

Candy Rule 32706 & 327.6.1
Public Comments & Responses
9-2010

1. From: Niccum, Judy (MDOR) [mailto:Judy.Niccum@state.mn.us]
Sent: Tuesday, September 28, 2010 8:21 AM
To: MeMe Roth Nutrition
Cc: Johnson, Craig T - DOR; 'Sherry Harrell'; Page, Jane
Subject: Candy Rule

Thank you for your comments. The rule that was noticed is intended to clarify the Streamlined Sales and Use Tax definition of "candy;" it cannot change or modify the definition in any way. The definition provides a standard definition for states that are members of the Streamlined Sales and Use Tax Agreement (SSUTA) to use if their state legislature chooses to impose tax on candy.

The definition for candy was a part of the SSUTA when the Agreement was initially adopted in November 2002. One of the more significant problems in adopting a candy definition was distinguishing between candy and a cookie, which states wanted to continue to treat as food. The objective was not to distinguish between nutritious and non-nutritious products or to influence consumer's decisions on what products to purchase.

Judy Niccum
Revenue Tax Specialist
Minnesota Department of Revenue
Sales and Use Tax Division
(651)556-6725

MeMe Roth Nutrition <info@memeroth.net> 9/27/2010 3:19 AM
Dear Ms. Page and Ms. Harrell, Hello and many thanks for your consideration of the below submission for redefinition of "candy" on behalf of MeMe Roth and National Action Against Obesity.

MeMe Roth
770-846-1911
www.ActionAgainstObesity.com
www.MeMeRoth.com

Candy shall be defined as a solid, liquid or gas intended for human ingestion comprising more than one ingredient (excepting added vitamins or minerals), and with 20 grams or more Total Carbohydrates per serving.

[Caveat: gum balls seem to slip through having fewer carbs per serving... and yes, assuming the above definition, many items on the grocery shelf would be taxable as "candy" due to dangerously high levels of total carbohydrates. Type 2 diabetics (and those wishing to avoid developing type 2 diabetes) are limited to 20-60 total carbs per day.] thx again! MeMe

2. From: Niccum, Judy (MDOR) [mailto:Judy.Niccum@state.mn.us]
Sent: Tuesday, September 28, 2010 8:13 AM
To: thelipstickvogue@gmail.com
Cc: Johnson, Craig T - DOR; 'Sherry Harrell'; Page, Jane
Subject: Candy Rule

Thank you for your comments. The rule that was noticed is intended to clarify the Streamlined Sales and Use Tax definition of "candy;" it cannot change or modify the definition in any way. The definition does not create a tax on candy, however, it does provide a standard definition for states that are members of the Streamlined Sales and Use Tax Agreement to use if their state legislature chooses to impose tax on candy.

The definition for candy was a part of the Streamlined Sales and Use Tax Agreement (SSUTA) when the Agreement was initially adopted in November 2002. One of the more significant problems in adopting a candy definition was distinguishing between a cookie, which states wanted to continue to treat as food, and candy. The objective was not to distinguish between nutritious and non-nutritious products or to influence consumer's decisions on what products to purchase. In adopting this definition, states realized that certain products such as Kit Kat®, Twix®, Reese Sticks®, and some licorice would no longer be candy under the SSUTA definition because these products ingredient labels contained a specific listing for flour. In addition, states were aware that granola bars, Slim-Fast® Bars and similar breakfast bars and nutrition bars would be considered candy when the product ingredient labeling did **not** contain a specific listing for flour because they are sold in the form of bars and do not require refrigeration.

From: Becca Lee <thelipstickvogue@gmail.com> 9/26/2010 5:46 PM
Hello,

While inherently I don't think a candy tax is a bad idea, I think exempting candy with flour in it is a very odd approach. Just because there is flour in a candy, it does not give it any extra nutritional value, nor does it provide and real form of sustenance. I think if the candy tax were to stay in place it would make more sense to exempt products with nuts in them, or just tax all candy.

I also think it would be great to put an exemption on products made in Washington. I know there are a lot of small and/or local candy makers in our state, and I think it would be fantastic to encourage people to buy locally.

Thanks! Rebecca Lee

3. From: Niccum, Judy (MDOR) [mailto:Judy.Niccum@state.mn.us]
Sent: Monday, September 27, 2010 9:19 AM
To: mary.arenberg@abbott.com
Cc: Page, Jane; Sherry Harrell; CraigT.Johnson@revenue.wi.gov
Subject: Comments on Rule 327.6.1 Candy Definition

Thank you for your comments. The rule that was noticed is intended to clarify what is included in the definition of "candy;" it cannot change or modify the definition in any way.

