

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 and which Article X relates to TAX ON 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, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

Article X. Tax on Sale of Cigarettes.

Sec. 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) "Board" shall mean the Northern Virginia Cigarette Tax Board.
- (b) "Carton" shall mean any container, regardless of material used in its construction, in which ten (10) packages of twenty (20) cigarettes are placed.
- (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) "Dealer" shall mean and include every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the city.
- (f) "Package" shall mean and include any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily a package contains twenty (20) cigarettes; however, "package" includes those containers in which fewer or more than twenty (20) cigarettes are placed.
- (g) "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, shall include all the officers and directors thereof.

(h) "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, consumption or distribution, including vending machines, by a dealer within the city.

(i) "Registered agent" shall mean and include every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this article.

(j) "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 within his own place of business, one or more cigarette 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, stores, transfers or deals in cigarettes for the purpose of sale within the city to the ultimate consumer, who is not licensed as a wholesaler, or vending machine operator.

(k) "Sale" or "sell" shall mean and include every act or transaction, irrespective of method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices, or a criminal or tortious act whereby ownership or possession, or both, of any cigarettes shall be transferred within the city from a dealer, as herein defined, to any person for a consideration.

(l) "Stamp" shall mean a small gummed piece of paper or decalcomania used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold or used within the city.

(m) "Store" or "storage" shall mean and include the keeping or retention of cigarettes in this city for any purpose except sale in the regular course of business.

(n) "Use" shall mean and include the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

(o) "User" shall mean any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

Sec. 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 every person who sells or uses cigarettes within the City, from and after July 1978, an excise tax equivalent to ten cents (10¢) for each package containing twenty (20) cigarettes and five (5) mills for each cigarette contained in packages of fewer or more than twenty (20) cigarettes sold or used within the city. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the city shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes.

Sec. 36-52. Method of collection.

The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Board to carry out the provisions of this article. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax and report separately for packages of twenty (20) cigarettes and packages of cigarettes which contain fewer or more than twenty (20) cigarettes forms prescribed for this purpose by the Board, (1) the quantity of Northern Virginia Cigarette Tax Board stamped cigarettes sold or delivered to: (a) each registered agent appointed by the Board for which no tax was collected, (b) each manufacturer's representative and (c) each separate person and place of business within the city during the preceding calendar or fiscal month; and (2) the quantity of Northern Virginia Cigarette Tax Board stamps on hand, both affixed and unaffixed on the first day and the last day of the preceding calendar or fiscal month and the quantity of Northern Virginia Cigarette Tax Board stamps or Northern Virginia Cigarette Tax Board stamped cigarettes received during the preceding calendar or fiscal month; (3) the quantity of cigarettes on hand to which the Northern Virginia Cigarette Tax Board stamp had not been affixed on the first and last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the Northern Virginia Cigarette Tax Board stamp had not been affixed; and (4) such further information as the administrator for the Board may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.

Each dealer or other person liable for the tax shall file such reports with the Board and pay the tax due to the Board between the first and twentieth day after the close of each calendar or fiscal month, and shall furnish a copy of any cigarette tax reports submitted to the department of taxation for the previous month.

When, upon examination and audit of any invoices, records, books, cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the Board of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The board, shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid and impose a penalty of ten percent (10%) and interest of three-quarters percent (3/4%) per month of the gross tax due.

When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the Board shall administratively assess the tax due and unpaid and impose a penalty of fifty percent (50%) and interest of three-quarters percent (3/4%) per month of the gross tax due.

The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Northern Virginia Cigarette Tax Board stamp has been affixed thereto prior to offering them for sale.

Any dealer or other person liable for the tax who shall receive cigarettes not bearing the Northern Virginia Cigarette Tax Board stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the Northern Virginia Cigarette Tax Board stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any dealer or other person liable for the tax who has notified the Board that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the Board) without affixing the stamps required by this article. Any such interstate or intrastate stock shall be kept entirely separate and apart from the Northern Virginia Cigarette Tax Board stamped stock, in such a manner as to prevent the co-mingling of the interstate or intrastate stock with the Northern Virginia Cigarette Tax Board stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which has been lost whether by negligence, theft or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

It shall also be the duty of each dealer, or other person liable for the tax and he is hereby required, to maintain and to keep for a period of three (3) years, not including the current calendar year, such records of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, whether the same were stamped or unstamped, to make all of such records available for audit, inspection and examination and to make available at all reasonable times, the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Board.

