

**AMENDMENT TO
ORDINANCE TO LEVY A MEALS AND BEVERAGE TAX
IN WISE COUNTY, VIRGINIA**

WHEREAS, § 58.1-3833 of the Code of Virginia, 1950, as amended, provides that any county is authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in §35.1-1, not to exceed six percent (6%) of the amount charged for such food and beverages; and

WHEREAS, on February 10, 2022, the Wise County Board of Supervisors levied a food and beverage tax of six percent (6%) to be effective July 1, 2022; and

WHEREAS, the Wise County Board of Supervisors desires to amend said ordinance to further detail definitions related to the Tax, collecting and enforcement of the Tax, including penalties for non-compliance; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Wise County Board of Supervisors that the following section of the Code of Wise County be amended to supplement the February 10th as follows:

Food and Beverage Tax.

Definitions.

For the purposes of this article, the following words and phrases have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

Beverage means alcoholic beverages as defined in *Code of Virginia* § 4.1-100 and nonalcoholic beverages served as part of a meal. This does not include alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption.

Caterer means a business or person who furnishes meals on the premises of another.

Commissioner means the Commissioner of Revenue of the County of Wise, Virginia.

Food means any food, beverage, or both, including alcoholic beverages, 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. Included in the term "food" are prepared foods ready for human consumption sold by grocery stores and convenience stores at a delicatessen, for that portion of the grocery store or convenience store selling such items. Not included in this definition of food is that which is 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.

Food Establishment means any place in or from which food or food products are prepared, packaged, sold, or distributed in Wise County, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionary, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption. In any case where a business is located partially within two or more local jurisdictions by reason of the boundary line between the local jurisdictions passing through such place of business, and one or more of the local jurisdictions imposes the food and beverage or meals tax, the tax rate shall be computed by applying the apportionment formula in *Code of Virginia* § 58.1-3709 to the food and beverage or meals tax rate of each applicable local jurisdiction. Such apportioned rate shall be rounded to the nearest one-half percent.

Purchaser means any person who purchases a meal.

Sale means the final sale to the ultimate customer.

Seller means any food establishment or caterer selling food, or the person operating such business.

Treasurer means the Treasurer of the County of Wise, Virginia.

Sec. 1. Payment and Collection of Tax.

In every case, the tax shall be collected by the seller and paid by the purchaser at the time the charge for the meal becomes due and payable, whether payment is to be made in cash or on credit by means of a credit card or otherwise. The seller shall add the tax to the amount charged for the meal and shall pay the taxes collected to the County as provided in this article.

Sec. 2. Collections in trust for County.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the County as provided in this article.

Sec. 3. Reports and remittance.

The Commissioner may require all prospective sellers of food licensed to do business in the County to register for collection of tax imposed by this article. Every seller shall make a report to the Commissioner for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the Commissioner and shall be signed by the seller. They shall be delivered to the Commissioner on or before the 20th day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer of Wise County. The Commissioner shall promptly transmit all taxes received to the Treasurer. Sellers who fail to file such reports timely shall incur a penalty as provided in Section 8-228.

Sec. 4. Penalty and interest for failure to pay tax when due.

There shall be a penalty of 10% (ten percent) added to all food taxes imposed under the provisions of this article that are unpaid on the first day following the due date for such tax as provided in this article.

In addition to such penalty, interest at the rate of 10% (ten percent) per annum shall accrue and be added to all due and unpaid taxes beginning with the first day following the date such tax is due. Taxes, penalties, and interest herein provided shall be assessed and collected by the Treasurer of Wise County in the manner provided by law for the enforcement of the collection of other taxes.

Sec. 5. Failure to collect or remit tax; failure to report timely.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article or to make timely report and remittance thereof, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed, the Commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the County and, in connection therewith, shall make such investigations and take such testimony and other evidence as may be necessary.

