

ARTICLE XIII: Food and Beverage Tax

[Adopted 7/7/1999]

§ 151-57 Definitions.

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

BEVERAGES

Any alcoholic beverages as defined in Virginia Code Section 4.1-100 and any nonalcoholic beverages, when either is served as part of a meal.

BED-AND-BREAKFAST ESTABLISHMENT

An establishment with eight or fewer bedrooms which provides overnight accommodations.

CATERER

A person who furnishes meals and/or beverages on the premises of another, for compensation.

FOOD

Any and all edible refreshments or nourishment, liquid or otherwise, purchased for human consumption in or from a restaurant.

PERSON

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

PURCHASER

Any person who:

- A. Purchases food and/or beverages from a restaurant or caterer; or
- B. Pays for the overnight occupancy of a room, together with food and/or beverages, at a bed-and-breakfast establishment for a fixed aggregate price.

RESTAURANT

A. 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 § 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.

B. 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 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.

SELLER

Any person:

- A. Who sells food and/or beverages in or from a restaurant;
- B. Who charges another for occupancy of a room, together with food and/or beverages, at a bed-and-breakfast establishment for a fixed aggregate price; or
- C. Any caterer.

§ 151-58 Levy of tax.

In addition to all other taxes imposed by law, a four-percent tax is hereby levied on the amount paid by any purchaser who:

- A. Purchases food and/or beverages served, sold or delivered for human consumption in Rappahannock County, Virginia, in or from a restaurant or by a caterer; or
- B. Pays for the occupancy of a room, together with food and/or beverages, at a bed-and-breakfast establishment for a fixed aggregate price.

§ 151-59 Special provisions for bed-and-breakfast establishments.

- A. Any bed-and-breakfast establishment which collects and remits to the County the tax referred to in § 151-57B, immediately above, for room occupancy together with food and/or beverages, at a fixed aggregate price, shall then be exempt from the levy and collection of any County transient occupancy tax as to such room occupancy.
- B. Any bed-and-breakfast which chooses to itemize its charges to a purchaser so to show charges for food and/or beverages separate and apart from charges for room occupancy shall collect the tax levied by § 151-57B, immediately above, on the portion of the bill attributable to food and/or beverages, and shall collect the tax levied by the County transient occupancy tax on the portion of the bill attributable to room occupancy.

§ 151-60 Payment and collection of tax.

Every seller shall collect the amount of tax imposed under this article from the purchaser at the time payment is made by the purchaser, regardless of the means of payment. The amount of tax owed shall be added to, and shown on, the bill, receipt or other written record of the charges made to the purchaser. The seller shall pay the taxes collected to Rappahannock County, Virginia, as provided in this article. Taxes collected by the seller shall be held in trust by the seller until remitted to Rappahannock County, Virginia.

§ 151-61 Reports and remittances generally.

A. Report.

- (1) Every seller required to collect the tax under this article shall make out a report, upon such forms and setting forth such information as the Commissioner of the Revenue may require, showing:

- (a) The amount of the charges to the purchaser which are taxable under this article;
- (b) The tax collected;
- (c) The retainage provided by Subsection B below; and
- (d) The net amount to be paid to the Treasurer.

(2) The seller shall sign and deliver such report to the County Treasurer with the remittance of such tax. The report shall contain the current mailing address and telephone number of the seller. Such reports and remittance shall be made on or before the 20th day of each January, April, July and October, covering the amount of tax collected during the preceding calendar quarter. For example, the first payment due after the effective date of this article (October 1, 1999) is to be made by no later than January 20, 2000, and covers the period October 1, 1999 through December 31, 1999.

B. The seller shall be entitled to retain 3% of the amount of any payment due the County, provided that the payment and report are not delinquent.

§ 151-62 Preservation of records.

It shall be the duty of any seller liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three years records showing the information required to be reported by § 151-60 above. The Commissioner of the Revenue shall have the power to examine such records for the purpose of administering and enforcing the provisions of this article and to make copies of all or any parts thereof and may require the seller to produce such records in the office of the Commissioner upon 10 days' written request to the seller, by certified mail to the seller's address most recently on file with the Commissioner. Failure by the seller to so produce said records shall be a violation of the article.

§ 151-63 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 payment of all or any part of the tax.

§ 151-64 Tips.

