

EXHIBIT NO. 1

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1-20-07

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City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 3, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: CONSIDERATION OF AN ORDINANCE TO AMEND AND REORDAIN THE CITY CODE TO ENSURE CONSISTENCY IN LANGUAGE AND ENFORCEMENT OF CIGARETTE TAX ORDINANCES AMONG MEMBER JURISDICTIONS OF THE NORTHERN VIRGINIA CIGARETTE TAX BOARD

ISSUE: Updating of the City's cigarette tax ordinance.

RECOMMENDATION: That City Council pass the proposed ordinance on first reading, and schedule it for public hearing, second reading, and final passage on Saturday, January 20, 2007.

DISCUSSION: As a member of the Northern Virginia Cigarette Tax Board (NVCTB), the City of Alexandria has, by ordinance, delegated the administration, collection and enforcement of the City's cigarette tax to the NVCTB. Periodically, the NVCTB requests that all member-jurisdictions amend their local cigarette tax ordinances. The requested modifications are considered technical and would have no substantive effect on the administration of the tax or the 50 cents per pack tax rate currently levied by the City. However, these changes will enable the NVCTB to more effectively administer and collect cigarette taxes. As of the date of this memorandum, Fairfax County, the City of Falls Church, and the towns of Haymarket, Dumfries, Leesburg, Purcellville, Herndon and Vienna have all passed the revised ordinance. All of the other NVCTB members (Clifton, Fairfax City, Manassas and Warrenton) are currently in the process of amending their ordinances as well.

FISCAL IMPACT: None

ATTACHMENT:

Attachment 1 - Memorandum from Northern Virginia Cigarette Tax Board Administrator
Attachment 2 - Proposed Ordinance

STAFF:

Mark Jinks, Deputy City Manager
Laura Triggs, Acting Director, Finance
Roderick B. Williams, Assistant City Attorney
Debbie Kidd, Division Chief, Revenue Administration

ALEXANDRIA CLIFTON DUMFRIES FAIRFAX FAIRFAX COUNTY FALLS CHURCH
HAYMARKET HERNDON LEESBURG MANASSAS PURCELLVILLE VIENNA WARRENTON

NORTHERN VIRGINIA CIGARETTE TAX BOARD

4400 FAIR LAKES CT #103
FAIRFAX, VA 22033
(703) 802-0373
FAX (703) 802-0375

MEMORANDUM

Date: December 19, 2006

From: Ronald W. Smith, Administrator

Re: Cigarette Tax Ordinance Revision

In an effort to strengthen and clarify our ability to seize cigarettes for non-payment of cigarette taxes and eliminate a surety bond limit, which caused some financial vulnerability, the member jurisdictions of the Northern Virginia Cigarette Tax Board are in the process of updating their cigarette tax ordinances.

The most important update is the elimination of the \$50,000.00 limit on the surety bond required of all Registered Reporting Agents. Due to the increases in cigarette tax rates of many of the jurisdictions of the Board, the \$50,000.00 bond limit was leaving us vulnerable since some of our reporting agents are collecting and holding cigarette tax revenues well in excess of their cigarette tax bond limits. In addition, the Board has changed the due dates of the monthly cigarette tax reports in order to allow for the distribution of tax revenues in the month they are received thereby reducing the total amount of time that cigarette tax revenues are held by Registered Reporting Agents. The new updates incorporate the revised resolutions the Board has adopted that have resulted in additional revenue. Other changes clarify provisions concerning the transportation of cigarettes through the jurisdictions of the Board and help to strengthen the language concerning the seizure of cigarettes.

Overall, the updates greatly clarify and strengthen the Cigarette Tax Ordinances and create no additional burden on the retailers located in the member jurisdictions. It is important that all of the jurisdictions of the Northern Virginia Cigarette Tax Board adopt similar changes to insure consistency and uniformity in the enforcement of cigarette tax law.

Our staff would be happy to answer any questions or provide any further information if necessary.

Introduction and first reading: 01/09/2007
Public hearing: 01/20/2007
Second reading and enactment: 01/20/2007

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and to enact new Section 3-2-116, in 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

Summary

The proposed ordinance updates and makes certain technical amendments to the City's cigarette tax regulations to ensure consistency in language and enforcement of the cigarette tax ordinances among the member jurisdictions of the Northern Virginia Cigarette Tax Board. The city is a member of this Board, which actually administers the City's cigarette tax ordinance. The amendments include changes for cigarette retailers, wholesalers, and distributors with respect to the bonding requirements, the establishment of a yearly registration requirement and fee, and elimination of a discount for reporting the tax. The amendments would also permit the Board to modify the due dates for vendors to report taxes imposed. The proposed ordinance makes no change to the rate of the city cigarette tax imposed upon consumers.

Sponsor

Staff

Laura B. Triggs, Acting Director of Finance
Roderick B. Williams, Assistant City Attorney

Authority

Virginia Code, Title 58.1, Chapter 38, Article 7

Estimated Costs of Implementation

None.

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None.

ORDINANCE NO. _____

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AN ORDINANCE to amend and reordain Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and to enact new Section 3-2-116, in 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

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 Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and new Section 3-2-116, to read as follows:

Sec. 3-2-101 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

(1) Board or NVCTB shall means the Northern Virginia Cigarette Tax Board.

(2) Carton shall means any container, regardless of material used in its construction, in which ~~10~~ packages of 20 cigarettes are placed.

(3) Cigarette shall means and includes 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 ~~it~~ 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.

(4) Cigarette Machine Operator means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.

(45) City shall means the City of Alexandria, Virginia.

