

ADOPTED

APR 17 1989

ORDINANCE NO. 107A-7

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 18, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY ADDING ARTICLE VII. TAX ON PREPARED FOOD AND BEVERAGES, SECTION 18-34. DEFINITIONS, SECTION 18-35. LEVY OF TAX; AMOUNT, SECTION 18-36. PAYMENT AND COLLECTION OF TAX, SECTION 18-37. REPORTS AND REMITTANCES GENERALLY, SECTION 18-38. PRESERVATION OF RECORDS, SECTION 18-39. ADVERTISING PAYMENT OR ABSORPTION OF TAX PROHIBITED, SECTION 18-40. TIPS AND SERVICE CHARGES, SECTION 18-41. DUTY OF SELLER WHEN GOING OUT OF BUSINESS, SECTION 18-42. ENFORCEMENT; DUTY OF COMMISSIONER OF THE REVENUE, SECTION 18-43. PROCEDURE UPON FAILURE TO COLLECT, REPORT, ETC., SECTION 18-44. DUTY OF TREASURER, SECTION 18-45. PENALTY OF LATE REMITTANCE OR FALSE RETURN, SECTION 18-46. VIOLATIONS OF ARTICLE, SECTION 18-47. EXEMPTIONS, AND SECTION 18-48. SEVERABILITY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 18, Taxation, is hereby amended and reordained by adding Section 18-34. Definitions, Section 18-35. Levy of tax; amount, Section 18-36. Payment and collection of tax, Section 18-37. Reports and remittances generally, Section 18-38. Preservation of records, Section 18-39. Advertising payment or absorption of tax prohibited, Section 18-40. Tips and service charges, Section 18-41. Duty of seller when going out of business, Section 18-42. Enforcement; duty of Commissioner of the Revenue, Section 18-43. Procedure upon failure to collect, report, etc., Section 18-44. Duty of treasurer, Section 18-45. Penalty of late remittance or false return, Section 18-46. Violations of article, Section 18-47. Exemptions, and Section 18-48. Severability.

Chapter 18. Taxation

Article VII. Tax on prepared food and beverages.

Section 18-34. Definitions.

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

- (a) Caterer: A person who furnishes food on the premises of another, for compensation.
- (b) Commissioner of the Revenue: The commissioner of the revenue of the county and any of his duly authorized deputies, assistants, employees or agents.
- (c) Food: Any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic beverages, purchased in or from a restaurant or from a caterer, except snack foods.
- (d) Person: Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.
- (e) Purchaser: Any person who purchases food in or from a restaurant or from a caterer.
- (f) Restaurant: Any place in or from which food is sold in the county, including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, cafe, snack bar, lunch counter, delicatessen, confectionery, bakery, eating house, eatery, drugstore, vending machine, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar or lounge. The word "restaurant" shall not mean a grocery store or supermarket except for any space or section therein designated as a delicatessen or for the sale of prepared sandwiches, delicatessen food or food prepared in a delicatessen.
- (g) Seller: Any person who sells food in or from a restaurant or as a caterer.
- (h) Snack food: Unopened bottles or cans of carbonated soft drinks; chewing gum; candy; popcorn; peanuts and other nuts; unopened packages of cookies, donuts, crackers and potato chips; and other items of essentially the same nature and consumed for essentially the same purpose.
- (i) Treasurer: The treasurer of the county and any of his duly authorized deputies, assistants, employees or agents.

Section 18-35. 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 in the county in or from a restaurant, whether prepared in such restaurant or not, and consumed on the premises or prepared by a caterer. The rate of this tax shall be four percent of the amount paid for such food. In the computation of this tax, any fraction of one-half cent or more shall be treated as one cent.

Section 18-36. Payment and collection of tax.

Every seller of food with respect to which a tax is levied under this article shall collect the amount of tax imposed under this article 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 article. Taxes collected by the seller shall be held in trust by the seller until remitted to the county.

Section 18-37. Reports and remittances generally.

Every seller of food with respect to which a tax is levied under this article shall make out a report, upon such forms and setting forth such information as the commissioner of the revenue 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 treasurer with a remittance of such tax. It shall be presumed that all food served, sold, or delivered in the county in or from a restaurant which provides seating facilities for its customers are consumed on premises and the burden shall be upon the seller of food to establish by records what food is sold for off-premises consumption. Such reports and remittance shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

Section 18-38. Preservation of records.

It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three years records showing gross sales of all food and beverages, the amount charged the purchaser of each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The commissioner of the revenue 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 article and to make copies of all or any parts thereon.

Section 18-39. 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 18-40. Tips and service charges.

Where a purchaser provides a tip for an employee or employees of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided, in the latter case, the full amount of the tip is turned over to the employee by the seller.

An amount or percent, whether designated as a tip or a service charge, that is added to the price of the meal by the seller, and required to be paid by the purchaser, is a part of the selling price of the meal and is subject to the tax imposed by this article.

Section 18-41. Duty of seller when going out of business.

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

Section 18-42. Enforcement; duty of Commissioner of the Revenue.

The commissioner of the revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the commissioner of the revenue to ascertain the name of every seller liable for the collection of the tax imposed by this article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The commissioner of the revenue shall have all of the enforcement powers as authorized by Article 1, Chapter 31 of Title 58.1 of the Code of Virginia (1950), as amended, for purposes of this article.

Section 18-43. 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 article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the commissioner of the revenue shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of

the tax due. As soon as the commissioner of the revenue 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 shall proceed to determine and assess against such seller the tax and penalties provided for by this article and shall notify such seller, by registered mail sent to his last known place of address, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten days from the date such notice is sent.

Section 18-44. Duty of Treasurer.

The treasurer shall have the power and the duty of collecting the taxes imposed and levied hereunder and shall cause the same to be paid into the general treasury for the county:

Section 18-45. Penalty of late remittance or false return.

If any seller whose duty it is to do so shall fail or refuse to file any report required by this article or to remit to the treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the treasurer a penalty in the amount of ten percent thereof and interest thereon at the rate of eight percent per annum, which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

Section 18-46. Violations of article.

Any person violating, failing, refusing or neglecting to comply with any provision of this article shall be guilty of a Class 3 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this article. Any agreement by any person to pay the taxes provided for in this article by a series of installment payments shall not relieve any person of criminal liability for violation of this article until the full amount of taxes 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 18-47. Exemptions.

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

- (a) Food furnished by restaurants to employees as part of their compensation when no charge is made to the employee.

- (b) Food sold by nonprofit day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
- (c) Food for use or consumption by the employees, agents or guests of the Commonwealth, any political subdivision of the Commonwealth or the United States.
- (d) Food furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped or other extended care facility to patients or residents thereof.
- (e) Food furnished by a nonprofit charitable organization to elderly, infirm, handicapped or needy persons in their homes or at central locations.
- (f) Food sold by a nonprofit educational, charitable or benevolent organization on an occasional basis as a fund-raising activity or food sold by a church or religious body on an occasional basis.
- (Q) Any other sale of food which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or administrative rules and regulation issued pursuant thereto.

Section 18-48. Severability.

If any provision of this article, or any application of such provision to any person or under any circumstances, shall be invalid, the remainder of this article, or the application of such provisions to persons or under circumstances other than those to which it shall have been held invalid, shall not be affected thereby.

That this ordinance shall be in full force and effect on and after June 1, 1989.

0235U

Thomas D. Mahone

Thomas D. Mahone, Chairman
Board of Supervisors

ATTEST:


David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	NAY
EDWARDS	NAY
DEPUE	AYE
MAHONE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 17th day of April, 1989.

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