

ORDINANCE NO. 2000-2
to
Amend and Re-enact
the
MEALS TAX ORDINANCE
OF
WYTHE COUNTY, VIRGINIA

ARTICLE I - Title, Authority and Jurisdiction

- 1.1 **Title.** This Ordinance shall be known as the "Meals Tax Ordinance of Wythe County, Virginia", Ordinance No. 2000-2.
- 1.2 **Authority.** This Ordinance is adopted pursuant to Chapter 38, Article 7.1, Sections 58.1-3833, Code of Virginia, 1950, as amended.
- 1.3 **Jurisdiction.** The provisions of this Ordinance shall apply to all land within Wythe County, Virginia, except where a town has enacted a similar ordinance.

ARTICLE II - Purpose

- 2.1 This Ordinance is enacted to impose a tax on prepared food and drink held out or offered for sale which when sold is ready for immediate consumption, and to enlarge the County's tax base.

ARTICLE III - Rules

- 3.1 In the construction of this Ordinance, the rules contained in this section shall apply, except where the context clearly indicates otherwise.
- 3.2 Words in the present tense shall include the future, and words in the singular shall also include the plural.
- 3.3 The word "shall" is mandatory and not permissive.
- 3.4 The word "may" is permissive.
- 3.5 The word "approve" shall be considered to be followed by the words "or disapprove."
- 3.6 The masculine gender includes both the feminine and neuter.

3.7 Any reference to this Ordinance includes all ordinances amending and supplementing the same.

ARTICLE IV - Definitions

4.1 For the purpose of this Ordinance, certain words or terms used herein shall be defined as follows:

4.1-1 **Administrator.** The official designated by the governing body to serve as its agent to administer the Ordinance.

4.1-2 **Beverage.** As used herein, the term beverage shall mean alcoholic beverage as defined in Virginia Code §4.1-100 and nonalcoholic beverages served as a part of a meal and purchased in and from a food establishment.

4.1-3 **Cater.** The furnishing of food, beverages, or both on the premises of another, for compensation.

4.1-4 **Collector.** The Commissioner of Revenue of Wythe County, or any of his or her duly authorized agents.

4.1-5 **Food.** All food purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

4.1-6 **Food establishment.** Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including but not limited to, lunch rooms, short-order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private corporations, dining accommodations of public and private schools and colleges, mobile points of food service, such as push-cart operations, hot dog stands and similar operations, and grocery stores and convenience stores selling prepared food ready for human consumption at a delicatessen counter.

4.1-7 **Meal.** Meal shall mean any prepared food and beverage as defined herein offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and which is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

- 4.1-8 **Prepared.** The application of labor to food to make it ready or available for immediate consumption.
- 4.1-9 **Purchaser.** Any person who purchases a meal.
- 4.1-10 **Restaurant.** A food establishment as defined in Virginia Code Section 35.1-1.
- 4.1-11 **Seller.** Any person or caterer who sells meals.

ARTICLE V - Tax

- 5.1 In addition to all other taxes and fees of any kind now imposed or hereafter imposed by law, there is hereby imposed and levied by the County of Wythe on each person at the rate of Four Percent (4%) of the gross amount paid for food and beverages purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

ARTICLE VI - Collection of Tax by Seller

- 6.1 Every person receiving any payment for food and beverages with respect to which a tax is imposed and levied hereunder shall collect and remit the amount of tax imposed by this Ordinance from the person on whom the same is levied or from the person paying for such food and beverages at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.
- 6.2 All amounts collected as taxes under this Ordinance shall be deemed to be held in trust by the collector, until remitted to the County of Wythe as required by this Ordinance.

ARTICLE VII - Gratuities and Service Charges

- 7.1 When a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this Ordinance, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided that in the latter case, the full amount of the gratuity is turned over to the employee by the seller.
- 7.2 Except as provided in Section 7.1, an amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and

required to be paid by the purchaser as a part of the selling price of the food and beverages is subject to the tax imposed by this Ordinance.

ARTICLE VIII - Reports and Remittance by Seller

- 8.1 It shall be the duty of every person required by this Ordinance to pay to the County of Wythe the taxes imposed by this Ordinance to make a report thereof, setting forth such information as the Commissioner of Revenue may prescribe and require, including all purchases taxable under this Ordinance, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Ordinance.

- 8.2 Every seller shall make the required report to the Commissioner of Revenue for each calendar month, on forms as prescribed by the Commissioner of Revenue, and shall be signed by the seller. Monthly reports shall be delivered to the Commissioner of Revenue on or before the twentieth (20th) day of the calendar month following the month being reported.

- 8.3 Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer of the County of Wythe.

ARTICLE IX - Discount

- 9.1 For the purpose of compensating sellers for the collection of the tax imposed by this Ordinance, every seller shall be allowed Three Percent (3%) of the amount of tax due and accounted for in the form of a deduction on his or her monthly report; provided, the amount due is not delinquent at the time of payment.

ARTICLE X - Violations and Penalties

- 10.1 Any person willfully failing or refusing to file a return as required under this Ordinance shall upon conviction thereof, be guilty of a Class 1 misdemeanor, except that any person failing to file such a return shall be guilty of a Class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is less than \$1,000.00. Any person violating or failing to comply with any other provision of this Ordinance shall be guilty of a Class 1 misdemeanor.

- 10.2 Except as provided in Section 9.1 above, any corporate or partnership officer, as defined in Virginia Code Section 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this Ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade

such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a Class 1 misdemeanor.

10.3 Each violation of or failure to comply with this Ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this Ordinance.

