

Sec. 62-155. Gratuities and service charges.

(a) Where 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 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 gratuity is turned over to the employee by the seller.

(b) 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 article.

(Ord. of 6-27-2000(2), § V)

Sec. 62-156. Report of taxes collected; remittance; preservation of records.

It shall be the duty of every person required by this article to pay to the town the taxes imposed

by this article to make a report thereof setting forth such information as the treasurer may prescribe and require, including all purchases taxable under this article, 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 article. Such records shall be kept and preserved for a period of five years. The treasurer 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 this article, and to make transcripts of all or any parts thereof.

(Ord. of 6-27-2000(2), § VI)

Sec. 62-157. Penalty for violation.

(a) Any person willfully failing or refusing to file a return as required under this article 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 \$1,000.00 or less. Any person violating or failing to comply with any other section of this article shall be guilty of a class 1 misdemeanor.

(b) Except as provided in subsection (a) of this section, any corporate or partnership officer, as defined in Code of Virginia, § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this article 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.

(c) 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.

(Ord. of 6-27-2000(2), § VII)

Secs. 62-158--62-185. Reserved.

ARTICLE V.

LODGING TAX*

* **Cross References:** Businesses, ch. 18.

State Law References: Municipal taxes generally, Code of Virginia, § 15.2-1104; municipal excise tax on transient room rentals, Code of Virginia, § 58.1-3840.

Sec. 62-186. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Transient person means one who, for a period of not more than 30 consecutive days, either at his own expense or at the expense of another, lodges or obtains lodging at any hotel, motel, bed and breakfast, inn, tourist home, club boarding or any other similar place.

(Ord. of 9-9-1997, § 10-20(b))

Cross References: Definitions generally, § 1-2.

Sec. 62-187. Imposed.

A tax shall be levied on any person who lodges or obtains temporary lodging at any hotel, motel, bed and breakfast, inn, tourist home, club boarding or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration.

(Ord. of 9-9-1997, § 10-20(a))

Sec. 62-188. Amount of levy.

There is hereby imposed and levied by the town on each transient person a lodging tax in the amount of four percent of the charge made for each room rented to such transient. Such tax shall be collected from such transient at the time and in accordance with this article.

(Ord. of 9-9-1997, § 10-21)

Sec. 62-189. Collection.

Every person receiving any payment for lodging with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying for such lodging. The tax required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes as provided in this article.

(Ord. of 9-9-1997, § 10-22)

Sec. 62-190. Reports required.

The person collecting any tax as provided in this article shall make out a report thereof on such forms and setting forth such information as the town treasurer may prescribe and require, showing the amount of lodging charges collected and the taxes required to be collected, and shall sign and deliver such report to the town. Reports and remittances shall be made to the town treasurer on or before the 20th day of the calendar month following the month being reported.

(Ord. of 9-9-1997, § 10-23)

Sec. 62-191. Penalties for late payment.

If any person shall fail or refuse to remit to the town treasurer the tax required to be collected and paid under this article within the time and in the amount specified, there shall be added to such tax by the town treasurer a penalty in the amount of ten percent per annum, which shall be computed upon the taxes and penalty from the first day of the month next following the month in which such taxes are due and payable.

(Ord. of 9-9-1997, § 10-24)

Sec. 62-192. Failure to collect or make reports.

It shall be unlawful for any person to fail or refuse to collect the taxes imposed under this article and to make reports and remittance as required. The town treasurer shall have the power to examine pertinent records for the purpose of administering or enforcing this article.

(Ord. of 9-9-1997, § 10-25)

Sec. 62-193. Records required.

It shall be the duty of every person liable for the collection and payment to the town of any tax imposed by this article to keep and preserve for a period of four years such suitable records as may be necessary to determine the amount of tax due to have been collected and paid to the town. The town treasurer may inspect such records at all reasonable times.

(Ord. of 9-9-1997, § 10-26)

Sec. 62-194. Violations; penalties.

Every person convicted of violating this article shall be guilty of a class 4 misdemeanor. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense.

(Ord. of 9-9-1997, § 10-27)

Sec. 62-195. Cessation of business.

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

(Ord. of 9-9-1997, § 10-28)

Secs. 62-196--62-200. Reserved.

ARTICLE VI.

REAL ESTATE TAXATION

Sec. 62-201. Partial exemptions for real estate taxation.

Certain real property within the town shall be partially exempt from real estate taxes upon the following terms and conditions:

(1) The partial exemption shall apply only to rehabilitated, renovated or replaced commercial, industrial and residential structures that have been rehabilitated, renovated or replaced, and such exemption shall be in effect for a period of ten years.

(2) The partial exemption shall only apply to commercial or industrial structures that are not less than 20 years old, to residential structures that are not less than 15 years old, or where the commercial or industrial structures have been substantially rehabilitated by complete replacement for commercial or industrial use and where the total square footage of the replacement structure does not exceed 15 percent of the total square footage of the replaced structure, and where the structures are located in the First Street District which boundaries are: First Street between Maryland Avenue and Railroad Avenue; Railroad Avenue between First Street and Second Street; Maryland Avenue between the Norfolk Southern railroad underpass to Second Street; Pennsylvania Avenue between First Street and Second Street and Virginia Avenue between First Street and Third Street and Second Street from Maryland Avenue to Railroad Avenue.

