

## PRIVATE TAXPAYER RULING LR95-002

March 28, 1995

The following private taxpayer ruling is in response to your letter dated October 7, 1994 and the receipt of the requested additional information dated January 5, 1995. Your letter requests a determination of the taxability of the sale of pizza boxes, soda pop containers and lids, labels attached to the pizza boxes, and napkins to a pizza franchisee in Arizona.

The following is a restatement of the facts as presented in your letter.

Statement of facts:

..., a commissary owned by ..., sells pizza boxes, soda pop containers and lids, napkins, and labels attached to the pizza boxes to ... franchisees. The labels, called door forms, itemize the customer order, the location of the customer's home and the price of the pizza.

Your position:

The sale of the pizza boxes, soda pop containers and lids, napkins and door forms (labels) to ... franchisees are exempt as sales for resale.

Applicable statutory provisions:

Arizona Revised Statutes (A.R.S.) 42-1310.01 levies the transaction privilege tax on the business of selling tangible personal property at retail.

A.R.S. 42-1310.01.P.3 defines "selling at retail" as a sale for any purpose other than for resale.

Arizona Administrative Code (A.A.C.) rule R15-5-134 delineates the taxability of sales of containers, bottles and labels.

A.A.C. R15-5-135 delineates how the resale concepts apply to sales of restaurant accessories.

Discussion:

Arizona imposes a transaction privilege tax which differs from the sales tax imposed by most states. The Arizona transaction privilege (sales) tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the

vendor is ultimately liable to Arizona for the tax.

A.R.S. 42-1310.01 levies the transaction privilege tax on the business of selling tangible personal property at retail. "Selling at retail" is defined as a sale for any purpose other than for resale. All retail sales are subject to tax unless specifically exempted by statute.

The Arizona Supreme Court in *Shamrock Foods Company v. City of Phoenix*, 157 Ariz. 286, 757 P.2d 90 (1988), held that disposable paper and plastic products (such as beverage cups, paper plates, napkins, straws, coffee stirrers or plastic utensils), whether or not used as containers, which are sold to restaurants for the use of their customers are sales for resale and exempt from the transaction privilege tax regardless of whether such items are given directly to the customer with the meal or made available for their use on the premises.

A.A.C. R15-5-134.C states that the sale of labels to a purchaser who affixes them to nonreturnable containers to be resold is considered to be a sale for resale and is not taxable. However, subsection F states that items such as price tags, shipping tags, and advertising matter used in connection with the subsequent sale is taxable as a retail sale.

Labels which itemize the customer's location, the order and the price of the pizza do not fall within the ordinary meaning of price tags or shipping tags. Therefore, if these labels are to be affixed to the container given to the customer in the ordinary course of business, they are considered to be resold. As such, the sale of these labels is exempt as a sale for resale.

A.A.C. R15-5-135 provides that sales of disposable food accessories such as containers and napkins to persons engaged in the restaurant business, which are transferred by the restaurant in the ordinary course of business to facilitate the consumption of the food or drink provided, are considered to be exempt sales for resale. However, gross receipts from the sale of items transferred by a restaurant for the convenience or operation of the restaurant are taxable. Such items include advertisements and similar property.

Arizona Transaction Privilege Tax Ruling TPR 93-25 provides additional information regarding this exemption. This ruling points out that restaurants may purchase disposable paper and plastic products for resale by furnishing an exemption certificate to the seller. Enclosed is an Arizona Department of Revenue Transaction Privilege Tax Exemption Certificate (ADOR Form 5000) which can be used for this purpose. I have also enclosed Arizona Transaction Privilege Tax Procedure TPP 92-1 Use of Exemption Certificates.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request.

The department rules that the sale of pizza boxes, soda pop containers and lids, and napkins

to ... franchisees are exempt as sales for resale.

In addition, the sale of labels to be attached to the pizza boxes which itemize the order and provide the customer's address is exempt as a sale for resale.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letters dated October 7, 1994 and January 5, 1995 in this request for a private taxpayer ruling.

If you have been reporting and paying transaction privilege tax on gross receipts not subject to tax, you may wish to file amended ST-1s for any applicable periods. However, A.R.S. 42-1302. A.1 provides that taxpayers are required to remit all transaction privilege taxes to the Department of Revenue when an additional charge has been made to cover the tax or when an additional charge is identified as being imposed to cover the tax. In the event that the tax was passed on to your customer through an additional charge being made to cover the tax or which was identified to cover the tax, the refund must be returned to the customers from whom it was collected.

For further information regarding refund procedures, please contact:

Refund Desk  
Transaction Privilege and Use Tax Audit  
Arizona Department of Revenue  
1600 W. Monroe  
Phoenix, AZ 85007

(602) 542-4656

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department and is valid for a period of four years from the date of issuance except as set out herein. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.