

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2021:

Present

Vote

W. Chad Green, Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
G. Stephen Roane, Jr.
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO ADD ARTICLE XI TO CHAPTER 21, LEVYING A TAX ON CIGARETTES SOLD WITHIN THE COUNTY AT THE RATE OF \$0.02 PER CIGARETTE, OR \$0.40 PER PACKAGE OF TWENTY CIGARETTES, REQUIRING STAMPS TO BE AFFIXED PRIOR TO SALE AS EVIDENCE OF THE PAYMENT OF TAXES, AND PROVIDING FOR THE SEIZURE AND FORFEITURE OF CIGARETTES NOT PROPERLY TAXED OR VENDING MACHINES AND OTHER PROPERTY USED IN UNLAWFUL SALES

**Chapter 21 TAXATION – ARTICLE XI
CIGARETTE TAX**

Sec. 21-180 Definitions.

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

Agent see registered stamping agent.

Carton means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

Cigarette means any product that contains nicotine, is intended to be burned and produces smoke from combustion under ordinary conditions of use, and consists of or con-

tains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is burned and functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

Cigarette Machine Operator means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines within the County.

Commissioner of the Revenue means the Commissioner of the Revenue of the County and any of her duly authorized deputies and agents.

County means York County, Virginia.

Dealer means and includes every manufacturer's representative, wholesaler, retailer, cigarette machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the County.

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 they are consumed by their ultimate user. Ordinarily a package contains (20) cigarettes; however, "package" includes those containers in which fewer or more than (20) cigarettes are placed

Person means any individual, firm, unincorporated association, company, corporation, 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, includes all the officers and directors thereof.

Place of business means any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the County.

Purchaser means any person to whom title to any cigarettes is transferred by a retail dealer within the jurisdictional limits of the County.

Registered Stamping Agent means and includes every dealer and other person who are authorized to purchase and affix stamps to packages, packs, cartons, or other containers of cigarettes under the provisions of this article.

Retail dealer means and includes every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the County to the ultimate consumer; or any person who, in the usual course of business, owns, leases or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the County of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers or deals in cigarettes for the purpose of sale within the County to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

Sale or Sell means every act or transaction, irrespective of the method or means employed, including barter, and the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the retail dealer to any other person within the boundaries of the County, but shall not include any such act or transaction of taxation whereof by the County is precluded or prohibited under the constitution or the general laws of the state.

Stamp means any type of stamp which will effectuate the purpose of paying taxes under this article including but not limited to heat applied stamps or decalcomania to be sold by the Commissioner of the Revenue and to be affixed by an registered stamping agent to every package of cigarettes sold at retail in the County and also any insignia or symbols printed by a meter machine upon any such package under the authorization of the Commissioner of the Revenue.

Treasurer means the Treasurer of the County and any of his or her duly authorized deputies and agents.

Wholesale Dealers means any individual, partnership or corporation engaged in the sale of packages of cigarettes for resale into or within the County.

Sec. 21-181 Registration required.

Each registered stamping agent, distributor, wholesaler, vendor, retailer, or other person selling, storing, or possessing cigarettes within or transporting cigarettes within or into the County for sale or use shall first register with the commissioner of revenue. The application form, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by the applicant as the commissioner of revenue deems necessary for the administration and enforcement of this article, including the name and address of a person or entity to whom lawful process may be served. Any applicant by filing his application agrees that all legal actions relating to the enforcement of this Article shall be instituted in the state or federal courts having jurisdiction in York County.

Sec. 21-182 Levied; amount.

Beginning November 1, 2021 there is hereby levied and imposed by the County, upon each and every sale of cigarettes, a tax equivalent to forty cents (\$0.40) for each twenty (20) cigarettes, or fractional number of twenty (20) cigarettes, sold within the County, the amount of the tax to be paid by the retail dealer, if not previously paid, in the manner and at the time provided for in this article. There shall be a penalty for late payment of the tax imposed herein in the amount of ten (10) percent, and interest in the amount of six percent per annum, prorated by months, upon any tax found to be overdue and unpaid. Any person found to have failed to pay any tax due by means of fraud or purposeful evasion shall be subject to a penalty of fifty percent of the unpaid tax.