(56) Dealer shall means and includes 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, but does not include any person transporting cigarettes through the city, without stopping other than in the ordinary course of

1 transportation, to a destination outside the city, provided that such cigarettes are
2 accompanied by a receipt/bill of lading or other document indicating:

3
4 a. a consignee or purchaser in another state or the District of Columbia who
5 is authorized by the law of such other jurisdiction to receive or possess such tobacco
6 products on which the taxes imposed by the other jurisdiction have not been paid, unless
7 the tax of the jurisdiction of destination has been paid and said cigarettes bear the tax
8 stamps of that jurisdiction; or

9
10 b. a consignee or purchaser in the Commonwealth of Virginia, but outside
11 the taxing jurisdiction, who possesses a Virginia Sales and Use Tax Certificate and,
12 where applicable, any required licenses issued by the Commonwealth of Virginia or local
13 jurisdiction of destination.

14
15 (67) *Package shall* means and includes any container, regardless of the material
16 used in its construction in which separate cigarettes are placed without such cigarettes
17 being placed into any container within the package. Packages are those containers of
18 cigarettes from which individual cigarettes are ordinarily taken when they are consumed
19 by their ultimate user. Ordinarily a package contains 20 cigarettes, however, "package"
20 includes those containers in which fewer or more than 20 cigarettes are placed.

21
22 (78) *Person shall* means and includes any individual, firm, unincorporated
23 association, company, corporation, joint stock company, group, agency, syndicate, trust
24 or trustee, receiver, fiduciary, partnership or conservator. The word "person" as applied to
25 a partnership, unincorporated association or other joint venture means the partners or
26 members thereof, and as applied to a corporation, shall include all the officers and
27 directors thereof.

28
29 (89) *Place of business shall* means and includes any place where cigarettes are
30 sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought
31 or kept for the purpose of sale, consumption or distribution, including vending machines,
32 by a dealer within the city.

33
34 (910) *Registered agent shall* means and includes every dealer and other person
35 who shall be required to report and collect the tax on cigarettes under the provisions of
36 this article.

37
38 (1011) *Retail dealer shall* means and includes every person who, in the usual
39 course of business, purchases or receives cigarettes from any source whatsoever for the
40 purpose of sale within the city to the ultimate consumer; or any person who, in the usual
41 course of business, owns, leases, or otherwise operates within his own place of business,
42 one or more cigarette vending machines for the purpose of sale within the city of
43 cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores,
44 transfers or deals in cigarettes for the purpose of sale within the city to the ultimate
45 consumer, who is not licensed as a wholesaler or vending machine operator.

1 (1112) *Sale or sell* shall means and includes every act or transaction, irrespective
2 of method or means employed, including barter, exchange, or the use of vending
3 machines or other mechanical devices or a criminal or tortious act whereby ownership or
4 possession, or both, of any cigarettes shall be transferred within the city from a dealer, as
5 herein defined, to any person for a consideration.

6
7 (1213) *Stamp* shall means a small gummed piece of paper or decal used to
8 evidence provision for payment of the tax as authorized by the Northern Virginia
9 Cigarette Tax Board, required to be affixed to every package of cigarettes sold,
10 distributed, or used within the city.

11
12 (1314) *Store or storage* shall means and includes the keeping or retention of
13 cigarettes in this city for any purpose except sale in the regular course of business.

14
15 (1415) *Use* shall means and includes the exercise of any right or power over any
16 cigarettes or packages of cigarettes incident to the ownership or possession of those
17 cigarettes or packages of cigarettes including any transaction where possession is given
18 or received or otherwise transferred, other than a sale.

19
20 (1516) *User* shall means any person who exercises any right or power over any
21 cigarettes or packages of cigarettes subject to the provisions of this article incident to the
22 ownership or possession of those cigarettes or packages of cigarettes or any transaction
23 where possession is given or received or otherwise transferred, other than a sale.

24
25 (17) Wholesaler Dealers means any individual, partnership or corporation
26 engaged in the sale of cigarettes for resale into or within the city.

27
28 Sec. 3-2-102 Levy and rate.

29
30 (a) In addition to all other taxes of every kind now or hereinafter imposed by
31 law, there is hereby levied and imposed by the city, upon every person who sells or uses
32 cigarettes within the city, from and after the effective date of this article an excise tax
33 equivalent to \$0.70 for each package of containing 20 cigarettes and 35 mills for each
34 cigarette contained in packages of fewer or more than 20 cigarettes, sold or used within
35 the city. The tax shall be paid and collected in the manner and at the time hereinafter
36 prescribed; provided, that the tax payable for each cigarette or cigarette package sold or
37 used within the city shall be paid but once. ~~The tax hereby levied shall not apply to free~~
38 ~~distribution of sample cigarettes in packages containing five or fewer cigarettes.~~

39
40 Sec. 3-2-103 Method of collection.

41
42 (a) The tax imposed by this article shall be evidenced by the use of a tax
43 stamp and shall be paid by each dealer or other person liable for the tax under a reporting
44 method deemed by the board to carry out the provisions of this article. The stamps shall
45 be affixed in such a manner that their removal will require continued application of water
46 or steam. Each dealer or other person liable for the tax is hereby required, and it shall be

1 his duty to collect and pay the tax and report ~~separately for packages of 20 cigarettes and~~
2 ~~packages of cigarettes which contain fewer or more than 20 cigarettes~~ all packages of
3 cigarettes on forms prescribed for this purpose by the board-;
4

5 (1) the quantity of Northern Virginia Cigarette Tax Board-stamped cigarettes
6 sold or delivered to:

7
8 a. each registered agent appointed by the board for which not tax was
9 collected;

10
11 b. each manufacturer's representative; and

12
13 c. each separate person and place of business within the city during the
14 preceding calendar ~~or fiscal~~ month; and

