

ARTICLE XII. FOOD AND BEVERAGE TAX*

*State Law reference: Authority to adopt, Code of Virginia, § 58.1-3833.

Sec. 20-841. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Beverage: the term “beverage” means alcoholic beverages as defined in Code of Virginia, § 4.1-100 and nonalcoholic beverages served as part of a meal.

Grocery items: the term “grocery items” means any food and foodstuffs, green groceries, including whole fruits and vegetables, beverages and household goods usually prepackaged or measured into quantities for household use from containers made for retail grocery or baking sales and usually not suitable for immediate consumption by the purchaser. Grocery items, sometimes called staples, include, by way of illustration and not limitation, sugar, flour, spices, dry pasta, loaves of bread, whole chickens, ground coffee, coffee beans, loose or bagged tea, cooking oils, and canned and jarred goods.

Meals: the term “meals” means any prepared food and beverage sold for human consumption, whether designated as breakfast, lunch, dinner, supper or by some other name, and without regard to the manner, time, and place of service or consumption, except that the following do not constitute meals: (1) grocery items, (2) snack foods alone, (3) beverages alone, and (4) any combination consisting entirely of snack foods, beverages, or grocery items.

Restaurant: the term “restaurant” means any one of the following:

(1) Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under Code of Virginia, § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

(2) Any place or operation which prepares or stores meals for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

Snack foods: the term “snack foods” means any candy, chewing gum, peanuts and other nuts, popcorn, cookies, crackers, donuts, muffins, bagels, and fried or baked goods of a similar nature, potato chips, ice cream or frozen yogurt, single-serving cakes and pies, and other items of essentially the same nature consumed for essentially the same purpose.

Sec. 20-842. - Levy of tax; amount.

For the purpose of funding the operational needs and capital projects of the Henrico County Public Schools, there is hereby imposed and levied by the county a tax on food and beverages sold as meals by

restaurants and on prepared foods ready for human consumption at a delicatessen counter sold by grocery stores and convenience stores. The rate of the tax shall be four percent of the sales price. In the computation of this tax, any fraction of one-half cent (\$.005) or more shall be treated as one cent (\$.01).

Sec. 20-843. - Exemptions.

The following transactions shall not be subject to the tax under this article:

- (1) Food and beverages sold through vending machines;
- (2) Food and beverages sold by boardinghouses that do not accommodate transients;
- (3) Food and beverages sold by cafeterias operated by industrial plants for employees only;
- (4) Food and beverages sold by restaurants to their employees as part of their compensation when no charge is made to the employee;
- (5) Food and beverages sold by volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, the first \$100,000.00 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes;
- (6) Food and beverages sold by churches that serve meals for their members as a regular part of their religious observances;
- (7) Food and beverages sold by public or private elementary or secondary schools, colleges, and universities to their students or employees;
- (8) Food and beverages sold by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof;
- (9) Food and beverages sold by day care centers;
- (10) Food and beverages sold by homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics;
- (11) Food and beverages sold by age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees;
- (12) Food and beverages when used or consumed and paid for by the Commonwealth of Virginia, any political subdivision of the Commonwealth of Virginia, or the United States;
- (13) Food and beverages provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations;
- (14) Food and beverages provided by private establishments that contract with the appropriate agency of the Commonwealth of Virginia to offer food, food products, or beverages for immediate consumption

at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations;

(15) That portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price;

(16) That portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed twenty percent of the sales price;

(17) Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption; and

(18) Food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to the Act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

Sec. 20-844. - Certificate of registration.

(a) Every person responsible for the collection of the tax levied under this article shall file an application for a certificate of registration with the director of finance. The application shall be on a form prescribed by the director of finance to provide information for the assessment and collection of this tax and for the enforcement of the provisions of this article.

(b) Upon approval of the application by the director of finance a certificate of registration authorizing the collection of this meals tax shall be issued to the applicant.

(c) Each person with a certificate of registration pursuant to this section shall notify the director of finance of any changes to the information provided on their application for the certificate within thirty (30) days of the change.

Sec. 20-845. - Payment and collection of tax.

Every seller of food and beverages with respect to which a tax is levied under this article shall collect the amount of tax imposed under this article from the purchaser on whom the same is levied at the time payment for such food and beverages becomes due and payable, whether payment is made in cash, by check, by electronic funds transfer, or on credit by means of a credit card or otherwise. The amount of tax owed by the purchaser shall be added to the cost of the food and beverages by the seller who shall pay the taxes collected to the county as provided in this article. Taxes collected by the seller shall be held in trust by the seller until remitted to the county. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to Code of Virginia, § 18.2-111.

Sec. 20-846. - Commission to seller for collection of tax.

For the purpose of defraying some of the costs incurred by the seller in collecting the tax imposed by this article, every seller who files and pays the tax levied under this article in a timely manner shall be allowed three percent of the amount of the tax due and accounted for in the form of a deduction on his return.

