

December 31, 2003

Ms. Christie Comanita
Manager, Tax Policy
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Re: ATRA's comments on proposed amendments to job printing rules

Dear Ms. Comanita:

Thank you for the opportunity to review the Department's proposed changes to the job printing rules. The Arizona Tax Research Association (ATRA) is concerned about some of these rules because they conflict with Arizona law. For example:

1. In its proposed form, A.A.C. R15-5-150(B) (via the definition of "photography" in subsection A (2)), indicates that digital photography services are subject to tax under the retail classification even if the only product is on "digital or analog storage medium." This is in conflict with Arizona law, which only imposes tax under the retail classification on businesses that sell tangible personal property at retail. (A.R.S. § 42-5061(A).) Taking and transferring digital images, by itself, is not subject to tax. Some of the definitions in proposed A.A.C. R15-5-1101 also are problematic to the extent that they suggest that other intangibles and/or services may be subject to tax.
2. Similarly, proposed A.A.C. R15-5-1102(A) suggests that charges for services such as folding, binding, etc. are subject to tax even if not performed in conjunction with job printing, engraving, embossing and/or copying – the services that are subject to tax under the job printing classification, A.R.S. § 42-5066. Performed alone, folding, binding and similar services are not subject to tax.
3. In addition, to the extent that proposed A.A.C. R15-5-1102(B) attempts to tax proceeds from activities that take place out of state, proposed A.A.C. R15-5-1102 may violate both Arizona law and the dormant Commerce Clause. *See, e.g., Arizona State Tax Commission v. Southwest Kenworth, Inc.*, 114 Ariz. 433, 561 P.2d 757 (App. 1977).

4. Proposed A.A.C. R15-5-1106(B) does not take into account existing statutory exemptions. For example, while proposed A.A.C. R15-5-1106(B) suggests that printing plates and film processing chemicals sold to a printer are subject to tax under the retail classification, such items probably qualify for the manufacturing or processing and chemical exemptions. *See A.R.S. § 42-5061(B)(1) and A.R.S. § 42-5061(A)(39).*

Because some of the Department's proposed changes to the job printing rules conflict with Arizona law, ATRA urges the Department not to adopt them in their current form. We appreciate your consideration of our comments and would be pleased to discuss this issue with you further should you have any questions.

Sincerely,

Kevin J. McCarthy
President