

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 15 OF THE  
SOUTHAMPTON COUNTY CODE, 1991, SO AS TO PROVIDE A NEW ARTICLE IX,  
TAX ON PREPARED FOOD AND BEVERAGES

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BE IT ORDAINED by the Board of Supervisors of Southampton County, Virginia that the Southampton County Code be, and hereby is amended and reordained so as to provide a new article IX, Chapter 15, Section 15-170, et seq. and reading as follows:

CHAPTER 15  
ARTICLE IX  
TAX ON PREPARED FOOD AND BEVERAGES

1 **Sec. 15-170. Definitions.**

2  
3 The following words and phrases, when used in this article, shall have, for the purposes of this  
4 article, the following respective meanings except where the context clearly indicates a different meaning:

5  
6 *Beverage.* Any alcoholic beverages as defined in section 4.1-100 of the Code of Virginia, 1950, as  
7 amended, and nonalcoholic beverages, any of which are served as part of a meal, excluding alcoholic  
8 beverages sold in factory containers and purchased for off-premises consumption.

9  
10 *Caterer.* A person who furnishes food on the premises of another for compensation.

11  
12 *Commissioner of the revenue.* The commissioner of the revenue of the county and any of his/her  
13 duly authorized deputies, assistants, employees or agents.

14  
15 *Food.* Any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic  
16 beverages and nonalcoholic beverages served with a meal, purchased in or from a restaurant or from a  
17 caterer, except snack foods.

18  
19 *Meal.* Any food as herein defined, other than a beverage, sold for consumption on the premises or  
20 elsewhere, whether designated as breakfast, lunch, snack, dinner, supper, or by some other name, and  
21 without regard to the manner, time, or place of service.

22  
23 *Person.* Any individual, corporation, company, association, firm, partnership or any group of  
24 individuals acting as a unit.

25  
26 *Purchaser.* Any person who purchases food in or from a restaurant or from a caterer.

27  
28 *Restaurant.*

29 (1) Any place where food is prepared for service to the public whether on or off the premises  
30 including a delicatessen counter at a grocery store or convenience store selling prepared foods ready for  
31 human consumption;

32 (2) Any place where food is served to the public; or

33 (3) Any place or operation which prepares or stores food for distribution to persons of the same  
34 business operations or of a related business operation for service to the public.

35 Examples include a dining room; grill; coffee shop; cafeteria; cafe; snack bar; lunch counter;  
36 lunchroom; short-order place; tavern; delicatessen; confectionery; bakery; eatery; drugstore; catering  
37 service; lunch wagon or truck; pushcart or other mobile facility that sells food; dining facility in a public  
38 or private club, resort, bar, or lounge; kitchen facility of a hospital or nursing home; and dining facility of  
39 a public or private school or college.

40  
41 *Seller.* Any person who sells food in or from a restaurant or as a caterer.

42  
43 *Snack food.* Chewing gum, candy, popcorn, peanuts and other nuts, and unopened prepackaged  
44 cookies, donuts, crackers, potato chips and other items of essentially the same nature and consumed for  
45 essentially the same purpose.

46  
47 *Treasurer.* The treasurer of the county and any of his duly authorized deputies, assistants, employees  
48 or agents.

49  
50 **Sec. 15-171. Levy of tax; amount.**

51  
52 In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby  
53 levied and imposed on the purchaser of all food served, sold or delivered for human consumption in the  
54 county, but not including the incorporated town(s) of Boykins, Branchville, Capron, Courtland, Ivor or  
55 Newsoms, in or from a restaurant, whether prepared in such restaurant or not, or prepared by a caterer.  
56 The rate of this tax shall be four percent of the amount paid for such food. In the computation of this tax,  
57 any fraction of \$0.005 or more shall be treated as one cent.

58  
59 **Sec. 15-172. Payment and collection of tax.**

60  
61 Every seller of food with respect to which a tax is levied under this article shall collect the amount of  
62 tax imposed under this article from the purchaser on whom the same is levied at the time payment for  
63 such food becomes due and payable, whether payment is to be made in cash or on credit by means of a  
64 credit card or otherwise. The amount of tax owed by the purchaser shall be added to the cost of the food  
65 by the seller who shall pay the taxes collected to the county as provided in this article. Taxes collected by  
66 the seller shall be held in trust by the seller until remitted to the county.

