

July 25, 2010

The Honorable Sheila Hixson
The Honorable Christopher Rants
Co-Chairs, NCSL Executive Committee Task Force on State and Local
Taxation of Communications and Electronic Commerce
444 North Capitol Street, N.W., Suite 515
Washington, DC 20001

Re: West Virginia Amendment to SSUTA to Provide a Definition of Healthy Food

Dear Delegate Hixson and Representative Rants:

The undersigned organizations and their members would like to bring to your attention a matter regarding the creation of a “healthy food” definition that would supplement the current “food” definition in the Streamlined Sales and Use Tax Agreement (SSUTA). We are opposed to this further fracturing of the “food” definition, and we are very concerned about the added complexity this new definition brings to the current definition of food and the ultimate difficulty in administering it. The adoption of this “healthy food” amendment may likely lead an entire industry to oppose the adoption of the pending federal enabling legislation and the SSUTA in states that have not yet adopted the agreement.

I. WIC Definition of Food

West Virginia delegates to the Streamlined Sales Tax Project (SSTP) have introduced a “healthy food” definition as an attempt to combat obesity in their state. Their proposal would create a complex definition that will be difficult to administer and to understand. West Virginia’s proposal is based on the definition of food as used for the federal Women, Infant and Children (WIC) program, as administered by USDA. The WIC program is a supplemental feeding program for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and infants and children up to age five who are found to be at nutritional risk – all special nutritional needs – and the goal of the program is to address particular nutritional deficiencies of this population.

II. Complexity of the Definition

Many food items such as certain canned fruits and vegetables, herbs and spices, creamed, breaded, pickled and sauced vegetables, juices, soups, fruit-nut mixtures, peanuts and baked goods, to name a few, would be considered “unhealthy” because they are not currently included in the WIC program, and therefore subject to taxation. These foods serve as an

important source of nutrition for millions of Americans and are core components of a balanced diet.

To adopt this definition would create a gross unfairness for the public at large, because many Americans consider these foods healthy. The development of this “healthy food” tax definition has become arbitrary, discriminatory, and regressive.

Placing a tax on one item within a category and excluding other items leads to consumer confusion and establishes preferences that may unfairly affect consumer-purchasing decisions without benefit to the consumer. Furthermore, this food tax definition hinders free choice by consumers to determine what foods should be part of their individual diets and disproportionately affects households with lower incomes that may have fewer affordable food and beverage options where they live. It also limits the public’s ability to purchase lower taxed, or in some states, tax-free food – an area that will certainly affect the elderly and lower-income the greatest.

III. Unnecessary Cost Burden

For retailers and manufacturers, requiring compliance with the healthy food amendment would reduce cost effectiveness and increase burdens while providing no education on healthy lifestyles to the public. Furthermore, an average sized grocery store sells more than 45,000 items. To add another layer of tax complexity to the food definition would be confusing for customers and would represent a very significant and complex technological challenge for supermarkets who already must deal with a host of different tax arrangements in various states and even some municipalities. As you well know, the goal of SSTP is to simplify the state sales and use tax system to make the tax collection of Internet and catalog sales across state lines, less onerous.

IV. Federal Legislation

As you know, the “Main Street Fairness Act” (H.R. 5660) was recently introduced in Congress. This Act is defined as a bill “to promote simplification and fairness in the administration and collection of sales and use taxes.” As the current SSUTA is continually amended, the Federal legislation will likely be derailed due to lack of support because of the SSUTA’s complexity. The addition of a “healthy food” definition certainly does not promote simplification of the process and may indeed prove to be a straw that breaks the camel’s back.

V. Conclusion

If adopted, the healthy food amendment will add another layer of complexity to the SSUTA food definition. Indeed, the Streamlined Sales Tax Governing Board’s Compliance Review and

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Interpretations Committee has spent much effort in the last few years providing explanations and interpretations for the current “food” definition. This additional carve-out is not needed and will further complicate the “food” definition currently in place. Moreover, it is certainly not in the spirit of the original intent of the Streamlined Sales Tax Project. If this amendment passes, the public will pay additional food taxes and the price of their food overall will increase as the cost of conducting business will increase – all in a tough economy.

We thank you for your consideration and urge the Streamlined Sales Tax Governing Board not to adopt a “healthy food” definition.

Sincerely,

American Bakers Association

American Beverage Association

Food Marketing Institute

Grocery Manufacturers Association

International Bottled Water Association

National Retail Federation

Peanut & Tree Nut Processors Association

Snack Food Association