

ARLINGTON COUNTY CODE

Chapter 39

CIGARETTE TAX

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§ 39-1. Short Title.

This chapter shall be known and may be cited as the “Arlington County Cigarette Tax Ordinance.” (8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Carton” means any container, regardless of material used in its construction, that contains packages of cigarettes.

“Cigarette” means any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

“Commissioner of the Revenue” means the Commissioner of the Revenue of Arlington County, Virginia, and any of the Commissioner's designees.

“County” means Arlington County, Virginia.

“Dealer” means every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the County.

“Package” means any container, regardless of the material used in its constructions, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily a package contains twenty (20) cigarettes; however, "package" includes those containers in which fewer or more than twenty (20) cigarettes are placed.

“Person” means any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, shall include all the officers and directors thereof.

“Place of business” means any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the County.

“Registered agent” means every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of the chapter.

“Retail dealer” means every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the County to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one (1) or more cigarette vending machines for the purpose of sale within the County of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the County to the ultimate consumer, who is not licensed as a wholesaler, or vending machine operator.

“Sale” or “sell” means every act or transaction, regardless of the method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the County from a dealer as herein defined to any other person for a consideration.

“Self-wholesaler” means any person who owns and operates one (1) or more retail stores and purchases cigarettes directly from a dealer, as herein defined, and whose function it is to store or warehouse cigarettes for distribution to his several retail outlets for sale at retail.

“Stamp” means a small, gummed piece of paper or decalcomania used to evidence payment of the tax levied under §§ 58.1-1000 et seq. of the Virginia Code as amended (1950) and officially designated as a Virginia revenue stamp.

“Store” or “storage” means the keeping or retention of cigarettes in this County for any purpose except sale in the regular course of business.

“Treasurer” means the Treasurer of Arlington County and any of the Treasurer's designees.

“Use” means the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

“User” means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this chapter incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

“Wholesaler” means any person who sells cigarettes to dealers, as herein defined, for the purpose of resale only, or who sells at wholesale to institutions, commercial or industrial users.
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-3. Levy and Rate.

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the County upon every person who sells or uses cigarettes within the County from and after the effective date of this chapter an excise tax equivalent to twenty cents (\$0.20) for each package containing twenty (20) cigarettes and ten (10) mills for each cigarette contained in packages of fewer or more than twenty (20) cigarettes sold or used within the County effective September 1, 2004; and an excise tax equivalent to thirty cents (\$0.30) for each package containing twenty (20) cigarettes and fifteen (15) mills for each cigarette contained in packages of fewer or more than twenty (20) cigarettes sold or used within the County effective July 1, 2005. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the County shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes. (8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 04-22, 7-10-04)

§ 39-4. Methods of Collection.

A. The tax imposed by this chapter shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Commissioner to carry out the provisions of this chapter. Each dealer or other person liable for the tax is hereby required, and it shall be his duty to collect and pay the tax and report separately for packages of twenty (20) cigarettes and packages of cigarettes which contain fewer or more than twenty (20) cigarettes on forms prescribed for this purpose by the Board Commissioner (1) the quantity of cigarettes sold and delivered to (a) each registered agent in the County appointed by the Commissioner for which no tax was collected, (b) each manufacturer's representative, and (c) each separate person and place of business within the County during the preceding calendar or fiscal month; and, (2) the quantity of cigarettes received during the preceding calendar or fiscal month for distribution in the County; and (3) the quantity of cigarettes for distribution in the County on hand; and (4) such further information as the Commissioner may require for the proper administration and enforcement of this chapter for the determination of the exact number of cigarettes in the possession of each dealer or user.

B. Each dealer or other person liable for the tax shall file such reports with the Commissioner and pay the tax due to the County between the first (1st) and twentieth (20th) day after the close of each calendar or fiscal month.

C. When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage, exchange or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the Commissioner of sufficient tax payments to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The Commissioner shall, from the result of such examination and audit based upon the best information available, assess the tax due and unpaid and shall impose a penalty of ten percent (10%) of the gross tax due which shall be added to the tax due. Interest shall accrue on taxes due and delinquent prior to June 30, 1999, at the rate of three-quarters percent (0.75%) per month of the gross tax and penalty due, up to June 30, 1999, and as prescribed in § 27-3 thereafter. Interest on taxes due and payable after July 1, 1999, shall accrue interest as prescribed in § 27-3.

D. When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the Commissioner shall administratively assess the tax due and unpaid and impose a penalty of fifty percent (50%). The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Virginia revenue stamp has been affixed thereto prior to offering them for sale in Arlington County.

E. The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. No interest shall be imposed on such unpaid tax and penalty assessed on or after July 1, 1999.

Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Virginia revenue stamp has been affixed thereto prior to offering them for sale in Arlington County.

F. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

G. It shall be duty of each dealer or other person liable for the tax and he is hereby required to maintain and keep for a period of three (3) years, not including the current calendar year, records of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, to make all such records available for audit, inspection and examination and to make available at all reasonable times, the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Commissioner.
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

§ 39-5. Registered Agents.

Any dealer or other person liable for the tax who shall sell, buy, store, possess, distribute or transport cigarettes within, or into the County, shall first make application to the Commissioner to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the Commissioner deems necessary. Such applicant shall provide a surety bond to the County of one hundred and fifty percent (150%) of his average monthly tax liability or fifty thousand dollars (\$50,000.00), whichever is less, with a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon it shall continue in force from year to year. Any applicant whose place of business is outside the County shall automatically, by filing his application, submit himself to the County's legal jurisdiction and appoint the Commissioner as his agent for any service of lawful process.

