

STEPHENS CITY CODE

**ARTICLE 1. IN GENERAL**

**Sec. 19-1. When and where real estate and personal property tax payable; Penalty for delinquency.**

(a) All taxes imposed upon real estate and personal property shall become due and payable to the Town Treasurer, at her office for each calendar year, on a biannual basis, with one-half of the tax due on June 5<sup>th</sup> and the second half of the tax due on December 5<sup>th</sup>, of each year, unless they become due and payable at an earlier date by other provisions of law. If such taxes are not paid on or before that date, a penalty of 10% shall be imposed upon the amount of taxes so due and payable, together with interest at 10% per annum as may be authorized by law, as well as actual Town attorney's fees, costs and collection agency fees, not to exceed 20% of the delinquent tax.

(b) All other taxes imposed upon utilities or property of any kind upon which the Town may levy shall become due and payable to the Town Treasurer, at her office, of each calendar year, on or before December 5<sup>th</sup> of each year, unless they become due and payable at an earlier date by other provisions of law, if such taxes are not so paid on or before that date a penalty of 10% shall be imposed upon the amount of taxes so due and payable together with interest at 10% per annum as may be authorized by law.

State law reference: §§58.1-3916; 58.1-3918; 58.1-3701; 15.2-105

**Sec. 19-2. List of delinquent town taxpayers; publication of list.**

(a) Within 90 days after taxes become due and payable to the town, the town treasurer shall submit to the Town Council a list of all delinquent taxpayers, specifying each taxpayer's name, address, type of tax due, and amount due thereon.

(b) The Town Council may cause the list mentioned above, or such parts thereof as deemed advisable to be published one time in a newspaper in the county and/or handbills to be posted generally throughout the town and at the front door of the county courthouse for a period of 30 days.

(c) The publication costs shall be charged to the delinquent taxpayers listed. The sum payable by each delinquent taxpayer shall be determined by dividing the total publication costs incurred by the number of delinquent taxpayers included in the list.

State law reference-§58.1-3924

**Sec. 19-3. Cost of Collections.**

In addition to all remedies available to the Town Treasurer to collect any real estate or personal property taxes due to the Town of Stephens City which are delinquent, i.e. due and payable for three months or more, the Treasurer may refer the delinquent taxes for collection to a collection agency. The costs of the collection shall be added to the amount due as a penalty, and the Treasurer shall be given credit on her books for taxes collected for any compensation withheld

## TAXATION

by a collection agency. Prior to referring a delinquent account to a collection agency, the Treasurer shall provide written notice by first class mail.

**State law reference-**State Code §58.1-3919.1, use of private collectors after six months; §58.1-3958 for payment of costs.

**Secs. 19-4 – 19-25. Reserved.**

### ARTICLE II. BANK FRANCHISE TAX\*

#### Sec. 19-26. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed to them by this section:

*Bank* shall be defined as provided in Code of Virginia, §58.1-1201.

*Net Capital* means a banks' net capital computed pursuant to Code of Virginia, §58.1-1205

---

\*State Code references-Virginia Bank Franchise Tax Ace, Code of Virginia, §58.1-1200 et seq.; town tax, Code of Virginia, §58.1-1209.

#### Sec. 19-27. Imposition of tax.

(a) Pursuant to the provisions of Code of Virginia, title 58.1, chapter 12 (§58.1-1200 et seq.), There is hereby imposed upon each bank located within the boundaries of this town a tax on net capital equaling 80 percent of the state rate of franchise tax set forth in Code of Virginia, §58.1-1204.

(b) If any bank located within the boundaries of this town also has offices that are located outside the corporate limits hereof, the tax upon such branch shall be apportioned as provided by Code of Virginia, §58.1-1211.  
State law reference-§58.1-1209

#### Sec. 19-28. Filing of return and payment of tax.

(a) On or after January 1 of each year, but not later than March 1 of any such year, all banks whose principal offices are located within this town shall prepare and file with the Town Treasurer a return as provided by Code of Virginia, title 58.1, chapter 12 (§58.1-1200 et seq.). The Town Treasurer shall certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the state department of taxation.