15
16 (2) the quantity of Northern Virginia Cigarette Tax Board stamps on hand,
17 both affixed and unaffixed on the first day and the last day of the preceding calendar ~~or~~
18 ~~fiscal~~-month and the quantity of Northern Virginia Cigarette Tax Board stamps or
19 Northern Virginia Cigarette Tax Board-stamped cigarettes received during the preceding
20 calendar ~~or fiscal~~ month;

21
22 (3) the quantity of cigarettes on hand to which the Northern Virginia Cigarette
23 Tax Board stamp had not been affixed on the first and last day of the preceding calendar
24 ~~or fiscal~~ month and the quantity of cigarettes received during the preceding calendar ~~or~~
25 ~~fiscal~~ month to which the Northern Virginia Cigarette Tax Board stamp had not been
26 affixed; and

27
28 (4) any further information as the administrator for the board may require for
29 the proper administration and enforcement of this article for the determination of the
30 exact number of cigarettes in the possession of each dealer or user.

31
32 (b) Each dealer or other person liable for the tax shall file such reports with
33 the board and pay the tax due to the board ~~between the first and twentieth day after the~~
34 ~~close of each calendar or fiscal month prior to the due date~~ and shall furnish a copyies of
35 ~~any any~~ cigarette tax reports submitted to the ~~state department of taxation~~ Virginia
36 Department of Taxation ~~for the previous month.~~

37
38 (c) When, upon examination and audit of any invoices, records, books,
39 cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or
40 possession of tobacco products taxed herein, any dealer or other person liable for the tax
41 is unable to furnish evidence to the board of sufficient tax payments and stamp purchases
42 to cover cigarettes which were sold, used, stored, received, purchased or possessed by
43 him, the prima facie presumption shall arise that such cigarettes were received, sold,
44 used, stored, purchased or possessed by him without the proper tax having been paid. The
45 board, shall, from the results of such examination and audit based upon any such direct or

1 indirect information available, assess the tax due ~~and unpaid~~ and impose a penalty of 10
2 percent and may impose interest of three-quarters percent per month of the gross tax due.
3

4 (d) When any dealer or other person liable for the tax files a false or
5 fraudulent report or fails to file a report or fails to perform any act or performs any act to
6 evade payment of the tax, the board shall administratively assess the tax due ~~and unpaid~~
7 and impose a penalty ~~of not to exceed~~ 50 percent of the tax due and interest of three-
8 quarter percent per month of the gross tax due.
9

10 (e) The dealer or other person liable for the tax shall be notified by certified
11 mail of the deficiency and such tax, penalty and interest assessed shall be due and
12 payable within 10 days after notice of the deficiency has been issued. Every dealer or
13 other person liable for the tax shall examine each package of cigarettes to ensure that the
14 Northern Virginia Cigarette Tax Board stamp has been affixed thereto prior to offering
15 them for sale.
16

17 (f) Any dealer or other person liable for the tax who shall receive cigarettes
18 not bearing the Northern Virginia Cigarette Tax Board stamp shall, within one hour of
19 receipt of such cigarettes, commence and with all reasonable diligence continue to affix
20 the Northern Virginia Cigarette Tax Board stamp on each and every package of cigarettes
21 until all unstamped packages of cigarettes have been stamped and before offering the
22 cigarettes for sale. Any dealer or other person liable for the tax who has notified the
23 board that he is engaged in interstate or intrastate business shall be permitted to set aside
24 any part of his stock as may be legally kept for the conduct of such interstate or intrastate
25 business (that is, cigarettes held for sale outside the jurisdiction of the board) without
26 affixing the stamps required by this article. Any interstate or intrastate stock shall be kept
27 entirely separate and apart from the Northern Virginia Cigarette Tax Board stamped
28 stock, in such a manner as to prevent the commingling of the interstate or intrastate stock
29 with the Northern Virginia Cigarette Tax Board stock. Any dealer or other person liable
30 for the tax found to have had untaxed cigarettes which have been lost whether by
31 negligence, theft or any other unaccountable loss shall be liable for and shall pay the tax
32 due thereon.
33

34 (g) It shall also be the duty of each dealer, or other person liable for the tax
35 and he is hereby required, to maintain and to keep for a period of three years, not
36 including the current calendar year, any records of cigarettes received, sold, stored,
37 possessed, transferred or handled by him in any manner whatsoever, whether the same
38 were stamped or unstamped, to make all of such records available for audit, inspection
39 and examination and to make available at all reasonable times, the means, facilities and
40 opportunity for making an audit, inspection or examination upon demand of the board.
41

42 Sec. 3-2-104 Registered agents.
43

44 (a) Any dealer or other person liable for the tax who shall sell, use, store,
45 possess, distribute or transport cigarettes within or into the city shall first make
46 application to the board to qualify as a registered agent. The application blank, which

1 shall be supplied upon request, shall require such information relative to the nature of the
2 business engaged in by the applicant as the board deems necessary for the administration
3 and enforcement of this article. There is a yearly Registration Fee for all Wholesale
4 Dealers and for all Cigarette Machine Operators. The applicant shall provide a surety
5 bond to the board of 150 percent of the average monthly tax liability of the applicant ~~or~~
6 ~~\$50,000, whichever is less,~~ with a surety company authorized to do business in the State
7 Commonwealth of Virginia. The bond shall be so written that, on timely payment of the
8 premium thereon, it shall continue in force from year to year. Any applicant whose place
9 of business is outside the city shall automatically, by filing his application, submit
10 himself to the board's legal jurisdiction and appoint the administrator for the board as his
11 agent for any service of lawful process.

12
13 (b) Upon receipt of the properly completed application forms, and the
14 required surety bond executed, the board shall determine whether the said applicant
15 qualifies to be a registered agent. The Board will issue to the said qualified applicant a
16 yearly registered agent permit to qualify him as a registered agent to purchase, sell, use,
17 store, possess, distribute or transport Northern Virginia Cigarette Tax Board-stamped
18 cigarettes within or into the city.

