



TAXPAYER INFORMATION RULING LR18-004

June 12, 2018

Douglas A. Ducey
Governor

David Briant
Director

Thank you for your letter requesting a taxpayer information ruling on behalf of your unnamed client (“the Taxpayer”). Specifically, you requested a ruling regarding whether the Taxpayer is required to collect and remit Arizona transaction privilege tax (“TPT”) on the subsidies it receives from an employer as part of a contractual arrangement whereby Taxpayer operates the employer’s cafeteria and sells food and drink to the employer’s employees.

ISSUE:

Whether, under Arizona TPT law, the Taxpayer is required to collect and remit TPT on the subsidies it receives from an employer as part of a contractual arrangement whereby Taxpayer operates the employer’s cafeteria and sells food and drink to the employer’s employees.

RULING:

Taxpayer is subject to Arizona transaction privilege tax under the restaurant classification on its gross income, which includes the subsidies, fixed administration fee, and all other revenues it receives from operating the employer’s cafeteria.

SUMMARY OF FACTS:

The Taxpayer is a company based in *** and is duly authorized to transact business in the State of Arizona. The Taxpayer is a third-party food services provider and has entered into various operating agreements with employers, each owning a cafeteria or similar facility, (a) for providing meal and beverage services on the employer’s premises to employees, and (b) for providing other services and supplies. Pursuant to Arizona Revised Statute Annotated Section 42-5074(A), the Taxpayer charges [transaction privilege tax] on the sales of meals and drinks service to its employer-client’s employees as well as on the subsidies it receives from the employers for costs associated with operating each employer’s cafeteria in Arizona.

Pursuant to the operating agreements with the Taxpayer, the employer provides the physical plant and certain equipment, including all fixtures, tables, chairs, equipment, silverware, chinaware, glassware, linens, kitchen utensils and all other fixed and movable equipment and facilities necessary to the efficient operation, transportation and control of food service as mutually agreed to by the parties. Taxpayer and each employer work

together in determining operating policies, employee related expenses including wage scales, selling price of food, size of portions, quality of food, and recipes and menus. However, the employer's decision would prevail involving the aforementioned. The price of all food items sold to employees is established by the parties and the prices are generally in substantial relation to and generally exceed food costs.

The Taxpayer hires and supervises all cafeteria employees. The Taxpayer also purchases, prepares and services all food, and provides various bookkeeping, housekeeping, and administrative services to each employer.

At the end of a specific period, the Taxpayer is entitled to receive a fixed administration fee, plus reimbursement of the cost of conducting business, less receipts from sales of meals to the employees. The cost of conducting business consists of the following: (i) the cost of all labor employed by the Taxpayer, including payroll taxes and workmen's compensation insurance; (ii) the cost of all food supplies and other materials and supplies, including sales taxes, delivery charges, etc.; and (iii) the cost of all supervision expenses (collectively, the "Costs of Operations"). If, during any accounting period, the gross receipts received from the employees for cafeteria sales exceed the Costs of Operations, the Taxpayer is required to pay the excess to the employer. If, however, the gross receipts received from the employees for cafeteria sales are less than the Costs of Operations, the employer is contractually obligated to pay the difference to the Taxpayer.

The employer subsidy is not paid at the time of the food and drink purchase. Only after the end of the accounting period is the amount of the subsidy calculated to comply with the terms of the agreement to pay the amount that the employer is required to pay the Taxpayer. The result of the employer subsidy is that the Taxpayer generally does not have the full risk of loss in connection with the operations of the employer's cafeteria.

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DISCUSSION & LEGAL ANALYSIS:

Arizona imposes a transaction privilege tax on the privilege of conducting business in the State of Arizona. The authority to levy the transaction privilege tax is found in Arizona Revised Statutes (A.R.S.) § 42-5008.

A.R.S. § 42-5074 imposes the transaction privilege tax under the restaurant classification. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5001(4) defines "gross income" as "the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the

sale of tangible personal property or service, or both, and without any deduction on account of losses.”

A.R.S. § 42-5001(7) defines “gross receipts” as “the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense.”

Taxpayer is subject to Arizona transaction privilege tax on its gross income. Gross receipts include the employer subsidies, any administration fees, and all other revenue derived from operating a cafeteria. There is no specific exemption or exclusion from the restaurant classification for such subsidies or administration fees. Therefore, Taxpayer’s subsidies that it receives from an employer as part of a contractual arrangement whereby Taxpayer operates the employer’s cafeteria and sells food and drink to the employer’s employees is subject to transaction privilege tax under the restaurant classification.

This response is a taxpayer information ruling (TIR) and the determination herein is based solely on the facts provided in your request. The determinations are 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 information 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.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.