Food & Beverage Tax

Aka Meals Tax

Code of Virginia Title 58.1-3833 - Counties
Code of Virginia Title 58.1-3840 – Cities & Towns

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Tax Rate – Ceilings - Background

- Previous to the 2022 legislative change – Counties could only assess the tax on beverages sold with a meal with a rate cap of 4% whereas Cities and towns were able to assess the tax on both food and beverages sold separately or together with no rate cap

- Previous to the change in 2022 – Counties attempting to adopt the tax had to put it out to voter referendum.

- Recent legislative change to 58.1-3833 – raised the maximum tax rate from 4% to 6% for counties.

Anklebiters in the Administration of F & B tax

- Terms like “prepared foods”, “immediate consumption” “factory sealed beverages”
- Bakeries – do they have a sitting area and are you able to purchase single serving items and get a beverage like coffee or a fountain soda.
- Quantity sold – what do we consider “quantity”. Example 6 doughnuts in a box; more than a single cookie?

- What is your definition of a “meal” - A meal is any prepared food and beverages offered or held out for sale by a restaurant or caterer for the purpose of being consumed by an individual or group of individuals at one time to **satisfy the appetite**, whether prepared in such restaurant or not.

Gray Areas?

- Is a single doughnut a meal?
- If a factory sealed beverage is considered part of a meal but rung up separately – it it taxable for F & B
- If a bottle of San Pellegrino is sold with my lunch consisting of a burrito or whatever and the beverage is sold sealed with the meal – is it taxable ? If I choose to sit down in the restaurant – is that bottle of water subject to the tax ? If the server opens the beverage – is it subject to the tax?
- Would you consider the purchase of a single cookie or brownie placed in a bag to go taxable?
- How about self-serve items ?

Exemptions:

- Purchaser must provide a sales tax exemption certificate – ST-12 – from the Virginia Department of Taxation - Governmental and political subdivisions therein – F & B must be paid for using a purchase order, check in the name of the institution or government/agency credit card. An individual employed by the agency cannot pay with their own funds and be considered exempt.
- Non-profit organizations are issued a tax-exempt certificate from the Virginia Department of Taxation. If they are not designated as such then the transaction is taxable.

Collection Issues

- Food Trucks – there is some difficulty in determining if a truck has been conducting business in your jurisdiction particularly if they are from outside the area. Monthly sales tax report only seem to reflect where they are filing from. There isn't a good way to track from day to day. Also operators may assume the tax rate is the same for all jurisdictions.
- E-mails to taxpayers reminding them that filings have not been received. More people seem to answer e-mails than return telephone calls. Site visits are effective as well.
- Letters are sent monthly to non-filers urging them to file or face statutory assessments being levied.
- Statutory assessments – if no filing is received then an assessment is done primarily using previous months activity, or State sales tax monthly reports if filed. Key here is to be reasonable but also to get the taxpayers attention.

Establishments that serve alcohol

- Another enforcement tool is to notify your regional ABC office.
- Per Virginia Code Section title 4.1-226 ---- if any ABC license holder if more than 90 days delinquent with any local taxes, taxpayer may be summoned to administrative hearing and answer inquires as to why the ABC license should not be suspended. ABC will advise taxpayer that if they set up a payment arrangement with the locality and provided they adhere to the terms of the arrangement they will be able to keep their ABC license;
- **Code Section 4.1-226(6)**

6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment plan approved by the same locality to settle the outstanding liability.

Goal of Collection Efforts

- Education – remind licensee that the money collected for F & B taxes is held in trust for the jurisdiction and is not their to do as they please! (ie. Use for payroll, suppliers or other expenses) .

- COMPLIANCE - file and remit trust taxes due in a TIMELY FASHION. If done licensee can get a 3% discount on the tax that is due.

Reality checks for non-filers/payers – Administrative Summmons

- Per 58.1-3110 – The commissioner may for the purposes of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him and his office, to answer under oath, questions touching the tax liability of any and all specifically identified taxpayers and to produce documents relating to such tax liability , either or both.

(C) Summons may be served by the commissioner, or his deputy, or may be directed to the sheriff to be served pursuant to 8.01-292 and executed and returned in like manner as the civil process of a court of competent jurisdiction.

Failure to appear, produce requested records and to answer under oath questions regarding tax liability shall be guilty of a Class 3 misdemeanor. Each days refusal to comply shall constitute a separate offense.

A judgement may be sought – and issued by the local General District Court. This does not guarantee that the food and beverage tax due will be recovered. Merely puts a ding on business/individual credit status and makes it difficult to obtain any sort of loan from a financial institution/ leasing company , suppler , etc.

Failure to remit Food & Beverage Tax

- The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute **embezzlement** pursuant to **18.2-111**. The amount must be over $1,000.00 collectively to be charged as a felony.

- Steps necessary to proceed –
- Go to Magistrate and to local Commonwealth’s Attorney –case is laid out with chronological facts, correspondence and actions taken. Criminal complaint is filed.
- Warrant is sought and issued.
- Case put on docket.

Magistrate/Court

- § 58.1-3907. Willful failure to collect and account for tax – Class 1 misdemeanor
- File Criminal Complaint with Magistrate (Form DC-311) – find it online or let magistrate fill it out. Swear under oath and sign in presence of magistrate.
- Usually hearing date is set, and deputies start looking to serve the defendant.
- At General District Court…
- Make sure your i's are dotted and t's crossed.
- If taxpayer complies before court, nol pros. THIS IS THE PREFERRED GOAL!