

## COUNTY OF AUGUSTA, VA.

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**TIMOTHY K. FITZGERALD – COUNTY ADMINISTRATOR**

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### MEMO

**TO:** Timothy K. Fitzgerald, County Administrator

**FROM:** Jennifer Whetzel, Deputy County Administrator

**DATE:** August 17, 2021

**RE:** Cigarette Tax Public Hearing

Virginia Counties are authorized by the General Assembly to enact ordinances for cigarette tax. A public hearing will be held August 25, 2021 for comment on a new ordinance to impose a cigarette tax. The ad specified a 30 cent tax per pack, which is consistent with the Cities of Staunton and Waynesboro. The draft ordinance is included in the agenda packet for the Board's consideration.

Administration of a cigarette tax program will require resources. In May 2021, the Board approved participating in a study conducted by the Thomas Jefferson Planning District Commission for the establishment of a regional cigarette tax board. Inclusion in the Board will allow for options in implementing cigarette tax collections and enforcement. If the Board approves a cigarette tax, an ordinance and Memorandum of Understanding for inclusion in the regional tax board will be presented to the Board in September for consideration.

## ***NOTICE OF PUBLIC HEARING***

The Augusta County Board of Supervisors shall hold a public hearing on Wednesday, August 25, 2021 at 7:00 p.m., in the Board Meeting Room, Augusta County Government Center, Verona, Virginia, to consider an ordinance that would impose an excise tax on the sale of cigarettes equivalent to \$0.30 on each package containing twenty-five (25) or fewer cigarettes. Such ordinance would be added to Augusta County Code Section 22-62 and would be effective January 1, 2022.

Questions should be directed to the County Administrator's Office at 540-245-5600.

Augusta County Board of Supervisors  
By: Timothy Fitzgerald, County Administrator

## **Chapter 22**

### **CIGARETTE TAX**

#### **# Definitions.**

Except where the context clearly indicates a different meaning, the following words, terms, and phrases shall, for purposes of this Chapter, have the meanings ascribed to them in this Section:

“Agent” means every local dealer and other person who shall be authorized by the Commissioner of Revenue to purchase and affix stamps to packages of cigarettes under the provisions of this Chapter.

“Carton” means any container, regardless of material used in its construction in which packages of cigarettes are placed.

“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.

“County” means the County of Augusta, Virginia.

“Dealer” means and includes every manufacturer, manufacturer’s representative, self-wholesaler, wholesaler, retailer, cigarette machine operator, public warehouser, jobber, or other person who shall sell, receive, store, possess, distribute, or transport cigarettes within or into the County.

“Commissioner of Revenue” means the Commissioner of Revenue of Augusta County, Virginia and any of his or her duly authorized deputies and agents.

“Package” means and includes any container, regardless of the material used in its construction, 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.

“Person” means any individual, firm, unincorporated association, company, corporation, L.L.C., 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.

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

“Sale” or “Sell” means and includes every act or transaction, regardless of the method or means employed, including barter, exchange, the use of vending machines and 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 or seller as herein defined to any other person for consideration.

“Seller” means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the County for any purpose other than resale.

“Stamp” means a small gummed piece of paper or decal to be sold by the Commissioner of Revenue and to be affixed, manually or by machine, to every package of cigarettes sold at retail in the city, under the authorization of the commissioner of revenue.

“Treasurer” means the Treasurer of Augusta County and any of his or her duly authorized deputies, agents, or designees.

#### **# Amount Levied.**

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the County an excise tax on the sale of cigarettes equivalent to \$0.30 on each package containing twenty-five (25) or fewer cigarettes. The tax is to be paid by the seller, local dealer, or other agent by affixing a stamp or causing a stamp to be affixed to every package of cigarettes. The tax payable for each package of cigarettes sold within the County shall in no circumstance be paid more than once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

#### **# Methods of Payment.**

The tax imposed by this Chapter shall be evidenced by the use of a stamp purchased from the Commissioner of Revenue and affixed by the dealer or seller to every package of cigarettes to be sold within the County. The tax shall be paid at the time the stamps are purchased. Every dealer and every seller shall have the right to buy such stamps from the Commissioner of Revenue and to affix the same to packages of cigarettes as provided in this chapter. The purchase price of any tax stamps purchased pursuant to this Chapter shall be refunded, without penalties or additional fees, upon verification by the Commissioner of Revenue that the stamps have been returned to the Commissioner of Revenue.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

#### **# Preparation and Sale of Stamps Generally – Discounts.**

For the purpose of making stamps available for use, the Commissioner of Revenue shall sell stamps of such denomination and in such quantities as may be necessary for the payment of the taxes imposed by this Chapter. In the sale of such stamps, the Commissioner of Revenue

shall allow a discount of five percent (5%), or 1.5 cents per pack, of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

**# Duties of Dealers and Sellers.**

(A) Every dealer or other person liable for the tax in cigarettes is hereby required, and it shall be his or her duty, to purchase such stamps at the office of the Commissioner of Revenue as shall be necessary to pay the tax levied and imposed by this Chapter and to affix or cause to be affixed the proper number of stamps of the prescribed monetary value to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller.