67  
68 **Sec. 15-173. Reports and remittances generally.**

69  
70 Every seller of food with respect to which a tax is levied under this article shall make out a report,  
71 upon such forms and setting forth such information as the commissioner of the revenue may prescribe  
72 and require, showing the amount of food charges collected and the tax required to be collected, and shall  
73 sign and deliver such report to the treasurer with a remittance of such tax. It shall be presumed that all  
74 food served, sold or delivered in the county (outside of incorporated towns) in or from a restaurant which  
75 provides seating facilities for its customers are consumed on premises and the burden shall be upon the  
76 seller of food to establish by records what food is sold for off-premises consumption. Such reports and  
77 remittance shall be made on or before the first business day following each calendar quarter, covering the  
78 amount of tax collected during the preceding quarter.

79  
80 **Sec. 15-174. Preservation of records.**

81

82 It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by  
83 this article to keep and preserve for a period of three years records, showing gross sales of all food and  
84 beverages, the amount charged the purchaser of each such purchase, the date thereof, the taxes collected  
85 thereon and the amount of tax required to be collected by this article. The commissioner of the revenue  
86 shall have the power to examine such records at reasonable times and without unreasonable interference  
87 with the business of the seller, for the purpose of administering and enforcing the provisions of this  
88 article and to make copies of all or any parts thereon.  
89

90 **Sec. 15-175. Advertising payment or absorption of tax prohibited.**

91  
92 No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any  
93 part of the tax imposed under this article will be paid or absorbed by the seller or anyone else, or that the  
94 seller or anyone else will relieve the purchaser of the payment of all or any part of the tax.  
95

96 **Sec. 15-176. Tips and service charges.**

97  
98 (a) Where a purchaser provides a tip for an employee or employees of a seller, and the amount of  
99 the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article,  
100 whether paid in cash to the employee or added to the bill and charged to the purchaser's account,  
101 provided, in the latter case, the full amount of the tip is turned over to the employee by the seller.  
102

103 (b) An amount or percent, whether designated as a tip or a service charge, that is added to the price  
104 of the meal by the seller, and required to be paid by the purchaser, is a part of the selling price of the  
105 meal and is subject to the tax imposed by this article.  
106

107 **Sec. 15-177. Duty of seller when going out of business.**

108  
109 Whenever any seller required to collect or pay to the county a tax under this article shall cease to  
110 operate or otherwise dispose of his business, any tax payable under this article shall become immediately  
111 due and payable and such person shall immediately make a report and pay the tax due.  
112

113 **Sec. 15-178. Enforcement; duty of commissioner of the revenue.**

114  
115 The commissioner of the revenue shall promulgate rules and regulations for the interpretation,  
116 administration and enforcement of this article. It shall also be the duty of the commissioner of the  
117 revenue to ascertain the name of every seller liable for the collection of the tax imposed by this article  
118 who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this  
119 article. The commissioner of the revenue shall have all of the enforcement powers as authorized by  
120 article 1, chapter 31 of title 58.1 of the Code of Virginia (1950), as amended, for purposes of this article.  
121

122 **Sec. 15-179. Procedure upon failure to collect, report, etc.**

123  
124 If any seller whose duty it is to do so shall fail or refuse to collect the tax imposed under this article  
125 and to make, within the time provided in this article, the reports and remittances mentioned in this  
126 article, the commissioner of the revenue shall proceed in such manner as he may deem best to obtain  
127 facts and information on which to base his estimate of the tax due. As soon as the commissioner of the  
128 revenue shall procure such facts and information as he is able to obtain upon which to base the  
129 assessment of any tax payable by any seller who has failed or refused to collect such tax and to make  
130 such report and remittance, he shall proceed to determine and assess against such seller the tax and  
131 penalties provided for by this article and shall notify such seller, by registered mail sent to his last known

132 place of address, of the total amount of such tax and penalties and the total amount thereof shall be  
133 payable within ten days from the date such notice is sent.  
134

