

● **ARTICLE XIV. - TAX ON PREPARED FOOD AND BEVERAGE**

● **Sec. 32-283. - Definitions.**

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

(a)

Caterer: A person who furnishes food on the premises of another, for compensation.

(b)

Commissioner of revenue: The commissioner of revenue of the City of Roanoke and any of his duly authorized deputies, assistants, employees or agents.

(c)

Food: Any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic beverages, purchased in or from a restaurant or from a caterer, except snack foods.

(d)

Person: Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.

(e)

Purchaser: Any person who purchases food in or from a restaurant or from a caterer.

(f)

Restaurant: Any place in or from which food is sold in the city, including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, cafe, snack bar, lunch counter, delicatessen, confectionery, bakery, eating house, eatery, drugstore, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar or lounge. The word "restaurant" shall not mean a grocery store or supermarket except for any space or section therein designated as a delicatessen or for the sale of prepared sandwiches, delicatessen food or food prepared in a delicatessen.

(g)

Seller:

(1)

Where the restaurant or catering business is a corporation, the president or a duly authorized agent of the corporation.

(2)

Where the restaurant or catering business is an unincorporated partnership or association, the general partner or partners or the managing agent of such unincorporated partnership or association.

(3)

Where the restaurant or catering business is a sole proprietorship, the owner or the managing agent of the proprietorship.

(4)

Where the restaurant or catering business is a nonprofit or charitable organization, the organization or a duly authorized agent of the organization.

(h)

Snack food: Unopened bottles or cans of carbonated soft drinks; chewing gum; candy; popcorn; peanuts and other nuts; unopened packages of cookies, doughnuts, crackers and potato chips; and other items of essentially the same nature and consumed for essentially the same purpose which are packaged for home consumption.

(i)

Treasurer: The treasurer of the City of Roanoke and any of his duly authorized deputies, assistants, employees or agents.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 30959, § 1, 4-13-92; Ord. No. 31169, § 1, 8-24-92; Ord. No. 34860, § 1, 6-5-00; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-284. - Levy of tax; amount.**

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby levied and imposed on the purchaser of all food sold in the city in or from a restaurant, whether prepared in such restaurant or not and whether consumed on the premises or not, or by a caterer regardless of place of delivery or consumption. The rate of this tax shall be five and one-half (5.50) percent of the amount paid for such food. In the computation of this tax, any fraction of one-half cent (\$0.005) or more shall be treated as one cent (\$0.01).

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 30394, § 1, 2-4-91; Ord. No. 37045, § 1, 5-10-05; Ord. No. 38758, § 1, 4-5-10; Ord. No. 40225, § 1, 5-11-15)

- **Sec. 32-285. - Payment and collection of tax.**

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

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 31169, § 1, 8-24-92)

- **Sec. 32-286. - Reports and remittance generally.**

Every seller of food with respect to which a tax is levied under this article shall make out a report, upon such forms and setting forth such information as the commissioner of revenue may prescribe and require, showing the amount of food charges collected and the tax required to be collected, and shall sign and deliver such report to the city treasurer with a remittance of such tax. Such reports and remittance shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-287. - Preservation of records.**

It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three (3) years records showing gross sales of all food and beverages, the amount charged the purchaser of each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The commissioner of revenue shall have the power to examine such records at reasonable times and without unreasonable interference with the

business of the seller, for the purpose of administering and enforcing the provisions of this article and to make copies of all or any parts thereof.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-288. - 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 the 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 the purchaser of the payment of all or any part of the tax.

(Ord. No. 28631, § 1, 5-18-87)

- **Sec. 32-289. - Tips and service charges.**

Where a purchaser provides a tip for an employee of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip 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 tip is turned over to the employee by the seller.