19
20 (c) Registered agents shall agree to the reporting and payment requirements
21 placed upon them by this article and the rules and regulations as from time to time may
22 be promulgated by the board. ~~In his reporting and payment of the tax, the registered agent~~
23 ~~shall be allowed a discount, as the board may determine, not to exceed .0175 cents per~~
24 ~~carton sold or delivered by him.~~ When any registered agent's monthly report and payment
25 of the tax is not received within the dates prescribed, the board ~~shall disallow any~~
26 ~~discount taken up to a maximum amount of \$500 and shall impose a late reporting~~
27 ~~penalty of 10 percent of the gross tax due or \$10, whichever is greater, but in no event~~
28 ~~more than \$500~~\$1,000. The board may also require the registered agent to provide proof
29 that he has complied with all applicable ~~state laws of the Commonwealth of Virginia to~~
30 ~~legally conduct his business and to file financial statements showing all assets and~~
31 ~~liabilities. The board may revoke or suspend any registered agent's permit due to failure~~
32 ~~to file tax reports in a timely manner, non-payment of taxes due or if his cigarette tax~~
33 ~~surety bond, as required, is should become impaired for any reason.~~

34
35 (d) All money collected as cigarette taxes under this ordinance shall be
36 deemed to be held in trust by the dealer collecting the same until remitted to the board.

37
38 (e) Registered agents must account for all Northern Virginia Cigarette Tax
39 Board authorized tax stamps purchased. Periodic audits may be conducted to determine
40 any unaccounted variance between the number of stamps purchased and the number of
41 stamps reported and an assessment will be made for all unaccounted for stamps. Any
42 assessment of registered agents located outside the jurisdictions of the board will be
43 based upon the average sales of packages of cigarettes by jurisdiction during the audit
44 period. For registered agents located within the jurisdictions of the board, any assessment
45 will be based upon the tax rate of the jurisdiction in which they are located. In addition,
46 there will be a penalty for non-reporting of ten per cent of the gross tax due.

1
2 Sec. 3-2-105 Notice of intention by retail dealers.
3

4 (a) Retail dealers, who shall sell, offer for sale, store, possess, distribute,
5 purchase, receive or transport cigarettes ~~in or into~~ for the purpose of sale within the city
6 ~~shall notify the board, in writing, of the supplier of such cigarettes and the names and~~
7 ~~addresses and the Virginia Retail Sales and Use Tax Certificate registration number for~~
8 ~~each separate place of business purchase cigarettes only from registered agents giving or~~
9 ~~supplying the business trade name and business address of the location where the~~
10 ~~cigarettes will be placed for sale to the public. Possession of a Virginia State Retail~~
11 ~~Tobacco License, a Virginia State Retail Sales and Use Tax Certificate and a retail~~
12 ~~business license issued by the city for each separate place of business by a retail dealer~~
13 ~~shall be considered sufficient written notification to the board. Cigarettes purchased for~~
14 ~~personal use cannot be brought into a business for resale. Only properly registered and~~
15 ~~licensed retail stores may sell cigarettes to the public. To be properly registered and~~
16 ~~licensed, a retail store must first have a valid Virginia state sales and use tax certificate~~
17 ~~and valid retail business license. Cigarettes must be purchased and stored separately for~~
18 ~~each business location. All copies of cigarette purchase invoices/ receipts must be~~
19 ~~retained by the retailer for a period of three years and shall be made available to Agents~~
20 ~~of the NVCTB upon request for use in conducting audits and investigations. All copies~~
21 ~~of cigarette purchase invoices/receipts must be stored at the business retail location for a~~
22 ~~period of one year from date of purchase. Failure to provide cigarette invoices/receipts~~
23 ~~may result in confiscation of cigarettes until receipts can be reviewed by the Board to~~
24 ~~verify the proper tax has been paid. It is the responsibility of each retail location to insure~~
25 ~~that all cigarettes placed for sale or stored at that location be properly taxed and stamped.~~
26 ~~Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be~~
27 ~~seized by the Agents of the Board.~~

28
29 (b) ~~No retail dealer, as defined herein, who shall have complied with the~~
30 ~~provisions of this article and who purchases only tax paid Northern Virginia Cigarette~~
31 ~~Tax Board stamped cigarettes for each separate place of business shall be required to~~
32 ~~qualify as a registered agent. Retail dealers must make their place of business available~~
33 ~~for inspection by Tobacco Revenue Agents to insure that all cigarettes are properly~~
34 ~~stamped and all cigarettes taxes are properly paid.~~

35
36 Sec. 3-2-106 ~~Presumption of violation by dealer~~ illegality; seizure of contraband goods,
37 sealing/seizing of machines.
38

39 (a) ~~When a dealer~~ If any cigarette machine operator or other person liable for
40 the tax imposed by this article is found to possess any cigarettes without the jurisdictional
41 ~~tax-paid Northern Virginia Cigarette Tax Board~~ or the proper tax stamp affixed and when
42 ~~such dealer or other person is not in the process of affixing the stamps thereto,~~ there shall
43 arise a rebuttable presumption that the dealer or any such operator or other person is shall
44 be in possession of untaxed cigarettes in violation of this article.
45

1 (b) Any cigarettes placed in any ~~coin-operated~~ vending machine within the
2 city shall be presumed for sale within the city. Any vending machine located within the
3 city containing cigarettes upon which the Northern Virginia Cigarette Tax Board tax
4 stamp has not been affixed or on which the jurisdictional tax has not been paid or
5 containing cigarettes placed so as not to allow visual inspection of the Northern Virginia
6 Cigarette Tax Board tax stamp through the viewing areas as provided for by the vending
7 machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this
8 article.

