



100 Majestic Drive, Suite 400 ♦ Westby, WI 54667

# State and Local Advisory Council Request and Assignment Form

**Provide the name(s) and contact information of the state or parties submitting the Request.**

**Date:** 5/28/2021

**Name of State or Person(s) submitting request:** Christie Comanita

**Contact Person:** Christie Comanita

**Address:** [Click here to enter Address \(Street or PO Box, City, State, Zipcode\)](#)

**Phone:** 480-653-7113 **Email:** christie.comanita@sstgb.org

**1. Agreement Section(s), Rules or Tax Administration Practice(s) involved (if any).** (Identify the section(s) of the Streamlined Sales and Use Tax Agreement, the Streamlined Rules, or Tax Administration Practices, if any, which are affected or involved with the issue.)

Library of definitions – Food and Food Products - Prepared food  
CRIC Interpretation 2006-04

**2. Question, Issue, or Topic for discussion.** (Identify the question, issue, or topic you believe requires a study or resolution by SLAC.)

Definition of “food sold with eating utensils provided by the seller” and the 75% test adopted in the CRIC interpretation 2006-04 adopted April 18, 2006.

**3. Statement of Background Facts.** (Provide a detailed description of the issue and supporting facts. Please be as descriptive as possible and provide examples of actual transactions.)

A CRIC request was received in January 2006 seeking an interpretation of the definition of “food sold with eating utensils provided by the seller” found in definition of “prepared food”. The issue went to SLAC for review of the issue paper approved January 10, 2005 which established the 75% test when a seller provides utensils. The interpretation was updated April 13, 2006 but retained the 75% test.

The CRIC recommendation was to adopt the interpretation of the definition of “food sold with utensils” as set out in the SLAC issue paper updated on April 13, 2006. This recommendation was adopted April 18, 2006.

This interpretation can only be found in the CRIC interpretations and does not appear anywhere in the SSUTA itself or in the SSUTA rules.

The State of Michigan adopted this test by regulation. The regulation was challenged and the Court held that regulation was invalid and that the provision was required to be in statute.

**4. Proposed Resolution/Outcome/Solution.** (Provide a description of the anticipated outcome from the workgroup. For example: Development of an interpretive rule pertaining to Section XXX of the Agreement.)

Develop a toggle in the prepared food definition to allow states to either tax or exempt items that would become prepared food if a seller exceeds the 75% test and makes utensils available. (For example, a state could tax prepared food, but still exempt sales of bottled water or candy by a seller who exceeds the 75% test and makes utensils available, if those items are otherwise exempt in the state.) See attached proposed solution.

Incorporate the CRIC Interpretation 2006-04 regarding the 75% test in the SSUTA itself or a rule.

**Submit completed form to:**

Craig Johnson, Executive Director  
Streamlined Sales Tax Governing Board  
100 Majestic Dr., Suite 400  
Westby, WI 54667

Email: [Craig.Johnson@SSTGB.org](mailto:Craig.Johnson@SSTGB.org)  
Phone: 608-634-6160  
[www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)

## For SST Governing Board Use

**Approved by:** [Click here to enter name.](#)      **Date:** [Click here to select a date.](#)

**Approved with Modifications** (If the Governing Board determines the request will be addressed by SLAC but in a modified format, explain the modifications to the request here):

[Click here to enter text.](#)

**Denied by:** [Click here to enter name.](#)      **Date:** [Click here to select a date.](#)

### **Form F0021 Instructions**

The scope of work for the State and Local Advisory Council (SLAC) is to advise the Governing Board on matters pertaining to the administration of the Streamlined Sales and Use Tax Agreement (Agreement). Matters relating to noncompliance of members with the Agreement, interpretive rules clarifying Agreement language, and revisions or additions to the Agreement are all within the scope of a SLAC work assignment. This form, as submitted by a requestor, is a public document and shall be published on the Streamlined Governing Board's website.

Any state and person making a request for a SLAC work assignment must do so by completing the **SLAC REQUEST & ASSIGNMENT FORM** and submitting it to the Executive Director of the Streamlined Sales Tax Governing Board. The Governing Board will take up the request at its next scheduled meeting or as applicable the SLAC Chair will take up the request at the next SLAC Steering Committee meeting. Any decision by the SLAC Steering Committee shall be reported to the Governing Board at its next meeting. In the interim, a request approved by the SLAC Steering Committee can be assigned to a SLAC workgroup. The Governing Board may approve, deny or modify the request at any time.

The Governing Board is not required to use this form to refer matters to SLAC. If the Governing Board refers an item to SLAC without use of this form, the Governing Board should provide written guidance to the SLAC Chair as to the expectations regarding the assigned task.

**(Note:** States or other persons requesting an interpretive opinion of existing Agreement provisions or definitions should not use this form, but should instead complete and submit the **INTERPRETATION/ DEFINITION REQUEST** form.)