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OPINION NO. 86-189

April 21, 1986

The Honorable John W. Parkerson
Representative, District 52
520 Ouachita Avenue
Hot Springs, Arkansas 71901

Dear Representative Parkerson:

This is in response to your letter wherein you requested an opinion concerning the following questions:

1. Are establishments that carry on the business of selling prepared food for take-out and delivery only and which have no facilities for on premise consumption required to collect a gross receipts tax pursuant to Ark. Stats. Ann. §§19-4613 and 19-4622?
2. Are establishments that carry on the business of selling prepared food for on premise consumption and for take-out and delivery required to collect the tax on gross receipts from sale of food for on premise consumption and for take-out and delivery?

Ark. Stat. Ann. §19-4613 provides in part:

Any city of the first class may by ordinance ... levy a tax of one percent (1%) upon the ... gross receipts for gross proceeds of restaurants, cafes, cafeterias and other establishments, as defined in the levying ordinance engaged in the business of selling prepared food for consumption on the premises in such city.

For the statute to apply, at least two requirements must be met. First, the establishment must be engaged in the business of selling prepared food. Second, the food must be prepared for consumption on the premises. Since your first question describes a situation where the food is prepared

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for consumption entirely off the premises, the gross receipts tax would not apply. In cases, however, where the operative requirement of on premise consumption is met, gross receipts tax should be applied notwithstanding the fact that some sales were for take-out and delivery.

The foregoing opinion which I hereby approve was prepared by Special Assistant Attorney General George A. Harper.

Sincerely,



STEVE CLARK
Attorney General

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