

ARTICLE VIII. - FOOD AND BEVERAGE TAX

Footnotes:

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Editor's note— Ord. No. 06-21, adopted May 24, 2021, repealed the former Art. VIII, and enacted a new Art. VIII as set out herein. The former Art. VIII pertained to meals tax and derived from Ord. of Jan. 26, 2009.

Sec. 70-325. - 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 means alcoholic beverages as defined in Code of Virginia, § 4.1-100 and nonalcoholic beverages served as part of a meal.

Commissioner means the commissioner of the revenue of King William County.

Food means any and all food purchased in or from a restaurant, whether prepared in such restaurant or not, and whether consumed on the premises or not.

Restaurant means any place that meets the definition of "restaurant" as set forth in Code of Virginia, § 35.1-1.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-326. - Levy of tax; amount.

A tax is hereby 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 that restaurant, or prepared by a caterer, subject to the limitations and conditions of Code of Virginia, § 58.1-3833.

The tax rate shall be four percent of the amount paid for the food and beverages.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-327. - Payment and collection of tax.

Every restaurant 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 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 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.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-328. - Exemptions; limits on application.

(a) Such tax shall not be levied on:

- (1) Food and beverages sold through vending machines;
- (2) Boardinghouses that do not accommodate transients;
- (3) Cafeterias operated by industrial plants for employees only;
- (4) Restaurants to their employees as part of their compensation when no charge is made to the employee;
- (5) Volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on 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) Churches that serve food or beverages for their members as a regular part of their religious observances;
- (7) Public or private elementary or secondary schools or institutions of higher education that serve food or beverages to their students or employees;
- (8) Hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities that serve food or beverages to patients or residents thereof;
- (9) Day care centers;
- (10) Homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics;
- (11) 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) Sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500.00. For the exemption described in this subclause, the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax.
- (13)

When the food and beverages are consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States;

- (14) When the food or beverages are 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; or
 - (15) Provided by private establishments that contract with the 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 homes or at central locations.
- (b) Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen shall be subject to the tax for that portion of the grocery store or convenience store selling such items.
- (c) This tax shall not apply upon: (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) 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 20 percent of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or 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 that 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.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-329. - Reports and remittances generally.

Every seller of food and/or 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 commissioner may prescribe and require, showing the amount of food charges collected and the tax required to be collected, and shall sign and deliver such report to the commissioner of the revenue with the remittance of such tax payable to the treasurer. Such reports and remittance shall be made on or before the 20th day of each month if filing electronically or in person, or postmarked on or before the 20th of each month, covering the amount of tax collected during the preceding month.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-330. - Preservation of records.

It shall be the duty of any restaurant liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three years records showing gross sales of all food and beverages, the amount charged the purchaser of each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The commissioner shall have the power to examine such records and to make copies of all or any parts thereon 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.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-331. - Duty of seller when going out of business.

Whenever any seller required to collect and 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 seller shall immediately make a report and pay the tax due.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-332. - Enforcement; duty of the commissioner.

The commissioner shall promulgate rules and regulations for the interpretation, administration, and enforcement of this article. It shall also be the duty of the commissioner 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 or by the commissioner pursuant to this article.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-333. - Procedure upon failure to collect, report.

If any seller whose duty it 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 required by this article or by the commissioner pursuant to this article, the commissioner shall proceed in such a manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the commissioner shall procure such facts and information upon which to base the assessment, he/she shall proceed to determine and assess against such restaurant the tax and penalties provided for by this article, and shall notify such restaurant, by registered mail sent to its last known address, of the total amount of such tax and penalties. The total amount of such tax and penalties shall be payable within ten days from the date such notice is sent.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-334. - Penalty of late remittance or false return.

If any person fails or refuses to file any report required by this article or by the commissioner pursuant to this article or fails to remit to the county treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the county treasurer a penalty in the amount of ten percent if the failure is not for more than 30 days. 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.

In the case of a false or fraudulent return with intent to defraud the county of any tax due under this article, a penalty of 50 percent of the tax shall be assessed against the person required to remit such tax.

Any person violating, failing, refusing or neglecting to comply with any provision of this article shall, upon conviction thereof, be guilty of a Class 1 misdemeanor, except that if the amount of tax lawfully assessed in connection with the return is \$1,000.00 or less, then he/she shall be guilty of a Class 3 misdemeanor.

Each violation of or failure to comply with this article shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this article.

(Ord. No. 06-21, 5-24-2021)

Sec. 70-335. - 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.

(Ord. No. 06-21, 5-24-2021)

Secs. 70-336—70-360. - Reserved.