(b) If the principal office of a bank is located outside the corporate boundaries of this town and such bank has branch offices located within this town, in addition to the filing requirements set forth in subsection (a), any bank conducting such branch business shall file with the Town Treasurer a

## STEPHENS CITY CODE

copy of the real estate deduction schedule, apportionment, and other items which are required by Code of Virginia, §§58.1-1207, 58.1-1211 and 58.1-1212.

(c) Each bank on or before June 1 of each year, shall pay into the treasurer's office (or other appropriate official) of this town all taxes imposed pursuant to this article.

**State law reference**-Filing of return and payment of tax, Code of Virginia§58.1-1207.

### **Sec. 19-29. Penalty upon bank for failure to comply with article.**

Any bank which fails to file a return or pay the tax required by this article or fails to comply with any other provision of this article shall be subject to a penalty of five percent of the tax due. If the commissioner of the revenue is satisfied that such failure is due to providential or other good cause such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with Code of Virginia, §58.1-15.

**State law reference**-Penalty upon bank for failure to comply with Virginia Bank Franchise Tax Act, Code of Virginia, §58.1-1216.

## **ARTICLE III. REAL ESTATE, PERSONAL PROPERTY, MACHINERY & TOOLS**

### **Sec. 19-30. Return of tangible personal property and machinery and tools.**

(a) Tangible personal property and machinery and tools shall be returned for taxation as of the first day of each tax year and the status of all persons liable to taxation on any such property shall be fixed as of such date and each year and that the value of all such property shall be taken as of such date.

(b) Returns listing personal property and machinery and tools for taxation under the provisions of this chapter shall be prepared and filed each tax year in accordance with the laws of the Commonwealth of Virginia, and each taxpayer owing machinery and tools or business or personal property taxes shall include on his return of such property information as to the total of original capitalized costs by year of purchase; provided however that such returns shall be filed with the Commission of the Revenue in Frederick County as is required by the County.

(c) If any person, after being provided with the proper form for returns listing tangible personal property and/or machinery and tools for taxation, shall fail, within the time prescribed, to deliver the lists in the manner prescribed herein, he shall be guilty of a Class 3 misdemeanor. If any person shall refuse to exhibit to the Commission of the Revenue any personal property listed or required to be listed by him in order that a fair evaluation thereof may be assessed, he shall be guilty of a Class 3 misdemeanor as provided in Virginia Code Section §58.1-3111.

(d) A tax will be assessed and levied annually on any motor vehicle, as tangible personal property, based on a previous personal property tax return filed by the owner or owners of such property, as provided in this subsection and subsection (e). For those whose name and address has not changed since a previous filing and whose personal property has had no change in the status or situs, the assessment and taxation of property will be based on a personal property tax return previously filed with Frederick County.

## TAXATION

- (e) Any motor vehicle owner shall file a new personal property tax return whenever there is:
1. A change in the name or address of the person or persons owning taxable personal property;
  2. A change in the situs of the personal property;
  3. Any other change effecting the assessment or levy of the personal property tax on motor vehicles for which a tax return has been filed previously; or
  4. Any change in which a person acquires one or more motor vehicles and for which no personal property tax return has been filed.

### **Sec. 19-31. Tax on personal property generally.**

Pursuant to Sections 58.1-3000 and 58.1-3008 of the Code of Virginia on all tangible personal property there shall be a tax of \$1.00 (One dollar) on every \$100.00 (One Hundred Dollars) of the assessed value thereon; provided, however, that the following household goods, personal effects and agricultural property are eliminated from such tax pursuant to Section 58.1-3504 and 58.1-3505 of the Code of Virginia:

1. Bicycles
2. Household and kitchen furniture, including gold and silver plates, plated ware, watches, clocks, sewing machines, refrigerators, automatic refrigerating machinery of any type, vacuum cleaners, and all other household machinery, books, firearms and weapons.
3. Pianos and organs, phonographs, record players and machines used to play music in households, and all other musical instruments of whatever kind, radio and televisions instruments and equipment.
4. Oil paintings, pictures, statuary, curios and other works of art.
5. Diamonds, cameos, or other precious stones belonging to a household, and all precious metal used as ornaments or jewelry for household use.
6. Sporting and photographic equipment for household use.
7. Clothing and objects of apparel.
8. All other tangible personal property used by an individual or a family or a household incident to maintaining a home.
9. Horses, mules and other kindred animals.
10. Cattle
11. Sheep and goats
12. Hogs
13. Poultry
14. Grains and other feeds used for the nurture of farm animals
15. Grain, tobacco, wine produced by farm wineries as defined in Section 4-2(10a) of the Code of Virginia; and other agricultural products in the hand of a producer.
16. Farm machinery and farm implements, which shall include equipment and machinery used by farm wineries, as defined above, used in the production of wine.
17. Equipment used by farmers or farm cooperatives qualifying under Section 521 of the Internal Revenue Code of the Federal Government of the United States of America to manufacture industrial ethanol, provided that the materials from which the ethanol if derived consists primarily of farm products.

