

**The Streamlined Sales and Use Tax Agreement
and
New Mexico's Gross Receipts and Compensating Taxes**

APPENDIX B

Some of the definitions developed so far—

FOOD AND FOOD PRODUCTS

“Alcoholic Beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

“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.

“Dietary supplement” means any product, other than “tobacco,” intended to supplement the diet that:

A. Contains one or more of the following dietary ingredients:

1. A vitamin;
2. A mineral;
3. An herb or other botanical;
4. An amino acid;
5. A dietary substance for use by humans to

supplement the diet by increasing the total dietary intake; or

6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and

B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.

“Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic beverages” or “tobacco.” A member state may exclude “candy,” “dietary supplements” and “soft drinks” from this definition, which items are mutually exclusive of each other. Notwithstanding the foregoing requirements of this definition or any other provision of the Agreement, a member

state may maintain its tax treatment of food in a manner that differs from the definitions provided herein, provided its taxation or exemption of food is based on a prohibition or requirement of that state's Constitution that exists on the effective date of the Agreement.

“Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment.

“Prepared food” means:

- A. Food sold in a heated state or heated by the seller;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

“Prepared food” in B does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

The following items may be taxed differently than “prepared food” and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under “food and food ingredients.”

1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
2. Food sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

Substances within “food and food ingredients” may be taxed differently if sold as “prepared food.” A state shall tax or exempt from taxation “candy,” dietary supplements,” and “soft drinks” that are sold as “prepared food” in the same manner as it treats other substances that are sold as “prepared food.”

“Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

“Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

HEALTH-CARE

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

C. Intended to affect the structure or any function of the body.

A member state may independently:

A. Limit the definition of “drug” to human use (as opposed to both human and animal use) in the administration of its exemption;

B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that no prescription is required, even if a state requires a prescription under its exemption for drugs;

C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and other medical facilities;

D. Determine the taxability of free samples of drugs; and

E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment of bundled transactions is not otherwise defined in the Agreement.

“Durable medical equipment” means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:

A. Can withstand repeated use; and

B. Is primarily and customarily used to serve a medical purpose; and

C. Generally is not useful to a person in the absence of illness or injury; and

D. Is not worn in or on the body.

A member state may limit its exemption to “durable medical equipment” used for home use only. A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.

“Grooming and hygiene products” are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan

lotions and screens, regardless of whether the items meet the definition of “over-the-counter-drugs.”

“Mobility enhancing equipment” means equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:

A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and

B. Is not generally used by persons with normal mobility; and

C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.

“Over-the-counter-drug” means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude “grooming and hygiene products” from this definition. The “over-the-counter-drug” label includes:

A. A “Drug Facts” panel; or

B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

“Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

“Prosthetic device” means a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

A. Artificially replace a missing portion of the body;

B. Prevent or correct physical deformity or malfunction; or

C. Support a weak or deformed portion of the body.

A member state may exclude any or all of the following from the definition of “prosthetic device:”

A. Corrective eyeglasses;

B. Contact lenses;

C. Hearing aids; and

D. Dental prosthesis.

A member state may limit the application of this definition by requiring a “prescription,” or limit an exemption based on Medicare or Medicaid payments or reimbursements.

