

AN ORDINANCE to amend and reordain Article X, Chapter 36 of The Code of the City of Alexandria, Virginia, 1963, as amended, which Chapter 36 relates to TAXATION, which Article X relates to TAX ON THE SALE OF CIGARETTES.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article X, Chapter 36 of The Code of the City of Alexandria, Virginia, be and the same hereby is amended and reordained to read as follows:

Article X. Tax on Sale of Cigarettes.

Section 36-50. Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) "Authorized Agent" shall mean and include every dealer and other person who shall be appointed or authorized by the Northern Virginia Cigarette Tax Board to collect the tax on cigarettes under the provisions of this Article.

(b) "Board" shall mean the Northern Virginia Cigarette Tax Board.

(c) "Cigarette" shall mean and include 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.

(d) "City" shall mean the City of Alexandria, Virginia.

(e) "City Manager" shall mean the City Manager of the City of Alexandria, Virginia, or any of his duly authorized deputies or agents.

(f) "Dealer" shall mean and include every manufacturer, jobber, manufacturer's representative, wholesale dealer, retail dealer, vending machine operator or other person who sells cigarettes.

(g) "Manufacturer" shall mean and include any person who makes, manufactures, produces or fashions cigarettes for sale as herein defined.

(h) "Package" shall mean and include every package, box, can or other container of any cigarettes, irrespective of the size, shape or material from which such container is made, to which the tobacco revenue stamp of the Commonwealth of Virginia is required to be affixed, in which retail sales of such cigarettes, as herein defined, are normally made or intended to be made.

(i) "Person" shall mean and include any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, means all the officers and directors thereof.

(j) "Place of Business" shall mean and include any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale or consumption, including vending machines, by a dealer.

(k) "Purchaser" shall mean and include every person to whom the ownership of any cigarettes is transferred irrespective of the means employed by a dealer within the City of Alexandria, Virginia.

(l) "Retail Dealer" shall mean and include every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the City to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates one or more vending machines for the purpose of sale within the City of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, transfers or deals in cigarettes for profit within the City, who is not licensed as a wholesaler or self-wholesaler.

(m) "Sale" or "Sell" shall mean and include every act or transaction, irrespective of method or means employed, including barter, exchange, gifts, theft or the use of vending machines or other mechanical devices whereby ownership to any cigarettes shall be transferred within the City from a dealer, as herein defined, to any other person.

(n) "Self-wholesaler" shall mean and include any person who owns and operates one or more retail stores and purchases cigarettes directly from a dealer, as herein defined, and whose function it is to store or warehouse cigarettes for distribution to his several retail outlets for sale at retail.

(o) "Transporter" shall mean and include any person importing or transporting into the City or transporting in the City cigarettes obtained from a source located outside the City or from any person not licensed to sell cigarettes by the State of Virginia for which the tax has not been paid or for which provision for payment of the tax has not been made. It shall not include an interstate commerce carrier licensed by Interstate Commerce Commission to carry commodities in interstate commerce or a dealer maintaining a warehouse or place of business outside the City when such warehouse or place of business is licensed by the State of Virginia to sell or store cigarettes.

(p) "Unclassified Acquirer" shall mean and include any person except a transportation company or a purchaser at retail from a licensed retail dealer within the City, who imports or acquires cigarettes for use, sale or distribution within the City from any other source.

(q) "Use" shall mean and include the exercise of any right or power or transaction incident to the ownership or control of cigarettes into whose possession, storage, or control is given.

(r) "Vending Machine Operator" shall mean and include any person who owns and operates one or more coin operated cigarette vending machines or mechanical devices for the sale of cigarettes and who purchases his cigarettes from a dealer as herein defined. Every vending machine or mechanical device operated or maintained for the purpose of vending cigarettes shall constitute a separate place of business. The definition of a "Vending Machine Operator" shall not apply to a person holding a current State license as a tobacco retailer and having in his own place of business one or more cigarette vending machines.

(s) "Wholesaler" shall mean and include any person who sells cigarettes to dealers, as herein defined, for the purpose of resale only or who sells at wholesale to institutions, commercial or industrial users.

Section 36-51. Levy and Rate.

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the City, upon each and every package of cigarettes, as herein defined, first entering this City for sale or use within the City, from and after the effective date of this Article, an excise tax equivalent to three and one-half cents (3-1/2¢) for each ten (10) cigarettes or fractional portion of ten (10) cigarettes or seven cents (7¢) per pack, whichever is less; the tax shall be paid in the manner and at the time hereinafter prescribed.

