

ARTICLE ____ . - MEALS TAX

Section _____ 0. - Definitions.

The following words and phrases, when used in this article, shall have for the purposes of this article, the following meanings, except where the context clearly indicates a different meaning:

Cater. The furnishing of food, beverages, or both, on the premises of another, for compensation.

Director. The Town Clerk or other designee of Council, and their duly designated deputies, assistants, inspectors or other employees.

Food. All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or off, and without regard to the manner, time or place of service.

Food establishment. Any place in or from which food or food products are prepared, packaged, sold, or distributed in the town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, cafe, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

Meal. Meal shall mean any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Section _____ 1. - Levy.

There is hereby imposed and levied on each person a tax at the rate of three (3) percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

Section _____ 2. - Collection of tax by seller.

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the visually handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collections shall be deemed to be held in trust for the town.

Section _____ 3. - Report of collection and remittance of tax.

- (a) The director shall prescribe a meals tax collection return form, which shall show the amount of charges collected for meals and the tax required to be collected. The form shall contain an appropriate signature block and shall call for such other information as the director may require.
- (b) Every person collecting the meals tax shall complete a meals tax collection return and submit it and the remittance of the tax to the director on or before the close of business on the twentieth day of each month. Each return shall cover the amount of tax due and collected during the preceding month.
- (c) Every person collecting the meals tax shall be allowed three (3) percent of the amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided that no meals taxes are delinquent at the time of payment.

Section _____ 4. - Exemptions; limits on application.

(a) The tax imposed under this article shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.

(b) The tax imposed under this article shall not be levied on the following items when served exclusively for off-premises consumption: (1) Donuts, ice cream, crackers, nabs, chips, cookies and factory-prepackaged items of essentially the same nature; (2) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on-premises consumption (e.g., a whole cake, a gallon of ice cream). A bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption. (3) Alcoholic and non-alcoholic beverages sold in factory sealed containers. (4) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the food stamp program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. (5) Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the Federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d)(3), (4) and (5) below.

(c) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(d) The tax imposed hereunder shall not be levied on the following purchases of food and beverages: (1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee. (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees. (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States. (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons. (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind,

handicapped or needy persons in their homes or at central locations.(6)Food and beverages sold by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.(7)Food and beverages sold through vending machines.

Section _____ 5. - Gratuities and service charges.

The tax imposed under this article shall not be levied on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal or (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the food establishment in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price.

Section _____ 6. - Report of taxes collected; remittance; preservation of records.

It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the director may prescribe and require, including all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. Such records shall be kept and preserved for a period of five (5) years. The director or his or her duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any parts thereof.

Section _____ 7. - Violations; liability of corporate or partnership officer.

Any corporate or partnership officer, as defined in Code of Virginia, § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a Class 1 misdemeanor.