested by humans and is not a component part of the food product. I respectfully disagree with this interpretation and believe this is the key issue that needs to be understood. The smoke that flavors the wood is the wood, just in another form (gas). The committee somehow believes that the smoke is a separate and distinct item, but in fact the smoke is simply the flavor compounds of the wood in a different form. The interpretation request provided several reference documents which detailed the science behind how the “wood” when burnt takes on another form and becomes “smoke”.

2. The states of Florida and Missouri have both specifically addressed this issue and deemed that the wood chunks are a food ingredient. Missouri specifically states: “Because a part of the wood, in the form of smoke particles, blends with and remains as part of the finished product, the apple wood may be purchased tax exempt as an ingredient or component part.” Numerous other cases in a number of jurisdictions (documented in the original request) noted similar items used during the cooking process such as “shortening”, “cooking oil”, or in the case of drinks “ice cubes” and this committee specifically noted that “carbon dioxide” are all food ingredients. Wood chunks…in the form of smoke are a flavoring agent, and therefore should be considered a food ingredient.

3. The wood chunks in the “form” of “smoke” are ingested by humans and are sold for their “taste”. Therefore the wood chunks meet the two criteria to be deemed a food ingredient. Just as the flavor of bay leaves and cinnamon sticks are a food ingredient and "Liquid Smoke" products (providing flavor, but not actually "chewed by humans", so too are wood chunks. We purchase hundreds of thousands of dollars worth of wood chunks each year, to provide a unique flavor to our "wood-grilled" menu items. This is the sole purpose of this purchase—the wood is not used as a fuel; it is used as a flavoring ingredient. This should not be a taxable event.

4. I suggest the Governing Board before making a final decision, seek additional scientific evidence so that everyone better understands how "wood" becomes "smoke". This may help the Board understand how the wood chunks are indeed a food ingredient.

Respectfully submitted,

Ken Nogueira

Dec 16, 2011.