(3) The amount of the exemption shall not exceed an amount equal to 40 percent of

the cost of the rehabilitation, renovation or replacement.

(4) The exemption shall commence on January 1 of the year following the rehabilitation, renovation or replacement and shall run with the real estate for a period of no longer than ten years.

(5) Nothing in this section shall be construed as to permit the commissioner of the revenue to list upon the land book any reduced value due to the exemption herein provided.

(6) No property shall be eligible for such exemption unless the appropriate permits including building and demolition permits have been obtained and the commissioner of the revenue or assessing officer has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

(7) Where rehabilitation is achieved through demolition and replacement of an existing structure, the exemption shall not apply when any structure demolished is a registered state landmark or is determined by the department of historic resources to contribute to the significance of a registered historic landmark.

(Ord. of 12-11-2001)

Sec. 62-202. Tax relief for the elderly and disabled.

(a) Applications for real estate tax relief for the elderly and disabled must be submitted to the county commissioner of revenue each tax year by deadline as set by the county.

(b) The county commissioner of revenue will set qualifications and determine eligibility for real estate tax relief for the elderly and disabled for each tax year.

(c) All town delinquent real estate taxes must be paid in full before you receive real estate tax relief for the elderly and disabled each tax year.

(Ord. of 6-12-2007)

Secs. 62-203--62-300. Reserved.

ARTICLE VII.

CIGARETTE TAX

Sec. 62-301. Definitions.

The following words and phrases, when used in this article, shall, for the purposes of this article, have the following meanings:

Carton means any container, regardless of material used in its construction, in which two or more packs of cigarettes are placed.

Cigarette means any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded, or crimped tobacco, or other plant or substitute for tobacco, whether the same is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

Dealer/distributor/wholesaler means every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, or public warehouseman, or other person, who sells, receives, stores, possesses, distributes, or transports cigarettes for resale within or into the town.

Pack means every package, box, can, or other container of any cigarettes, irrespective of the material from which such container is made, and in which retail sales of such cigarettes are normally made or intended to be made. Packs are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user.

Purchaser means every person to whom title to any cigarette is transferred by a seller within the corporate limits of the town.

Retailer means every person who transfers title to any cigarette, or in whose place of business title to any cigarette is transferred, within the corporate limits of the town, for any purpose other than resale.

Sale means every act or transaction, irrespective of the method or means employed, including the use of vending machines, and other mechanical devices whereby title to any cigarette is transferred from the seller, to any person within the corporate limits of the town.

Stamp means a small heat set of paper or decalcomania to be sold by the town treasurer, to be affixed to every pack of cigarettes sold at retail in the town limits.

Town means Town of Shenandoah, Virginia.

Treasurer means Treasurer for the Town of Shenandoah, Virginia.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-302. Rate and amount of tax; exemptions; tax additional to other taxes.

(a) There is hereby levied and imposed by the town, upon the sale of each and every pack, or part of a pack, of cigarettes, sold within town limits, on and after July 1, 2010, a tax of ten cents per pack, regardless of the number of cigarettes within the pack. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette pack sold or used within the town shall be paid but once.

(b) The tax hereby shall not apply to free distribution of sample cigarettes in packs containing five or fewer cigarettes.

(c) 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.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-303. Methods of collection; reports.

(a) The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or retailer liable for the tax at the time the stamps are purchased from the town treasurer. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or retailer liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax.

(b) All unstamped cigarette packs in the possession of any retailer in the town on the effective date of this article shall be inventoried and reported to the treasurer not later than 12:00 p.m. on July 12, 2010. The treasurer shall provide the report form, and the retailer shall remit the tax for the unstamped packs along with the report. Such reporting shall continue monthly until all unstamped cigarette packs have been sold. Any unstamped cigarette packs not reported and the tax not paid may be confiscated by the treasurer.

(c) It shall be the duty of each dealer or retailer liable for the tax to report monthly to the treasurer separately the following information:

(1) The quantity of stamped cigarettes sold or delivered, specifying recipients, during the period requested by the treasurer;

(2) The quantity of stamps on hand, both affixed and unaffixed, on the last day of

the period of request and the quantity of stamps or stamped cigarettes received during the period; and

(3) Such further information from any appropriate party as the treasurer may require for the proper administration and enforcement of this article.

(d) When, upon examination and audit of any invoices, records, books, canceled checks, or other memoranda touching on the purchase, sale, receipt, storage, or possession of cigarette products taxed herein, any dealer or retailer liable for the tax is unable to furnish evidence to the treasurer of sufficient tax payments and stamp purchases to cover cigarettes that were sold, used, stored, received, purchased, or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased, or possessed by him without the proper tax having been paid. The treasurer shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid.

