



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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May 7, 2020

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Nina Carter, Attorney at Law  
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RE: Gross Receipts Tax – Service Fees  
Opinion 20200312

Dear ██████████

Your request for a legal opinion on behalf of ██████████ (the “Restaurant”) has been referred to me for a response. Your March 6, 2020 email states:

*Regarding a “To Go” order in a restaurant, if the restaurant charges a service fee for said “To Go” order and separately states the fee on the receipts is the fee taxable? The service fee is mandatory, which means the order can not be processed without said fee charged to transaction.*

*Also, if the entire fee is returned to the sales associate performing the service, does that change whether it is taxable or not? (We are aware that if the fee is returned to the sales associate it should be reflected as wages)*

## **RESPONSE**

As explained more fully below, the mandatory service fee on a “To Go” order is part of the sales price of the meal and subject to sales tax.

## **APPLICABLE ARKANSAS LAW**

The Arkansas Gross Receipts tax, commonly referred to as “sales tax” generally applies to all sales of tangible personal property and certain enumerated services unless an exemption applies. *See* Ark. Code Ann. § 26-52-301 (Supp. 2019). Gross receipts tax is computed based on the total value of consideration paid for the taxable property or service, including a “charge by the seller for any service necessary to complete the sale, other than a delivery or an installation charge.” *See* Ark. Code Ann. § 26-52-103(19)(A)(iii) (Supp. 2019).

The Restaurant, as the seller in this transaction, is liable for the collection and payment of all applicable state and local sales tax on each transaction under Ark. Code Ann. § 26-52-508(a) (Supp. 2019). The Restaurant is responsible for the collection and remittance of tax on the entire gross receipts, which includes the service fees. A mandatory service fee is part of the gross receipts or gross proceeds on which the tax must be collected and remitted. The Restaurant is responsible for collecting and remitting sales tax on the full purchase price of the tangible personal property sold, including service fees.

You also asked whether the taxability would change if the service fees were returned to the sales associate performing the service. The definitions of “gross receipts” in Arkansas Gross Receipts Tax Rule GR-3(H)(2)(c) specifically provide that the mandatory service fee charge cannot be deducted from the sales price. Thus, the service fee must be taxed as part of the total sales price of the meal regardless of how you ultimately treat the service fee.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any change in the facts or law could result in a different opinion. Please be advised that this opinion may only be relied upon by the Taxpayer and will only be binding upon the Department for three (3) years from the date of issuance. *See* Arkansas Gross Receipts Tax Rule GR-75.

A copy of the Arkansas Gross Receipts Tax Rules referenced in this letter is available online at [http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008\\_3.pdf](http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf).

Sincerely,



Nina Samuel Carter  
Office of Revenue Legal Counsel