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October 25, 2006

Mr. Scott C. Peterson  
South Dakota Department of Revenue and Regulation  
445 E. Capitol Ave.  
Pierre, SD 57501

**Re: Interpretation of “Four or More Servings Packaged as a Single Item”  
from the SSTP “Prepared Food” Definition**

Dear Mr. Peterson:

The Food Marketing Institute (FMI)<sup>1</sup> supports the interpretation request put forward by John Nugent, representing the Rhode Island Division of Taxation. His proposed interpretation is as follows:

A dozen or half dozen pieces of pastry individually selected by the purchaser but boxed by the seller and sold for a single price are “items sold that contain four (4) or more servings packaged as one item sold for a single price.”

This proposed interpretation is on target with the “Prepared Food” interpretation as approved by the Compliance Review and Interpretations Committee in April 2006. It states:

For sellers with a sales percentage greater than 75% and who sell items that contain four (4) or more servings packaged as one item sold for a single price, an item does not become prepared food due to the seller having utensils available.

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<sup>1</sup> FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI’s U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI’s retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

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Furthermore, purchasing four or more of the same food items is clearly intended for at-home consumption. A knife, fork or other utensil are not customarily accompanied with four or more pastries packaged together.

Moreover, in the "Prepared Food" definition, as contained in the "Streamlined Sales and Use Tax Agreement," it clearly states that bakery items may be taxed differently than prepared food, if sold without eating utensils provided by the seller.

FMI appreciates the opportunity to provide comments on this issue. Please do not hesitate to contact me at 301.591.4403 or [etansing@fmi.org](mailto:etansing@fmi.org) if I can provide further information.

Sincerely,

*Elizabeth Tansing*

Elizabeth K.Tansing  
Director, State Government Relations