The definition for candy was a part of the Streamlined Sales and Use Tax Agreement when it was initially adopted in November 2002. One of the more significant problems in adopting a candy definition was distinguishing between a cookie, which states wanted to continue to treat as food, and candy. The objective was not to distinguish between nutritious and non-nutritious products or to influence consumer's decisions on what products to purchase. In adopting this definition in 2002, states realized that certain products such as Kit Kat®, Twix®, Reese Sticks®, and some licorice would no longer be candy under the SSUTA definition because these products ingredient labels contained a specific listing for flour. In addition, states were aware that granola bars, Slim-Fast® Bars and similar breakfast bars and nutrition bars would be considered candy when the product ingredient labeling did **not** contain a specific listing for flour because they are sold in the form of bars and do not require refrigeration.

Including a provision to exclude products that contain 5g or more protein per serving would require an amendment to the agreement which is beyond the scope of this rule-making effort.

Judy Niccum
Revenue Tax Specialist
Minnesota Department of Revenue
Phone – (651) 556-6725

4. From: Mary E. Arensberg <mary.arenberg@abbott.com>
To: Page, Jane; Sherry.Harrell@tn.gov <Sherry.Harrell@tn.gov>
Cc: Daryl B Dorcy <Daryl.Dorcy@abbott.com>
Sent: Fri Sep 24 10:30:21 2010
Subject: Comments on Rule 327.6.1 Candy Definition

There was recent public notice given of a new candy rule (327.6.1 Candy Definition). We are submitting the attached comments in response to the SLAC Chair's call for final comments on this rule.

*****To see her comments see page 6, but if you are online you can see her comment there.**

5. From: Niccum, Judy (MDOR) [mailto:Judy.Niccum@state.mn.us]
Sent: Monday, September 27, 2010 8:47 AM
To: satyaneeharika@yahoo.com
Cc: Page, Jane; Sherry Harrell; CraigT.Johnson@revenue.wi.gov
Subject: Definition of Candy

Thank you for your comments. The rule that was noticed is intended to clarify what is included in the definition of "candy;" it cannot change or modify the definition in any way.

The definition for candy was a part of the Streamlined Sales and Use Tax Agreement when it was initially adopted in November 2002 and has always stated that if flour is an ingredient, the product is not considered to be candy. There were many meetings where states attempted to define candy in a way that would not include cookies or cakes. The exclusion of flour was the compromise to provide a bright line test for retailers to distinguish between what would be defined as candy and what would not be included in the definition of candy. Including a provision to include products that contain less than 5 percent flour in the definition of candy would require an amendment to the agreement and it would remove the bright-line test retailers need since the percentage of ingredients are not listed on the product label.

From: Satya Prakash <satyaneeharika@yahoo.com>
To: Page, Jane
Sent: Tue Sep 21 01:48:17 2010
Subject: Definition of candy

Dear Page,

“Candy means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruit, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.”

It does not require any change, only to stop its misuse a 5% limit of flour may be added. It needs inclusion of a proviso at the end. The proviso will read as under:

Provided candy contains less than 5% flour, still it shall be treated as Candy for Sales Tax purposes.

This provision will also save the people who are gluten intolerance and do not want gluten shall be added in the Candy. It had also been suggested by Lorenzo Andres Sanchez in his mail dated September 11, 2010.

Kindly consider this also, while taking decision.

Dr. SATYA PRAKASH
Former Director
Central Food Laboratory, Kolkata, India
e-mail satyanecharika@yahoo.com

6. From: Page, Jane
Sent: Monday, September 13, 2010 8:41 AM
To: 'Lorenzo A Sanchez'
Subject: RE: candy definition - why exclude flour?

Thank you for your comments. The definition for candy was added to the Agreement in 2005/2006 and has always stated that if flour was an ingredient it would not be considered candy. During the many meetings to hammer out a definition states said they did not want to include cookies or cakes etc., in the definition, so the exclusion of flour was the compromise, although everyone knows it excludes Twix candy bars etc.

The new rule does not apt the exclusion of flour, but rather, explains the current definition which is below.

"Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

Jane A. Page
Assistant Director
Business Tax Division
SD Department of Revenue & Regulation

From: Lorenzo A Sanchez [mailto:zilben888@yahoo.com]
Sent: Saturday, September 11, 2010 2:02 AM
To: Page, Jane
Subject: candy definition - why exclude flour?