(B) Every seller is hereby required, and it shall be his or her duty, to examine each package of cigarettes prior to exposing the same for sale for the purpose of ascertaining whether such package has the proper stamps affixed thereto as required by this Chapter. If upon such examination unstamped or improperly stamped packages of cigarettes are discovered, the seller shall either:

- (1) Purchase and affix to such packages of cigarettes the proper stamps covering the tax imposed by this Chapter prior to exposing the cigarettes for sale; or
- (2) Immediately notify the dealer who provided the cigarettes and refrain from exposing the same for sale until the tax is paid and packages are properly stamped or the unstamped or improperly stamped packages of cigarettes are replaced with properly stamped packages. Upon such notification, the dealer shall forthwith either affix to the unstamped or improperly stamped packages the proper number of stamps covering the amount of tax due or shall replace such packages with others on which stamps have been properly fixed.

(C) In the event any seller elects to purchase and affix stamps before offering cigarettes for sale, the dealer delivering and furnishing such cigarettes shall not be required to purchase and affix stamps to such cigarettes provided that any such dealer shall, on the day following the day of such delivery, file with the Commissioner of Revenue a copy of the delivery memorandum showing the name and address of such seller and the quantity and type of cigarettes so delivered and furnished.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

**# Monthly Reports and Recordkeeping – Inspection.**

(A) It shall be the duty of each dealer to report monthly to the Commissioner of Revenue the following information:

(1) The quantity of stamped cigarettes sold or delivered during the period requested by the Commissioner of Revenue to:

- (a) Each dealer;
- (b) Each seller; and
- (c) Each separate person or place of business within the County;

(2) The quantity of stamps on hand, both affixed and unaffixed, on the first day of the period of request and the quantity of stamps or stamped cigarettes received during the period; and

(3) Such further information as the Commissioner of Revenue 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 seller.

(B) Upon request by the Commissioner of Revenue, any seller shall provide the Commissioner of Revenue, in writing, with the name and address of the dealer who provides the seller with cigarettes.

(C) It shall be the duty of each dealer or other person liable for the tax imposed by this Chapter to maintain and keep for a period of three years, not including the current calendar year, records of the quantity of all cigarettes received, sold, stored, possessed, transferred, handled, or delivered by such dealer or person in any manner whatsoever, whether the same were stamped or unstamped, and to make all such records available for audit, inspection, and examination by the Commissioner at all reasonable times and upon demand.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

#### **# Assessment of Unpaid Taxes.**

(A) When, upon examination and audit of any invoices, records, books, canceled checks, or other memoranda touching on the purchase, sale, receipt, storage, 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 Revenue of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased, or possessed by him, the Commissioner of Revenue shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid.

(B) The dealer or other person liable for the tax shall be notified by certified mail or hand delivery 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.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

# **Display of Stamps - Seizure.**

(A) Stamps shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser and shall be affixed to each package of cigarettes in such a manner that their removal will require continued application of water or steam.

(B) Any seller found to possess, prior to being offered for sale, more than six (6) cartons of cigarettes without the tax paid stamp affixed, who is not in the process of affixing such stamps thereto, shall be presumed to be in possession of untaxed cigarettes in violation of this Chapter. If such person has received the cigarettes within the preceding forty-eight (48) hours and has not offered them for sale, such presumption shall not apply.

(C) Any vending machine located within the County containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this chapter. If a vending machine does not allow for visual inspection of the stamp, the Commissioner of Revenue is hereby authorized to direct the owner to open the machine in order to determine whether the cigarettes contained therein are stamped.

(D) 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 of Revenue with the aid of the Augusta County Sheriff's Office. 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.

(E) In lieu of seizure, the Commissioner of Revenue 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 any 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.

(F) All cigarette vending machines shall be plainly marked with the name, address, and telephone number of the owner of said machine.

(G) Any seized and confiscated cigarettes, vending machines, or other property used in the furtherance of any illegal evasion of the tax prescribed in this Chapter may be disposed of by sale or other method deemed appropriate by the Commissioner of Revenue thirty (30) days after notice is given to the person from whom the items were seized and to any other known holder of a property interest in the property. Such notice shall state that the owner or holder of a property interest may challenge the proposed sale and forfeiture by written appeal to the Commissioner of Revenue, or his or her designee, at least five (5) days prior to the date of the proposed sale. The appellant shall have the right to personally appear before the Commissioner of Revenue, or his or her designee, and to present any relevant evidence or witnesses, to question any witness for the County, and to assert any available affirmative defense. The Commissioner of Revenue, or his or her designee, shall render a written decision on the appeal within ten (10) working days. If a timely appeal is filed, no sale and forfeiture shall occur unless and until the Commissioner of Revenue, or his or her designee, renders a decision rejecting the appeal.

