

AN ORDINANCE TO TAX PREPARED FOOD AND BEVERAGES

WHEREAS, the Code of Virginia authorizes the County to adopt a tax on certain prepared food and beverages sold within the County, upon referendum of the voters of the County; and,

WHEREAS, on July 9, 2019, the Circuit Court for Patrick County ordered a referendum on the issue to be held at the next general election; and,

WHEREAS, by referendum duly held and passed the 5th day of November, 2019, the voters of Patrick County approved the adoption of such tax, consistent with the requirements of Virginia Code § 58.1-3833.

NOW, THEREFORE, Pursuant to authority granted by § 15.2-3833 of the Code of Virginia, 1950, as amended, after public hearing duly advertised and conducted, **BE IT HEREBY ORDAINED** by the Board of Supervisors of Patrick County, Virginia, as follows:

Taxation of Prepared Food and Beverages.

A. Definitions: as used in this section the following words and phrases, shall have the following respective meanings:

Beverage: Alcoholic beverages and non-alcoholic beverages served as part of a meal.

Caterer: A person who furnishes food on the premises of another for compensation.

Commissioner of the Revenue: The commissioner of the revenue of Patrick County and any of his or her duly authorized deputies, assistants, employees, or agents.

Food: Any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic beverages and nonalcoholic beverages served as part of a meal, meant for refreshment or nourishment value purchased in or from a restaurant, convenience store or from a caterer, except for factory packaged snack foods, whether consumed on the premises or not.

Person: Any individual, corporation, company, association, firm partnership, or any group of individuals acting as a unit.

Purchaser: Any person who purchases food in or from a restaurant, convenience store or from a caterer.

Restaurant:

(1) Any place where food is prepared for service to the public whether on or off the premises;

- (2) Any place where food is served to the public; or
- (3) Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples include: dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, lunchroom, short order place, tavern, delicatessen, confectioner, bakery, eating house, eatery, drugstore, catering service, lunch wagon or food truck, pushcart or other mobile facility that sells food, and dining facility in a public or private club, resort, bar or lounge, restaurant, convenience store, theatre, ice cream/yogurt shops.

Seller: Any person who sells food or beverages in or from a restaurant, convenience store or from a caterer, and who is required to collect, report, and remit the tax due pursuant to this article.

Snack food: Chewing gum, popcorn, peanuts and other nuts, unopened prepackaged cookies, donuts, crackers, potato chips, and other items of essentially the same nature and consumed for essentially the same purpose.

Treasurer: The treasurer of Patrick County and any of his or her duly authorized deputies, assistants, employees, or agents.

B. Levy of tax; amount.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby levied and imposed on the purchaser of all food and beverages served, sold, or delivered for human consumption in the county in or from a restaurant, whether prepared in such restaurant or not, or prepared by a caterer. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall also be subject to said tax, but the application of the same shall be limited to such prepared foods. The rate of this tax shall be four (4) percent of the amount paid for such food. In the computation of this tax, any fraction of one-half cent (\$0.005) or more shall be treated as one cent (\$0.01), while fractions of less than one-half cent in sales price shall not be collected.

C. Exemptions

- (a) The tax imposed by this article shall not be levied on the following items when served exclusively for off-premises consumption:
 - (1) Unopened pre-packaged snacks including chewing gum, popcorn, nuts, donuts, nabs, chips, cookies, crackers and items of essentially the same nature;
 - (2) Food sold in bulk. For the purpose of this section, a bulk sale shall mean the sale of food or beverages that would exceed the normal, customary and usual portion which would be sold for on-premises consumption (e.g., a whole cake, a whole pie, a gallon of ice cream, etc.).
 - (3) Beverages including alcoholic beverages sold in factory sealed containers.
- (b) The tax imposed by this article shall not be levied on the following purchases of food and beverages:

- (1) Food or beverages sold through vending machines;
- (2) Food or beverages furnished by boardinghouses that do not accommodate transients;
- (3) Food or beverages sold by cafeterias operated by industrial plants for employees only;
- (4) Food or beverages furnished by restaurants to employees as part of their compensation where no charge is made to the employee;
- (5) Food or beverages sold by volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year, and, beginning with the fourth time, on the first \$100,000 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 or beverages served by churches that serve meals for their members as a regular part of their religious observance;
- (7) Food or beverages served or sold by, public or private elementary or secondary schools, colleges, or universities to their students or employees;
- (8) Food or beverages sold or furnished to patients or residents by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, or handicapped, or other extended care facility;
- (9) Food or beverages furnished by day care centers, [viii]
- (10) Food or beverages furnished by homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics;
- (11) Food or beverages furnished 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 or beverages when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States;
- (13) Food or beverage furnished by non-profit charitable organizations, to elderly, infirm, handicapped, nor needy persons in their homes, or at central locations;
- (14) Food and beverages provided by private establishments that contract with appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their home or at central locations.
- (15) Alcoholic beverages sold in factory-sealed containers and purchased for off-premises consumption;
- (16) Any food purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C Section 2012, or amended, except for sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages.
- (17) Any other sale of food which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or administrative rules and regulation issued pursuant thereto.
- (18) Catered events that have written contracts signed by all parties prior to February 10, 2020 for services to be provided through December 31, 2020 that did not include a provision for collecting taxes pursuant to a food and beverage tax ordinance.