9
10 (c) Any cigarettes, ~~coin-operated~~ vending machines, ~~counterfeit~~ cigarette tax
11 stamps, or other property found in violation of this article shall be declared contraband
12 goods and may be seized by the board. In addition to any tax due, the dealer or other
13 person liable for the tax possessing such untaxed cigarettes or tax stamps shall be subject
14 to civil and criminal penalties herein provided.

15
16 (d) In lieu of seizure, the board may seal such vending machines to prevent
17 continued illegal sale or removal of such cigarettes. The removal of the seal from a
18 vending machine by any unauthorized person shall be in violation of this article. Nothing
19 in this article shall prevent the seizure of any vending machine at any time after it is
20 sealed.

21
22 (e) All cigarette vending machines shall be plainly marked with the name,
23 address and telephone number of owner of the machine.

24
25 Sec. 3-2-107 Illegal acts.

26
27 It shall be unlawful and a violation of this article for any dealer or other person
28 liable for the tax:

29
30 (1) to perform any act or fail to perform any act for the purpose of evading the
31 payment of any tax imposed by this article or of any part thereof, or to fail or refuse to
32 perform any of the duties imposed upon him under the provisions of this article or to fail
33 or refuse to obey any lawful order which may be issued ~~by tobacco revenue agents or as~~
34 ~~hereinafter provided under this article; or~~

35
36 (2) to falsely or fraudulently make, or cause to be made, any invoices or
37 reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or
38 cause to be made, forged, altered or counterfeited any stamp, or knowingly and willfully
39 to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or
40 stamps; or

41
42 (3) to sell, offer for sale, or ~~authorized or approve the sale~~ distribute in the city
43 ~~of~~ any cigarettes upon which the Northern Virginia Cigarette Tax Board tax stamp has
44 not been affixed or upon which the jurisdictional tax has not been paid; or
45

1 (4) to possess, store, use, authorize or approve the possession, storage or use
2 in the city of any cigarettes ~~in quantities of more than 60 packages~~ upon which the
3 Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the
4 jurisdictional tax has not been paid, except as provided in section 3-2-103(f); or
5

6 (5) to transport, authorize or approve the transportation of any cigarettes
7 packages, in quantities of more than 60 packages into or within the city upon which the
8 Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the
9 jurisdictional tax has not been paid, if they are:

10
11 a. not accompanied by a receipt/bill of lading or other document indicating
12 the true name and address of the consignor or seller and the consignee or purchaser and
13 the brands and quantity of cigarettes transported; or
14

15 b. accompanied by a receipt/bill of lading or other document which is false
16 or fraudulent in whole or part; ~~or accompanied by a bill of lading or other document~~
17 ~~indicating;~~

18
19 c. accompanied by a receipt/bill of lading or other document indicating:
20

21 1. a consignee or purchaser in another state or the District of Columbia who
22 is not authorized by the law of such other jurisdiction to receive or possess such tobacco
23 products on which the taxes imposed by the other jurisdiction have not been paid, unless
24 the tax of the ~~state or district jurisdiction~~ of destination has been paid and said cigarettes
25 bear the tax stamps of that ~~state or district jurisdiction~~; or
26

27 2. a consignee or purchaser in the Commonwealth of Virginia, but outside
28 the taxing jurisdiction of the board, who does not possess a Virginia Sales and Use Tax
29 Certificate, ~~a Virginia Retail Tobacco License~~ and, where applicable, ~~both a business~~
30 ~~license and a retail tobacco license~~ any required licenses issued by the Commonwealth of
31 Virginia or local jurisdiction of destination;
32

33 (6) to reuse or refill with cigarettes any package from which cigarettes have
34 been removed, for which the tax imposed has been therefore paid; or
35

36 (7) to remove from any package any stamp with intent to use or cause the
37 same to be used after same has already been used, or to buy, sell, or offer for sale or give
38 away any used, removed, altered or restored stamps to any person or to reuse any stamp
39 which had theretofore been used for evidence of the payment of any tax prescribed by
40 this article, or to sell, or offer to sell, any stamp provided for herein; or
41

42 (8) to sell, offer for sale or distribute any loose or single cigarettes; or
43

44 (9) to perform any act that violates the resolutions promulgated by the
45 Board.
46

1 (10) except as provided in section 3-2-103(f), to transport, possess, store, use,
2 authorize or approve the possession, storage or use of any cigarettes in quantities of more
3 than sixty packages upon which the Northern Virginia Cigarette Tax Board tax stamp has
4 not been affixed or upon which the jurisdictional tax has not been paid.
5

6 Sec. 3-2-108 Powers of the Northern Virginia Cigarette Tax Board.
7

8 (a) The board may delegate any of its powers to its administrator or
9 employees and may adopt regulations regarding the administration and enforcement of
10 the provisions of this article. The board shall be granted the following powers:
11

12 (1) to assess, collect and disburse the cigarette tax for each participating
13 jurisdiction;

14 (2) to audit dealer sales of cigarettes for each participating jurisdiction;

15 (3) to provide information ~~for criminal prosecution by the affected to~~
16 commonwealth's attorneys, county, city or town attorneys for each participating
17 jurisdictions;

18 (4) to designate an administrator;

19 (5) to manage ~~a general operating trend to ensure proper funding of board~~
20 operations on an ongoing basis the Northern Virginia Cigarette Tax Funds;

21 (6) ~~to employ an auditor~~ retain a certified public accountant to audit its books;

22 (7) to designate a depository bank or banks;

23 (8) to contract with ~~one or more member jurisdictions for the provision of~~
24 administrative services;

25 (9) to hold and convey ~~personal, but not real,~~ real and personal property;

26 (10) to enter into contracts;

