

ORDINANCE NO. 4497

AN ORDINANCE to amend and reordain Section 3-2-110 of Article I (TAX ON SALE OF CIGARETTES), Section 3-2-147 of Article K (TRANSIENT LODGING TAX), and Section 3-2-249 of Article N (TAX ON MEALS SOLD BY RESTAURANTS) of Chapter 2 (TAXATION) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article I (Tax on Sale of Cigarettes) of Chapter 2 (Taxation) of Title 3 (Finance, Taxation and Procurement) of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by enacting amended Section 3-2-110, to read as follows:

Sec. 3-2-110 Erroneous assessment; notices and hearing in the event of sealing of vending machines or seizure of contraband property.

(a) 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 the time of seizure and sealing, notice of the seizure or sealing shall be sent to them by certified mail within 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 the 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.

(b) The hearing shall be requested within 10 days of the notice of such assessment, seizure or sealing and shall set forth the reasons why the tax, penalties and interest and cigarettes, vending machines or other property should be returned or released. Within five days after receipt of the 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 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 10 days from first notice to the petitioner of such seizure or sealing. Within five days after the hearing, the administrator shall notify the petitioner, by certified mail, whether his request for a correction has been granted or refused.

(c) Appropriate relief shall be given by the administrator if he is convinced by the preponderance of the evidence 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 30 days of the date of such decision, appeal the decision of the appropriate court in the jurisdiction where the seizure or sealing occurred.

Section 2. That Article K (Transient Lodging Tax) of Chapter 2 (Taxation) of Title 3 (Finance, Taxation And Procurement) of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by enacting amended Section 3-2-147, to read as follows:

Sec. 3-2-147 Failure to collect, report or remit tax; action by the director of finance.

If any person shall fail or refuse to collect in whole or in part or properly to report or remit such tax within the time required by this article, the director 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 director has procured such facts and information, he shall make his estimate of the tax due and proceed to determine and assess against such person such estimated tax due together with the penalties and interest provided for by this article. He shall notify such person by certified mail sent to his last known address of the total amount of the tax, interest and penalties and the total amount thereof shall be payable within 10 days from the date of such notice; provided, however, that before any determination and assessment is made by the director that any person is liable for any tax, penalty and interest under this section, he shall give such person notice and an opportunity to be heard concerning such possible determination and assessment.

Section 3. That Article N (Tax on Meals Sold by Restaurants) of Chapter 2 (Taxation) of Title 3 (Finance, Taxation And Procurement) of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by enacting amended Section 3-2-249, to read as follows:

Sec. 3-2-249 Procedure upon failure or refusal to collect, etc., taxes.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article or to make within the time provided in this article the reports and remittances required by this article, the director shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the director procures such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person, who has failed or refused to collect such tax or to make such a report and remittance, he shall proceed to determine and assess against such person such tax and penalty and interest provided for in this article and shall notify the person by certified mail at his last known place of address of the amount of such tax and interest and penalty and the total amount thereof shall be payable within 10 days from the date of the notice.

Section 4. That this ordinance shall become effective upon the date and at the time of its

final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: September 15, 2007