September 29, 2010

Chair Jane Page
Vice-Chair Sherry Harrell
State and Local Advisory Council
Streamlined Sales Tax Governing Board, Inc.
4205 Hillsboro Pike, Suite 305
Nashville, Tennessee 37215

Dear Chair Page and Vice Chair Harrell,

Thank you for the opportunity to offer comments to the Streamlined Sales Tax State and Local Advisory Council on the definition of “candy”.

The National Automatic Merchandising Association (NAMA) is the national trade association representing vending machine, coffee service and food service industries. NAMA has approximately 2,400 members who operate vending machines, sell or manufacture equipment, and distribute or manufacture food and beverage items for sale through vending machines and related outlets. The basic mission of the association, to collectively advance and promote the automatic merchandising and coffee service industries, still guides NAMA today as it did in 1936, the year of the organization’s founding. We have 34 affiliated State Councils encompassing 36 states.

The vending industry is a $40 billion a year industry, employing approximately 700,000 people who work at an estimated 13,500 companies.

According to The Vending Times Census of the Industry 2009, there are approximately 5.3 million food and beverage vending machines in the United States. Other sources estimate that there are 7.4 million food and beverage vending machines, including bulk vending.

We recognize that the Streamlined Sales Tax does not apply to the vending industry. However, when individual participating states adopt the definition of candy for their state sales tax regulations, it does impact our members.

The State and Local Advisory Council (SLAC) was tasked with proposing rules and definitions for a number of food products in March 2010. I understand that the candy definition is the first food-related definition to be addressed.
We also understand that the Governing Board is not changing the basic definition of “candy” at this time. Rather you are seeking to clarify the existing definition. Unfortunately, it appears that this process is producing more work and more confusion than clarity. The definition and rule being circulated is six pages long, the “white paper” is 5 pages long and an appendix apparently provides even more information.

The definition of candy under these rules is: “A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavourings in the form of bars, drops, or pieces. ‘Candy’ shall not include any preparation containing flour and shall require no refrigeration.”

Clarification on “flour” includes this language: “the term ‘flour’ means a ground powdery substance made from a grain,” it says. “…However, if the word ‘flour’ on the label is preceded by a modifier used to describe the product the ‘flour’ was made from and the modifier is not a type of grain, then the product is not considered to contain ‘flour’ for purposes of the definition of candy.” We acknowledge the difficulty of distinguishing between “cookies” and “candy.”

As this group recognizes, there is confusion about the definition of candy, which is causing the continued debate, further decisions and clarifying statements. If there is confusion among attorneys, tax experts and state revenue department staff, you can imagine the potential confusion at the retail level.

We have heard from our membership that such confusion is causing additional expenses and staff time to determine the tax rate of different vended snacks. With the wide variety of snacks which our members sell to customers across the nation, the time and effort to comply with this definition of candy is creating an unnecessary burden.

It requires extensive effort to track individual candy sales and determine the tax rate for each individual sale of such similar products. It doesn’t make sense for licorice and candy without flour to be taxed at one rate, and those with flour to be taxed at a different rate. Tracking and remitting the appropriate tax for similar retail products in this manner are expensive and an inappropriate burden.

Expenses include:
- Additional training for staff to recognize and charge the appropriate tax.
- Additional staff time to program computers to recognize the different tax rates, item-by-item.
- Extra expenses for accounting staff to ensure compliance.
- Extra staff time to track and remit the appropriate tax.

NAMA therefore suggests that the Streamlined Sales Tax Governing Board vote to remove the current definition of candy as currently written and write a new definition which is easier to understand and implement. A more common-sense definition of candy will eliminate confusion, will reduce expenses of small businesses and will ensure the appropriate collection of sales tax.

Webster’s dictionary defines the noun candy as:
1. crystallized sugar formed by boiling down sugar syrup
2. a confection made with sugar and often flavoring and filling
3. a piece of such confection.

The Board should provide a clear and concise definition which will allow our membership to appropriately collect and transmit tax.

We also strongly urge the committee to consider simplicity and common sense in all future food definitions in an effort to minimize confusion and expenses of small retailers. Perhaps the committee should consider if a definition is even necessary, since tax rates could easily, and more consistently be applied to broader categories. For example, are different tax rates and definitions really necessary for “cookies” or “candy”? Or would it be easier to apply just one definition and tax rate for “food”?

We are available and interested in providing additional information to assist in this ongoing process. For additional information on these comments please contact me at the Eastern Office address.

Sincerely,

Ned Monroe
Senior Vice President of Government Affairs