



## Airlines for America®

*We Connect the World*

March 27, 2023

Craig Johnson, Executive Director  
Streamlined Sales Tax Governing Board  
100 Majestic Drive, Suite 400  
Westby, WI 54667  
via email: [craig.johnson@sstgb.org](mailto:craig.johnson@sstgb.org)

Re: RI22002, Prepared Food

Dear Mr. Johnson:

I am writing to you on behalf of Airlines for America® (A4A), the trade association for the leading U.S. airlines,<sup>1</sup> regarding the request for interpretation (RI22002) before the Compliance Review and Interpretations Committee (CRIC) as submitted by the Minnesota Department of Revenue (DOR) and relating to definition of “prepared food” under the Streamlined Sales and Use Tax Agreement (SSUTA). Delta Air Lines has submitted more detailed comments on this request, and I would refer you to those comments for a full analysis of the facts and the proposed interpretation. However, A4A believes a change in interpretation would have ramifications for the industry as a whole and would lead to possible unintended consequences. We therefore join Delta in respectfully urging the CRIC to reject this proposed interpretation.

In its comments, Delta contends that the DOR has not provided sufficient facts under which the interpretation can be properly considered. A4A agrees on this point and does not believe that the DOR’s facts adequately describe transactions between sellers and the airlines. While we believe Delta’s situation is generally representative of the industry, the specific facts of any particular carrier could vary. Further, we would add that because the proposed interpretation will apply in streamlined sales tax (SST) states that make a distinction in taxability of food based on preparation, there may be unintended consequences beyond the aviation industry by adopting this interpretation. However, A4A believes the CRIC does not need to delve into these issues and can reject the interpretation as proposed, even with the insufficient facts.

Under Appendix C, Part II of the SSUTA, the definition of prepared food includes three categories: (i) food sold in a heated state or heated by the seller; (ii) two or more food ingredients that are mixed or combined by the seller for sale as a single item; or (iii) “food sold with eating utensils provided by the seller.” Please note that the DOR’s interpretation request applies only to clause (iii). Clauses (i) and (ii) are not at issue. Further, subsection C.2 provides that clause (iii) will vary based on the seller. For sellers with a prepared food sales percentage of 75% or less, “food sold with eating utensils provided by the seller” means that “the seller’s business practice is to

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<sup>1</sup> A4A’s members are Alaska Airlines, Inc.; American Airlines Group Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corp.; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada, Inc. is an associate member.

physically give or hand eating utensils to purchasers, except that plates, bowls, glasses and cups, necessary for the purchaser to receive the food need only be made available to the purchasers.”

The DOR acknowledges in its statements of fact that purchasers of food in the travel industry, such as the airlines, own the utensils (whether single-use or reusable) that are loaded into galley carts along with food items. However, its proposed interpretation is essentially that utensils owned by airlines can be considered “provided by the seller” when they are loaded into galley carts by the seller. We fail to see how a seller can “provide” something to the purchaser when the purchaser already owns the item. Such a conclusion is not supported by a plain reading of the provision or the plain understanding of the terms used, and we do not believe it was ever intended to be read as such and apply to purchaser-owned utensils. Accordingly, there would be no need to apply an analysis under subsection C.2 to arrive at the result the DOR wants.

For these reasons, A4A respectfully asks the CRIC to reject the DOR’s requested interpretation. If the committee does not reject it, A4A urges the CRIC to extend time for further consideration and comment before approving the change. This would allow the industry to study airlines’ factual situations and possible impacts in the various states and provide more detailed comments to the CRIC to address these issues.

Thank you for your time and consideration of this matter that is so important to the aviation industry. If you have any questions or comments, please do not hesitate to e-mail me at [jalmeras@airlines.org](mailto:jalmeras@airlines.org).

Sincerely yours,



Jon Almeras  
Managing Director, Taxes  
Airlines for America