27 (11) to hire, supervise and discharge its own employees;

28 (12) ~~to contract for benefits for board employees; and~~ sue and be sued in its
29 own name;

30 (13) ~~to exercise any other powers granted to the board by the respective local~~
31 ordinances and the Code of Virginia (1950), as amended, prescribe the design of a
32 stamp(s) and to issue and sell said stamps to authorized dealers;

33 (14) to establish different classes of taxpayers;
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1
2 (15) to promulgate resolutions for the assessment and collection of cigarette
3 taxes and the enforcement of this ordinance; and
4

5 (16) To conduct inspections of any place of business in order to enforce the
6 provisions of this ordinance and all Resolutions of the Board.
7

8 (b) The board may employ legal counsel, bring appropriate court actions in its
9 own name to enforce payment of the ~~tobacco~~-cigarette tax or penalties owed, and file tax
10 liens against property of taxpayers hereunder.
11

12 (c) The board is authorized to enter into an agreement with the ~~department of~~
13 ~~taxation~~ Virginia Department of Taxation under which a ~~wholesaler, registered agent~~
14 ~~with the NVCTB who is also qualified to purchase Virginia revenue stamps, may qualify~~
15 ~~to purchase dual Northern Virginia Cigarette Tax Board Virginia-NVCTB stamps from~~
16 ~~the department of taxation either at its Richmond, Virginia, office or its northern Virginia~~
17 ~~branch office~~ Virginia Department of Taxation. Authority to purchase dual Virginia-
18 NVCTB stamps is granted solely by the board and may be revoked or suspended for
19 violations of this ordinance or resolutions adopted by the board.
20

21 (d) The board may appoint certain employees as tobacco revenue agents, who
22 shall be required to carry proper identification while performing their duties ~~and who~~.
23 Tobacco Revenue Agents are further authorized to conduct inspections of any place of
24 business and shall have the power to seize or seal any coin-operated vending machines, to
25 seize any cigarettes, counterfeit stamps or other property found in violation of this article
26 and to shall have the power of arrest upon reasonable and probable cause that a violation
27 of this article has been committed. The board is authorized to provide its tobacco revenue
28 agents with (i) firearms for their protection, (ii) emergency-equipped vehicles while on
29 duty, and (iii) other equipment deemed necessary and proper.
30

31 (e) The board may exchange information relative to the sale, use,
32 transportation or shipment of cigarettes with an official of any other jurisdiction entrusted
33 with the enforcement of the cigarette tax laws of said other jurisdiction.
34

35 Sec. 3-2-109 Jeopardy assessment.
36

37 If the administrator for the board determines ~~after reasonable justification~~ that the
38 collection of any tax or any amount of tax required to be collected and paid under this
39 article will be jeopardized by delay, he shall make an assessment of the tax or amount of
40 tax required to be collected and shall mail or issue a notice of the assessment to the
41 taxpayer together with a demand for immediate payment of the tax or of the deficiency in
42 tax declared to be in jeopardy, including penalties and interest. In the case of a current
43 period, for which the tax is in jeopardy, the administrator may declare the taxable period
44 of the taxpayer immediately terminated and shall cause notice of this finding and
45 declaration to be mailed or issued to the taxpayer together with a demand for immediate
46 payment of the tax based on the period declared terminated and the tax shall be

1 immediately due and payable, whether or not the terms otherwise allowed by this article
2 for filing a return and paying the tax has expired.

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

6
7 (a) Any person assessed by the board with a cigarette tax, penalties and
8 interest or any person whose cigarettes, vending machines and other property have been
9 sealed or seized under processes of this article, who has been aggrieved by such
10 assessment, seizure, or sealing, may file a request for a hearing before the administrator
11 for the board for a correction of such assessment and the return of such property seized or
12 sealed. Where holders of property interest in cigarettes, vending machines or other
13 property are known at the time of seizure and sealing, notice of the seizure or sealing
14 shall be sent to them by certified mail within 24 hours. Where such holders of property
15 interest are unknown at time of seizure or sealing, it shall be sufficient notice to such
16 unknown interest holders to post such notice to a door or wall of the room or building
17 which contains the seized or sealed property. Any such notice of seizure or sealing shall
18 include procedures for an administrative hearing for a return of such property seized or
19 sealed as well as affirmative defenses set forth in this section which may be asserted.

20
21 (b) The hearing shall be requested within 10 days of the notice of such
22 assessment, seizure or sealing and shall set forth the reasons why the tax, penalties and
23 interest and cigarettes, vending machines or other property should be returned or
24 released. Within five days after receipt of the hearing request the administrator shall
25 notify the petitioner by certified mail of a date and time for the informal presentation of
26 evidence at a hearing to be held within 15 days of the date notification is mailed. Any
27 such request for hearing shall be denied if the assessed tax, penalties and interest have not
28 been paid as required or if the request is received more than 10 days from first notice to
29 the petitioner of such seizure or sealing. Within five days after the hearing, the
30 administrator shall notify the petitioner, by registered mail, whether his request for a
31 correction has been granted or refused.