D. Payment and collection of tax.

Every seller of food 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 becomes due and payable, whether payment is to be made in cash, check, or on credit by means of a credit card or otherwise. The seller shall separately state the amount of such tax and the amount of tax owed by the purchaser shall be added to the cost of the food 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.

E. Reports and remittances generally.

Every seller of food 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 commissioner of the revenue may prescribe and require, showing the amount of food charges collected and the tax required to be collected, shall sign and deliver such report to the treasurer with a remittance of such tax. Such reports and remittance shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

F. Preservation of records.

It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three (3) years records showing gross sales of all food and beverages, the amount charged the purchaser of each such purchase, the date thereof, the date of payment thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance. The commissioner of the revenue 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 thereon.

G. Advertising payment or absorption of tax prohibited.

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of the tax imposed under this article will be paid or absorbed by the seller or anyone else or that the seller or anyone else will relieve the purchaser of the payment of all or any part of the tax.

H. Tips and service charges.

- (a) Where a purchaser provides a tip for any employee or employees of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this Article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided, in the letter case, the full amount of the tip is turned over to the employee by the seller.

(b) The tax shall not apply to that portion of an amount paid by a purchaser as a mandatory tip or service charge added by a restaurant in addition to the sales price, but only to the extent that such mandatory tip or service charge does not exceed 20% of the sale price.

I. Duty of seller when going out of business.

Whenever any seller required to collect or pay to the county a tax under this article shall cease to operate or otherwise dispose of his business, 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. The seller shall further retain or cause to be retained all records in accordance with the Preservation of Records section above.

J. Enforcement; authority of commissioner of the revenue.

The commissioner of the revenue is hereby authorized to promulgate rules and regulations for the interpretation, administration, and enforcement of this article. The commissioner of the revenue is further authorized 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 commissioner of the revenue shall have all of the enforcement powers as authorized by Article 1, Chapter 31 of Title 58.1 of the Code of Virginia, 1950, as amended, for purpose of this article.

K. Procedure upon failure to collect, report, etc.

If any seller whose duty is to do so shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the commissioner of the revenue shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner of the revenue shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any seller who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this ordinance and shall notify such seller, by certified or registered mail sent to his last known place of address, of the total amount of such tax penalties and interest and the total amount thereof shall be payable within ten (10) days from the date such notice is sent.

L. Duty of treasurer

The treasurer shall have the power and the duty of collecting the taxes imposed and levied hereunder and shall cause the same to be paid into the general treasury for the county.

M. Penalty of late remittance or false return

If any seller whose duty it is to do so shall fail or refuse to file any report required by this article or to remit to the treasurer the tax required to be collected and paid under this ordinance within the time and in the amount specified in this article, there shall be added to such tax by the

treasurer a penalty in the amount of Ten Dollars (\$10.00) or ten (10) percent of the tax which has not been timely collected and/or remitted to the County, whichever amount is greater, and interest thereon at the rate of ten (10) percent per annum, which shall be computed upon the taxes and penalty due on the first day of the calendar month following the month in which such taxes became due and payable which interest shall be payable by seller whose duty it is to collect, report and remit the tax. An additional penalty at the same rate shall be added for each additional thirty (30) days or fraction thereof during which such tax is not duly remitted to the County; provided, however, that total aggregate penalties shall not exceed the amount of the tax due.

N. Violations of article

- (a) Any person willfully violating, falsifying, failing, refusing, or neglecting to comply with any of the provisions of this ordinance shall be guilty of:
 - (1) A Class 3 misdemeanor, as punishable according to the Code of Virginia, as amended, if the amount of the tax lawfully assessed in connection with the return is \$1,000.00 or less; or
 - (2) A Class 1 misdemeanor, as punishable according to the Code of Virginia, as amended, if the amount of the tax lawfully assessed in connection with the return is more than \$1,000.00.
- (b) Conviction of such violation shall not relieve any person from the payment, collection, or remittance of the tax penalties or interest provided for in this article. Any agreement by any person to pay the taxes prescribed by this article by a series of installment payments shall not relieve any person of criminal liability for violation of this ordinance until the full amount of taxes agreed to be paid by such person is received. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense.

O. Use of Revenues

The revenues collected from the tax shall be deposited in the general fund.

This ordinance and article shall be effective commencing April 1, 2020.

This Ordinance was duly adopted this 10th day of February, 2020.