Where a purchaser provides a tip for an employee of a seller and the amount of the tip is wholly at 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 that the full amount of the tip must be turned over to the employee by the seller.

§ 151-65 Duty of seller when going out of business.

Whenever any seller required to collect and pay the tax imposed under this article shall cease to operate or otherwise dispose of his/her business, any tax payable under this article shall become immediately due and payable, and such person shall immediately make a report and pay to the Treasurer of Rappahannock County any tax due.

§ 151-66 Enforcement; duties of Commissioner of the Revenue.

The Commissioner of the Revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the Commissioner of the Revenue to ascertain the name of every seller liable for collection of the tax imposed by this article. If any such seller fails, refuses or neglects to collect such tax or make the reports and remittances required by this article, the Commissioner of the Revenue shall have all the enforcement powers authorized by this article and Chapter 31 and Chapter 39 of Title 58.1 of the Code of Virginia.

§ 151-67 Procedure upon failure to collect, report, etc.

If any seller, whose duty it is to do so, shall fail or refuse to collect the tax imposed under this article, or to file the reports, or to pay the remittances mentioned in this article, the Commissioner of the Revenue shall proceed in such manner as he/she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Commissioner of the Revenue shall procure such facts and information, he/she shall proceed to determine and assess against such seller the tax and penalties provided for by this article and shall notify such seller, by certified mail sent to the seller's last known address on file with the Commissioner, of the total amount of such tax and penalties, whereupon the total amount thereof shall be payable within 10 days from the date such notice is sent; provided that, if payment is made within said ten-day period, it shall not relieve the seller from any penalties otherwise provided for in this article. The Commissioner shall also notify the Treasurer of the amount determined to be due, and the Treasurer may rely on this amount in any enforcement proceedings, including the calculation of any penalties.

§ 151-68 Duty of County 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 Rappahannock County, Virginia. The Treasurer shall have all powers of collection granted by Chapter 39 of Title 58.1 of the Code of Virginia.

§ 151-69 (Reserved) [1]

[1] Editor's Note: Former § 151-68, Penalty for late remittance or false return, was repealed 3-3-2003. See now, Art. XVI, Penalties and Interest; Due Dates at end of this document.

§ 151-70 Exemptions.

The following purchases of food and/or beverages shall not be subject to the tax under this article:

- A. Food and/or beverages furnished by restaurants to employees as part of their compensation when no charge is made to the employee.
- B. Food and/or beverages sold by nonprofit day-care centers and public or private elementary or secondary schools.
- C. Food and/or beverages sold to the commonwealth, any political subdivision of the commonwealth or the United States.
- D. Food and/or beverages sold by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped or other extended care facility to patients or residents thereof.

E. Food and/or beverages sold by a nonprofit charitable organization to elderly, infirm, handicapped or needy persons in their homes or at central locations.

F. Food and/or beverages sold by nonprofit educational, charitable, religious, social or benevolent organizations, including fire and rescue squads or companies, on an occasional basis as a fund-raising activity.

G. Food and/or beverages sold through vending machines.

H. Food and/or beverages sold through nonprofit cafeterias in public schools, nursing homes and hospitals.

I. Food and/or beverages sold in boardinghouses that do not accommodate transients.

J. Food and/or beverages sold through cafeterias operated by industrial plants for employees only.

K. Churches which serve meals for their members as a regular part of their religious observances.

L. Any other sale of food and/or beverages which is exempt from taxation under the Code of Virginia.

M. With respect to grocery and convenience stores, the tax levied by this article shall apply only to prepared sandwiches and single meal platters sold at delicatessen counters.

N. Food and/or beverages sold within the Town of Washington, so long as that town imposes a food and beverage tax.

ARTICLE XIV: Transient Occupancy Tax

[Adopted 7/7/1999]

§ 151-71 Definitions.

As used in this article, the following terms shall have the meanings indicated:

BED-AND-BREAKFAST ESTABLISHMENT

An establishment with eight or fewer bedrooms which provides overnight accommodations.

OCCUPANT

The individual or group who occupies a guest room or camping space.

PROVIDER

The individual or entity who, for a price, permits an occupant to occupy a guest room or camping space.

§ 151-72 Levy of tax.

Pursuant to §§ 58.1-3819 and 58.1-3842 of the Code of Virginia, and in addition to all other taxes, there is hereby levied on hotels, motels, boardinghouses, bed-and-breakfast establishments, travel campgrounds and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days a tax equivalent to 2% of the amount charged for the occupancy of any room or camping space.

