

**ORDINANCE TO AMEND and RE-ENACT
the FOOD and BEVERAGE TAX for
MADISON COUNTY, VIRGINIA**

WHEREAS, Virginia Code Section 58.1-38833 et seq (1950, as amended) authorize a county to levy a tax on certain food and beverages; and

WHEREAS, the Board of Supervisors of Madison County, Virginia, enacted a Food and Beverage Tax Ordinance for Madison County, Virginia, on January 13, 1998; and

WHEREAS, Virginia Code Sections 58.1-3833 et seq (1950) have been amended with an effective date of July 1, 2000; and

WHEREAS, the Board of Supervisors of Madison County, Virginia, hereby enacts this Ordinance to Amend and Re-enact the Food and Beverage Tax for Madison County, Virginia, in order to comply with the changes in state law.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Madison County, Virginia, that the Food and Beverage Tax Ordinance for Madison County, Virginia is hereby amended and re-enacted as follows:

I. Definitions.

The following words and phrases, when used in ordinance, shall have, for the purposes of this ordinance, the following respective meanings except where the context clearly indicates a different meaning:

Beverage. As used herein, the term beverage shall mean alcoholic beverages as defined in Virginia Code §4.1-100 and nonalcoholic beverages served as a part of a meal and purchased in and from a food establishment.

Cater. The furnishing of food, beverages, or both on the premises of another, for compensation.

Collector. The Commissioner of Revenue of Madison County, Virginia, or designee.

Commissioner. The Commissioner of Revenue of Madison County, Virginia, and any duly designated deputies, assistants, inspector or other employees.

Food. All food purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

Food establishment. Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including but not limited to, lunch rooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private corporations, dining accommodations of public and private schools and colleges, mobile points of food service, such as push cart operations, hot dog stands and similar operations, and grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter.

Meal. Meal shall mean any prepared food and beverage as defined herein offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

II. Levy.

There is hereby imposed and levied by the County of Madison, Virginia, on each person a tax at the rate of four percent (4%) on the amount paid for food and beverages purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

III. Collection of tax by seller.

Every person receiving any payment for food and beverages with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the person on whom the same is levied or from the person paying for such food and beverages at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and

used by the United States for any military or navel purpose shall be required to collect or remit such taxes.

All tax collections shall be deemed to be held in trust for the County.

IV. Exemptions; limits on application.

(a) The tax imposed under this ordinance shall not be levied on the following items when served for off-premises consumption.

- (1) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.
- (2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature;
- (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for a premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
- (4) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
- (5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
- (6) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. §2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad

bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d) (3), (4) and (5) hereinbelow.

(b) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(c) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

- (1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
- (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
- (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
- (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
- (6) Food and beverages sold on an occasional basis by a non-profit educational, charitable or benevolent organization, church, or religious

body as fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.

(7) Food and beverages sold through vending machines.

V. Gratuities and service charges.

Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this ordinance, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

An amount or percent, whether designated as gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the food and beverages and is subject to the tax imposed by this ordinance.

VI. Report of taxes collected, remittance, preservation of records.

It shall be the duty of every person required by this ordinance to pay the County of Madison, Virginia, the taxes imposed by this ordinance to make a report thereof setting forth such information as the Commissioner may prescribe and require, including all purchases taxable under this ordinance, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance. Such records shall be kept and preserved for a period of five (5) years. The Commissioner or any duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.

VII. Penalty for violation of ordinance.

(a) Any person willfully failing or refusing to file a return as required under this ordinance shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1000.00 or less. Any person violating or failing to comply with any other provision of this ordinance shall be guilty of a class 1 misdemeanor.

(b) Except as provided in subsection (a) above, any corporate or partnership officer, as defined in Virginia Codes §58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

(c) Each violation of or failure to comply with this ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax provided in this ordinance.

VIII Effective date.

This ordinance shall be effective on and after July 1, 2000.

ADOPTED this 15th day of June, 2000.

Chairman, Board of Supervisors of
Madison County, Virginia

	Aye	Nay	Abstain	
David C. Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
James R. Hale	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
James L. Arrington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Absent
Steven S. Hoffman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
George Volchansky	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Stephen L. Utz, County Administrator