Sec. 21-183 Method of payment.

- (a) The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp, of the proper denominational or face value, to each and every package of cigarettes sold within the County, in the manner and at the time or times provided for in this article. Every registered stamping agent, once registered, shall have the right to buy such stamps from the Commissioner of the Revenue and to affix the same to packages of cigarettes as provided in this article.
- (b) The Commissioner of the Revenue may permit the payment in advance of the tax levied and imposed by this article by the method of placing imprints of the stamps upon original packages by the use of heat applied or meter machines, in lieu of the method of paying such tax by the purchase and affixing of gummed stamps, and may prescribe and enforce the necessary regulations setting forth the method to be employed and the condition to be observed in the use of such meter machines.

Sec. 21-184 Registered stamping agents.

Every registered stamping agent authorized as such under this Article shall have the right to buy and affix stamps for resale to retail dealers. Every registered stamping agent shall at all times have the right to appoint a person in his employ to affix the stamps to any cigarette under the registered stamping agent's control.

Sec. 21-185 Preparation and sale of stamps.

For the purpose of making stamps available for use, the Commissioner of the Revenue shall prescribe, prepare and furnish stamps of such denominations and in such predetermined rolled quantities for the payment to the Treasurer of the taxes imposed by this article. In the sale of such stamps, there shall be a discount of four (4) percent of the denominational or face value thereof to cover the costs which will be incurred in affixing the stamps to packages of cigarettes.

Sec. 21-186 General duties of registered stamping agents and retail dealers with respect to stamps.

- (a) Every registered stamping agent of cigarettes are hereby required and it shall be his duty to purchase such stamps, at the office of the Commissioner of the Revenue, as shall be necessary to pay to the Treasurer the tax levied and imposed by this article, and to affix or cause to be affixed a stamp of the monetary value prescribed by this article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any retail dealer. Nothing herein contained shall preclude any registered stamping agent from using a heat applied or stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.
- (b) Every retail dealer shall 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 or imprinted thereon, as provided by this article. If upon such examination, unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer, where such cigarettes were obtained from a registered stamping agent, shall immediately notify such registered stamping agent, and upon such notification, such registered stamping agent shall forthwith either affix to or imprint upon such unstamped or improperly stamped packages the proper amount of stamps, or shall replace such packages with others to which stamps have been properly affixed or imprinted thereon.
- (c) Should a retail dealer obtain or acquire possession of, from any person any unstamped or improperly stamped cigarettes, such retail dealer shall forthwith, before selling or offering or exposing such cigarettes for sale in the County, purchase from a registered stamping agent and have the registered stamping agent affix or cause to be affixed to such packages of cigarettes the proper stamps, or the markings of a meter machine, covering the tax imposed by this article.

Sec. 21-187 Visibility of stamps or meter markings.

Stamps or the printed markings of a heat applied or meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to purchaser. Upon affixing the stamp to the package the stamp must remain readable, with no other stamps or markings covering the stamp in any way.

Sec. 21-188 Altering design of stamps.

The Commissioner of the Revenue may, from time to time, and as often as he 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.

Sec. 21-189 Use by registered stamping agent of dual die or stamp to evidence payment of cigarette taxes.

The Commissioner of the Revenue may enter into an arrangement with the State Department of Taxation under which any tobacco stamp registered stamping agent who so desires may use a dual die or stamp to evidence the payment of both the tax levied by this article and the state tax on cigarettes.

Sec. 21-190 Refund for unused stamps or meter imprints.