§ 151-73 Exceptions.

No tax shall be payable hereunder on room or space rental:

- A. At any hospital, medical clinic, convalescent home, nursing home or home for the aged.
- B. Continuously occupied for 30 or more consecutive days.
- C. Within the Town of Washington for so long as the town imposes its own transient occupancy tax.

§ 151-74 Special provisions for bed-and-breakfast establishments.

- A. Any bed-and-breakfast establishment which provides rooms together with food and/or beverages for a fixed aggregate price shall collect and remit to the County the tax referred to in § 151-57B of the Rappahannock County Code (the combined transient occupancy and food and beverage tax) and shall then be exempt from the levy and collection of this transient occupancy tax as to such room or rooms.
- B. Any bed-and-breakfast which chooses to itemize its charges to an occupant so to show charges for food and/or beverages separate and apart from charges for room occupancy shall collect the tax levied by § 151-57B of the Rappahannock County Code (food and beverage tax) on the portion of the bill attributable to food and/or beverages and shall collect the tax levied by this transient occupancy tax on the portion of the bill attributable to room occupancy.

§ 151-75 Payment and collection of tax.

Every provider shall collect the amount of tax imposed under this article from the occupant at the time payment is made by the occupant, regardless of the means of payment. The amount of tax owed shall be added to, and shown on, the bill, receipt or other written record of the charges made to the occupant. The provider shall pay the taxes collected to Rappahannock County, Virginia, as provided in this article. Taxes collected by the provider shall be held in trust by the provider until remitted to Rappahannock County, Virginia.

§ 151-76 Reports and remittances generally.

A. Report.

(1) Every provider required to collect the tax under this article shall make out a report, upon such forms and setting forth such information as the Commissioner of the Revenue may require, showing:

- (a) The amount of the charges to the occupant which are taxable under this article;
- (b) The tax collected;
- (c) The retainage provided by Subsection B below; and
- (d) The net amount to be paid to the Treasurer.

(2) The provider shall sign and deliver such report to the County Treasurer with the remittance of such tax. The report shall contain the current mailing address and telephone number of the provider. Such reports and remittance shall be made on or before the 20th day of each January, April, July and October, covering the amount of tax collected during the preceding calendar quarter. For example, the first payment due after the effective date of this article (October 1, 1999) is to be made by no later than January 20, 2000, and covers the period October 1, 1999, through December 31, 1999.

B. The provider shall be entitled to retain 3% of the amount of any payment due the County, provided that the payment and report are not delinquent.

§ 151-77 Preservation of records.

It shall be the duty of any provider liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three years records showing the information required to be reported by § 151-75 above. The Commissioner of the Revenue shall have the power to examine such records for the purpose of administering and enforcing the provisions of this article and to make copies of all or any parts thereof and may require the provider to produce such records in the office of the Commissioner upon 10 days' written request to the provider, by certified mail to the provider's address most recently on file with the Commissioner. Failure by the provider to so produce said records shall be a violation of this article.

§ 151-78 Duty of provider when going out of business.

Whenever any provider required to collect and pay the tax imposed under this article shall cease to operate or otherwise dispose of his/her business, any tax payable under this article shall become immediately due and payable, and such person shall immediately make a report and pay to the Treasurer of Rappahannock County any tax due.

§ 151-79 Enforcement; duties of Commissioner of the Revenue.

The Commissioner of the Revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the Commissioner of the Revenue to ascertain the name of every provider liable for collection of the tax imposed by this article. If any such provider fails, refuses or neglects to collect such tax or make the reports and remittances required by this article, the Commissioner of the Revenue shall have all the enforcement powers authorized by this article and Chapter 31 and Chapter 39 of Title 58.1 of the Code of Virginia.

§ 151-80 Procedure upon failure to collect, report, etc.

If any provider, whose duty it is to do so, shall fail or refuse to collect the tax imposed under this article, or to file the reports, or to pay the remittances mentioned in this article, the Commissioner of the Revenue shall proceed in such manner as he/she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Commissioner of the Revenue shall procure such facts and information, he/she shall proceed to determine and assess against such provider the tax and penalties provided for by this article and shall notify such provider, by certified mail sent to the provider's last known address on file with the Commissioner, of the total amount of such tax and penalties, whereupon the total amount thereof shall be payable within 10 days from the date such notice is sent; provided that, if payment is made within said ten-day period, it shall not relieve the provider from any penalties otherwise provided for in this article. The Commissioner shall also notify the Treasurer of the amount determined to be due, and the Treasurer may rely on this amount in any enforcement proceedings, including the calculation of any penalties.

