

EXHIBIT NO. 1

21
9-15-07

~~21~~
~~9-11-07~~

City of Alexandria, Virginia

MEMORANDUM

DATE: AUGUST 31, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO ELIMINATE THE REMAINING REQUIREMENTS IN THE CITY CODE THAT THE CITY GIVE CERTAIN NOTICES TO TAXPAYERS BY REGISTERED MAIL AND TO PERMIT INSTEAD THAT THE CITY GIVE SUCH NOTICES BY CERTIFIED MAIL

ISSUE: Consideration of an ordinance to eliminate the remaining requirements in the City Code that the City give certain notices to taxpayers by registered mail and to permit instead that the City give such notices by certified mail.

RECOMMENDATION: That City Council approve the proposed ordinance on first reading, and schedule it for public hearing, second reading, and final passage on September 15, 2007.

DISCUSSION: Three sections of Title 3 (Finance, Taxation and Procurement) of the City Code still require the City to send certain tax notices by registered mail instead of certified mail. The requirement to send notices by registered mail instead of certified mail is neither mandated by the Code of Virginia nor does it provide the City any meaningful added legal or factual benefits for purposes of giving the required legal notices.

Section 1-206 (and its predecessor, Section 1-15.1) of the Code of Virginia has provided, since 1956, "If any mail or notice is required to be sent by registered mail, it shall constitute compliance with this requirement if such mail or notice is sent by certified mail." See also Va. Code § 1-202 (applying the foregoing to the construction of the Code of Virginia and to acts of the General Assembly). Therefore, State law does not require the City to use registered mail.

The United States Postal Service says, of registered mail, it "provides maximum protection and security for valuables." <http://www.usps.com/rates/extra-services-rates.htm>. As such, the Postal Service's rates for registered mail are scaled according to the value of the item being sent. The Postal Service charges \$9.50, plus applicable postage, to send via registered mail items that do not have any economic value. Legal notices, by their very nature, do not have economic value. Their value rests in the fact of their having informed the recipient of their contents. While the Postal Service maintains a record of delivery of items sent by registered mail, the sender must

still purchase the add-on return receipt for an extra \$2.15, in order to receive such a record for its own files. The Postal Service also requires a complex intake procedure for registered mail, including that the item must be sealed by a Postal Service employee.

Certified mail, on the other hand, as the Postal Service describes it, “provides proof of mailing at the time of mailing and date and time of delivery or attempted delivery.”

<http://www.usps.com/rates/extra-services-rates.htm>. The Postal Service currently charges \$2.65, plus applicable postage, to send items via certified mail. Again, the Postal Service maintains a record of delivery, and the sender must still purchase the add-on return receipt for an extra \$2.15, in order to receive such a record for its own files. For legal notices, however, the operative document is that proof of delivery and that proof is the same whether the sender has used the registered mail service or the certified mail service.

Accordingly, for the foregoing reasons, certified mail is an acceptable substitute for registered mail, for purposes of any legal notices the City is required to send for tax-related matters. Certified mail is also more efficient for City staff to administer.

FISCAL IMPACT: Staff estimates that changing the indicated notice requirements would result in a small direct cost savings (less than \$200 per year) to the City, but would create staff efficiencies that could be better utilized for tax collections.

ATTACHMENT: Proposed Ordinance

STAFF:

Laura B. Triggs, Acting Director of Finance

Debbie Kidd, Division Chief, Finance/Revenue Administration

Roderick B. Williams, Assistant City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Introduction and first reading: 09/11/2007
Public hearing: 09/15/2007
Second reading and enactment: 09/15/2007

INFORMATION ON PROPOSED ORDINANCE

Title

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

Summary

The proposed ordinance would eliminate the remaining requirements in the City Code that the City give certain notices to taxpayers by registered mail and would instead require that the City give such notices by certified mail. Section 1-206 of the Code of Virginia already provides, "If any mail or notice is required to be sent by registered mail, it shall constitute compliance with this requirement if such mail or notice is sent by certified mail." Compared to certified mail, registered mail is much more cumbersome (envelopes must be sealed and labeled by the Postal Service) and expensive (\$9.50 vs. \$2.65, per item, in addition to base postage and return receipt fee) and does not provide the City any meaningful added legal or factual benefits for purposes of giving required legal notices.