### **Sec. 19-31B. Implementation of the changes to the personal property tax relief act of 1998.**

1. **Purpose: Definitions; relation to other ordinances.**

## STEPHENS CITY CODE

- (a) The purpose of this ordinance is to provide for the implementation of the changes to the PPTRA effected by the legislation adopted during the 2004 special session 1 and the 2005 regular session of the General Assembly of Virginia.
- (b) Terms used in this ordinance that have defined meanings set forth in PPTRA shall have the same meanings as set forth in Virginia Code §58.1-3523, as amended.
- (c) To the extent that the provisions of this ordinance conflict with any prior ordinance or provision of the Town of Stephens City Code, this ordinance shall control.

### **2. Method of computing and reflecting tax relief**

- (a) For tax years commencing in 2006, the Town of Stephens City adopts the provisions of Item 503.E of the 2005 Appropriations Act, providing for the computation of tax relief as a specific dollar amount to be offset against the total taxes that would otherwise be due but for PPTRA and the reporting of such specific dollar relief on the tax bill.
- (b) The Council shall, as a part of the annual budget adopted pursuant to Chapter 25 of Title 15.2 of the Code of Virginia and Sec. 19-31 of the Town Code, set the rate of tax relief at such level that is anticipated fully to exhaust PPTRA relief fund provided to the Town by the Commonwealth. Any amount of PPTRA relief not used with the Town's fiscal year shall be carried forward and used to increase the funds available for personal property tax relief in the following fiscal year.

### **3. Allocation of relief among taxpayers.**

- (a) Allocation of PPTRA relief shall be provided in accordance with the general provisions of this section, as implemented by the specific provisions of the Town's annual budget relating to PPTRA relief.

### **4. Transitional provision.**

- (a) Pursuant to authority conferred in Item 503.D of the 2005 Appropriations Act, the Town Treasurer is authorized to issue a supplemental personal property tax bill, in the amount of 100 percent of tax due without regard to any former entitlement to state PPTRA relief, plus applicable penalties and interest, to any tax payer whose taxes with respect to a qualifying vehicle for tax year 2005 or any prior tax year remain unpaid on September 1 2006 or such date as state funds for reimbursement of the state share of such bill have become available, whichever occurs first.
- (b) Penalty and interest with respect to bills issued pursuant to subsection (a) of this section shall be computed on the entire amount of tax owed. Interest shall be computed at the rate provided in Sec. 19-1 of the Town Code from the original due date of the tax.

(Ord. 1-3-05)

### **Sec. 9-32. Tax on boats and water craft.**

## TAXATION

Pursuant to Section 58.1-3506 of the Code of Virginia on all boats or water craft mentioned in such section there shall be a tax of \$3.00 (Three Dollars) on every \$100.00 (One Hundred Dollars) of the assessed value thereof.

### **Sec. 9-33. Tax on machinery and tools.**

Pursuant to Section 58.1-3000, 58.1-3507, and 58.1-3508 of the Code of Virginia there shall be levied a tax of \$.50 on every \$100.00 (One Hundred Dollars) of valuation on all machinery and tools, except machinery and equipment used by farm wineries as defined in Section 4.1(10a) of the Code of Virginia, idle machinery and tools as defined in §58.1-3507(D), and machinery and tools used in manufacturing, mining, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business.

Neither “machinery” nor “tools” as used in this Section shall be defined to include farm machinery or farm implements.

### **Secs. 19-34 – 19-45. Reserved.**

### **Sec. 19-46. Real estate tax.**

It is hereby imposed upon all real estate located within the Town Corporate Limits a tax upon the current assessed value of real estate and improvement thereon at the rate of \$0.076 per \$100.00 valuation. This shall include any manufactured housing or mobile home.