Upon receipt of the properly completed application, and the required surety bond executed, the Commissioner shall issue to said applicant a permit to qualify him as a registered agent to purchase, sell, use, store, possess, distribute or transport cigarettes within or into the County.

Registered agents shall agree to the reporting and payment requirements placed upon them by this chapter and the rules and regulations as from time to time may be promulgated by the Commissioner. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Commissioner shall impose a late reporting penalty of ten percent (10%) of the gross tax due or ten dollars (\$10.00) whichever is greater, but in no event more than five hundred dollars (\$500.00). The Commissioner may also require such registered agents to provide proof that they have complied with all applicable State laws to legally conduct such business and to file financial statements showing all assets and liabilities. The Commissioner may revoke any registered agent's permit if such bond, as required, is impaired for any reason.

After adoption of this chapter, dealers or other persons liable for that tax who shall sell, use, store, possess, distribute or transport tobacco products within or into the County, shall be allowed thirty (30) days to become qualified as a registered agent.
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-6. Notice of Intention by Retail Dealers.

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the County, shall notify the Commissioner, in writing, of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business.

No retail dealer, as defined herein, who shall have complied with the provisions of this chapter and who purchases only tax paid cigarettes for each separate place of business shall be required to qualify as a registered agent.
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-7. Sale of Cigarettes in Vending Machines; Contraband.

Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the County. Any vending machine located within the County containing cigarettes upon which the Virginia revenue stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the Virginia revenue stamp through the viewing area as provided for by the vending machine manufacturer shall be in violation of this chapter.

Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this chapter shall be declared contraband goods and may be seized by the Commissioner. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the Commissioner may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by an unauthorized person shall be a violation of this chapter. Nothing in this chapter shall prevent the seizure of any vending machine at any time after it is sealed.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-8. Illegal Acts.

It shall be unlawful and a violation of this chapter for any dealer or other person liable for the tax:

A. To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this chapter or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this chapter or to fail or refuse to obey any lawful order which may be issued under this chapter; or

B. To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

C. To sell, offer for sale, or authorize or approve the sale of any cigarettes upon which the Virginia revenue stamp has not been affixed; or

D. To possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty (60) packages upon which the Virginia revenue stamp has not been affixed; or

E. To transport, authorize or approve the transportation of any cigarettes, in quantities of more than sixty (60) packages into or within the County upon which the Virginia revenue stamp has not been affixed, if they are:

1. Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or
2. Accompanied by a bill of lading or other documents which is false or fraudulent in whole or part; or
3. Accompanied by a bill of lading or other document indicating:
 - a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax of the state or district of destination has been paid and said cigarettes bear the tax stamps of that state or district; or

- b. A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia retail tobacco license and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination; or

F. To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

G. To remove from any package any stamp with intent to use or cause the same to be used after same have already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this chapter or to sell, or offer to sell, any stamp provided for herein.
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§§ 39-9, 39-10. Reserved.

Editors Note: Ord. No. 85-10, adopted February 23, 1985, repealed § 39-9 and § 39-10 in their entirety. Section 39-9 pertained to the establishment of the Northern Virginia Cigarette Tax Board and was derived from legislation adopted Aug. 3, 1974, as amended by legislation adopted April 29, 1978, effective July 1, 1978, and by Ord. No. 82-4, adopted Feb. 16, 1982. Section 39-10 pertained to the powers of the NVCTB and was derived from legislation of April 29, 1978 and July 1, 1978.

§ 39-11. Jeopardy Assessment.

If the Commissioner determines that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including any penalties and interest provided by law. In the case of a current period, for which the tax is in jeopardy, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by the chapter for filing a return and paying the tax have expired.
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

§ 39-12. Erroneous Assessment; Notices and Hearings in the Event of Sealing of Vending Machines or Seizure of Contraband Property.

Any person assessed by the Commissioner with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this chapter who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the Commissioner for a correction of such assessment and the return of such property seized or sealed.

Where holders of property interest in cigarettes, vending machines or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four (24) hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

Such hearing shall be requested within ten (10) days of the notice of such assessment, seizure, or sealing and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines or other property should be returned or released. Within five (5) days after receipt of such hearing request, the Commissioner shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be

held within fifteen (15) days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest have not been paid as required or if the request is received more than ten (10) days from first notice to the petitioner of such seizure or sealing. Within five (5) days after the hearing, the Commissioner shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

Appropriate relief shall be given by the Commissioner if he is convinced by the preponderance of the evidence that the illegal sale or use of such seized cigarettes or vending machines or other property was not intentional on the part of the petitioner, and that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Commissioner is satisfied that the tax was erroneously assessed, he shall correct the assessment and the Treasurer shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the Commissioner may, within thirty (30) days of the date of said decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-13. Disposal of Seized Property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Commissioner after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-14. Extensions.

The Commissioner, upon a finding of good cause, may grant an extension of time to file a tax report upon written application therefor, until the end of the calendar or fiscal month in which any tax report is due hereunder, for a period not exceeding thirty (30) days. In no case shall a request for extension of time to file a tax report be granted by the Commissioner when such request is not received within the due date for filing such tax report. Where such extension is granted beyond the end of the calendar or fiscal month in which any tax report is due, hereunder, interest on the tax at a rate specified in § 27-3.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

§ 39-15. Penalty for Violations of Chapter.

Any person violating any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty, or interest imposed by this chapter.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 91-34, 9-18-91)

§ 39-16. Each Violation a Separate Offense.

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the tax has not been paid shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-17. Severability.

If any section, phrase, or part of this chapter should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the chapter; and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

ARLINGTON COUNTY CODE

CIGARETTE TAX

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)