10.4 If any person shall fail to pay the tax required by this Ordinance within the time and in the amount required, there shall be added by the Commissioner of Revenue to the amount of tax due, a penalty in the amount of Ten Percent (10%) of the tax, plus interest thereon at the judgment rate of interest, which shall be computed upon the tax and penalty from the date such were due and payable.

ARTICLE XI - Failure to Collect Tax

11.1 If any person whose duty it is to do so, shall fail or refuse to collect the tax imposed by this Ordinance or to make timely report and remittance thereof, the Commissioner of Revenue shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. The amount of such estimate may then be determined and assessed against the person, together with penalty and interest as provided herein, and the Commissioner of Revenue shall notify the person by certified or registered mail sent to his or her last known address of the amount of the tax, penalty and interest. The entire amount shall be due and payable Ten (10) days after the date of mailing of such notice.

ARTICLE XII - Preservation of Records

12.1 Every person liable for the collection and remittance of the tax imposed by this Ordinance shall keep and preserve the records required for a period of Five (5) years.

12.2 The Commissioner of Revenue or his or her duly authorized agent shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this Ordinance, and to make transcripts of all or any part thereof.

12.3 If any person liable for the collection and remittance of the tax imposed by this Ordinance shall maintain or store his or her records at a location other than within Wythe County, Virginia, he or she shall, upon demand by the Commissioner of Revenue and within Ten (10) days thereafter, make the same available at an agreed location within Wythe County, Virginia, and respond to proper inquiries from the Commissioner of Revenue.

ARTICLE XIII - Duty of Persons Going out of Business

- 13.1 Whenever any person required to collect and remit to the County of Wythe any tax imposed by this Ordinance shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable, and such person shall make a report and remittance thereof to the Commissioner of Revenue by the first day of the month following the month in which such business was terminated or disposition made thereof.

ARTICLE XIV - Prohibited Advertising

- 14.1 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 by this Ordinance will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve the purchaser of the payment of all or any part of the tax.

ARTICLE XV - Exceptions

- 15.1 The tax imposed by this Ordinance shall not be levied on the following items when served exclusively for off-premises consumption:
 - 15.1-1 Factory pre-packaged candy, gum, nuts and other items of essentially the same nature.
 - 15.1-2 Factory pre-packaged donuts, ice cream, crackers, nabs, chips, cookies and items essentially of the same nature.
 - 15.1-3 Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on-premises consumption (e.g., a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
 - 15.1-4 Alcoholic and non-alcoholic beverages sold in factory sealed containers.
 - 15.1-5 Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp program, or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants and Children.
 - 15.1-6 Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 U.S.C. §2012, as amended, except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax

levied hereunder, the following items, whether or not purchased for immediate consumption, are excluded from the definition of food in the Federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non factory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs 15.3-3, 15.3-4, 15.3-5 hereinbelow.

- 15.2 A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.
- 15.3 The tax imposed hereunder shall not be levied on the following purchases of food and beverages:
 - 15.3-1 Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
 - 15.3-2 Food and beverages sold by day-care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
 - 15.3-3 Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
 - 15.3-4 Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
 - 15.3-5 Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.
 - 15.3-6 Food and beverages sold on an occasional basis by a non-profit educational, charitable or benevolent organization, church or religious body as a fund raising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.
 - 15.3-7 Food and beverages sold through vending machines.

ARTICLE XVI - Enforcement

- 16.1 It shall be the duty of the Commissioner of Revenue to ascertain the name of every seller in the County of Wythe who is liable for the collection of the tax imposed by this Ordinance, or who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this Ordinance. The Commissioner of Revenue may have a summons issued for such person, and the summons may be served by the Sheriff in the manner provided by law, seeking a conviction in the General District Court of Wythe County, or demanding a civil remedy, including an injunction, against such person.
- 16.2 In the event a purchaser of a meal refuses to pay the tax imposed by this Ordinance, the seller may call upon the Sheriff for assistance, who may, when probable cause exists, issue a summons to the purchaser for such violation returnable to the General District Court of Wythe County.
- 16.3 The Treasurer of Wythe County shall receive all receipts from the tax imposed by this Ordinance and shall cause the same to be deposited in the general fund of the County.

ARTICLE XVII - Administration

- 17.1 The Commissioner of Revenue and Treasurer may issue regulations for the administration and enforcement of this Ordinance.

ARTICLE XVIII - Legal Status Provisions

- 18.1 Should any article, section, subsection or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this Ordinance as a whole or any part thereof, other than the part so declared to be invalid or unconstitutional.
- 18.2 Certified copies of this Ordinance and all amendments thereto shall be filed in the offices of the Planning Commission, the County Administrator and the Clerk of the Circuit Court of Wythe County, Virginia.
- 18.3 All ordinances or portions thereof in conflict with this Ordinance, specifically including the provisions of the former Meals Tax Ordinance, No. 90-4, are hereby repealed to the extent of such conflict.

18.4 **Effective date.** This Ordinance was duly considered following the required public hearing held on August 8, 2000 and was adopted by the Board of Supervisors of Wythe County, Virginia, at its regular meeting held on August 8, 2000, the members voting as follows:

<u>NAME</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSENT</u>
Sue Crigger	X		
Anne B. Crockett-Stark	X		
Charles S. Dix	X		
Howard R. Manley	X		
Danny C. McDaniel	X		
R. Daniel Porter	X		
Wythe B. Sharitz	X		

This Ordinance shall become effective on and after 12:01 a.m. on August 9, 2000.

I certify that this is a true and correct copy taken from the August 8, 2000 minutes of the Wythe County Board of Supervisors meeting.

R. Cellell Dalton, Clerk

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