(e) The dealer or retailer liable for the tax shall be notified by certified mail or hand delivery of such deficiency and such tax, penalty, and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued.

(f) It shall be the duty of every dealer and retailer in the town to keep complete records for the current year and the three preceding calendar years of all cigarettes delivered or

sold by such dealer or retailer and to make all such records available for examination by the treasurer, or other authorized personnel, upon demand, at any and all reasonable times.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-304. Preparation and sale of stamps generally.

(a) For the purpose of making stamps available for use, the town treasurer shall sell stamps by the roll for the payment of the taxes imposed by this article.

(b) Stamps shall be placed upon each pack of cigarettes in such manner as to be readily visible to the purchaser.

(c) Every retailer is hereby required to examine each pack of cigarettes prior to exposing the same for sale for the purpose of ascertaining whether such pack has the proper stamps affixed thereto as provided by this article.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-305. Notice by retailers.

Retailers who sell, offer for sale, store, possess, distribute, purchase, receive, or transport cigarettes in or into the town shall notify the treasurer, in writing, upon the request of the treasurer, of the dealer of such cigarettes and the name and address and the Virginia retail sales and use certificate of registration number for each separate place of business.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-306. Display of stamps; seizure.

(a) Packs of cigarettes shall be displayed by the retailer so that the stamps are readily visible.

(b) Except as allowed by section 62-308(b), any retailer found to possess any cigarettes without the stamp affixed who is not in the process of affixing such stamps thereto, shall be presumed to be in possession of untaxed cigarettes in violation of this article. Retailers shall have 48 hours to stamp all cigarette packs in their possession.

(c) Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the town. Any vending machine located within the town containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

(d) Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the treasurer. In addition to any tax due, the dealer or retailer liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

(e) In lieu of seizure, the treasurer may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

(f) All cigarette vending machines shall be plainly marked with the name, address,

and telephone number of owners of said machines.

(g) Any seized and confiscated cigarettes, vending machines, or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the treasurer after 30 days' notice to the person from whom the items were seized. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax, penalties, or interest assessed.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-307. Design of stamps.

The town treasurer may, from time to time, and as often as he or she 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.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-308. Refunds.

(a) Should any person, after acquiring from the town treasurer any stamps herein provided for, cease to be engaged in a business necessitating the use thereof, or should any such stamps become mutilated and unfit for use, such person shall be entitled to a refund of the face amount of any such stamps so acquired and not used, upon presenting the stamps and an affidavit to the town treasurer showing that the stamps were acquired by such person and have not in any manner been used, and the reason for requesting a refund.

(b) In the case of a stale-dated cigarettes, a refund of the face amount of the stamps shall be made upon furnishing the treasurer with:

(1) A count of pre-stamped packs that have not been sold and have been removed from the market; and

(2) A sworn affidavit of the manufacturer affirming the number of packs returned.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-309. Rules and regulations.

The treasurer is authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to all matters pertaining to the administration and enforcement of the provisions of this article. The treasurer is further authorized and empowered to examine the 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 retailer. The treasurer is authorized to delegate any of the powers and duties set out in this article to one or more deputies or assistants, except as may be prohibited by law.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-310. Violations of article--Generally.

(a) Any person violating any provision of this article shall be guilty of a Class I misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax imposed by this article. In addition, any person who shall perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of 50 percent, and interest at the rate of ten percent per year, of any tax found to be overdue and unpaid.

(b) Each day's violation of, or noncompliance with, any of the provisions of this article may constitute a separate offense.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-311. Same--Prohibited acts enumerated.

(a) It shall be unlawful and a violation of this article for any person:

(1) 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 any part thereof; for any retailer, 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 may issue under this article;

(2) To falsely or fraudulently make, forge, alter, or counterfeit any stamp or to

procure or cause to be made, forged, altered, or counterfeited any such stamp or knowingly and willfully to alter, publish, pass, or tender as true any false, altered, forged, or counterfeited stamp or stamps;

(3) 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 pack of cigarettes;

(4) To reuse or refill with cigarettes any previously sold stamped packs, have been removed; or

(5) To remove from any pack any stamp with the intent to use, or cause the stamp to be used, after it has already been used, or to buy, sell, or offer for sale, or give away any used, removed, altered, or restored stamps to any person, or to reuse any stamp that had been previously used for evidence of the payment of the tax prescribed by this article, or, except as to the town treasurer, to sell, or offer to sell, any stamp provided for herein.

(Ord. of 5-11-2010, eff. 7-1-2010)

Sec. 62-312. Appointment of attorney for service of process.

Any dealer whose business and residence is outside of the corporate limits of the town, who shall sell, store or possess within the corporate limits of the town any cigarettes shall, by virtue of such sale, storage or possession submit himself to the town's legal jurisdiction and appoint as his attorney for any service of lawful process the town manager for that purpose. A copy of any such process served on the said town manager shall be sent forthwith by registered mail to the dealer.

(Ord. of 5-11-2010, eff. 7-1-2010)