



Legislation Text

File #: ORD. 2019-059, **Version:** 1

To amend ch. 26 of the City Code by adding therein a new art. XVIII, consisting of sections numbered 26-1277 through 26-1287, concerning the levy of a cigarette tax, for the purpose of imposing a new tax on the sale of cigarettes.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 26 of the Code of the City of Richmond (2015) be and is hereby amended and reordained by **adding therein a new** Article XVIII, consisting of sections numbered 26-1277 through 26-1287, as follows:

ARTICLE XVIII.

CIGARETTE TAX

Sec. 26-1277. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cigarette means any slender roll of cut tobacco enclosed in paper and meant to be smoked.

Dealer means any manufacturer, jobber, wholesaler, or other person who supplies a seller with cigarettes.

Director means the Director of Finance or the designee thereof.

Package means any box, can, or other container of any cigarettes, regardless of the material from which such container is made, to which the internal revenue stamp of the United States government is required or was formerly required to be affixed and in which retail sales of such cigarettes are normally made or intended to be made.

Purchaser means any person to whom ownership of any cigarettes is transferred by a seller within the corporate

limits of the city.

Sale means any act or transaction, regardless of the method or means employed, including the use of vending machines and other mechanical devices, whereby ownership of any cigarettes is transferred from the seller to any other person within the corporate limits of the city.

Seller means any person who transfers ownership of any cigarettes, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the city, for any purpose other than resale.

Stamp means a small gummed piece of paper or decalcomania to be sold by the Director and to be affixed to every package of cigarettes sold to dealers or sellers in the city and any insignia or symbols printed by a meter machine upon any such package under the authorization of the Director.

Sec. 26-1278. Levy and rate; penalty for nonpayment.

(a) *Levy and rate.* In addition to all other taxes of every kind now or hereinafter imposed by any other ordinance or law, there is hereby levied and imposed by the City upon the sale of each cigarette within the city a tax of \$0.025 per cigarette. The seller and dealer shall pay the amount of such tax, if not previously paid, in the manner and at the time provided for in this article; provided, however, that the tax payable for each cigarette sold within the city only shall be paid once.

(b) *Penalty for nonpayment.* For any amount of the tax imposed herein found to be overdue and unpaid, there shall be a penalty for such late payment in the amount of ten percent, not to exceed an amount equal to ten percent per month, and interest of nine percent per year, upon any tax found to be overdue and unpaid.

Sec. 26-1279. Method of payment.

(a) The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp or stamps, of proper denominational or face value, to each package of cigarettes sold within the city, in the manner and at the time or times provided for in this article. Every dealer and seller in the city shall have the right to buy such stamps from the

Director and to affix the same to packages of cigarettes as provided in this article.

(b) The Director is authorized to permit the payment of the tax levied and imposed by this article by the method of placing imprints of the stamps upon original packages by the use of meter machines, in lieu of the method of paying such tax by the purchase and affixing of gummed stamps, and to prescribe and enforce the necessary regulations setting forth the method to be employed and the conditions to be observed in the use of such meter machines.

Sec. 26-1280. Stamps generally; visibility of stamps or meter marking; altering design of stamps; use of dual die or stamp by wholesaler; refund for unused stamps.

(a) *Generally.* For the purpose of making stamps available for use, the Director shall prepare and sell stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this article.

(b) *Visibility of stamps or meter markings.* Stamps or the printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

(c) *Altering design of stamps.* The Director may, from time to time, and as often as the Director may deem necessary, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

(d) *Use by wholesaler of dual die or stamp to evidence payment.* The Director may enter into an arrangement with the Virginia Department of Taxation under which any tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the tax levied by this article and the state tax on cigarettes.

(e) *Refund for unused stamps or meter imprints.* Any person who, after acquiring from the Director any stamps provided for in this article, ceases to be engaged in a business necessitating the use thereof or if any such stamps become mutilated and unfit for use other than by a violation of this article, such person shall be entitled to a refund of the purchase price of any stamps so acquired and not used by such person upon presenting such stamps to the Director

and furnishing the Director with an affidavit showing, to the Director's satisfaction, that such stamps were acquired by such person and have not in any manner been used and the reason for requesting such refund. In the case of any authorized meter machine, if any imprints of such machine have been paid for but have not been used, such person shall, upon furnishing the Director with an affidavit, be entitled to a refund of the denominational or face amount thereof.

Sec. 26-1281. Duties of dealers and sellers with respect to stamps.

(a) Every local dealer in cigarettes is hereby required, and it shall be such dealer's duty, to purchase such stamps from the Director as shall be necessary to pay the tax levied and imposed by this article and shall affix, or cause to be affixed, a stamp or stamps of the monetary value prescribed by this article to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller. Nothing in this section shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.

(b) Every seller shall examine each package of cigarettes prior to exposing the same for sale for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon as provided by this article. If, upon such examination, the seller discovers unstamped or improperly stamped packages of cigarettes, the seller, where such cigarettes were obtained from a local dealer, shall immediately notify such dealer, and, upon such notification, such dealer shall either affix to or imprint upon such unstamped or improperly stamped packages the proper amount of stamps or shall replace such packages with others to which stamps have been properly affixed or imprinted thereon.

(c) If a seller should obtain or acquire possession from any person, other than a local dealer, of any stamped or improperly stamped cigarettes, such seller shall, before selling or offering such cigarettes for sale in the City, purchase from the Director and affix or cause to be affixed to such packages of cigarettes the proper stamps, covering the tax imposed by this article.