Dear Chair Page,

This is in regards to Rule 327.6 Food and Food Ingredients Definition and Rule 327.6.1 Candy Definition. I agree with most of the definition, however, I disagree with the exclusion of any item that contains flour as an ingredient due to the following:

- The nutritional and functional difference between a confectionary without flour and one with flour is practically non-existent (e.g. Kit Kat vs Milky Way; regular M&Ms vs crispy/pretzel M&Ms)
- Confectionery manufacturers can easily add a minimal amount of a flour as ingredient without affecting the taste profile of the item to avoid the "candy" definition (e.g. tiny flour based crunchy specs)
- Processed flours have a very similar glycemic, storage, and nutritional of sugar: minimal nutrients, long shelf life, and high glycemic load/index.

With these points in mind, I don't see a practical reason of making this distinction of candy based on just the presence of flour. If a specific proportion of flour was considered, the distinction would make more sense though.

Kind regards,
Lorenzo Andres Sanchez
zilben888@yahoo.com
480-584-8255

7. From: Leslie Wells [mailto:texaslil7@sbcglobal.net]
Sent: Wednesday, September 15, 2010 9:48 AM
To: Page, Jane
Subject: RE: Public Notice of Candy Rule
Ms. Page,

Thank you very much for your quick response. I understand the reasoning why the flour ingredient was used. However, if the tax is based on the definition of candy, then the tax could unjustly tax individuals based on medical condition. It is no different than if the government were to tax only sugar-free candy, unjustly taxing those individuals with diabetes, even though there are others who eat sugar-free candy. If there are medical conditions that force an individual to choose one type of candy over another, then this cannot be used to define candy and thus taxation.

Thank you,
Leslie

From: Page, Jane
Sent: Wednesday, September 15, 2010 9:40 AM
To: 'Leslie Wells'
Subject: RE: Public Notice of Candy Rule

Thank you for your comments. The definition of candy that was approved by the Streamlined Governing Board in 2005/2006 states that if flour is an ingredient then it is not considered candy. Many states did not want to include cake and cookies within the definition

of candy, so excluding sweets that included flour was the compromise, although we realize that as a result Twix and Kit Kats were removed from the definition of candy.

The rule that was noticed does not affect the definition of candy; it is only to clarify it.

Jane A. Page
Chair, SLAC

From: Leslie Wells [mailto:texaslii7@sbcglobal.net]
Sent: Wednesday, September 15, 2010 9:13 AM
To: Page, Jane; Sherry.Harrell@tn.gov
Subject: Public Notice of Candy Rule

Good morning,

My name is Leslie Wells and I am writing you this morning regarding the proposed sales tax on candy. I believe that the American public is already paying its share of taxes and imposing a tax on candy will unfairly tax individual groups, in particular lower income individuals. Furthermore, the definition of candy being discussed, with attention to the ingredient flour, will also unfairly tax individuals, in particular those with Celiac disease and gluten intolerance. I am severely gluten intolerant, so when I choose to eat candy, I must choose a candy bar that does not contain flour. However, if the definition of candy is based on whether it contains flour, I will always pay an extra tax for my candy but those with can eat flour can eat a Kit Kat and not pay extra taxes. Many children with autism are on gluten free diets, and the parents of these children will also be unjustly taxed.

Please take this information into consideration when making your decision.

Sincerely,
Leslie Wells
Saint Louis, MO

Did not send response to this comment.
7. From: Prem, Richard [mailto:richprem@amazon.com]
Sent: Monday, September 06, 2010 10:59 PM
To: Page, Jane; Sherry.Harrell@tn.gov.
Subject: FW: Public Notice of Candy Rule

Did the group discuss "transition issues" and "effective date" with respect to this rule? I can already see the class action attorneys seizing on the clarification and filing lawsuits in the absence of any effective date or transition rules and I would suggest that it would be a good idea to address this in the rule.

Have not yet sent response to this comment.
8. From: Ned Monroe [mailto:nmonroe@vending.org]
Sent: Wednesday, September 29, 2010 3:28 PM
To: Page, Jane; Sherry.Harrell@tn.gov
Subject: Comments on Rule 327.6 Food and Food Ingredients Definition and Rule 327.6.1 Candy Definition

NAMA (National Automatic Merchandising Association) Serving the Vending, Coffee Service and Foodservice Management Industries

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.

Ned Monroe
Senior Vice President of Government Affairs