Sponsor

Staff

Laura B. Triggs, Acting Director of Finance
Debbie Kidd, Division Chief, Finance/Revenue Administration
Roderick B. Williams, Assistant City Attorney

Authority

Virginia Code § 1-206

1 Estimated Costs of Implementation

2

3 None – the proposed ordinance would result in a small cost savings to the City.

4

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

6

7 None

ORDINANCE NO. _____

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

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

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

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

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

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

(c) Appropriate relief shall be given by the administrator if he is convinced by the preponderance of the evidence that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines

1 or other property were seized or sealed or that petitioner was authorized to possess such untaxed
2 cigarettes. If the administrator is satisfied that the tax was erroneously assessed, he shall refund
3 the amount erroneously assessed together with any interest and penalties paid thereon and shall
4 return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any
5 petitioner who is unsatisfied with the written decision of the board may, within 30 days of the
6 date of such decision, appeal the decision of the appropriate court in the jurisdiction where the
7 seizure or sealing occurred.

8
9 Section 2. That Article K (Transient Lodging Tax) of Chapter 2 (Taxation) of Title 3
10 (Finance, Taxation And Procurement) of the Code of the City of Alexandria, Virginia, 1981, as
11 amended, be, and the same hereby is, amended by enacting amended Section 3-2-147, to read as
12 follows:

13
14 Sec. 3-2-147 Failure to collect, report or remit tax; action by the director of finance.

15
16 If any person shall fail or refuse to collect in whole or in part or properly to report or
17 remit such tax within the time required by this article, the director shall proceed in such manner
18 as he may deem best to obtain facts and information on which to base his estimate of the tax due.
19 As soon as the director has procured such facts and information, he shall make his estimate of the
20 tax due and proceed to determine and assess against such person such estimated tax due together
21 with the penalties and interest provided for by this article. He shall notify such person by
22 ~~registered-certified~~ mail sent to his last known address of the total amount of the tax, interest and
23 penalties and the total amount thereof shall be payable within 10 days from the date of such
24 notice; provided, however, that before any determination and assessment is made by the director
25 that any person is liable for any tax, penalty and interest under this section, he shall give such
26 person notice and an opportunity to be heard concerning such possible determination and
27 assessment.

28
29 Section 3. That Article N (Tax on Meals Sold by Restaurants) of Chapter 2 (Taxation) of
30 Title 3 (Finance, Taxation And Procurement) of the Code of the City of Alexandria, Virginia,
31 1981, as amended, be, and the same hereby is, amended by enacting amended Section 3-2-249, to
32 read as follows:

33
34 Sec. 3-2-249 Procedure upon failure or refusal to collect, etc., taxes.

35
36 If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under
37 this article or to make within the time provided in this article the reports and remittances required
38 by this article, the director shall proceed in such manner as he may deem best to obtain the facts
39 and information on which to base his estimate of the tax due. As soon as the director procures
40 such facts and information as he is able to obtain upon which to base the assessment of any tax
41 payable by any person, who has failed or refused to collect such tax or to make such a report and
42 remittance, he shall proceed to determine and assess against such person such tax and penalty and
43 interest provided for in this article and shall notify the person by ~~registered-certified~~ mail at his
44 last known place of address of the amount of such tax and interest and penalty and the total

1 amount thereof shall be payable within 10 days from the date of the notice.

2

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

5

6

7

WILLIAM D. EUILLE
Mayor

8

9

10 Introduction: 09/11/2007

11 First Reading: 09/11/2007

12 Publication:

13 Public Hearing:

14 Second Reading:

15 Final Passage:

16

17

18 G:\DOCUMENT\DATA\RBW\Finance\Ordinances\Certified Mail Ordinance

ORDINANCE NO. 4497

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

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

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

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

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

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

(c) Appropriate relief shall be given by the administrator if he is convinced by the preponderance of the evidence that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines

or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the board may, within 30 days of the date of such decision, appeal the decision of the appropriate court in the jurisdiction where the seizure or sealing occurred.

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

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

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

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

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

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

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

WILLIAM D. EUILLE
Mayor

Final Passage: September 15, 2007