Sec. 26-1282. Seizure and disposal of unstamped cigarettes-generally.

(a) If the Director discovers any cigarettes, in quantities of more than six cartons, within the city that are subject to the tax imposed by this article and upon which the tax has not been paid, upon which stamps have not been affixed, or evidence of such tax payment is not shown by the printed markings of an authorized meter machine as required by this article, the Director may seize and confiscate such cigarettes, which shall be deemed to be forfeited to the City, and may, after providing notice of such seizure to the known holders of property interests in such property in the manner set forth in subsection (b) of this section, provide for the sale of such forfeited cigarettes. No credit from such sale shall be allowed toward any tax or penalties and interest owed, nor shall such seizure and sale deemed to relieve any person from any fine or other penalty provided for the violation of the provisions of this article. All monies collected under the provisions of this section shall be paid to the City. The mere possession of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any provision of this article.

(b) All cigarettes seized and confiscated according to subsection (a) of this section shall be deemed to be forfeited to the City. The Director shall provide for notice of such seizure and confiscation to the known holders of property interests in the cigarettes. Such notice shall be given to known holders of property interests, if any, by certified mail and by written notice posted at the court house of the Circuit Court of the City of Richmond at least seven days before the date of sale. Such notice shall contain the time and place at which the sale is to occur and, as set forth in the rules and regulations prepared by the Director, procedures for administrative appeal, as well as affirmative defenses that may be asserted by such holders.

Sec. 26-1283. Same-Cigarettes in transit.

(a) Cigarettes found in quantities of more than six cartons within the city shall be presumed for sale or use within the city and may be seized and confiscated by the Director if:

(1) Such cigarettes are in transit and are not accompanied by a bill of lading or other document indicating the true name and address of the seller or purchaser and the brands and quantity of cigarettes so

transported, or are in transit and accompanied by a bill of lading or other document that is false or fraudulent, in whole or in part;

(2) Such cigarettes are in transit and are accompanied by a bill of lading or document indicating:

a. 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 cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or district of destination has been paid and the said cigarettes bear the tax stamps of that jurisdiction; or

b. A consignee or purchaser in the Commonwealth of Virginia, but outside of the city, who does not possess a Virginia sales and use tax certificate, a Virginia retail tobacco license and, where applicable, both a business license and retail cigarette license issued by the local jurisdiction of destination; or

(3) Such cigarettes are not in transit, the tax imposed by this article has not been paid, and no approved arrangement for payment has been made, provided that this subdivision shall not apply to cigarettes in the possession of distributors or public warehouses that have filed notice and appropriate proof with the Director that those cigarettes are temporarily within the city and will be sent to consignees or purchasers outside the city in the normal course of business.

(b) Cigarettes seized and confiscated pursuant to this section shall be deemed to be forfeited to the City as contraband property, and the Director may provide for the sale of such forfeited cigarettes in the same manner as provided for the sale of cigarettes as set forth in section 26-1282 and subject to the notice requirements set forth in subsection (b) of that section.

Sec. 26-1284. Dealer's and seller's records; examination of records.

Every local dealer and seller shall maintain and keep, for a period of two years, such records, books, and invoices

of cigarettes sold and delivered by such dealer or seller as may be required by the Director and shall make all such records available for examination by the Director, upon demand, at all reasonable times. The Director may examine such records, books, invoices, and any and all cigarettes at any location where the same are, as applicable, placed, stored, sold, offered for sale, or displayed for sale by a local dealer or seller.

Sec. 26-1285. Rules and regulations for enforcement and administration of article.

The Director shall prepare rules and regulations for the administration and enforcement of the provisions of this article. Such rules and regulations shall include the procedures for administrative appeal and the affirmative defenses that may be asserted by holders of property interests.

Sec. 26-1286. Violations of article-generally.

(a) Any person violating any of the provisions of this article shall be deemed guilty of a Class 1 misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax imposed by this article. In addition, any person who shall commit any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of ten percent, and interest of nine percent per year, upon any tax found to be overdue and unpaid.

(b) In accordance with subsection (c) of section 1-16, each day that any violation of, or noncompliance with, any of the provisions of this article continues shall constitute a separate offense.

Sec. 26-1287. Same-Prohibited acts.

It shall be unlawful for any person:

(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 for any dealer or seller, with the intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon such dealer or seller under the provisions of this article or to

fail or refuse to comply with requests made by the Director in accordance with this article or other applicable law.

(2) To falsely or fraudulently make, forge, alter, or counterfeit any stamp or the printed markings of any meter machine, to procure or cause to be made, forged, altered, or counterfeited any such stamp or printed markings of a meter machine, or knowingly and willfully to alter, publish, pass, or tender as true any false, altered, forged, or counterfeited stamp or stamps or printed markings of a meter machine.

(3) To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.

(4) To reuse or refill with cigarettes any package from which cigarettes, for which the tax imposed has been paid, have been removed.

(5) To remove from any package any stamp or the printed markings of a meter machine with the intent to use or cause such stamp or printed markings to be used after the same have been used, or to buy, sell, offer for sale, or give away, any used, removed, or restored stamps or printed markings of a meter machine, to any person, or to reuse any stamp or printed markings of a meter machine that has been used for evidence of the payment of any tax prescribed by this article, or, except as to the Director, to sell or offer to sell any stamp or printed markings of a meter machine provided for in this article.

§ 2. This ordinance shall be in force and effect on July 1, 2019.