

## ARLINGTON COUNTY CODE

### Chapter 65

#### MEALS, FOOD AND BEVERAGE TAXATION

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#### **§ 65-1. Definitions.**

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

“Caterer” means a person who prepares food at a business site in the County for compensation, for service, or consumption off the premises.

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

“Grocery items” means food and foodstuffs, green groceries, beverages and household goods usually prepackaged or measured into quantities for household use from containers made for retail grocery or baking sales and not generally suitable for immediate consumption by the purchaser. Grocery items, sometimes called staples, include, by way of illustration and not limitation, sugar, flour, spices, dry pasta, loaves of bread, ground coffee, coffee beans and loose or bagged tea, bottled and unopened wine, cooking oils, four (4) or more rolls, donuts or other baked goods, canned, bottled, and jarred goods (other than individual, nonalcoholic beverages sold with food).

“Meals” means all food or beverages or both including alcoholic beverages and snack foods sold in a state ordinarily associated with consumption at one (1) period by a single person or a group, whether or not eaten in the place where it is bought or prepared including at delicatessen counters of grocery and convenience stores in the County. The term "meals" does not include grocery items nor alcoholic beverages sold in factory-sealed containers for off-premises consumption.

“Person” means any business, individual, corporation, company, association, firm, partnership, or any combination of individuals of whatever form or character.

“Purchaser” means any person who buys meals in or from a restaurant, caterer, or delicatessen counter at grocery or convenience stores.

“Restaurant” means:

- (1) Any place in the County where meals are prepared for service to the public on or off the premises, or any place where meals are served. Examples of such places include, but are not limited to, any lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, and for profit schools; and
- (2) Any place or operation which prepares or stores meals 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 meals 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” means any person who sells for money or other consideration meals in or from a restaurant, or as a caterer from business premises in the County or from a delicatessen counter at grocery or convenience stores in the County.

“Treasurer” means the Treasurer of Arlington County and any of the Treasurer's designees.  
(Ord. No. 91-8, 6-1-91; Ord. No. 00-19, 8-1-00)

### § 65-2. Levy.

A. Except as outlined in subparagraph B, there is hereby imposed and levied by Arlington County, in addition to all other taxes, fees, and charges of every kind now or hereafter imposed by law, a tax upon all meals sold for money or other consideration in, from, or by a restaurant or caterer, whether prepared in such restaurant or not and whether consumed on the premises or not, and upon prepared sandwiches and single-meal platters sold at the delicatessen counters of grocery and convenience stores, such tax to be at a rate of four percent (4%) on the total amount charged by the seller for the meal. In the computation of this tax, any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

B. For meals sold by a restaurant or caterer specifically prepared for use on commercial airlines and delivered to the purchaser for that purpose, the tax rate shall be two percent (2%) of the total amount charged by the seller for the meal. In the computation of this tax, any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

C. In situations where any amount or percentage, whether designated as a gratuity, tip, or service charge, is added to the price of the meal by the seller and required to be paid by the purchaser and the amount of said gratuity, tip or service charge exceeds twenty percent (20%) of the cost of the meal, said amount or percentage shall be included in the calculation of the amount charged for the meal.

(Ord. No. 91-8, 6-1-91; Ord. No. 08-21, 11-15-08)

### § 65-3. Exemptions, Limitations, and Credits.

A. *Exemptions.* The tax levied by § 65-2.A shall not be collected or assessed on the following sales of meals:

1. Meals sold through vending machines;
2. Meals sold at or included in the cost of accommodations or services at the following facilities: boardinghouses that do not accommodate transients, child care and senior care facilities, nursing homes, senior and disabled living facilities, hospitals, and public or nonprofit institutions of learning;
3. Meals sold at cafeterias operated by industrial plants for employees only;
4. a. Meals sold by nonprofit organizations including churches, fraternal, civic and social organizations, volunteer fire departments and rescue squads, at occasional dinners and bazaars of

up to three (3) days duration at which meals prepared in the homes of members or in the kitchen of the church or organization are offered for sale to the public;

b. Meals sold by nonprofit organizations including churches, fraternal, civic and social organizations, volunteer fire departments and rescue squads, at occasional dinners or special events, of up to three (3) days duration per event, if the nonprofit organization has three (3) or fewer such events a year and the food or meals sold by the nonprofit organization to the public is prepared by the members of the nonprofit organization.