**State law reference**-Article X, Section 1, Section 2, Virginia Constitution; 58.1-3200, 3201; 58.1-3000; 58.1-1; 58.1-3010; 58.1-3281; Code of Virginia, §58.1-3522.

### **Sec. 19-47. Tax exemption for the elderly.**

As set forth in Section 19-48 through 19-53, the real estate tax may be exempted for certain elderly citizens.

### **Sec. 19-48. Definitions.**

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Affidavit* means the real estate tax exemption affidavit.

*Commissioner of the revenue* means the county commissioners of the revenue

*Dwelling* means principal residence of the person claiming the exemption

*Taxable year* means the calendar year, from January 1 until December 31, for which exemption is claimed (Code 1975, Sec. 17-24)

**Cross reference**-Definitions and rules of construction generally, Sec. 1-2

**State law reference**-Restrictions and exemptions, Code of Virginia, §58.1-3210; 3212; application for exemption, Code of Virginia, §58-1-3213.

### **Sec. 19-49. Eligibility.**

## STEPHENS CITY CODE

Exemption from the real estate tax shall be subject to the following provisions:

1. The head of the household occupying the dwelling and owning title or partial title thereto shall have reached the age of 65 prior to the taxable year for which the exemption is claimed.
2. The title or partial title to the real estate for which exemption is claimed shall be owned on January 1 of the taxable year by the person claiming such exemption.
3. The total combined income during the immediately preceding calendar year from all sources of the owners of the dwelling living therein and of the owners' relatives living in the dwelling does not exceed \$12,000.00; provided, that the first \$3,000.00 of income of each relative, other than the spouse, of the owner, who is living in the dwelling shall not be included in such total.

**State law reference**-Restrictions and exemptions, Code of Virginia, §58.1-3212 et seq.

4. The net combined financial worth including equitable interests, as of December 31 of the immediately preceding calendar year, of the owners and the spouse of any owner, excluding the value of the dwelling and the land, not exceeding one acre, does not exceed \$30,000.00

(Code 1975, Sec 7-25, Ord of 1-7-86, Sec. 1)

**State law reference**-Restrictions and exemptions, Code of Virginia, §58.1-3212.

### **Sec. 19-50. Application for exemption.**

(a) Application for exemption shall be made annually between February 1 and May 1 of each taxable year for which the exemption is claimed. The person claiming such an exemption must make application on the forms supplied by the county. The application must be filed with the Commissioner of the Revenue.

(b) The affidavit shall set forth, in a manner prescribed by the Commission of the Revenue:

1. The names of the related persons occupying the dwelling for which exemption is claimed, their gross combined income and the total combines net worth of the owners and spouses; and
2. That the total combined net worth, including equitable interest and the combined income from all sources, to not exceed the limits prescribed in this article.

(c) If after audit and investigation, the Commissioner of the Revenue determines that the person is qualified for exemption, he shall so certify to the Town Treasurer who shall deduct the amount of the exemption from the claimant's real estate tax liability.

(d) If any person applies for exemption but is determined to be ineligible by the Commissioner of the Revenue, such person will be notified in writing by the Commissioner of the Revenue.

**State law reference**-Application for exemption, Code of Virginia, §58.1-3213.

### **Sec. 19-51. Claimant death.**

If an eligible claimant should die during the year, the exempted taxes will be prorated to the date of death and the remaining year's taxes will be paid by the new owner; provided, that the new owner is not also exempt by provisions found in this article.

## TAXATION

### **Sec. 19-52. Administration and enforcement of article.**

The exemption from real estate tax for elderly persons shall be administered by the Commissioner of the Revenue according to the provisions of this article. The Commissioner of the Revenue is hereby authorized to prescribe, adopt and enforce such rules and regulations in conformance with the provisions of this article, including the right to require answers under oath, as may be reasonably necessary to determine eligibility for exemption. The Commissioner of the Revenue may also require the production of certified tax returns to establish total combined income or net combined financial worth.

**State law reference**-similar provisions, Code of Virginia, §58.1-3213.

### **Sec. 19-53. Violations and penalties.**

Any person falsely claiming an exemption or deferral shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50.00 nor more than \$500.00 for each offense.

