

BOARD OF SUPERVISORS

DARREL W. JETER
MARSHALL D. TIPTON
JEREMY P. HERRON
MICHAEL K. BRICKEY
DANNY P. MANN
SELMA G. HOOD
STEFANIE A. CRUBY

We're a Natural



**SCOTT COUNTY
BOARD OF SUPERVISORS**

COUNTY ADMINISTRATOR
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SCOTT

VIRGINIA

At a meeting of the Scott County Board of Supervisors begun and held in the Supervisors' meeting room located at the Community Services Building in Gate City, Virginia on Wednesday the 5th day of January, 2022 at 8:30 a.m.

PRESENT: Darrel W. Jeter
Marshall D. Tipton
Jeremy P. Herron
Danny P. Mann – Chairman
Michael K. Brickey
Selma G. Hood
Stefanie A. Cruby – Vice-Chairman

ABSENT: None.

On a motion by Darrel W. Jeter, duly seconded by Jeremy P. Herron, this Board hereby adopts the following:

Ordinance No: 2022 - 02

**ORDINANCE TO LEVY A
FOOD AND BEVERAGE TAX IN SCOTT COUNTY, VIRGINIA**

Section 1. Definitions.

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

Beverage. The term “beverage” as set forth herein shall mean any alcoholic beverages as defined in the Code of Virginia § 4.1-100, as amended, and nonalcoholic beverages, served as part of a meal.

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

Commissioner. The Commissioner of the Revenue of the county and any of his/her duly authorized deputies, assistants, employees or agents.

Food. Any and all edible refreshments or nourishment, liquid or otherwise, including beverages as herein defined, purchased in or from a restaurant or from a caterer, except snack foods.

Meal. Meal shall mean any food as herein defined, other than a beverage, sold for consumption on the 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.

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

Purchaser. Any person who purchases food in or from a restaurant or from a caterer.

Restaurant. (1) Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including 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 school and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under the Code of Virginia § 53.1-68, as amended.

(2) Any place or operation that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public, including operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service.

Excluded from the definition is any place manufacturing packaged or canned foods that are distributed to grocery stores or other similar retailers for sale to the public.

Seller. Any person who sells food in or from a restaurant or as a caterer.

Treasurer. The Treasurer of the county and any of his/her duly authorized deputies, assistants, employees or agents.

Section 2. Levy of tax; amount.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby levied and imposed on the purchaser of all food served, sold or delivered for human consumption in all portions of the county, except where a town has enacted a similar ordinance, in or from a restaurant, whether prepared in such restaurant or not, or prepared by a caterer. The rate of this tax shall be six percent (6%) on the amount paid for such food. In the computation of this tax, any fraction of one-half cent (\$0.005) or more shall be treated as one cent (\$0.01).

Section 3. Exemptions.

The following purchases of food shall not be subject to the tax under this ordinance:

- (1) Food and beverages sold through vending machines.
- (2) Food sold by boardinghouses that do not accommodate transients.
- (3) Food sold by cafeterias operated by industrial plants for employees only.
- (4) Food sold by restaurants to their employees as part of their compensation when no charge is made to the employee.

- (5) Food sold by volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first one hundred thousand dollars (\$100,000.00) of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes.
- (6) Food sold by churches that serve meals for their members as a regular part of their religious observances.
- (7) Food sold by public or private elementary or secondary schools or institutions of higher education to their students or employees.
- (8) Food sold by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facility to patients or residents thereof.
- (9) Food sold by day care centers.
- (10) Food sold by homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics.
- (11) Food sold by age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.
- (12) Food sold by sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed two thousand five hundred dollars (\$2,500.00). For this exemption, the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax.
- (13) Food when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States.
- (14) Food provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.
- (15) Food provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.
- (16) A grocery store or convenience store shall not be subject to the tax except for any portion of the grocery store or convenience store designated as a delicatessen counter selling prepared foods ready for human consumption.
- (17) Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: 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 exemption does not include hot food or hot food products ready for immediate consumption.

Section 4. Tips and service charges.

No tax shall be levied upon that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price or that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed twenty percent (20%) of the sales price.

Section 5. Payment and collection of tax.