- (a) Should any registered stamping agent after acquiring from the Commissioner of the Revenue any stamps provided for in this article, cease to be engaged in a business necessitating the use thereof, or should any such stamps become mutilated and unfit for use, other than by cancellation as provided in this article, such person shall be entitled to a refund of the denominational or face amount of any stamps so acquired and not used by him, less four (4) percent of the denominational or face amount thereof, upon presenting such stamps to the Commissioner of the Revenue and furnishing the Commissioner of the Revenue with an affidavit showing, to his satisfaction, that such stamps were acquired by such person and have not in any manner been used and the reason for requesting such refund. In the case of any authorized meter machine, should any imprints of such machine theretofore paid for not be used, such person shall, upon furnishing the Commissioner of the Revenue with a similar affidavit, be entitled to a refund of the denominational or face amount thereof, less four (4) percent of the denominational or face amount of such imprints of such machine not so used.
- (b) All refunds for unused and mutilated stamps and for nonuse of imprints of stamps by meter machines provided for under this section are hereby authorized to be made on vouchers approved by the Commissioner of the Revenue and, when made, the same shall be charged against the sums collected for the sale of such stamps and for the use of such imprints.

Sec. 21-191 Seizure of unstamped cigarettes.

Whenever the commissioner of revenue shall discover cigarettes in quantities of more than six (6) cartons within the County which are subject to the tax imposed by this article and upon which the tax has not been paid or upon which stamps have not been affixed or evidence of such tax shown thereon by the printed markings of an authorized meter machine, as this article requires, such cigarettes shall be conclusively presumed for sale or use within the County and the commissioner of revenue may forthwith seize and confiscate such cigarettes, if:

- (a) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the cosigner or seller and of the cosigner or purchaser, and the brands and quantity of cigarettes so transported; or are in transit and accompanied by a bill of lading or other document which is false or fraudulent in whole or in part; or

- (b) They are in transit and are accompanied by a bill of lading or other documents indicating:
 - i. 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 tobacco products on which the taxes imposed by such other jurisdiction have not been paid, and unless the tax of the state or district of destination has been paid and the said products bear the tax stamp of that state or district; or
 - ii. 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 retail tobacco license issued by the local jurisdiction of destination; or
- (c) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the Commissioner of the Revenue that those cigarettes are temporarily within the County and will be sent to consignees or purchasers outside the County in the normal course of business.
- (d) Cigarettes and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax so seized and confiscated may be disposed of by sale or other method deemed appropriate by the Commissioner of the Revenue, as provided in Section 21-192. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

Sec. 21-192. Sale, destruction, or other disposition of seized cigarettes.

Whenever the Commissioner of the Revenue shall have seized cigarettes as provided in Section 21-191, the Commissioner of the Revenue is hereby authorized and empowered to forthwith seize and take possession of such cigarettes, which shall thereupon be deemed to be forfeited to the County, which may, within a reasonable time thereafter, after written notice posted at the front door of the courthouse of the County at least five (5) days before the date of sale, or published in some newspaper having general circulation in the County at least five (5) days before the date of sale, sell such forfeited cigarettes at the time and place designated in such notice. From the proceeds of such sale, the County shall collect the tax due thereon, together with a penalty of fifty (50) per centum thereof and the costs incurred in such proceedings, and pay the balance, if any, of such proceeds to the person in whose possession such forfeited cigarettes were found. Such seizure and sale shall not be deemed to relieve any person from any fine provided herein for the violation of the provisions of this article. All money collected under the provisions of this section shall be paid to the County Treasurer and treated as other taxes collected under this article. If the Commissioner of the Revenue deems it advisable

to do so, any cigarettes so seized may be destroyed or otherwise disposed of rather than sold.

Sec. 21-193 Seizure and sale or other disposition of coin-operated vending machines and counterfeit stamp or impression devices.