### **Sec. 19-54 - 56. Reserved.**

### **Sec. 19-57. Eligibility for Special Assessments, for Agriculture, Horticulture or Open Space**

(a) The owner of any real estate meeting the criteria set for by §§58.1-3230 and 58.1-3232 of the Code of Virginia, as amended, may, at least 60 days preceding the tax year for which such taxation is sought, apply to the Town Treasurer for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use under the procedures set for by §58.1-3234 of the Code of Virginia, as amended, provided that, in any year in which a general reassessment is being made, the property owner may submit such application until 30 days have elapsed after his notice of increase in assessment is mailed in accordance with §58.1-3330 of the Code of Virginia or 60 days preceding the tax year, which is later, provided that such application must be submitted for any year at least 60 days preceding the effective date of the assessment for such year. Such application shall be on forms provided by the State Department of Taxation and supplied by the Treasurer and shall include such additional schedules, photographs and drawings as may be required by the Treasurer.

(b) A separate application shall be filed for each parcel on the land book for which qualification is sought, and shall be signed by all owners of the subject property. An owner of an undivided interest in the property may apply on behalf of owners that are minor or that cannot be located, upon submitting an affidavit attesting to such fact.

(c) All applications under this article shall be accompanied by an application fee payable to the Town of \$100.00 or \$0.50 per acre (or major part thereof) per parcel sought to be classified, assessed and taxes under this article, whichever is greater. No such application fee is required upon the filing of an annual revalidation nor upon the filing of an application upon a change in acreage. No application fees are refundable.

(d) The owner of any real estate which has been approved for special assessment as allowed by §58.1-3231 of the Code of Virginia, as amended, shall revalidate annually any application previously approved. Such validation shall be made with the Treasurer, on form prescribed by the

## STEPHENS CITY CODE

same. Revalidations must be made before November 1 of the preceding tax year for which such assessment is sought.

1. An application with applicable fees shall be submitted whenever the use or acreage of such land previously approved changes; provided, however, that no application fee shall be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action of condemnation of a portion of any land previously approved. If the acreage change is the result of a current survey of the property being made or a boundary agreement between adjoining property owners when all property owners have their land within this land use, and not the result of any deeded out-conveyance, then reapplication is not necessary for that adjustment.
2. But for the aforementioned exceptions, within thirty (30) days after posting a land transfer by the Frederick County Commissioner of Revenue of a transfer of all or any part of a parcel of land, which land, prior to the transfer, was taxed under use value, then the property will be removed from use valuation, effective immediately.

(e) Late filing of land use applications. A late filing fee of \$25.00 will be assessed for late filing for each parcel application. The applicant will have 30 days from the date of passage of this subsection and 30 days from the due date, November 1, of each year thereafter, to make payments to avoid a late fee. (Ord. 11-1-05)  
State law reference-§58.1-3231

### **Sec. 19-58. Determinations of Town Treasurer.**

(a) Promptly upon receipt of any application, the Treasurer shall determine whether the subject property meets the criteria for taxation hereunder. If the Treasurer shall determine that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use, as well as its fair market value.

(b) In determining whether the subject property meets the criteria for forest use, the Treasurer may request an opinion from the Director of the Department of Conservation and Economic Development; and in determining whether the subject property meets the criteria for open space use, she may request an opinion from the Director of Commission of Outdoor Recreation. Upon the refusal of the Director of the Department of Conservation and Economic Development or the Director of the Commission of Outdoor Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth by the respective Director, the party aggrieved may seek relief from a court of record wherein the real estate in question is located; and in the event that the court finds in his favor, it may issue an Order which shall serve in lieu of an opinion for the purposes of this article.

(c) Minimum acreage:

1. Real estate devoted to:
  - a. Agricultural or horticultural use shall consist of a minimum of five acres.
  - b. Forest use shall consist of a minimum of 20 acres. Any such forest property shall provide to the Town a copy of their county forest commitment plan, which plan shall be obtained from the County Commissioner of the Revenue.
  - c. Open space use shall consist of a minimum of five acres.

## TAXATION

2. The foregoing requirements for minimum acreage shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots title in the same ownership. For purposes of this section, properties separated only by a public right of way are considered contiguous.

