

Information on Meals Tax Collection in the Town of Occoquan

The information below can be found in the Town of Occoquan Town Code, Chapter 58, Sections 38 through 51. The Town Code and applicable Meals Tax Reporting Forms are available online at www.occoquanva.gov.

Meals Tax Report and Payment Deadline: 20th day of the month following the month during which the tax was collected. (i.e. January meals tax are due on February 20th.)

Meals Tax Rate: Three percent (3%) on the amount paid for every meal or food purchased from any food establishment or caterer.

Meals Tax Collection Fee: For the purpose of compensating sellers for the collection of tax imposed by this article, every seller shall be allowed three percent (3%) of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided the amount due is not delinquent at the time of payment.

Late Fee: A penalty of ten percent (10%) of the tax, or a minimum of ten dollars (\$10), whichever is greater, will be assessed on reports and payments received after the due date. In addition, the Treasurer will also assess interest on the tax and penalty at the rate of ten percent (10%) per annum from the day after the tax is due until paid.

Remit payments and reports to the Town of Occoquan, in person or by mail, at PO Box 195, 314 Mill Street, Occoquan, VA 22125. Check or cash only. *Do not send cash in mail.* Town Hall is open Monday through Friday, 9 a.m. to 4 p.m. All payments must be accompanied by a complete report.

ARTICLE III. TAX ON FOOD AND MEALS SERVED IN FOOD ESTABLISHMENTS OR BY CATERERS

Sec. 58-38. Definitions.

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

Caterer. A person who furnishes food, beverages, or both, on the premises of another for compensation.

Collector. The treasurer of the town or designee.

Food. All food, beverages 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.

Food establishment. Any place in or from which a meal, food or food products are prepared, packaged, sold or distributed in the town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, 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.

Meal. Any prepared food or beverage, including alcoholic beverages, offered or held out for sale by a food establishment or caterer for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Seller. Any food establishment or caterer selling meals or food, or the person operating such business.

Treasurer. The treasurer of the town and any duly designated deputies, assistants, inspectors or other employees.

Town. The Town of Occoquan, Virginia, a municipal corporation of the Commonwealth of Virginia.

(Ord. O-2000-02, § 58-38)

Sec. 58-39 Levy.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby imposed and levied by the town on each person a tax at the rate of three percent (3%) on the amount paid for every meal or food purchased from any food establishment or caterer, whether prepared in such food establishment or not, and whether consumed on the premises or not.

(Ord. O-2000-02, § 58-39; Ord. O-2006-08, § 58-39)

Sec. 58-40. Collection of tax by seller.

Every person receiving any payment for a meal or food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such meal or food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

All tax collections shall be deemed to be held in trust for the town.

(Ord. O-2000-02; O-2015-02, § 58-40)

Sec. 58-41. Report of taxes collected; remittance of tax.

It shall be the duty of every person required by this article to collect and remit to the town the taxes imposed by this article to make a report for each calendar month 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. The monthly reports shall be delivered to the treasurer on or before the twentieth (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 town and sent to the treasurer. When the report deadline and payment deadline falls on a Saturday,

Sunday, or legal holiday, then any return required by this title may be filed or such payment made without penalty or interest on the next succeeding business day.

(Ord. O-2000-02; O-2015-02, § 58-41)

Sec. 58-42. Discount.

For the purpose of compensating sellers for the collection of tax imposed by this article, every seller shall be allowed three percent (3%) of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided the amount due is not delinquent at the time of payment.

(Ord. O-1999-03, § 58-42)

Sec. 58-43. Penalty and interest.

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this article within the time and in the amount required, there shall be added to the tax by the treasurer a penalty in the amount of ten percent (10%) of the tax, or a minimum of ten dollars (\$10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax due. The treasurer shall also assess interest on the tax and penalty at the rate of ten percent (10%) per annum from the day after the tax is due until paid.

(Ord. O-1999-03, § 58-43)

Sec. 58-44. Procedure when tax not reported or collected.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and make within the time provided herein any report and remittance required, the treasurer shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the treasurer has secured whatever facts and information he is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and make such report and remittance, he shall proceed to determine and assess against such person the tax and penalty and interest provided for in this article and shall notify such person by registered mail, sent to his or her last known address, of the amount of such tax and penalty and interest. The total amount thereof shall be payable within (10) days of the mailing of such notice. The treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this article as provided by law.

(Ord. O-1999-03, § 58-44)

Sec. 58-45. 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 (5) years suitable records as may be necessary to determine the amount of 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. The treasurer or his duly authorized agents 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 the provisions of this article, and to make transcripts of all or any parts thereof. (Ord. O-2000-02, § 58-45)

Sec. 58-46. Cessation of business: tax due immediately.

Whenever any person required to collect and pay to the town a tax imposed by this article shall cease to operate, go out of business or otherwise dispose of his business, any tax then payable to the town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the treasurer.

(Ord. O-1999-03, § 58-46)

Sec. 58-47. Advertising payment or absorption of tax prohibited.

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

(Ord. O-1999-03, § 58-47)

Sec. 58-48. Gratuities and service charges.

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. An amount or percentage, whether designated as a gratuity or a service charge, that is added to the price of a meal by the seller and required to be paid by the purchaser, as a part of the selling price of the meal and is subject to the tax imposed by this article.

(Ord. O-1999-03, § 58-48)

Sec. 58-49. Exemptions; limits on application.

The following classes of meals shall not be subject to tax under this article:

(a) The tax imposed under this article shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.

(b) The tax imposed under this article shall not be levied on the following items when served exclusively for off-premises consumption:

(1) Donuts, ice cream, crackers, nabs, chips, cookies and factory-prepackaged items of essentially the same nature;

(2) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g., a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

(3) Alcoholic and non-alcoholic beverages sold in factory sealed containers.

(4) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

(5) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. §2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: 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. This subsection shall not affect provisions set forth in subparagraphs (d) (3), (4) and (5) hereinbelow.

(c) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(d) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

(1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.

(2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

(3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.

(4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.

(5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

(6) Food and beverages sold on an occasional basis by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the net proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.

(7) Food and beverages sold through vending machines.

(Ord. O-2000-02, § 58-49)

Sec. 58-50. Enforcement.

(a) It shall be the duty of the treasurer to ascertain the name of every person operating a restaurant in the town, liable for the collection of the tax imposed by this article, who fails, refuses or neglects to collect such tax or to make the reports and remittance required by this article. The treasurer may have issued a summons for such person, and the summons may be served upon such person by any town police officer in the manner provided by law. One return of the original summons shall be made to the general district court for the town.

(b) In the event the purchaser of any meal refuses to pay the tax imposed by this article, the seller may call upon the police department for assistance; and the investigating officer may, when probably cause exists, issue the purchaser a summons returnable to the general district court as provided by law.

(Ord. O-1999-03, § 58-50)

Sec. 58-51. Penalty for violation of this article.

(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 provision of this article shall be guilty of a Class 1 misdemeanor.

(b) Except as provided in subsection (a) above, any corporate or partnership officer, as defined in Virginia Code §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 provided in this article.

(Ord. O-2000-02, § 58-51)