

**CHAPTER 16**  
**MEALS TAX**

- 16-01 TITLE
- 16-02 DEFINITIONS
- 16-03 LEVY
- 16-04 COLLECTION OF TAX BY SELLER
- 16-05 EXEMPTIONS: LIMITS ON APPLICATION
- 16-06 GRATUITIES AND SERVICE CHARGES
- 16-07 REPORT OF TAXES COLLECTED; REMITTANCE;  
PRESERVATION OF RECORDS
- 16-08 PENALTY & INTEREST FOR FAILURE TO FILE RETURN  
OR REMIT TAX WHEN DUE
- 16-09 PENALTY FOR VIOLATION OF ORDINANCE
- 16-10 DUTY OF PERSON GOING OUT OF BUSINESS
- 16-11 ENFORCEMENT
- 16-12 REGULATIONS

## CHAPTER 16

### MEALS TAX

#### Sec. 16-01. TITLE

This Ordinance (hereinafter "the Ordinance") shall be known and may be cited as the Town of Clifton Meals Tax Ordinance.

#### Sec. 16-02. DEFINITIONS

- a. Cater. The furnishing of food, beverages, or both on the premises of another, for compensation.
- b. Collector. The Town Treasurer.
- c. Food. Except as otherwise provided herein, all food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.
- d. Food Establishment. Except as otherwise provided herein, any place in or from which food or food products are prepared, packaged, sold or distributed in the Town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.
- e. Meal. Any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included.
- f. Restaurant. Any one of the following:
  - a. Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including but not limited to,

**Commented [BB1]:** This language is not in section 58.1-3840; should it be deleted here, or is it a logical corollary?

**Commented [BB2]:** This language is not in section 58.1-3840

lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodation of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under Va. Code § 53.1-68. Excluded from this definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

- b. Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public, including but not limited to, operations preparing or storing food for catering services, push cart operations, hot dog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

g. Town. The Town of Clifton, Virginia.

**Sec. 16-03. LEVY** There is hereby imposed and levied by the Town on each person a tax at the rate of two percent (2%) on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

**Sec. 16-04. COLLECTION OF TAX BY SELLER**

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made. The collector shall prescribe a meals tax collection return form, which shall show the amount of charges collected for meals and the tax required to be collected. The form shall contain an appropriate signature block and shall call for such other information as the collector may require. Every person collecting the meals tax shall complete a meals tax collection return and submit it and the remittance of the tax to the collector on or before the close of business on the twentieth day of each month or on the next business day, if the former day is not a business day. Each return shall cover the amount of tax due and collected the preceding month. All tax collections shall be deemed to be held in trust for the Town.

**Sec. 16-05. EXEMPTIONS: LIMITS ON APPLICATION**

- a. The tax imposed under this ordinance shall not be levied on the following:
1. Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption;
  2. Any tangible personal property 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; or
  3. Any food purchased for human consumption as “food” is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages.
  4. Food and beverages sold through vending machines.
- b. The tax imposed hereunder shall not be levied on meals sold or provided by the following purchases of food and beverages:
1. Restaurants to their employees as part of their compensation when no charge is made to the employee;
  2. Volunteer fire departments; volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipt from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes;
  3. Churches that serve meals for their members as a regular part of their religious observances;
  4. Public or private elementary or secondary schools, or public or private colleges or universities, to their students or employees;

5. Hospitals, medical clinics, convalescent homes, nursing homes or other extended care facilities to patients or residents thereof;

6. Day care centers;

7. Homes for aged or infirm individuals, individuals with disabilities, battered women, narcotic addicts, or alcoholics;

8. Age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees; or

9. Sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500, including income from sales at all local farmers markets and roadside stands, not just those sales occurring in the Town.

c. The tax imposed hereunder also shall not be levied on meals:

1. Used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States;

2. Provided by a public or private nonprofit charitable organization or establishment to elderly, infirm or needy individuals, or individuals with blindness or other disabilities persons in their homes, or at central locations; or

3. Provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm or needy individuals, or individuals with blindness or other disabilities in their homes or at central locations.

d. Additionally, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

#### **Sec. 16-06. GRATUITIES AND SERVICE CHARGES**

The tax imposed hereunder may not be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; or (ii) that portion of the amount paid by the purchaser as a mandatory gratuity

or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price.

**Sec. 16-07. REPORT OF TAXES COLLECTED; REMITTANCE; PRESERVATION OF RECORDS**

It shall be the duty of every person required by this ordinance to pay to the Town the taxes imposed by this ordinance to make a report thereof setting forth such information as the collector may prescribe and require, including all purchases taxable under this ordinance, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance. Such records shall be kept and preserved for a period of three (3) years. The Collector shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.