#### Sec. 36-52.1. Registered agents.

Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the city, shall first make application to the Board to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the Board deems necessary for the administration and enforcement of this article. Such applicant shall provide a surety bond to the Board of one hundred and fifty percent (150%) of the average monthly tax liability of the applicant or fifty thousand dollars (\$50,000.00), whichever is less, with a surety company authorized to do business in the state of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. Any applicant whose place of business is outside the city shall automatically, by filing his application, submit himself to the Board's legal jurisdiction and appoint the administrator for the Board as his agent for any service of lawful process.

Upon receipt of the properly completed application, and the required surety bond executed, the Board shall issue to said applicant a permit to qualify him as a registered agent to purchase, sell, use, store, possess, distribute or transport within or into the city, Northern Virginia Cigarette Tax Board stamped cigarettes.

Registered agents shall agree to the reporting and payment requirements placed upon him by this article and the rules and regulations as from time to time may be promulgated by the Board. In his reporting and payment of the tax, the registered agent shall be allowed a discount, as the Board may determine, not to exceed .0175¢ per carton sold or delivered by him. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Board shall disallow any discount taken up to a maximum amount of five hundred dollars (\$500.00) and shall impose a late reporting penalty of ten percent (10%) of the gross tax due or ten dollars (\$10.00), whichever is greater, but in no event more than five hundred dollars (\$500.00). The Board may also require such registered

agent to provide proof that he has complied with all applicable state laws to legally conduct such business and to file financial statements showing all assets and liabilities. The Board may revoke any registered agent's permit if such bond, as required is impaired for any reason.

After adoption of this article, dealers or other persons liable for that tax who shall sell, use, store, possess, distribute or transport tobacco products within or into the city, shall be allowed thirty (30) days to become qualified as a registered agent.

Sec. 36-53. Notice of intention by retail dealers.

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the city shall notify the Board, in writing, of the supplier of such cigarettes and the names and addresses and the Virginia Retail Sales and Use Tax Certificate registration number for each separate place of business. Possession of a Virginia State Retail Tobacco License and a Virginia State Retail Sales and Use Tax Certificate and, a retail business license issued by the city for each separate place of business by a retail dealer, shall be considered sufficient written notification to the Board.

No retail dealer, as defined herein, who shall have complied with the provisions of this article and who purchases only tax paid Northern Virginia Cigarette Tax Board stamped cigarettes for each separate place of business shall be required to qualify as a registered agent.

Sec. 36-54. Presumption of violation by dealer.

When a dealer or other person liable for the tax is found to possess any cigarettes without the tax paid Northern Virginia Cigarette Tax Board stamp affixed and when such dealer or other person is not in the process of affixing such stamps thereto, there shall arise a rebuttable presumption that said dealer or person is in possession of untaxed cigarettes in violation of this article.

Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the city. Any vending machine located within the city containing cigarettes upon which the Northern Virginia Cigarette Tax Board stamp has not been affixed or containing cigarettes placed so as not to allow visual inspection of the Northern Virginia Cigarette Tax Board stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the Board. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the Board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be in violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of said machine.

Sec. 36-54.1. Illegal acts.

It shall be unlawful and a violation of this article for any dealer or other person liable for the tax:

(a) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which may be issued by tobacco revenue agents or as hereinafter provided under this article; or

(b) To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp; or

(c) To sell, offer for sale, or authorize or approve the sale in the city of any cigarettes upon which the Northern Virginia Cigarette Tax Board stamp has not been affixed; or

(d) To possess, store, use, authorize or approve the possession, storage or use in the city of any cigarettes in quantities of more than sixty (60) packages upon which the Northern Virginia Cigarette Tax Board stamp has not been affixed; or

(e) To transport, authorize or approve the transportation of any cigarettes, in quantities of more than sixty (60) packages into or within the city upon which the Northern Virginia Cigarette Tax Board stamp has not been affixed, if they are;

(1) Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

(2) Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or accompanied by a bill of lading or other document indicating;

a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax of the state or district of destination has been paid and said cigarettes bear the tax stamps of that state or district; or

b. A consignee or purchaser in the Commonwealth of Virginia, but outside the jurisdiction of the Board, who does not possess a Virginia Sales and Use Tax Certificate, a Virginia retail tobacco license and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination; or

(f) To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been therefore paid; or

(g) To remove from any package any stamp with intent to use or cause the same to be used after same have already been used, or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person or to reuse any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this article, or to sell, or offer to sell, any stamp provided for herein.

Sec. 36-55. Powers of the Northern Virginia Cigarette Tax Board.