Sec. 20-847. - Reports and remittances generally.

(a) Every seller of food and beverages with respect to which a tax is levied under this article shall make out a report, upon such forms and setting forth such information as the director of finance may prescribe and require, and shall sign and deliver such report to the director of finance with a remittance of such tax. Such reports and remittance shall be made on or before the 20th day of each month, covering the amount of tax collected during the preceding month.

(b) Notwithstanding the foregoing provisions of this section, the director of finance may allow any person collecting the tax to elect to make reports and remittances on a quarterly basis when the person has established for a period of one year that his monthly remittances average less than \$100.00 per month or on a seasonal basis for persons operating in the county only periodically during the year. Persons electing to make reports and remittances on a quarterly basis shall make them on or before the 20th day of the month following the close of the quarter. Persons electing to make reports on a seasonal basis shall make reports and remittances on or before the 20th day of the month following each month during which they operated, covering the amount of tax collected during the preceding month.

Sec. 20-848. - Preservation of records.

It shall be the duty of any seller of food and beverages liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of five years records showing gross sales of all food and beverages, the amount charged to the purchaser for each such purchase, the date of the purchase, the taxes collected on the purchase, and the amount of tax required to be collected under this article. The director of finance shall have the power to examine such records at reasonable times and without unreasonable interference with the business of the seller for the purpose of administering and enforcing the provisions of this article and to make copies of all or any parts of the records.

Sec. 20-849. - Duty of seller when going out of business.

Whenever any person required to collect or pay to the county a tax under this article shall cease to operate or otherwise dispose of a business required to collect or pay to the county a tax under this article, any tax payable under this article shall become immediately due and payable, and such person shall immediately make a report and pay the tax due.

Sec. 20-850. - Enforcement; duty of director of finance; powers of business section manager.

(a) The director of finance shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the director of finance to ascertain the name of every seller liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The director of finance shall have all of the enforcement powers authorized under Code of Virginia, title 58.1, chapter 31, article 1 (Code of Virginia, § 58.1-3100 et seq.) for purposes of this article.

(b) Police powers are conferred upon the business section manager, appointed pursuant to Sec. 20-353 of Article XI of the Code, and business inspectors while engaged in performing their duties as such under the provisions of this article, and they shall exercise all the powers and authority of police officers granted to them in performing those duties. The business section manager and business inspectors may have a summons issued for any person charging him with a violation of the provisions of this article and may serve a copy of such summons upon such person in the manner provided by law. He shall return the original to the general district court with the manner and time of service stated on the summons.

Sec. 20-851. - Penalty for failure to file report or pay tax; interest on unpaid tax.

(a) If any person shall fail or refuse to file with the director of finance the report required under this article within the time specified in this article, there shall be assessed a penalty in the amount of ten percent of the tax assessable on such report. Such penalty shall be assessed on the day following the day on which the report was due. Any such penalty, when assessed, shall become a part of the tax. The imposition of such penalty shall not be deemed a defense to any criminal prosecution for failing to make any report required in this article.

(b) If any person shall fail or refuse to remit to the director of finance the tax required to be collected and paid under this article within the time specified in this article, there shall be assessed a penalty in the amount of ten percent of the tax past due. Such penalty shall be assessed on the day following the day on which the tax was due. Any such penalty, when assessed, shall become a part of the tax.

(c) In addition, there shall be assessed interest at the rate of ten percent per year on the amount of tax past due, which interest shall commence on the day following the day on which the tax was due and continue until paid.

Sec. 20-852. - Procedure upon failure to file return or pay tax.

If any person shall fail or refuse to collect the tax imposed under this article or to make within the time provided in this article the reports and remittance required in this article, the director of finance shall make an estimate of the amount of taxes due the county by such person upon the best information available and shall proceed to determine and assess against such person such tax and penalty and interest as provided for in this article. The director of finance shall notify such person by registered mail, sent to his last known address, of the amount of such tax and interest and penalty, and the total amount thereof shall be payable within ten days from the date of such notice.

Sec. 20-853. - Bond or letter of credit.

The director of finance shall require any seller with a record of late filing of the tax returns or of late remittance of the taxes required by this article to post annually a bond in a form acceptable to the director of finance and payable to the county to insure the seller's faithful performance of the requirements of this article. The bond shall be in an amount which is three times the taxes collected or which should have been collected by the seller during the preceding month, but in no case shall be less than \$1,000. An irrevocable letter of credit from a local bank approved by the director of finance with an expiration date not earlier than one year from the date of issuance in the amount specified in this section and payable to the county may be accepted in lieu of the bond.

Sec. 20-854. - Criminal penalties.

Any person required to collect, account for, and pay over the tax levied in this article who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall be guilty of a class 1 misdemeanor. Any person who willfully violates any other provision of this article shall be guilty of a class 3 misdemeanor.

Sec. 20-855. - Severability.

The sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this article shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the remaining phrases, clauses, sentences, paragraphs and sections of this article shall remain valid.