



SST State and Local Advisory Council

Meeting Minutes

October 27, 2009 – Teleconference continued from October 15, 2009

Steering Committee

Sherry Harrell
Chair
Tennessee

Christie Comanita
Arizona

Richard Dobson
Kentucky

Cathy Wicks
Minnesota

Craig Rook
New Jersey

Vicki Gibbons
Wisconsin

Mike Bailey
*GFOA
City of Renton, WA*

Sonny Brasfield
NACO

Sherry Harrell opened the teleconference/webinar meeting. She indicated the meeting would begin with Loren Chumley's request RI09007 and then would move to Mr. Tilton's request for interpretation RI09012.

Agenda:

- 1) RI09007 & IO09005 – request by Loren Chumley – Employee Points Program
- 2) RI09012 – Mr. Tilton – Do breakfast cereals, breakfast bars, rice cakes and Rice Krispies Treats meet the definition of candy? Is a high percentage of sugar content a determinative factor whether a food is considered candy?

Welcome and Introduction

Roll was taken. Twenty-five delegates were present.

RI09007 – Loren Chumley – Employee Points Program

Sherry Harrell began by providing an update of the status of the issue and indicated she had hosted a discussion call on October 7, 2009. SLAC members and Ms. Chumley were able to ask questions. Ms. Chumley addressed the SLAC members' questions with her client and has provided responses to the questions in SL09074.

Ms. Chumley, KPMG reviewed SL09074.

The additional information includes clarification regarding:

- 1) application of federal income tax to an employee's redemption of points for cash, travel or toward the purchase price of tangible personal property;
- 2) when employee points are eligible to be redeemed for cash; and
- 3) when employee points are redeemed for travel.

Russ Brubaker, WA indicated if the employee points are being earned for services, the points are equal to consideration. The points are different from a discount. A \$100 discount can't be redeemed for cash.

Bill Risenberger, OH asked, Do the points have value to the person receiving them?

Mike Eschelbach, MI indicated if the points are redeemed for cash, then it's not a discount.

Mary Cameron, AR stated the employee has performed services for the employee points.

Richard Dobson, KY asked, what happens to the employee points if the employee terminates?

Bill Risenberger, OH indicated if no cash is received for the TPP and only the earned points are put towards the price, then there is no sale.

Mike Eschelbach, MI indicated the Agreement does not define sale, there is only sales price.

Craig Johnson, WI asks, if the employee does not redeem the points for cash but instead redeems the points for TPP, is a sale recorded when the employee points are redeemed?

Richard Cram, KS indicated that points eligible for redemption for cash is a much tougher question than points redeemed for a discount.

Joe VanDevender, IN indicated trading points for cash is an income tax issue.

Ms. Chumley agreed to provide a second set of responses to questions regarding what happens to an employee's points when the employee terminates and how the employee points are accounted for.

Sherry Harrell, TN indicated the paper should include options for proposed responses to the request for the interpretation of the definition of sales price and the employee points program. She asked for volunteers to help prepare a 1st draft of a paper. Russ Brubaker, WA, Mike Eschelbach, MI, Bruce Johnson, UT, Vicki Gibbons, WI, volunteered to help with the initial draft of the paper. Sherry indicated once Ms. Chumley's second set of responses are received, she would set up a call of the drafters.

RI09012 – James Tilton – Breakfast Cereals and Breakfast Bars

Sherry Harrell began the discussion by explaining the revisions made to the candy definition issue paper, IP09002A01. The revisions take into consideration the members comments made during the call on October 15th.

- 1) Information was added to the paper concerning the specific assignment made by CRIC.
- 2) Information for the 2 interpretive opinions 2007-03 and 2009-04 was included in the paper along with the candy definition.
- 3) Information was added that no state currently treats breakfast cereal as candy.
- 4) In accordance with IO09004 an objective analysis of the application of the candy definition to breakfast cereals and to breakfast bars was added to the paper.
- 5) The proposed answer has been revised to specifically state breakfast cereals are not candy because breakfast cereals are not sold in the form of bars, drops, or pieces.
- 6) Based on the objective analysis, the proposed answer has been revised to clarify breakfast bars that meet all other provisions of the definition of candy are candy if the labeling for the breakfast bars does not specify flour.
- 7) A separate recommendation was added for Lightly Salted Rice Cakes because its ingredient labeling indicated it did not include natural or artificial sweeteners.

During the call states indicated the following sentence that was deleted from IP09002 should be added back to the paper.

Similarly, there are no historical records that demonstrate the work group and member states were looking to define candy based on the percentage of sugar content.

Other technical changes include:

- 1) No member state currently classifies ~~considers~~ breakfast cereal to be classified as candy.
- 2) Breakfast cereals are not sold in the form of pieces ~~as intended under the definition of candy.~~

Myles Vosberg, ND and Bruce Johnson, UT suggested the proposed answer for breakfast bars should be revised to make it clear candy does not require refrigeration.

(2) Natural or artificially sweetened breakfast bars, such as Carmel Corn Rice Cakes and Rice Krispie Treats that do not have ingredient labeling specifying flour ~~or~~ and do not require refrigeration, are candy.

The above changes were included in the revised issue paper, IP09002A02.

Bruce Johnson, UT made a motion to approve the issue paper and send to CRIC.

Bill Risenberger, OH made a motion to further amend the issue paper by deleting the following sentence from the issue paper:

There was never any intent to apply the definition of candy to food products such as breakfast cereal.

Bruce Johnson, UT accepted the friendly amendment.

Bill Risenberger, OH seconded the motion to approve the issue paper and send to CRIC.

A consensus of the group indicated 20 Yeas, 1 nay, 2 abstain, 2 absent.