**Sec. 16-08. PENALTY & INTEREST FOR FAILURE TO FILE RETURN OR REMIT TAX WHEN DUE**

- a. If any person shall fail to file a tax return required by this Ordinance when due, the collector shall assess a penalty of ten percent (10%) of the tax assessable on such return, or ten dollars (\$10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The penalty shall be assessed on the day after such return is due. Any such penalty shall become a part of the tax.
- b. If any person shall fail to pay a tax imposed by this article, when due, the collector shall assess a penalty ten percent (10%) for the first month the taxes are past due, and five percent (5%) for each month thereafter, up to a maximum of 25% of the taxes collected but not remitted, or ten dollars (\$10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The penalty for failure to pay any tax shall be assessed on the day after the tax is due. Any such penalty shall become a part of the tax.
- c. In addition to the penalty on delinquent taxes imposed under this Ordinance, there shall be added to such tax by the collector, interest at the rate of ten percent (10%) per annum on the taxes and penalty. The interest shall commence on the first day following the day such taxes are due and shall continue until all such

**Commented [BB3]:** What penalties are permitted, and pursuant to what provision of Virginia law? I don't find any of these provisions in 58.1-3840. It has been suggested that the best enforcement mechanism is to revoke/suspend the taxpayer's use permit. please edit appropriately.

taxes and penalty are paid. The Town shall pay to the taxpayer interest on the overpayments due to erroneously assessed taxes imposed under this Ordinance at the same rate as is assessed in this section on delinquent taxes, provided that no interest shall be required to be paid on a refund of ten dollars (\$10.00) or less.

d. Penalty and interest for failure to file a return or to pay a tax imposed under this Ordinance shall not be imposed if such failure was not the fault of the taxpayer, or was the fault of the collector, as the case may be. The failure to file a return or to pay a tax because of the death of the taxpayer or a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within thirty days of the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes which come due after the 120-day period. The collector shall make determinations of fault relating exclusively to failure to pay a tax, and of fault relating exclusively to failure to file a return.

#### **Sec. 16-09. PENALTY FOR VIOLATION OF ORDINANCE**

- a. Any person who willfully fails or refuses to file a return as required under this Ordinance or who makes a false statement with intent to defraud in such returns shall, upon conviction thereof, be guilty of (i) a Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is \$1,000 or less, or (ii) a Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than \$1,000.
- b. Except as otherwise provided in this Ordinance, any corporate or partnership officer, as defined in Virginia Code § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a Class 1 misdemeanor.
- c. The Town may collect delinquent meals taxes by civil action or other authorized judicial, administrative, or statutory tax or debt collection procedure.

**Commented [BB4]:** What penalties are permitted, and pursuant to what provision of Virginia law? I don't find any of these provisions in 58.1-3840. please edit appropriately.

- d. The Town reserves the right to prosecute violations of this Ordinance under the applicable criminal provisions of state law.
- e. Each violation of or failure to comply with this Ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this Ordinance.

**Sec. 16-10. DUTY OF PERSON GOING OUT OF BUSINESS**

Whenever any person required to collect and remit to the Town any tax imposed by this Chapter shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable, and the person shall immediately deliver to the Collector a report and remittance thereof.

**Sec. 16-11. ENFORCEMENT**

- a. It shall be the duty of the collector to ascertain the identity of every seller in the Town liable for the collection of the tax imposed by this Chapter, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this Chapter. The collector may summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions relating to the tax liability of any and all taxpayers and/or to produce documents relating to such tax liability. The Collector may seek a conviction or other civil remedy, including injunction, against such person. . The Collector may also use any authorized means enforce the collection of the tax, penalty and interest, including, but not limited to, Va Code Ann. Sections 3910, et seq. and the revocation of permits issued pursuant to the Code of the Town of Clifton, Virginia.
- b. Any such person who refuses to answer, under oath, questions touching any person's tax liability shall be deemed guilty of a Class 4 misdemeanor. Each day's refusal to answer such questions shall constitute a separate offense. Any court of competent jurisdiction may, or upon application of the collector or his deputy, compel the compliance of a taxpayer summoned or required to produce documents.
- c. The summons may be served by the collector, or his deputy or designee, or may be directed to the sheriff to be served pursuant to Va. Code Ann. § 8.01-292 and executed and returned in like manner as civil process of a court of competent jurisdiction.

**Commented [BB5]:** What enforcement is permitted, and pursuant to what provision of Virginia law? I don't find any of these provisions in 58.1-3840. please edit appropriately.



d. In the event the purchaser of any meal refuses to pay the tax imposed by this Chapter, the seller may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law.

**Sec. 16-12. REGULATIONS**

The Town Treasurer may issue regulations for the administration and enforcement of this Chapter not in conflict with this Chapter.