32
33 (c) Appropriate relief shall be given by the administrator if he is convinced by
34 the preponderance of the evidence that ~~the illegal sale or use of such seized cigarettes or~~
35 ~~vending machine or other property was not intentional on the part of the petitioner, and~~
36 ~~that said seized cigarettes were in the possession of a person other than the petitioner~~
37 ~~without the petitioner's consent at the time said cigarettes, vending machines or other~~
38 ~~property were seized or sealed or that petitioner was authorized to possess such untaxed~~
39 ~~cigarettes. If the administrator is satisfied that the tax was erroneously assessed, he shall~~
40 ~~refund the amount erroneously assessed together with any interest and penalties paid~~
41 ~~thereon and shall return any cigarettes, vending machines or other property seized or~~
42 ~~sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the~~
43 ~~board may, within 30 days of the date of such decision, appeal the decision of the~~
44 ~~appropriate court in the jurisdiction where the seizure or sealing occurred.~~

1 Sec. 3-2-113 Extensions.

2
3 ~~Except as hereinafter provided, the~~ The administrator, upon a finding of good
4 cause, may grant an extension of time to file a tax report upon written application
5 therefor, ~~until the end of the calendar or fiscal month in which any tax report is due~~
6 ~~hereunder or for a period not exceeding 30 days. In no case shall a request for an~~
7 ~~extension of time to file a tax report be granted by the administrator when the request is~~
8 ~~not received within the due date for filing the tax report. No~~ Except as hereinafter
9 provided, no interest or penalty shall be charged, assessed or collected by reason of the
10 granting of an extension. ~~Where an extension is granted beyond the end of the calendar or~~
11 ~~fiscal month in which any tax report is due hereunder, interest on the rate of three-~~
12 ~~quarters of one percent (.75%) per month shall be charged.~~

13
14 Sec. 3-2-114 Penalty for violation of article.

15
16 Any person violating any of the provisions of this article shall be guilty of a
17 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than
18 ~~\$1,000~~ \$2,500.00 or imprisonment for not more than 12 months or by both fine and
19 imprisonment. Any fine and/or imprisonment shall not relieve any person from the
20 payment of any tax, penalty or interest imposed by this article.

21
22 Sec. 3-2-115 Each violation a separate offense.

23
24 The sale of any quantity or the use, possession, storage or transportation of more
25 than 60 packages of cigarettes upon which the Northern Virginia Cigarette Tax Board tax
26 stamp has not been affixed or the proper jurisdictional tax has not been paid shall be
27 deemed to constitute a separate violation. Each continuing day of violation shall be
28 deemed to constitute a separate offense.

29
30 Sec. 3-2-116 Severability.

31
32 If any section, phrase or part of this article should for any reason be held invalid
33 by a court of competent jurisdiction, such decision shall not affect the remainder of the
34 article; and every remaining section, clause, phrase or part thereof shall continue in full
35 force and effect.

ORDINANCE NO. 4473

AN ORDINANCE to amend and reordain Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and to enact new Section 3-2-116, in 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

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 Sections 3-2-101 to 3-2-110 and 3-2-113 to 3-2-115 and new Section 3-2-116, to read as follows:

Sec. 3-2-101 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

- (1) *Board* or *NVCTB* means the Northern Virginia Cigarette Tax Board.
- (2) *Carton* means any container, regardless of material used in its construction, in which packages of cigarettes are placed.
- (3) *Cigarette* means and includes 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.
- (4) *Cigarette Machine Operator* means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.
- (5) *City* means the City of Alexandria, Virginia.
- (6) *Dealer* means and includes every manufacturer's representative, self-wholesaler, wholesaler, or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the city, but does not include any person transporting cigarettes through the city, without stopping other than in the ordinary course of transportation, to a destination outside the city, provided that such cigarettes are accompanied by a receipt/bill of lading or other document indicating:

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

b. a consignee or purchaser in the Commonwealth of Virginia, but outside the taxing jurisdiction, who possesses a Virginia Sales and Use Tax Certificate and, where applicable, any required licenses issued by the Commonwealth of Virginia or local jurisdiction of destination.

(7) *Package* means and includes 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 20 cigarettes, however, "package" includes those containers in which fewer or more than 20 cigarettes are placed.

(8) *Person* means and includes any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership or 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.

(9) *Place of business* means and includes 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.

(10) *Registered agent* means and includes every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this article.

(11) *Retail dealer* means and includes 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.

(12) *Sale or sell* means and includes 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.

(13) *Stamp* means a small gummed piece of paper or decal 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, distributed, or used within the city.

(14) *Store or storage* means and includes the keeping or retention of cigarettes in this city for any purpose except sale in the regular course of business.

(15) *Use* means and includes 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.

(16) *User* means 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.

(17) *Wholesaler Dealers* means any individual, partnership or corporation engaged in the sale of cigarettes for resale into or within the city.

Sec. 3-2-102 Levy and rate.

(a) 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 the effective date of this article an excise tax equivalent to \$0.70 for each package of 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.

Sec. 3-2-103 Method of collection.

(a) The tax imposed by this article shall be evidenced by the use of a tax 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 all packages of cigarettes on 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 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 month and the quantity of Northern Virginia Cigarette Tax Board stamps or Northern Virginia Cigarette Tax Board-stamped cigarettes received during the preceding calendar 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 month and the quantity of cigarettes received during the preceding calendar month to which the Northern Virginia Cigarette Tax Board stamp had not been affixed; and

(4) any 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.

(b) Each dealer or other person liable for the tax shall file such reports with the board and pay the tax due to the board prior to the due date and shall furnish copies of any cigarette tax reports submitted to the Virginia Department of Taxation.

(c) 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 impose a penalty of 10 percent and may impose interest of three-quarters percent per month of the gross tax due.

(d) 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 impose a penalty not to exceed 50 percent of the tax due and interest of three-quarter percent per month of the gross tax due.

(e) The dealer or other person liable for the tax shall be notified by certified mail of the deficiency and such tax, penalty and interest assessed shall be due and payable within 10 days after notice of the 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.

(f) 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 on each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering the 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 any 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 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 commingling 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 have been lost whether by negligence, theft or any other unaccountable loss shall be liable for and shall pay the tax due thereon.

(g) 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 years, not including the current calendar year, any 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 an audit, inspection or examination upon demand of the board.

Sec. 3-2-104 Registered agents.

