

TITLE 13
TOWN OF DAYTON
MEALS TAX
(Effective July 1, 2003.)

Section

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§ 13-1. Definitions. The following words and phrases, when used in this Title, shall have, for the purposes of this Title, the following respective meanings except where the context clearly indicates a different meaning:

- (a) *Cater.* The furnishing of Food, beverages, or both on the premises of another, for compensation.
- (b) *Treasurer.* The Treasurer and any duly designated deputies, assistants, inspectors or other employees.
- (c) *Food.* 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.* 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.* Meal shall mean any prepared Food or drink which is (i) offered or held out for sale by a Food Establishment for the purpose of being consumed by any person to satisfy the appetite and (ii) ready for immediate consumption. All such Food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

(Added June 9, 2003.)

§ 13-2. Levy. There is hereby imposed and levied by the town on each person a tax at the rate of five percent (5%) 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. (Code of Virginia, § 58.1-3840.) (Added June 9, 2003; amended July 1, 2007.)

§ 13-3. 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 Title 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; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collection shall be deemed to be held in trust for the town. (Added June 9, 2003.)

§ 13-4. Exemptions; limits on application.

- (a) The tax imposed under this Title shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.
- (b) The tax imposed under this Title shall not be levied on the following items when served exclusively for off-premises consumption:
 - (1) Donuts, crackers, nabs, chips, cookies and other factory-prepackaged items of essentially the same nature.
 - (2) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any Food or beverage that is Catered or delivered by a Food Establishment for off-premises consumption.
 - (3) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
 - (4) Any Food or Food product 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.
 - (5) Any Food or Food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended except hot Food or hot Food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items, whether or not purchased for immediate consumption, are excluded from the said definition of Food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d) (3), (4) and (5) hereinbelow.
- (c) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared Food and beverages.
- (d) The tax imposed hereunder shall not be levied on the following purchases of Food and beverages:
 - (1) Food and beverages furnished by Food Establishments to employees as part of their compensation when no charge is made to the employee.
 - (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or Food sold by any college or university to its students or employees.
 - (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
 - (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.
 - (5) Food and beverages furnished by a public or private non-profit charitable organization or Establishment or a private Establishment that contracts with the appropriate agency of the Commonwealth to offer Meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

- (6) Food and beverages sold on an occasional basis, not exceeding 12 times per calendar year, by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.
- (7) Food and beverages sold on an occasional basis not exceeding six times per calendar year.

(Code of Virginia, § 58.1-3840.) (Added June 9, 2003, Amended October 14, 2013.)

§ 13-5. *Gratuities and service charges.* Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this Title, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller. An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the Food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the Food and beverages and is subject to the tax imposed by this Title. (Added June 9, 2003.)

§ 13-6. *Report of taxes collected; remittance; preservation of records.*

- (a) It shall be the duty of every person required by this Title to pay to the town the taxes imposed by this Title to make a report thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this Title, 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 Title.
- (b) Reports and tax payments for the months of January, February and March shall be made on or before the following April 20th. Reports and tax payments for the months of April, May, and June shall be made on or before the following July 20th. Reports and tax payments for the months of July, August, and September shall be made on or before the following October 20th. Reports and tax payments for the months of October, November, and December shall be made on or before the following January 20th.
- (c) Further, every such person shall maintain records supporting the reports required by paragraph (a) of this section. Such records shall be kept and preserved for a period of five (5) years. The Treasurer 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 Title, and to make transcripts of all or any parts thereof.

(Added June 9, 2003.)

§ 13-7. *Penalty for violation of title.*

- (a) *Interest and penalties; collection.*
 - (1) *Penalties.* Should any tax due under this title not be paid when due, the Treasurer shall assess a penalty according to the following schedule:
 - (i) 10% of the tax due, if payment is made within one month of the due date;
 - (ii) 15% of the tax due, if payment is made more than one month after the due date, but not more than two months afterward;
 - (iii) 20% of the tax due, if payment is made more than two months after the due date, but not more than three months afterward;
 - (iv) 25% of the tax due, if payment is made more than three months afterward.

- (2) Interest. In addition to the penalties provided for in paragraph (a)(1) above, interest shall accrue on any delinquent taxes at the annual rate of 10%, beginning on the day after the due date. Likewise, any Meals Taxes paid on an erroneous assessment shall be refunded with interest at the rate of 10% per annum.
 - (3) Penalties and interest shall not be imposed if the failure to pay the tax was not the fault of the taxpayer, as determined by the Treasurer.
 - (4) Should the Town consult an attorney with respect to the collection of delinquent Meals Taxes, the taxpayer shall also be responsible for the Town's attorneys' fees, in a reasonable amount not to exceed 20% of the taxes collected by—or upon the advice of—the attorney.
- (b) Criminal Sanctions Any person willfully (i) failing or refusing to file a return or under this title or (ii) failing to collect or pay over the tax imposed hereby, shall, upon conviction thereof, be guilty of a class 1 misdemeanor; provided, however, that if the assessed tax is \$1,000.00 or less, such violation shall be a class 3 misdemeanor.

(Added July 1, 2003; amended July 1, 2006.) (See also Va. Code §§ 58.1-3906, 58.1-3907, 58.1-3916.)

§ 13-8. Regulations. The Treasurer is authorized but not required to adopt rules and regulations not inconsistent with the provisions of this title for the purpose of carrying out and enforcing the payment, collection, and remittance of the tax levied by this title. A copy of those rules and regulations shall be on file and available for public examination in the Treasurer's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this title. (Added June 9, 2003.)