135 **Sec. 15-180. Duty of treasurer.**  
136

137 The treasurer shall have the power and the duty of collecting the taxes imposed and levied hereunder  
138 and shall cause the same to be paid into the general treasury for the county.  
139

140 **Sec. 15-181. Penalty of late remittance or false return.**  
141

142 If any seller whose duty it is to do so shall fail or refuse to file any report required by this article or  
143 to remit to the treasurer the tax required to be collected and paid under this article within the time and in  
144 the amount specified in this article, there shall be added to such tax by the treasurer a penalty in the  
145 amount of ten percent thereof and interest thereon at the rate of eight percent per annum, which shall be  
146 computed upon the taxes and penalty from the date such taxes are due and payable.  
147

148 **Sec. 15-182. Violations of article.**  
149

150 Any person violating, failing, refusing or neglecting to comply with any provision of this article shall  
151 be guilty of a class 3 misdemeanor. Conviction of such violation shall not relieve any person from the  
152 payment, collection or remittance of the taxes provided for in this article. Any agreement by any person  
153 to pay the taxes provided for in this article by a series of installment payments shall not relieve any  
154 person of criminal liability for violation of this article until the full amount of taxes agreed to be paid by  
155 such person is received by the treasurer. Each failure, refusal, neglect or violation, and each day's  
156 continuance thereof, shall constitute a separate offense.  
157

158 **Sec. 15-183. Exemptions.**  
159

160 The following purchases of food shall not be subject to the tax under this article:  
161

162 (a) Food furnished by restaurants to employees as part of their compensation when no charge is  
163 made to the employee;  
164

165 (b) Food sold by nonprofit day care centers, public or private elementary or secondary schools or  
166 food sold by any college or university to its students or employees;  
167

168 (c) Food for use or consumption by the Commonwealth, any political subdivision of the  
169 Commonwealth or the United States;  
170

171 (d) Food furnished by a hospital, medical clinic, convalescent home, nursing home, home for the  
172 aged, infirm or handicapped or other extended care facility to patients or residents thereof;  
173

174 (e) Food furnished by a nonprofit charitable organization to elderly, infirm, handicapped or needy  
175 persons in their homes or at central locations;  
176

177 (f) Food sold by a nonprofit educational, charitable or benevolent organization on an occasional  
178 basis as a fund-raising activity or food sold by a church or religious body on an occasional basis;  
179

180 (g) Food furnished by boardinghouses that do not accommodate transients;  
181

182 (h) Food sold by cafeterias operated by industrial plants for employees only;

183  
184 (i) Food sold by nonprofit cafeterias in public schools, nursing homes and hospitals;

185  
186 (j) Food sold by churches, fraternal and social organizations and volunteer fire departments and  
187 reserve squads which hold occasional dinners and bazaars of one- or two-day duration, at which food  
188 prepared in the homes of members or in the kitchen of the organization is offered for sale to the public;

189  
190 (k) Food furnished by churches which serve meals for their members as a regular part of their  
191 religious observance;

192  
193 (l) Food sold through vending machines;

194  
195 (m) Any food or food product purchased for home consumption as defined in the federal Food  
196 Stamp Act of 1977, 7 U.S.C. section 2012, or amended, except for salad bar items sold from a salad bar,  
197 prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory  
198 sealed beverages. This exemption does not include hot food or hot food products ready for immediate  
199 consumption; and

200  
201 (n) Any other sale of food which is exempt from taxation under the Virginia Retail Sales and Use  
202 Tax Act, or administrative rules and regulation issued pursuant thereto.

203  
204 **Sec. 15-184. Severability.**

205  
206 If any provision of this article, or any application of such provision to any person or under any  
207 circumstances, shall be invalid, the remainder of this article, or the application of such provisions to  
208 persons or under circumstances other than those to which it shall have been held invalid, shall not be  
209 affected thereby.

210  
211 **Sec. 15-185. Effective date.**

212  
213 This ordinance shall be effective for all tax years beginning on and after July 1, 2010.

214  
215  
216 (STATE LAW REFERENCE--Code of Va., Sec. 58.1-3833.)

A copy teste: \_\_\_\_\_, Clerk  
Southampton County Board of Supervisors  
Adopted : February 22, 2010