(a) The Board may delegate any of its powers to its Administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this article. The Board shall be granted the following powers:

- (1) To assess, collect, and disburse the cigarette tax for each participating jurisdiction;
- (2) To audit dealer sales of cigarettes for each participating jurisdiction;
- (3) To provide information for criminal prosecution by the commonwealth's attorneys or city attorneys for each participating jurisdiction;
- (4) To designate an administrator;
- (5) To manage the Northern Virginia Cigarette Tax Fund;
- (6) To retain an accounting firm to audit its books;
- (7) To designate a depository bank or banks;
- (8) To contract with member jurisdictions for administrative services.
- (9) To hold and convey real and personal property;
- (10) To enter into contracts;
- (11) To hire, supervise and discharge its own employees;
- (12) To sue and be sued in its own name;
- (13) To prescribe the design of a stamp(s); and
- (14) To establish different classes of taxpayers and extend varying discount rates.

(b) The Board may employ legal counsel, bring appropriate court action in its own name to enforce payment of the tobacco tax or penalties owed and file tax liens against property of taxpayers hereunder.

(c) The Board is authorized to enter into an agreement with the department of taxation under which a wholesaler, qualified to purchase Virginia revenue stamps, may qualify to purchase dual Northern Virginia Cigarette Tax Board stamps from the department of taxation either at its Richmond, Virginia office or its Northern Virginia branch office.

(d) The Board may appoint certain employees as tobacco revenue agents, who shall be required to carry proper identification while performing their duties and shall have the power to seize or seal any coin-operated vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this article and shall have the power of arrest upon reasonable and probable cause that a violation of this article has been committed. The Board is authorized to provide its tobacco revenue agents with (1) firearms for their protection, (2) emergency-equipped vehicles while on duty and (3) other equipment deemed necessary and proper.

(e) The Board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

Sec. 36-55.1. Jeopardy Assessment.

If the Administrator for the Board determines after reasonable justification that the collection of any tax or any amount of tax required to be collected and paid under this article will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the Administrator may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this article for filing a return and paying the tax has expired.

Sec. 36-56. Erroneous assessment: Notices and hearing in the event of sealing of vending machines or seizure of contraband property.

Any person assessed by the Board with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this article, who has been aggrieved by such assessment, seizure, or sealing, may file a request for a hearing before the Administrator for the Board for a correction of such assessment and the return of such property seized or sealed. Where holders of property interest in cigarettes, vending machines or other property are known at time of seizure and sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four (24) hours. Where such holders of property interest are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contains such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for a return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

Such hearing shall be requested within ten (10) days of the notice of such assessment, seizure or sealing and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines or other property should be returned or released. Within five (5) days after receipt of such hearing request the Administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen (15) days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest have not been paid as required or if the request is received more than ten (10) days from first notice to the petitioner of such seizure or sealing. Within five (5) days after the hearing, the Administrator shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

Appropriate relief shall be given by the Administrator if he is convinced by the preponderance of the evidence that the illegal sale or use of such seized cigarettes or vending machine or other property was not intentional on the part of the petitioner, and 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, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the Board may within thirty (30) days of the date of said decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.

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

The resolution adopted by the City Council on July 14, 1970, pertaining to the establishment of the Northern Virginia Cigarette Tax Board is hereby continued in effect and made a part of this article by reference.

Any inconsistencies between the powers granted to the Board in the resolution adopted by the city council, dated July 14, 1970, and herein incorporated by reference, and the powers granted to the Board in section 36-55 of this article, shall be resolved in favor of those provisions in section 36-55.

The Board's fiscal year shall be from July 1, through June 30.

Sec. 36-57.1. Disposal of seized property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Board after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax and penalties assessed.

Sec. 36-57.2. Extensions.

Except as hereinafter provided, the Administrator, upon a finding of good cause may grant an extension of time to file a tax report upon written application therefor, until the end of the calendar or fiscal month in which any tax report is due hereunder or for a period not exceeding thirty (30) days. In no case shall a request for an extension of time to file a tax report be granted by the Administrator when such request is not received within the due date for filing such tax report. No interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension. Where such extension is granted beyond the end of the calendar or fiscal month in which any tax report is due hereunder, interest on the rate of three-quarters of one percent (3/4%) per month shall be charged.

Sec. 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 punished by a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than twenty (20) months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

Sec. 36-58.1. Each violation a separate offense.

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the Northern Virginia Cigarette Tax Board stamp has not been affixed shall be deemed to constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

Section 2. That the title of an 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.

FRANK E. MANN  
Mayor

FINAL PASSAGE: June 17, 1978