(d) In addition to meeting the foregoing requirements for minimum acreage, real estate devoted to open space use shall be:

1. Within an agricultural, a forest~~all~~ or an agricultural and forest~~all~~ district;
2. Subject to a recorded perpetual easement that is held by a public body and that promotes the open space use classification, as defined in §58.1-3230 of the Code of Virginia, or;
3. Subject to a recorded commitment meeting the standards as prescribed by the Director of the Virginia Department of Conservation and Recreation and entered into by the landowner with the County.

(e) If the Town Treasurer or his or her designee determines that the property does not meet such criteria, he or she shall determine the value of such property for its qualifying use, as well as its fair market value.

- (f) In determining whether the subject property meets the criteria of agricultural use or horticultural use, the Town Treasurer or his or her designee may request opinions from appropriate county or state agencies. (Ord. 11-1-05)

### **Sec. 19-59. Reserved.**

### **Sec. 19-60. Taxation based on qualifying use.**

The use value and fair market value of any qualifying property shall be the same values used by Frederick County. Continuation of valuation, assessment and taxation based upon land use shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as required in §58.1-3235 and compliance with other requirements of Article 4, Chapter 32 of Title 58.1 of the Code of Virginia, and not upon continuance in the same owner of title to the land. (Ord. of 11-1-05)

### **Sec. 19-61. Delinquent Taxes.**

If on April 1<sup>st</sup> of any year the taxes for any prior year on any parcel of real property which has special assessment as provided for in this Article are delinquent, the Town Treasurer shall send notice of that fact and the general provisions of §58.1-3235 of the Code of Virginia to the property owner by first class mail. If, after sending such notice, such delinquent taxes remain unpaid on June 1<sup>st</sup>, the Treasurer shall remove such parcel from land use program. In any year in which revalidation is required, all taxes must be current. If any taxes are unpaid and reassessment, revalidation and/or annual revalidation is required, then the Town Treasurer or his or her designee shall not process the application for revalidation and the special assessment will not be available to the applicant. If the parcel or parcels have been removed from the land use program, the re-application fees shall apply as provided for new applications above. (Ord. of 11-1-05).

State law reference-58.1-3235

### **Sec. 19-62. Change in use, zoning or area; rollback taxes.**

## STEPHENS CITY CODE

There is hereby imposed a roll back tax, and interest thereon, in such amounts as may be determined under Virginia Code §58.1-3237, on real estate which has qualified for assessment and taxation on the basis of use under this Article, upon on or more of the following occurrences:

- (a) When the use by which it qualified changes to a more intensive use or to non-qualifying use.
- (b) When it is rezoned to a more intensive use, as described in §58.1-3237 of the Code of Virginia.
- (c) When one or more parcels, lots or pieces of land are separated or split off for the real estate, as described in §58.1-3241 of the Code of Virginia.

Such roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years, including simple interest at a rate of 10%. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based upon the fair market value assessment of the real estate for that year.

### **Sec. 19-63. Failure to report changes; misstatements in application.**

(a) The owner of any real estate liable for rollback taxes shall, within sixty (60) days following a change in use or zoning, report such change to the Town Treasurer or his or her designee on such forms as may be prescribed. The Town Treasurer or his or her designee shall forthwith determine and assess the rollback tax which shall be paid to the Treasurer within thirty (30) days of assessment.

On failure to report within sixty (60) days following such change in use and/or failure to pay within thirty (30) days of assessment, such owner shall be liable for an additional penalty equal to ten (10%) percent of the amount of the rollback tax and interest, which penalty shall be collected as part of the tax. In addition to such penalty for failure to make required report, there is hereby imposed interest of ½% of the amount of the rollback tax, interest and penalty, for each month of failure or failure thereof during which the failure continues.

(b) Any person making material misstatement of fact other than a clerical error in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of 100% of such unpaid taxes. The term “material misstatement of fact” shall have the same meaning as it has under §58.1-3238 of the Code of Virginia. (Ord. of 11-1-05).

State law reference-§58.1-3238

### **Sec. 19-64. Application of Title 58.1 of the Code of Virginia.**

The provisions of Title 58.1 of the Code of Virginia applicable to local levies and real estate assessments and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis*, including without limitation, provisions relating to tax liens and the correction of erroneous assessments, and for such purposes the rollback taxes shall be considered to be deferred real estate taxes. (Ord. of 11-1-05).