§ 151-81 Duty of County 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 Rappahannock County, Virginia. The Treasurer shall have all powers of collection granted by Chapter 39 of Title 58.1 of the Code of Virginia.

§ 151-82 (Reserved) [1]

[1]Editor's Note: Former § 151-81, Penalty for late remittance or false return, was repealed 3-3-2003. See now Art. XVI, Interest and Penalties; Due Dates.

ARTICLE XVI: Penalties and Interest, Due Dates

[Adopted 9-12-1991; amended in its entirety 3-3-2003]

§ 151-92 Late penalties; failure to file; failure to pay.

A. The penalty for failure to file a tax return shall be 10% of the tax assessable on the return or \$10, whichever is greater, not to exceed the amount of tax due. The penalty for failure to file a return shall be assessed on the day after the return is due. Any penalty assessed shall become a part of the tax due and shall also accrue interest.

B. The penalty for failure to pay tax on, time shall be 10% of the tax past due or \$10, whichever is greater, not to exceed the amount of tax due. The penalty for failure to pay any tax shall be assessed on the day after the tax is due. Any penalty assessed shall become a part of the tax due and shall also accrue interest.

C. No penalty for failure to pay tax shall be imposed for any assessment made later than two weeks prior to the day on which taxes are due, if such assessment is made thereafter through the fault of a local official and if such assessment is paid within two weeks after notice thereof is mailed.

D. Penalty and interest for failure to file a return or pay a tax shall not be imposed if such failure was not the fault of the taxpayer as determined under § 58.1-3916 of the Code of Virginia.

§ 151-93 Interest; apportionment of payments.

A. Interest on taxes not paid on time shall accrue at the rate of 10% per year beginning the first day next following the due date and shall continue to accrue on any unpaid balance until the tax is paid in full. Any penalty assessed shall become a part of the tax due and shall also accrue interest.

B. The County shall refund to the taxpayer any overpayment of tax due to an erroneous assessment, together with interest at the rate of 10% per annum prorated to the day of payment, provided, no interest is required if the refund is \$10 or less or the refund is the result of a proration pursuant to § 58.1-3516 of the Code of Virginia.

C. Any partial payment received by the Treasurer on a delinquent account shall be applied first against interest and then against the amount of the tax, which amount shall include all penalties assessed.

[Added 5-4-2015]

D. As provided by § 58.1-3913 of the Code of Virginia, when the Treasurer and a taxpayer have entered into a written agreement for the payment of delinquent taxes, including penalties and interest, they may agree as to the allocation of those payments between delinquent amounts and taxes that may become due during the term of the agreement. Under such an agreement, the Treasurer shall not be required to automatically allocate payments received to the most delinquent years, but may apply amounts received against taxes as they become due so to prevent the taxpayer from accumulating more penalties and interest. If there is no such written agreement, amounts received by the Treasurer shall be applied first against the most delinquent taxes, penalties and interest, and be applied as provided in Subsection C above. This provision shall apply whether the agreement is reached before or after the filing of an action to sell property to enforce the tax lien of the County.

[Added 5-4-2015]

§ 151-94 Violations and penalties.

A. Any person who willfully fails or refuses to file any tax return required by law, or who makes any false statement with intent to defraud in such return, shall be guilty of a Class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is less than or equal to \$1,000, and shall be guilty of a Class 1 misdemeanor if the amount of the tax so assessed is more than \$1,000.

B. Any person who collects taxes on behalf of the County and holds same in trust for payment to the County, and who then willfully fails to pay over such taxes to the County shall be guilty of larceny.

§ 151-95 Collection fees.

In the event the services of an attorney, including the County Attorney, or of a collection agency are required to collect any taxes, penalties or interest, the taxpayer shall also be responsible for reasonable attorney's or collection agency's fees, not to exceed 25% of the amount collected.

§ 151-96 When effective.

This article, as amended, shall become effective at 12:00 midnight on March 4, 2003, provided, all penalties and interest assessed prior to the effective date of the amendments to this article shall remain due and owing in the amounts assessed.