

City of Conway
1201 Oak Street
Conway, Arkansas 72032
501-450-6110



Tab Townsell
Mayor
www.cityofconway.org

October 17, 2005

To Whom It May Concern:

The City of Conway has enacted ordinances which will levy a two percent sales tax on the gross receipts of the sale of prepared food and beverages in the city. By state law, under this levy the tax is applied to restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry out restaurants, concession stands, convenience stores, grocery store –restaurants and similar businesses who sell prepared food or beverages for on or off premise consumption. This tax will go into effect on November 1, 2005 and all businesses so engaged in the selling of prepared food will be required to collect the tax. This tax levy does not affect the sale of foods or beverages not deemed prepared nor does the tax levy apply to those operations that are classified in the federal tax code as being a 501(c) 3 tax exempt organization.

To facilitate the administration of this tax, the city has adopted Ordinance O-05-142 setting regulations for the collection and enforcement of this tax. A copy of this ordinance is included in this letter for your records although the ordinance is subject to periodic change by council action.

Businesses which are required to charge this tax shall be required to apply for a free but mandatory Advertising and Promotions Tax Permit. The permit will allow the city to maintain more accurate records on the businesses collecting the tax, their location, the owners, mailing address, etc. Permits will be issued through the Office of the City Clerk upon the submittal of an application. The tax shall be collected starting November 1, 2005 but businesses will have until December 1 to secure the permit. Tax proceeds will be required to be remitted to the city every month as well as monthly statements of gross receipts on the sale of prepared food and beverages at each business. Permit application forms and monthly tax statement forms are available through the Office of the City Clerk at City Hall, 1201 Oak Street in Downtown Conway or may be downloaded from the city web site at www.cityofconway.org

Taxes must be remitted during the month following the month of collection or be subject to penalties and interest. The Commission or its agent reserves the right to audit the business to insure proper payment of the tax. Enforcement for non-payment or improper payment could result in the legal action being pursued against the business. There is a two percent (2%) discount available to businesses that remit tax payments on or before the twentieth (20th) day of the month following collection. Procedures for the disputation of tax liability are also included in the collection and enforcement ordinance cited above.

While state law does allow for the collection of this tax, it does not offer clear definitions of what constitutes “prepared food and beverages.” These definitions are left to the local jurisdictions to

define and apply. The City of Conway will make every effort to reasonably apply a uniform standard in its definition of what items should be taxed. Lacking clear legal definitions from the state, the city recognizes that legitimate questions of applicability could arise and that many items must be determined on a case by case basis. The Commission will gladly hear appeals from businesses as to the application of the tax to various items. However, appeals will not be allowed to delay the application of the tax for items to which the tax should reasonably be applied.

In general, the tax will be applicable to all restaurants and all products served in restaurants. Grocery, supermarket, or convenience store products are taxable only to the extent they are restaurant-style products. Beyond that generalization, a couple of guidelines can be used as rules of thumb. If a food or beverage is prepared on site, it is taxable. If it is served on site, it is taxable. If it is prepared off site in packages ready for retail sale, it is not taxable unless it is served. If it is prepared off-site but not prepackaged for retail sale, it is taxable.

For example, a can soda from a cooler in a convenience store is not taxable. A can soda served to a diner in a restaurant is taxable. A fountain soda is taxable either way. Pizzas delivered to homes or served in restaurants are taxable but purchased pre-packaged in a grocery store are not taxable. Pre-packaged foods such as pizzas or burritos heated in a convenience store microwave are not taxable but the same type items not pre-packaged and selected out from under a heat lamp by the clerk at the same convenience store is taxable. Cheese dip served to restaurant diners is taxable as is cheese dip sold for take home. Cheese dip sold in retail ready packages at the cashier of the same restaurant is not taxable. Donuts boxed and packaged for retail are not taxable. Unpackaged donuts served by wait staff or self served individually are taxable. Potato chips sold in prepackaged retail ready lunch sizes are not taxable; the same package served with a meal is taxable, but the same package purchased in addition to a meal is not.

Any questions should be directed to the Business Agent for the Advertising and Promotion Commission, Ms. Barbara Money, CPA, 815 5th Street, Conway, Arkansas, 72032, 501.329.3776 or to the City Clerk Michael O. Garrett, 1201 Oak Street, Conway, Arkansas, 72032, 501.450.6100.

Thank you for your service to the city.

Sincerely,

A handwritten signature in black ink, appearing to read "Tab Townsell". The signature is written in a cursive, flowing style.

Tab Townsell,
Mayor