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*City of Conway*  
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## WHAT IS PREPARED FOODS AND THE A&P TAX?

The City of Conway enacted ordinances in 2005 which levies a two percent sales tax on the gross receipts of the sale of prepared food and beverages in the city, this is known as the A&P Tax. 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 became effective November 1, 2005 and a businesses who 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 adopted Ordinance O-05-142 setting regulations for the collection and enforcement of this tax. A copy of this ordinance can be found on the city's website at <http://www.cityofconway.org/media/government/city-clerk-treasurers-office/Ordinance%2005-142.pdf> and is subject to periodic change by city 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 A&P 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. 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. Information for 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 below:

For restaurants & private clubs:

[http://www.cityofconway.org/media/government/city-clerk-treasurers-office/Operating\\_a\\_Private\\_Club\\_in\\_Conway\\_Info.pdf](http://www.cityofconway.org/media/government/city-clerk-treasurers-office/Operating_a_Private_Club_in_Conway_Info.pdf)

For mobile vendors:

[http://www.cityofconway.org/media/government/city-clerk-treasurers-office/Operating\\_a\\_Mobile\\_Food\\_Vendor\\_in\\_Conway\\_Info.pdf](http://www.cityofconway.org/media/government/city-clerk-treasurers-office/Operating_a_Mobile_Food_Vendor_in_Conway_Info.pdf)

Taxes must be remitted by the twentieth (20th) day of the month following the collection month 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 mobile food vendors and all products served in restaurants and mobile food vendors. 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.
- 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:

Lisa Stephens, CPA  
715 Front Street  
Conway, Arkansas, 72032  
501-327-2834

Or:

City Clerk Michael O. Garrett/Conway City Hall  
1201 Oak Street  
Conway, Arkansas, 72032  
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