- (a) Any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or bogus tobacco tax stamp or impression or any unstamped cigarettes, or any cigarettes upon which the tax has not been paid, may be declared contraband property and be subject to confiscation and sale, destruction, or other disposition as provided in section §21-192. When any such vending machine is found containing such cigarettes, it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machine used in an illegal evasion of the tax, it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.
- (b) Any coin-operated vending machine, in which any cigarettes are found, stored or possessed must be clearly marked with the name, address and phone number of the owner and operator of the coin-operated vending machine.

Sec. 21-194 Registered stamping agents' and retail dealers' records.

It shall be the duty of every local registered stamping agent and retail dealer to maintain and keep, for a period of three (3) years, such records of cigarettes sold and delivered by him as may be required by the Commissioner of the Revenue and to make all such records available for examination by such Commissioner of the Revenue, upon demand, at any and all reasonable times.

Sec. 21-195 Rules and regulations for enforcement and administration of article; examination of books, records, etc.

- (a) The Commissioner of the Revenue is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of the aforesaid stamps and to any and all other matters pertaining to the administration and enforcement of the provisions of this article, including without limitation the sale, destruction, or other disposition of seized property.

- (b) The Commissioner of the Revenue may examine 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 retail dealer.

Sec. 21-196 Tax is in addition to other taxes.

The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law.

Sec. 21-197 Prohibited acts enumerated.

It shall be unlawful and a violation of this article 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 article or of any part thereof; or for any registered stamping agent, dealer or retail dealer, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which the Commissioner of the Revenue may issue under this article.
- (b) To falsely or fraudulently make, forge, alter or counterfeit any stamp or the printed markings of any meter machine or to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a heat applied or meter machine or to knowingly and willfully alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings of a meter machine.
- (c) To sell any cigarettes upon which the tax imposed by this article 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 cigarettes, for which the tax imposed has been theretofore paid, have been removed.
- (e) To remove from any package any stamp or the printed markings of a meter machine 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 or printed markings of a meter machine to any person or to reuse any stamp or printed markings of a meter machine which had theretofore been used for evidence of the payment of any tax prescribed by this article or, except as to the Commissioner of the Revenue, to sell or offer to sell any stamps or printed markings of a meter machine provided for in this article.

Sec. 21-198 Presumption of violation by retail dealer.

In the event any package of cigarettes is found in the possession of a retail dealer, without the proper stamps being affixed thereto or without authorized printed markings of a meter machine thereon, and the retail dealer shall be unable to submit evidence establishing that he received such package within the immediately preceding forty-eight (48) hours and that he has not offered the same for sale, the presumption shall be that such package is being kept by such retail dealer in violation of the provisions of this article and shall subject him to the penalties provided for such violation.

Sec. 21-199 Violations of article.

- (a) Any person violating any of the provisions of this article 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 imposed by this article.
- (b) The term "corporate partnership or limited liability company officer," as used in this section means an officer or employee of a corporation, or a member, or employee of a partnership or member, manager or employee of a limited liability company who, as such officer, employee, member or manager, is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who (i) had actual knowledge of the failure or attempt as set forth herein and (ii) had authority to prevent such failure or attempt.
- (c) Any corporate or partnership officer as defined in this section and in Virginia Code § 58.1-3906, or any other person required to collect, account for and pay over any cigarette taxes administered by the Commissioner of the Revenue or other authorized officer, who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall, in addition to any other penalties proved by law, be guilty of a Class 1 misdemeanor. In addition, any person found to have failed to pay any tax due by means of fraud or purposeful evasion shall be subject to a penalty of fifty percent of the unpaid tax.
- (d) Each violation of or failure to comply with this article 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 article.
- (e) The mere possession of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of this Article.

Sec. 21-200. Rules and regulations for enforcement and administration of article; examination of books, records, etc.

The Commissioner of the Revenue is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of the stamps provided for in this article, the sale, destruc-

tion, or other disposition of items seized as forfeiture, and to any and all other matters pertaining to the administration and enforcement of the provisions of this article. Such commissioner is hereby further authorized and empowered to examine 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.