Section 36-52. Method of Collection and Duties of Agents.

The tax imposed by this Article shall be paid by each authorized agent under a reporting method deemed by the Northern Virginia Cigarette Tax Board to carry out the provisions of this Article. Each authorized agent appointed hereunder is hereby required and it shall be his duty to collect the tax imposed under the provisions of this Article, and to file with the Northern Virginia Cigarette Tax Board on a prescribed form, postmarked on or before the 20th day of each calendar month, a report stating the number of cigarettes sold by him to, or purchased from him by, at each separate place of business within the City during the preceding calendar month. Such return shall contain or be accompanied by such further information as the Northern Virginia Cigarette Tax Board may require.

In his payment of this tax, the authorized agent shall be allowed a discount on the tax due of one and one-half percent if a self-wholesaler, two percent if any other type of wholesaler, and three and one-half percent if a vending machine operator.

When any authorized agent's monthly report or payment is not reported on the date prescribed, or is deficient, inadequate, or otherwise incomplete, for whatever cause; or whether a failure is due to a remittance not being accepted by a banking institution on first attempt to deposit, the Northern Virginia Cigarette Tax Board shall impose, in addition to other remedies or penalties which may be assessed, a late reporting penalty in addition to other remedies or penalties which may be assessed, a late reporting penalty of 10 percent of the gross tax due or \$10.00, whichever is greater, but in no event more than \$500.00, and shall disallow any discount up to a maximum amount of \$500.00. The authorized agent shall be notified by registered mail of the late reporting penalty and any additional tax or penalty assessed shall be due within 10 days after notice of such deficiency has been issued. Should the authorized agent fail to respond to such written notice, then the Northern Virginia Cigarette Tax Board shall proceed under Section 36-55 of this Article.

It shall also be the duty of every authorized agent and dealer, and he is hereby required, to maintain and to keep for a period of two (2) years, not including the current calendar year, such records of cigarettes received and sold by him, to make all of such records available for examination in the City by the Northern Virginia Cigarette Tax Board upon demand; and to make available the means, facilities and opportunity for making such examination at all reasonable times. The Northern Virginia Cigarette Tax Board is hereby empowered to make and carry into effect all such reasonable rules and regulations relating to the collection and reporting of this tax as may seem necessary.

Section 36-53. Notice of Intention by Dealers.

After the enactment of this Article, dealers intending to sell cigarettes within the City shall in writing notify the Northern Virginia Cigarette Tax Board of the names and addresses and the Virginia retail sales and use tax certificate of registration number of each separate place of business. Possession of a Virginia State retail tobacco license and a Virginia State retail sales and use tax certificate of registration obtained for each separate place of business by a retail dealer shall be considered sufficient written notification to the Northern Virginia Cigarette Tax Board. In the case of vending machine sales, possession of a Virginia State retail sales and use tax certificate of registration number properly covering such machines shall be considered sufficient notification to the Northern Virginia Cigarette Tax Board regardless of the number of machines in the City covered by one such number.

Section 36-54. Reserved.

Section 36-55. Powers and Duties of the Northern Virginia Cigarette Tax Board.

In addition to the powers granted to it in Section 36-52 of this Article, the Northern Virginia Cigarette Tax Board is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to (a) the delegation of any of its powers to its administrator or employees; (b) any other matter pertaining to the administration and enforcement of the provisions of this Article. The Northern Virginia Cigarette Tax Board may appoint certain employees as special tobacco enforcement agents, shall have the power of arrest upon reasonable and probable cause that a violation of this Article has been committed. The Northern Virginia Cigarette Tax Board is authorized and empowered to supply its special tobacco enforcement agents with the necessary (a) firearms for their protection; (b) emergency-equipped vehicles while on duty or call; (c) or other law enforcement equipment it deems necessary and proper for the enforcement of rules, regulations, and ordinances promulgated or delegated to the Northern Virginia Cigarette Tax Board. The Northern Virginia Cigarette Tax Board is authorized and empowered to examine the books, records, invoices, and papers of any dealer and any and all cigarettes in and upon any place of business where cigarettes are placed, stored, sold, offered for sale or displayed for sale within the City by a dealer. The Northern Virginia

