



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of November 15, 2008**

DATE: November 6, 2008

SUBJECT: Adopt amendments to Arlington County Code Chapter on Meals, Food and Beverage Taxation in § 65-2 [relating to the taxation of mandatory gratuities and service charges] and § 65-3(c) [Exemptions, limitations, and credits as it applies to tax credits on the sale, delivery, or service of meals].

C. M. RECOMMENDATION: Adopt proposed amendments to Chapter 65-2 (Levy) and Chapter 65-3(c) (Exemptions, limitations, and credits) of the Arlington County Code as set forth in Attachment 1.

ISSUES: Arlington County Code § 65-2 concerning the taxation of mandatory gratuities and service charges and the provision dealing with Meals, Food and Beverage Taxation found in §65-3(c) concerning credits on the tax on the sale, delivery, or service of meals should be amended to bring the Arlington County code in compliance with current Commonwealth of Virginia statutes on these subjects.

SUMMARY: The Arlington County Code §65-2 incorrectly provides for “*including any amount or percentage, whether designated as a gratuity, tip, or service charge that is added to the price of the meal by the seller and required to be paid by the purchaser.*” In 2006, the Virginia General Assembly specifically exempted from sales and meals taxation mandatory gratuities and service charges that do not exceed 20% of the base price.

The Commissioner of Revenue is requesting that County Code § 65-2 be amended to conform the meals tax levy on mandatory gratuities and service charges to the limitations imposed by the Virginia Code.

The Arlington County Code §65-3(c) incorrectly describes Virginia law as it is currently written. County Code §65-3(c) currently provides for a four and one half percent (4.5%) sales tax.

As of September 1, 2004 the Virginia sales tax increased from four and one-half (4 ½) to five (5) percent (4% state tax and 1% local tax).

County Manager: _____

County Attorney: _____

Staff: Raymond Warren, Commissioner of Revenue

The Commissioner of Revenue is requesting that County Code § 65-3(c) be amended to state: “exceeds the Virginia sales tax, including the local portion of the tax.”

BACKGROUND: Arlington County Code §62-2 is not in compliance with Virginia law in that it purports to impose the meals tax on mandatory gratuities that do not exceed 20% of the base meal price. To correct this situation, the Commissioner of Revenue is requesting that this section of the County Code be amended to reflect limitations now imposed by state law.

Likewise, Arlington County Code §65-3(c) is not consistent with Virginia law as it applies to Meals, Food and Beverage Taxation’s credit. To correct this situation, the Commissioner of Revenue is requesting that this section of the County Code be amended to reflect current and future tax rate changes with language that will accommodate any increases or decreases.

DISCUSSION: The changes would bring The Arlington County code into compliance with the Code of Virginia. This will eliminate the possibility of incorrectly collected taxes and confusion on the part of businesses collecting the meals tax.

FISCAL IMPACT: This ordinance change will have only a nominal impact on meals tax collection and, as such, no revision to the meal tax revenue in the FY 2009 budget is warranted.

ATTACHMENT 1

BE IT ORDAINED by the County Board of Arlington, Virginia that Chapter 65, subsections 2 and 3C of the Arlington County Code are amended, reenacted and recodified to read as follows:

Chapter 65

MEALS, FOOD AND BEVERAGE TAXATION

§ 65-2. Levy.

(a) Except as outlined in subparagraph (b), there is hereby imposed and levied by Arlington County, in addition to all other taxes, fees, and charges of every kind now or hereafter imposed by law, a tax upon all meals sold for money or other consideration in, from, or by a restaurant or caterer, whether prepared in such restaurant or not and whether consumed on the premises or not, and upon prepared sandwiches and single-meal platters sold at the delicatessen counters of grocery and convenience stores, such tax to be at a rate of four (4) percent on the total amount charged by the seller for the meal ~~including any amount or percentage, whether designated as a gratuity, tip, or service charge that is added to the price of the meal by the seller and required to be paid by the purchaser.~~ In the computation of this tax, any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

(b) For meals sold by a restaurant or caterer specifically prepared for use on commercial airlines and delivered to the purchaser for that purpose, the tax rate shall be two (2) percent of the total amount charged by the seller for the meal ~~including any amount or percentage, whether designated as a gratuity, tip, or service charge, that is added to the price of the meal by the seller and required to be paid by the purchaser.~~ In the computation of this tax, any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

(c) In situations where any amount or percentage, whether designated as a gratuity, tip, or service charge, is added to the price of the meal by the seller and required to be paid by the purchaser and the amount of said gratuity, tip or service charge exceeds 20% of the cost of the meal, said amount or percentage shall be included in the calculation of the amount charged for the meal.

§ 65-3(c). Exemptions, limitations, and credits.

(c) *Credits:* There shall be a credit for taxes paid by a seller as defined in this chapter in another state or the District of Columbia by reason of the imposition of a similar tax on the sale, delivery, or service of the meals subject to tax under this chapter in that other taxing jurisdiction to the extent the foreign jurisdiction's tax ~~exceeds the Virginia four and one half (4 1/2) percent sales tax exceeds the Virginia sales tax, as reflected in the Code of Virginia, including the local portion of the tax.~~ The amount of this credit shall not exceed the tax imposed by this chapter. Credit shall not be granted when the laws of the other taxing jurisdiction provide a credit for payment by the seller of Arlington County's meals tax. The other taxing jurisdiction's tax credit

must be exhausted before any credit is granted under this subsection. The credit under this subsection shall not be granted except upon proof of actual tax payments to the other jurisdiction based on the sale, delivery, or service of the same meals which are the subject of taxation under this chapter.