An amount or percent, whether designated as a tip or a service charge, that is added to the price of the meal by the seller, and required to be paid by the purchaser, shall be exempt from the tax imposed by this article to the extent that the mandatory gratuity or service charge is less than twenty percent of the sales price. Any portion of the mandatory gratuity or service charge that exceeds twenty percent of the sales price is a part of the selling price of the meal and is subject to the tax imposed by this article.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 37535, § 1, 9-18-06)

- **Sec. 32-290. - Duty of seller when going out of business.**

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

(Ord. No. 28631, § 1, 5-18-87)

- **Sec. 32-291. - Reserved.**

Editor's note— Ord. No. 35854, [§ 1](#), adopted May 13, 2002, repealed [§ 32-291](#) which pertained to discount and derived from Ord. No. 28631, [§ 1](#), adopted May 18, 1987.

- **Sec. 32-292. - Enforcement; duty of commissioner of revenue.**

The commissioner of revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the commissioner of revenue to ascertain the name of every seller 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 remittances required by this article. The commissioner of revenue may have issued a summons for such person and may serve a copy of such summons upon such person in the manner provided by law. Police powers are hereby conferred upon the commissioner of revenue and his duly authorized deputies, assistants, employees and agents while engaged in their duties pursuant to this article, and they shall exercise all the powers and authorities of police officers in performing such duties.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-293. - Procedure upon failure to collect, report, etc.**

If any seller, whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the commissioner of revenue shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner of revenue shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any seller who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such seller the tax and penalties provided for by this article and shall notify such seller, by mail sent to his last known place of address, or through such other method of communication determined in the commissioner's discretion, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date such notice is sent.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-294. - Duty of treasurer.**

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

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 31169, § 1, 8-24-92; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-295. - Penalty for late remittance or false return.**

(a)

If any seller whose duty it is to do so shall fail or refuse to file any report required by this article or to remit to the city treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax a penalty in the amount of ten (10) percent if the failure is not for more than thirty (30) days, with an additional five (5) percent of the total amount of tax owed for each additional thirty (30) days or fraction thereof during which the failure continues, not to exceed twenty-five (25) percent of the taxes collected, or ten dollars (\$10.00), whichever amount is greater. Provided, however, no penalty shall exceed the amount of the tax assessable.

(b)

In the case of a false or fraudulent return with intent to defraud the city of any tax due under this article, a penalty of fifty (50) percent of the tax shall be assessed against the person required to collect such tax.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 30959, § 1, 4-13-92; Ord. No. 40847, § 1, 6-19-17)

- **Sec. 32-296. - Violations of article.**

Any person violating, failing, refusing or neglecting to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this article. An agreement by any person to pay the taxes provided for in this article by a series of installment payments shall not relieve any person of criminal liability for violation of this article until the full amount of taxes agreed to be paid by such person is received by the treasurer. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 30959, § 1, 4-13-92)

- **Sec. 32-297. - Exemptions.**

(a)

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

(1)

Doughnuts, ice cream, crackers, nabs, chips, cookies, and other 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; 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 nonalcoholic 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 by this article, 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 nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d)(3), (4) and (5) herein below.

(c)

A grocery store, supermarket or convenience store shall not be subject to the tax imposed by this article 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 by this article shall not be levied on the following purchases of food and beverages:

(1)

Food and beverages furnished by restaurants to employees as part of their compensation when no charge is made to the employee.

(2)

Food and beverages sold by nonprofit 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 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, disabled, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.

(5)

Food and beverages furnished by a public or private nonprofit 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, disabled or needy persons in their homes or at central locations.

(6)

Food and beverages sold on an occasional basis, not exceeding three (3) times per calendar year by a nonprofit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for nonprofit educational, charitable, benevolent or religious purposes.

(7)

Bakery foods, as defined in the Food Stamp Act of 1977, U.S.C. § 2012. This includes bagels, brownies, cakes, cookies, crackers, croissants, doughnuts, pies, pastries, and similar prepackaged bakery items.

(8)

Any other sale of food which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or administrative rules and regulations issued pursuant thereto.

(9)

Food sold from a vending machine.

(Ord. No. 28631, § 1, 5-18-87; Ord. No. 30959, § 1, 4-13-92; Ord. No. 34860, § 1, 6-5-00)

- **Secs. 32-298, 32-299. - Reserved.**