cigarette Tax Board is also hereby authorized to seize any cigarettes, tobacco products, coin-operated vending machines, counterfeit stamps or impression devices which are in violation of this Article. Should the Northern Virginia Cigarette Tax Board discover, either by direct or indirect means or methods, any cigarettes which are subject to the tax imposed under the provisions of this Article, but upon which the tax has not been paid, nor provision for the payment of the tax been made, nor has money for the tax been paid by or billed to the place of business as part of its purchase price of the said cigarettes, or any cigarettes in the possession of an unclassified acquirer or transporter found within or being transported over the streets or highways of this City in quantities of more than thirty packages, not accompanied by a legitimate bill of lading, said bill of lading containing: (1) the date; (2) the seller's name and address; (3) the shipper's name and address; (4) the purchaser's name and address; (5) description of tobacco product shipped, including brands and quantities; and (6) the price and terms of the payment, then the Northern Virginia Cigarette Tax Board shall hereby declare such cigarettes contraband and shall seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited. The Northern Virginia Cigarette Tax Board shall give reasonable and proper notice to the public and to any known holders of property interest in such seized cigarettes that such seized cigarettes are to be offered for sale or bid, said notice to be given at least 30 days before any such sale or bid.

Any aggrieved person may petition the Northern Virginia Cigarette Tax Board in writing within such time as indicated hereinbelow for return of such cigarettes so seized, providing such petitioner shall show good cause why said cigarettes should be returned. Such good cause shall include a written statement showing by a preponderance of the evidence that: (1) the illegal sale or use of such seized cigarettes was not intentional on the part of the petitioner, and (2) that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes were seized. Said petition shall be answered by the Northern Virginia Cigarette Tax Board in writing by registered mail within 10 days thereafter, indicating whether such petition was granted or refused. In no event shall any petition be considered by the Northern Virginia Cigarette Tax Board if it is received more than 20 days after the first notice to the public of the sale of the seized cigarettes in question, provided, however, that reasonable and proper notice was given to the public and to the known holders of property interest in said cigarettes as hereinabove set forth.

Any petitioner who is unsatisfied with the written decision of the Northern Virginia Cigarette Tax Board, may within 30 days of the date of said decision, appeal such decision to the appropriate court in the jurisdiction where the arrest and seizure occurred. Any petitioner becoming an appellant in this manner shall agree to abide and be bound by all the rules and regulations relevant to said appeal in that court.

If seizure of the declared contraband cigarettes is not, for any reason, an available remedy to the Northern Virginia Cigarette Tax Board or if a dealer or person fails or refuses to file a return after notice of such failure by registered mail or files a fraudulent return or fails or refuses to pay the tax as required, the Northern Virginia Cigarette Tax Board shall administratively determine the tax due from such direct or indirect information as is then available and then assess the tax against the dealer. Notification to the dealer shall be by registered mail and the tax together with penalties of at least fifty (50) percent of the tax assessed shall be due 10 days after the notice of deficiency has been issued, provided, however, that such seizure and sale or other administrative act by the Northern Virginia Cigarette Tax Board shall not be deemed to relieve any dealer or person from any of the other penalties provided in this Article.

Section 36-56. Erroneous Assessment.

Any person assessed by the Northern Virginia Cigarette Tax Board with a cigarette tax, who has been aggrieved by such assessment may apply to the Northern Virginia Cigarette Tax Board for a correction of such assessment. If the Northern Virginia Cigarette Tax Board is satisfied that the tax was erroneously assessed, it shall certify the amount erroneously assessed and refund the amount erroneously assessed together with any interest and penalties paid thereon.

Section 36-57. Establishment of the Northern Virginia Cigarette Tax Board.

The City Manager of the City of Alexandria, Virginia, is further authorized to execute, on behalf of the City Council of Alexandria, an Agreement with appropriate representatives of other Northern Virginia jurisdictions providing for the establishment and operation of a joint administrative agency to administer and enforce the cigarette tax ordinances of the City of Alexandria and the other participating member jurisdictions, such agency to be known as the "Northern Virginia Cigarette Tax Board." The terms of such agreement shall be approved by resolution of the City Council of Alexandria prior to execution of the agreement and shall cover all aspects of the creation and operation of said agency, including, but not limited to, its membership, powers, duties and duration.

The said Agreement may further provide for the employment of officers and employees by the agency, including, but not limited to, an Administrator and Treasurer, with such compensation as may be set by the agency.

Section 36-58. Penalty for Violation of Article.

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000.00 or by imprisonment for each offense not exceeding twelve (12) months or by both such fine and imprisonment. Each continuing day of violation of this Article shall be deemed to constitute a separate offense.

Section 36-59. Severability.

If any section, phrase, or part of this Article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the Article; and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

Section 2. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.  
Mayor

FINAL PASSAGE: DECEMBER 30, 1974