5. Meals which churches serve for their members as a regular part of their religious observances; and
6. Meals sold at wholesale for resale, which sales are exempt from Virginia sales and use taxation under Chapter 6 of Title 58.1 of the Virginia Code.
7. Meals sold for delivery in another state or the District of Columbia by caterers based in Arlington County to an entity which is exempt from a similar tax on the sale, delivery, or service of meals in the jurisdiction where the meal is served. This exemption is not applicable except upon proof that the entity in the foreign jurisdiction is exempt from a sales and use tax. This section shall not be applicable to meals sold by a restaurant or caterer specifically prepared for use on commercial airlines and delivered to the purchaser for that purpose.

B. *Limitations.* The following limitations on the tax levied by § 65-2 shall apply:

1. Alcoholic beverages sold in factory-sealed containers for off-premises consumption shall not be subject to this tax;
2. Nonalcoholic beverages sold alone and not in connection with a meal shall not be subject to this tax;
3. Meals sold by enterprises under the jurisdiction of the Virginia Department for the Visually Handicapped which are exempted by state law from this tax are not subject to this tax;
4. Meals for the elderly which are exempt from Virginia sales and use taxation pursuant to § 58.1-608.8.C. of the Virginia Code, as amended, are not subject to this tax; and
5. Meals served by organizations exempt from business license taxes under Arlington County Code § 11-61.3 are exempt from this tax.

C. *Credits.* There shall be a credit for taxes paid by a seller as defined in this chapter in another state or the District of Columbia by reason of the imposition of a similar tax on the sale, delivery, or service of the meals subject to tax under this chapter in that other taxing jurisdiction to the extent the foreign jurisdiction's tax exceeds the Virginia sales tax, as reflected in the Code of Virginia, including the local portion of the tax. The amount of this credit shall not exceed the tax imposed by this chapter. Credit shall not be granted when the laws of the other taxing jurisdiction provide a credit for payment by the seller of Arlington County's meals tax. The other taxing jurisdiction's tax credit must be exhausted before any credit is granted under this subsection. The credit under this subsection shall not be granted except upon proof of actual tax payments to the other jurisdiction based on the sale, delivery, or service of the same meals which are the subject of taxation under this chapter.

(Ord. No. 91-8, 6-1-91; Ord. No. 93-14, 8-1-93; Ord. No. 96-18, 12-7-96; Ord. No. 00-19, 8-1-00; Ord. No. 08-21, 11-15-08)

#### **§ 65-4. Certificate of Registration.**

A. Every person responsible for the collection of the tax levied by § 65-2 shall file an application for a certificate of registration with the Commissioner of the Revenue. The application shall be on a form prescribed by the Commissioner of the Revenue to provide information for the assessment and collection of this tax and for the enforcement of the provisions of this chapter. The application shall be signed under oath by the person making

application who shall be an officer, partner, or authorized agent of the applicant.

B. Upon approval of the application by the Commissioner of the Revenue, a certificate of registration authorizing the collection of this meals, food, and beverage tax shall be issued to the applicant.

C. Each person with a certificate of registration pursuant to this section shall notify the Commissioner of the Revenue of any changes to the information provided on their application for the certificate within thirty (30) days of the change.

(Ord. No. 91-8, 6-1-91)

#### **§ 65-5. Collection.**

The tax levied by § 65-2, in each and every case, shall be collected by each seller from the purchaser at the time that the charges for the meals are due and payable, whether such payment is made in cash, by check, or on credit by means of a credit card or otherwise. The seller shall separately state the amount of the tax and add such tax to the amount charged for the meal, and the tax shall be paid to the County by the seller as hereinafter provided.

(Ord. No. 91-8, 6-1-91)

#### **§ 65-6. Taxes Collected Held in Trust.**

The taxes required to be collected under this chapter shall be deemed to be held in trust for the County by the person required to collect such taxes until remitted to the County as required in this chapter.

(Ord. No. 91-8, 6-1-91)

#### **§ 65-7. Filing of Tax Returns and Remittance of Tax.**

A. Every person required to collect the taxes levied under the provisions of this chapter shall file a tax return for each calendar month and upon such forms as the Commissioner of the Revenue shall prescribe. Each monthly tax return shall be filed with the Commissioner of the Revenue with remittance of the tax required to be collected for the previous month.

B. Such tax returns and remittances shall be made to the Commissioner of the Revenue on or before the twentieth day of each calendar month and shall cover the taxes required to be collected by the seller during the previous month; provided, however, that when the Commissioner of the Revenue finds any seller demonstrates a pattern of late filing of tax returns or payment of taxes, the Commissioner of the Revenue may require the filing of tax returns and remittance of taxes on a more frequent basis.