(H) No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax, penalties, or interest assessed.

(I) An inventory of the property seized pursuant to a violation of this section shall be prepared, and a copy shall be provided to the owner of the seized property as soon as practicable.

(J) When any property is seized for the purposes of forfeiture and an information naming that property has not been filed, neither the agency seizing the property nor any other law enforcement agency may request, require, or in any manner induce any person who asserts ownership, lawful possession, or any lawful right to the property to waive his interest in or rights to the property until an information has been filed.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

#### **# Refund for Unused or Damaged Stamps.**

(A) Should any person, after acquiring from the Commissioner of Revenue any stamps provided for in this Chapter, cease to be engaged in a business necessitating the use of the stamps or should the stamps be damaged to the extent that they are unusable, such person shall be entitled to a refund of the denominational or face amount of any such stamps, less any discount, upon presenting the stamps to the Commissioner of Revenue and furnishing an affidavit showing to the Commissioner's satisfaction that the stamps were acquired by such person but not used. Such person seeking a refund shall state in his or her affidavit the reason for requesting the refund.

(B) Any and all refunds for unused or damaged stamps provided for under this section may be made on vouchers approved by the Commissioner of Revenue. Such refunds shall be charged against the sums collected for the sale of said stamps. Payment to the person requesting the refund shall be made within thirty (30) days of the request, or such additional time necessary to comply with applicable law.

(C) Notwithstanding subsections (A) and (B) of this section above, no refund shall be paid to any person for stamps purchased that have been cancelled by the Commissioner of Revenue pursuant to this Chapter.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

#### **# Rules and Regulations.**

The Commissioner of Revenue is hereby authorized and empowered to jointly prescribe, adopt, promulgate, and enforce rules and regulations relating to the methods and means of cancellation of the stamps provided for in this Chapter and to any and all other matters pertaining to the administration and enforcement of the provisions of this Chapter. The Commissioner of Revenue is further authorized and empowered to examine the books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold,



offered for sale, or displayed for sale by a seller. The Commissioner of Revenue is authorized to delegate any of the powers and duties set out in this Chapter to one or more deputies or assistants, except as may be prohibited by law.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

**# Violations.**

- (A) Any person violating any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax, interest or penalty imposed by this chapter.
- (B) Any person who fails to pay any cigarette tax at the time it is due shall pay a late payment penalty in the amount of ten (10) percent of the unpaid tax per month.
- (C) Any person who fails to pay any cigarette tax at the time it is due shall pay interest on the tax found to be overdue and unpaid at the rate of three quarters of one percent per month.
- (D) In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Chapter shall be required to pay a penalty in the amount of fifty (50) percent of any tax found to be overdue and unpaid.
- (E) Each day's violation of, or noncompliance with, any of the provisions of this Chapter shall be and constitute a separate offense up to and until the date upon which all amounts owed are paid.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

**# Violations of chapter prohibited – Acts enumerated.**

It shall be unlawful and a violation of this Chapter for any person:

- (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 for any dealer or seller, with intent to violate any provision of this chapter, 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 the commissioner of revenue may issue under this chapter;
- (B) To falsely or fraudulently make, forge, alter or counterfeit any stamp, invoice or reports, 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;

- (C) To sell any cigarettes upon which the tax imposed by this chapter has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes;
- (D) To reuse or refill with cigarettes any package from which the cigarettes have been removed, for which the tax has been paid;
- (E) To remove from any package any stamp with intent to use or cause the same to be used after the 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 has theretofore been used for evidence of the payment of any tax prescribed in this Chapter, or, except as to the Commissioner of Revenue, to sell or offer to sell any stamp provided for herein;
- (F) To possess, store, use, authorize or approve the possession, storage or use for sale or resale of any cigarettes in quantities of more than six (6) cartons upon which the stamp has not been affixed; or
- (G) To transport, authorize or approve the transportation of any cigarettes, in quantities of more than six (6) cartons into or within the County upon which the 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 document 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 cigarettes 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 the 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 County 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.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

# **Interest and Penalty.**

If any person shall sell cigarettes within the County without complying with this Chapter, such person shall be liable to the County for the amount of any tax that should have been collected thereon, and the Treasurer shall add to such tax a penalty in the amount of ten percent or a minimum of \$2.00, and interest shall be payable on such overdue tax in the amount of ten percent (10%) per annum from the date of such unlawful sale.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

# **Severability.**

If any section, clause, 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.

# **Visibility of Stamps or Meter Markings.**

Stamps or the printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

# **Altering Design of Stamps.**

The Commissioner of Revenue may from time to time and as often as he or she may deem advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.

# **Disposition of Revenue.**

Revenue derived from the tax imposed in this Chapter shall be deposited by the Treasurer to the credit of the general fund of the County for utilization for such legal purposes as the Board of Supervisors of Augusta County may from time to time determine.

State Law Reference: Virginia Code §§ 58.1-3830; 58.1-3832.