Every seller of food with respect to which a tax is levied under this ordinance shall collect the amount of tax imposed under this ordinance from the purchaser on whom the same is levied at the time payment for such food becomes due and payable, whether payment is to be made in cash or on credit by means of a credit card or otherwise. The amount of tax owed by the purchaser shall be added to the cost of the food by the seller who shall pay the taxes collected to the county as provided in this ordinance. Taxes collected by the seller shall be held in trust by the seller for the county until remitted to the county.

Section 6. Deduction for seller.

For the purpose of compensating sellers for the collection of the tax imposed by this ordinance, every seller shall be allowed five percent (5%) of the amount of the tax due and accounted for in the form of a deduction on his/her monthly return; provided, the full amount shall be due if any part of the payment is delinquent at the time of payment.

Section 7. Reports and remittances generally.

Every seller of food with respect to which a tax is levied under this ordinance shall make out a report, upon such forms and setting forth such information as the Commissioner may prescribe and require, showing the amount of food charges collected and the tax required to be collected, and shall sign and deliver such report to the Commissioner with a remittance of such tax made payable to the Treasurer of the county. It shall be presumed that all food served, sold, or delivered in the county in or from a restaurant is taxable under this ordinance and the burden shall be upon the seller of food to establish by records what food is not taxable. Such reports and remittance shall be made on or before the twentieth (20th) day of each month, covering the amount of tax collected during the preceding month.

Section 8. Preservation of records.

It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by this ordinance to keep and preserve for a period of three (3) years records showing gross sales of all food and beverages, the amount charged the purchase for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance. The Commissioner shall have the power to examine such records at reasonable times and without unreasonable interference with the business of the seller for the purpose of administering and enforcing the provisions of this ordinance and to make copies of all or any parts thereof.

Section 9. Duty of seller when going out of business.

Whenever any seller required to collect and pay to the county a tax under this ordinance shall cease to operate or otherwise dispose of his/her business, any tax payable under this ordinance shall become immediately due and payable and such person shall immediately make a return and pay the tax due.

Section 10. 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 the payment of all or any part of the tax.

Section 11. Enforcement; duty of Commissioner.

It shall be the duty of the Commissioner to ascertain the name of every seller liable for the collection of the tax imposed by this ordinance, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this ordinance. The Commissioner shall have all of the enforcement powers as authorized by Article 1, Chapter 31 of Title 58.1 of the Code of Virginia, as amended, for purposes of this ordinance.

Section 12. 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 ordinance and to make, within the time provided in this ordinance, the reports and remittances mentioned in this ordinance, the Commissioner shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the Commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any seller who has failed or refused to collect such tax and to make such report and remittance, he/she shall proceed to determine and assess against such seller the tax and penalties provided for by this ordinance and shall notify such seller, by registered mail sent to his/her last known place of address, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date such notice is sent.

Section 13. Collection.

The Treasurer shall have the power and the duty of collection the taxes imposed and levied hereunder and shall cause the same to be paid into the general treasury for the county.

Section 14. Penalty for late remittance or false return.

If any seller whose duty it is to do so shall fail or refuse to file any return required by this ordinance or to remit the tax required to be collected and paid under this ordinance within the time and in the amount specified in this ordinance, there shall be added to such tax by the Commissioner a penalty of:

(1) For failure to remit the tax when due: ten percent (10%) of the total amount of the tax owed if the failure is not for more than thirty (30) days, with an additional penalty of five percent (5%) of the total amount of tax owed for each additional thirty (30) or fraction thereof during which the failure continues, such penalty not to exceed twenty-five percent (25%) of the tax owed, provided, however, the minimum penalty shall be ten dollars (\$10.00).

(2) For failure to file a report when due: ten percent (10%) of the tax assessable on such return or ten dollars (\$10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable.

Section 15. Violations.

Any person required to collect, account for and pay over tax under this article, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully evades or attempts to evade any such tax or payment thereof, shall be guilty of a Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars (\$1,000.00); and a Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less.

Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes or penalties provided for in this ordinance. Any agreement by any person to pay the taxes or penalties provided for in this ordinance by a series of installment payments shall not relieve any person of criminal liability for violation of this ordinance until the full amount of taxes and penalties agreed to be paid by such person is received by the Treasurer. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense.

Section 16. Effective date.

This ordinance shall be in force and effect in Scott County on and after its date of adoption by the Board of Supervisors.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie A. Cruby.

Voting nay: None.

Attest: Shida R. Stame
CLERK

C: Sally Kegley
Bo Taylor
Mitzi Owens