

1 A.R.S. § 42-5061(B) deducts from the tax base of the retail classification income derived from
2 the sales of . . . [m]achinery, or equipment, *used directly* in manufacturing [or] processing The
3 terms 'manufacturing' and 'processing' refer to and include those operations commonly understood within
4 their ordinary meaning." The Department's administrative regulation defines such activities (specifically,
5 manufacturing) as "an integrated series of operations which place tangible personal property in a form,
6 composition, or character different from that in which it was acquired and transforms it into a different
7 product with a distinctive name, character, or use." A.A.C. R15-5-120(A).

8 In a similar case involving a bakery, the Board noted that a "bakery takes eggs, yeast, flour, milk
9 and turns them into a bakery good" and, using the definition found in the Department's own regulation,
10 the Board found that these activities . . . "were an integrated series of operations which placed tangible
11 personal property in a form, composition or character different from that in which it acquired, and
12 transformed it into a different product for a distinctive name, character or use." *G.B. Investment Co. v.*
13 *Arizona Dep't of Rev.*, No. 629-88-S (BTA 1989). Similarly, Little Caesar's takes some of the same
14 ingredients and transforms them into a different product – pizza.

15 The Department contends that Little Caesar's is a restaurant and does not engage in
16 manufacturing or processing under the reasoning of *Wendy's of Tucson v. Arizona Dep't of Rev.*, No.
17 167-79-S (BTA 1980). In *Wendy's*, the Board determined that equipment used in a fast food restaurant
18 is not used in manufacturing or processing. The Board held that "the ordinary man would not consider
19 the cooking of hamburger patties, frying of frozen french fries, or the blending of milk shakes to be
20 processing . . ." as these activities do not transform tangible personal property into a different product. *Id.*
21 at 2. That is not the case here. Further, Little Caesar's is not a restaurant like Wendy's. It makes,
22 prepares for pick-up or delivers pizza. There is no restaurant atmosphere. Customers do not dine-in,
23 nor is there is any in-house service provided to customers.

24 The Board concludes that Little Caesar's is engaged in manufacturing or processing. The
25 evidence presented to the Board indicates that the dough cutters and the bubble poppers at issue are
26 nonexempt hand tools. A.R.S. § 42-5061(C)(2). Further, Appellant did not present evidence sufficient to
27 establish that the thermometers at issue are used directly in Little Caesar's manufacturing or processing
28

1 activities; therefore, they are taxable. The Board finds all other items at issue are exempt under A.R.S.
2 § 42-5061(B).

3 CONCLUSIONS OF LAW

4 1. Little Caesar's engages in manufacturing or processing; therefore, most of the equipment at
5 issue which Appellant sells to Little Caesar's is not taxable. See A.R.S. § 42-5061(B).

6 2. The dough cutters and the bubble poppers at issue are taxable hand tools. A.R.S. § 42-
7 5061(C)(2).

8 3. Appellant has not proven that the thermometers at issue are used directly in Little Caesar's
9 manufacturing or processing activities; therefore, they are taxable. *Kieckhefer*, 67 Ariz. 102 at 105
10 (1948); A.A.C. R16-3-118.

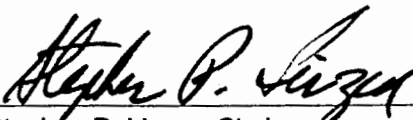
11 ORDER

12 THEREFORE, IT IS HEREBY ORDERED that the appeal is upheld in part and denied in part,
13 and the final order of the Department is modified.

14 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
15 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254
16 (formerly A.R.S. § 42-124).

17 DATED this 26th day of July, 1999.

18
19 STATE BOARD OF TAX APPEALS

20 
21 Stephen P. Linzer, Chairman

22 SPL:ALW
23 CERTIFIED

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