As soon as the Commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the Commissioner shall proceed to determine and assess the tax. Any person failing to file such report on or before the due date shall also incur a penalty thereon of ten percent (10) of the tax assessable which shall be assessed by the Commissioner and collected by Treasurer in the manner provided by law for the collection of other taxes. The Commissioner shall notify the person so assessed by first class mail sent to his or her address listed on the registration required in Section 8-226 or the last known address in the Commissioner's records, of such assessment. Upon such assessment by the Commissioner, the Treasurer shall send or cause to be sent by first class U.S. Mail a bill for the amount of such tax, and penalty due to the person so assessed in accordance with *Code of Virginia* § 58.1-3912. The Treasurer shall collect penalty and interest in accordance with Section 8-227 on such taxes that are unpaid on the first day following the due date provided in such bill.

Sec. 6. Preservation of Records.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to keep and preserve, for a period of five years, records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The Commissioner shall have the power to examine such records at reasonable times and without unreasonable interference to the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts or copies of all or any parts thereof.

Sec. 7. Duty of person going out of business.

Whenever any person required to collect and remit to the County any tax imposed by this article shall cease to operate or otherwise dispose of his or her business, the tax shall

immediately become due and payable, and the person shall immediately make a report and remittance thereof.

Sec. 8. Tips and service charges.

Where a purchaser provides a tip or gratuity for an employee of a seller and the amount of the tip or gratuity is wholly in the discretion of the purchaser, the tip or gratuity 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 that, in the latter case, the full amount of the tip or gratuity is turned over to the employee by the seller.

Sec. 9. Exemptions.

The following classes of food and/or beverage shall not be subject to the tax under this article:

- (a) Sold through vending machines.
- (b) Sold by boardinghouses that do not accommodate transients or sold by cafeterias operated by industrial plants for employees only.
- (c) Provided by restaurants to their employees as part of their compensation when no charge is made to the employee.
- (d) Sold by volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 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.
- (e) Service of meals by churches for their members as a regular part of their religious observances.
- (f) Sold by public or private elementary or secondary schools or institutions of higher education to their students or employees.
- (g) Provided by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof.
- (h) Provided by day care centers.
- (i) Provided by homes for the aged, infirm, handicapped, battered woman, narcotic addicts, or alcoholics.
- (j) Provided 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.
- (k) Sold at local farmers markets and roadside stands when such sellers' annual income from such sales does not exceed \$2,500. For the exemption described in this clause, 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.

- (l) Food and beverages when used or consumed and paid by the Commonwealth, any political subdivision of the Commonwealth, or the United States.
- (m) 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.
- (n) 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.

Sec. 10. Authority of Commissioner of the Revenue and Enforcement.

It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the County liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection, and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's Office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article.

It shall be the duty of the Commissioner to ascertain the name of every person operating a food establishment in the County liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or make the reports and remittances required by this article. The Commissioner may have a summons issued for such person, and the summons shall be served upon such person by any appropriate manner provided by law.

Sec. 11. Violations of ordinance.

- (a) Any person that willfully fails to collect or truthfully account for and pay over any taxes imposed herein or willfully evades or attempts to evade any such tax or the payment thereof shall, in addition to any other penalties provided by law, is guilty of a Class 1 misdemeanor.
- (b) Any person who willfully utilizes a device or software to falsify electronic records of cash registers or other point-of-sale systems or otherwise manipulates transaction records that affect their local tax liability shall, in addition to any other penalties provided by law be guilty of a Class 1 misdemeanor. Additionally, any person violating this subsection shall pay a civil penalty of \$20,000, to be assessed by the Commissioner of the Revenue and collected by the Treasurer as other local taxes are collected and deposited as other revenues of the County.

Sec. 12. Severability.

If any section, phrase, or part of this article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the article; and every remaining section, clause, phrase, or part thereof shall continue in full force and effect.

THIS AMENDED ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION.

ADOPTED this the ____ day of _____, 2022.

WISE COUNTY BOARD OF SUPERVISORS

J. H. Rivers, Chairman

ATTESTED:

Michael W. Hatfield, Clerk