(a) 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. The application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by the applicant as the board deems necessary for the administration and enforcement of this article. There is a yearly Registration Fee for all Wholesale Dealers and for all Cigarette Machine Operators. The applicant shall provide a surety bond to the board of 150 percent of the average monthly tax liability of the applicant, with a surety company authorized to do business in the Commonwealth of Virginia. The 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.

(b) Upon receipt of the properly completed application forms, and the required surety bond executed, the board shall determine whether the said applicant qualifies to be a registered agent. The Board will issue to said qualified applicant a yearly registered agent permit to purchase, sell, use, store, possess, distribute or transport Northern Virginia Cigarette Tax Board-stamped cigarettes within or into the city.

(c) Registered agents shall agree to the reporting and payment requirements placed upon them by this article and the rules and regulations as from time to time may be promulgated by the board. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the board shall impose a late reporting penalty of 10 percent of the gross tax due or \$10, whichever is greater, but in no event more than \$1,000. The board may also require the registered agent to provide proof that he has complied with all applicable laws of the Commonwealth of Virginia to legally conduct his business and to file financial statements showing all assets and liabilities. The board may revoke or suspend any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes due or if his cigarette tax surety bond should become impaired for any reason.

(d) All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the board.

(e) Registered agents must account for all Northern Virginia Cigarette Tax Board authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported and an assessment will be made for all unaccounted for stamps. Any assessment of registered agents located outside the jurisdictions of the board will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For registered agents located within the jurisdictions of the board, any assessment will be based upon the tax rate of the jurisdiction in which they are located. In addition, there will be a penalty for non-reporting of ten per cent of the gross tax due.

Sec. 3-2-105 Notice of intention by retail dealers.

(a) Retail dealers, who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the city shall purchase cigarettes only from registered agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia state sales and use tax certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchase invoices/ receipts must be retained by the retailer for a period of three

years and shall be made available to Agents of the NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the Agents of the Board.

(b) Retail dealers must make their place of business available for inspection by Tobacco Revenue Agents to insure that all cigarettes are properly stamped and all cigarettes taxes are properly paid.

Sec. 3-2-106 Presumption of illegality; seizure of contraband goods, sealing/seizing of machines.

(a) If any cigarette machine operator or other person liable for the tax imposed by this article is found to possess any cigarettes without the jurisdictional tax-paid or the proper tax stamp affixed, there shall arise a rebuttable presumption that any such operator or other person shall be in possession of untaxed cigarettes in violation of this article.

(b) Any cigarettes placed in any vending machine within the city 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 tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as not to allow visual inspection of the Northern Virginia Cigarette Tax Board tax stamp through the viewing areas as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

(c) Any cigarettes, vending machines, cigarette tax 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 or tax stamps shall be subject to civil and criminal penalties herein provided.

(d) In lieu of seizure, the board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of the 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.

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

Sec. 3-2-107 Illegal acts.

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

(1) 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 under this article; or

(2) 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 stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

(3) to sell, offer for sale, or distribute in the city any cigarettes upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or

(4) to possess, store, use, authorize or approve the possession, storage or use in the city of any cigarette packages upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, except as provided in section 3-2-103(f); or

(5) to transport, authorize or approve the transportation of any cigarette packages in quantities of more than 60 packages into or within the city upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, if they are:

a. not accompanied by a receipt/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

b. accompanied by a receipt/bill of lading or other document which is false or fraudulent in whole or part; or

c. accompanied by a receipt/bill of lading or other document indicating:

1. 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 the other jurisdiction have not been paid, unless the tax of the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of that jurisdiction; or

2. a consignee or purchaser in the Commonwealth of Virginia, but outside the taxing jurisdiction, who does not possess a Virginia Sales and Use Tax Certificate and, where applicable, any required licenses issued by the Commonwealth of Virginia or local jurisdiction of destination;

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

(7) to remove from any package any stamp with intent to use or cause the same to be used after same has 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; or

(8) to sell, offer for sale or distribute any loose or single cigarettes; or

(9) to perform any act that violates the resolutions promulgated by the Board.

(10) except as provided in section 3-2-103(f), to transport, possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty packages upon which the Northern Virginia Cigarette Tax Board tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

Sec. 3-2-108 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 to commonwealth's attorneys, county, city or town attorneys for each participating jurisdictions;

(4) to designate an administrator;

(5) to manage the Northern Virginia Cigarette Tax Funds;

(6) to retain a certified public accountant 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 to issue and sell said stamps to authorized dealers;
 - (14) to establish different classes of taxpayers;
 - (15) to promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and
 - (16) To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all Resolutions of the Board.
- (b) The board may employ legal counsel, bring appropriate court actions in its own name to enforce payment of the cigarette 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 Virginia Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia revenue stamps, may qualify to purchase dual Virginia-NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia-NVCTB stamps is granted solely by the board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the board.
- (d) The board may appoint certain employees as tobacco revenue agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any 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 (i) firearms for their protection, (ii) emergency-equipped vehicles while on duty, and (iii) 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. 3-2-109 Jeopardy assessment.

If the administrator for the board determines 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 the 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 this 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 the 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. 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 registered 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.

Sec. 3-2-113 Extensions.

The administrator, upon a finding of good cause, may grant an extension of time to file a tax report upon written application for a period not exceeding 30 days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of an extension.

Sec. 3-2-114 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 \$2,500.00 or imprisonment for not more than 12 months or by both fine and imprisonment. Any fine and/or imprisonment shall not relieve any person from the payment of any tax, penalty or interest imposed by this article.

Sec. 3-2-115 Each violation a separate offense.

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

Sec. 3-2-116 Severability.

If any section, phrase or part of this article should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the article; and every remaining section, clause, phrase or part thereof shall continue in full force and effect.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: January 20, 2007

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