(Ord. No. 91-8, 6-1-91)

#### **§ 65-8. Penalties, Interest, and Collection Fees.**

A. If a seller required to collect taxes pursuant to this chapter fails or refuses to file the tax returns or to remit the taxes collected or due within the time and in the amount specified by this chapter, there shall be added to such tax due a penalty of ten percent (10%) of the tax due.

B. Interest shall accrue as prescribed in § 27-3.

C. The assessment or payment of penalties or interest pursuant to this section shall not be deemed a defense to any criminal prosecution for failure to comply with any of the requirements of this chapter.

(Ord. No. 91-8, 6-1-91; Ord. No. 92-12, 4-25-92; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99; Ord. No. 09-23, 10-24-09)

#### **§ 65-9. Assessment and Collection of Omitted Taxes.**

A. If the Commissioner of the Revenue finds that any seller has failed to collect the taxes required by this chapter or has failed to remit taxes collected to the County, the Commissioner of the Revenue shall immediately assess such taxes, including penalty as provided in § 65-8, against the seller as the Commissioner of the Revenue

determines are due pursuant to § 58.1-3903 of the Virginia Code, as amended, and certify such assessment to the Treasurer for collection.

B. Any seller who neglects, fails, or refuses to collect the taxes due under this chapter from the purchaser shall be liable for and be assessed with and pay the omitted taxes due.

C. Upon receipt of a certified omitted tax assessment due under this chapter, the Treasurer may undertake immediate collection action for the omitted taxes.

D. The assessment and payment of omitted taxes under this section shall not be deemed a defense to any criminal prosecution for failure to comply with any of the requirements of this chapter.  
(Ord. No. 91-8, 6-1-91)

#### **§ 65-10. Posting Bond or Letter of Credit.**

The Commissioner of the Revenue shall require any seller with a record of late filing of the tax returns or of late remittance of the taxes required by this chapter to annually post a bond with corporate surety payable to the County to insure the seller's faithful performance of the seller's duties to the County under this chapter. The bond, including the corporate surety thereon, shall be in an amount which is three (3) times the taxes collected or which should have been collected by the seller during the month previous to bonding, but in no case less than one thousand dollars (\$1,000.00). An irrevocable letter of credit from a bank approved by the County Manager with an expiration date not earlier than one (1) year from the date of issuance in the amount specified in this section and payable to the County may be accepted in lieu of the bond.  
(Ord. No. 91-8, 6-1-91)

#### **§ 65-11. Records.**

Every seller subject to the requirements of this chapter shall keep and preserve books of account and complete records of the sales taxable or claimed exempt and the taxes paid under this chapter for the current year and the three (3) years last past.  
(Ord. No. 91-8, 6-1-91)

#### **§ 65-12. Sale or Cessation of Business.**

When any seller required to collect and remit taxes to the County under this chapter ceases to operate or otherwise disposes of his business, any taxes collected by the seller are immediately due and payable to the County, and the seller shall file a final tax return within fifteen (15) days of ceasing business.  
(Ord. No. 91-8, 6-1-91)

#### **§ 65-13. Criminal Penalties.**

A. Any person who willfully files a false or fraudulent tax return with intent to defraud the County under the provisions of this chapter, or who willfully fails or refuses to file a tax return under the provisions of this chapter, shall be guilty of a Class 3 misdemeanor if the amount of the tax lawfully due in connection with the return is one thousand dollars (\$1,000.00) or less and of a Class 1 misdemeanor if the amount of the tax lawfully due in connection with the return is more than one thousand dollars (\$1,000.00).

B. Violations or failure to comply with any other provisions of this chapter shall be a Class 3 misdemeanor.

C. Each day any violation or failure to comply continues shall constitute a separate offense.  
(Ord. No. 91-8, 6-1-91)

#### **§ 65-14. Severability.**

It is hereby declared to be the intention of the County Board that the sections, paragraphs, clauses,

sentences, and parts of this chapter are severable, and if any phrase, clause, sentence, paragraph, or section of this chapter is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder of this chapter or the application of such provisions to other provisions or circumstances but shall be confined in its application to the section, clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment shall have been rendered and the person or circumstances involved.

Should any exemption from, lower rate of, or limitation on this tax be declared invalid, illegal, unconstitutional, or void for any reason, such declaration is not intended to affect the taxes imposed by this chapter, but the transactions found to be wrongfully exempted, limited, or subjected to lower tax rate shall become fully subject to this tax to the same extent as if such exemption, attempted exemption or limitation, or lower rate had never been included in this chapter.

(Ord. No. 91-8, 6-1-91)