### **Sec. 19-65. When effective.**

## TAXATION

This Article shall be effective for all tax years beginning on or after January 1, 2006. (Ord. of 11-1-05).

**Sec. 19-66 – 19-70. Reserved.**

### ARTICLE IV. RESTAURANT MEAL EXCISE TAX

#### **Sec. 19-71. Definitions.**

For the purpose of this article, the following words or phrases shall have the following meanings:

*Caterer* means the furnishing of food, beverages or both on the premises of another for compensation.

*Collector* is the Town Treasurer, or her duly designated assistant.

*Food* means all food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

*Food establishment* means any place in or from which food or food products are prepared, packaged, sold or distributed in the Town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

*Meal* means any prepared food or drink 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 here 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.

*Purchaser* means any person who purchases a meal or food.

*Seller* means any restaurant or caterer selling meals for the person, partnership or corporate entity operating such business.

State law reference-§58.1-3840

## STEPHENS CITY CODE

### **Sec. 19-72. Levy.**

There is hereby levied and imposed by the Town of Stephens City upon the purchaser an excise tax of five percent of the total amount paid for the meal from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not. All fractional amounts of \$0.005 or more shall be rounded up to the next cent. (58.1-3840)(5/00)

State law reference-§§58.1-3840; 58.1-3841.

### **Sec. 19-73. Payment and collection.**

In every case, the purchaser shall pay the meals tax, and the seller shall collect the meals tax, at the time the charge for the meal comes due and payable, whether payment is made in cash or on credit by means of a charge card or otherwise. The seller shall add the tax to the amount charged for the meal; 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 purpose shall be required to collect or remit such taxes.

The money collected by the Seller in accordance with this Ordinance is held by the Seller in trust until remitted to the Town. Each remittance shall be made monthly, and the Seller is responsible for the care, custody and control of the funds held until remitted to the Town.

### **Sec. 19-74. Collection to be held in trust.**

All tax collections shall be deemed to be held in trust for the Town of Stephens City.

### **Sec. 19-75. Report of taxes collected; remittance.**

It shall be the duty of every person required by this Ordinance to pay to the Town of Stephens City the taxes imposed by this ordinance no later than the end of the next month following the collection. (Example – all meals taxes collected in the month of January must be paid over to the Town not later than the end of February). The person paying the meals taxes shall make a report thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this Ordinance, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Ordinance. If the report is not filed with the taxes each month, an annual report must be filed for the preceding twelve months on July 1 of each year.

### **Sec. 19-76. 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 filing 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 \$1,000.00 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

## TAXATION

in Virginia Code §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 as provided in this Ordinance.

(d) Penalty of 10% on unpaid tax shall commence the first day following the date the tax is due and interest on unpaid tax shall commence the first day of the month following the date the tax is due at 12% per annum.

State law reference-§58.1-3916

### **Sec. 19-77. Records.**

Records shall be kept and preserved for a period of five (5) years. The Treasurer or her 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.

### **Sec. 19-78. Report required for seller disposing of business.**

If any seller in the Town shall cease to operate or otherwise dispose of his business, then notwithstanding the regular monthly report and payment requirements, that seller shall file a report of the restaurant meal excise taxes due and make a payment on the date that the seller ceases operations or otherwise disposes of the business.

### **Sec. 19-79. Exemptions; limits on application.**

(a) The tax imposed under this Ordinance shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.

(b) The tax imposed under this Ordinance shall not be levied on the following items when served exclusively for off-premises consumption:

1. Donuts, ice cream, crackers, nabs, chips, cookies and factory prepackaged items of essentially the same nature.
2. Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any items that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
3. Alcoholic and non-alcoholic beverages sold in factory sealed containers.
4. Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants and Children.
5. Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, U.S.C. §2012, as amended except hot food or hot food

## STEPHENS CITY CODE

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 non-factory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (d)3,4 and 5.

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

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

1. Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
2. Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
3. Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth of 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 of alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.
5. Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contract with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, inform, blind, handicapped or needy persons in their homes or at central locations.
6. Food and beverages sold on an occasional basis, not exceeding one time per calendar year, by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.
7. Food and beverages sold through vending machines.

(e) 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 case to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

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

## TAXATION

### ARTICLE V. – UTILITY SERVICE PURCHASE TAX

#### Sec. 19-80. Definitions.

The following words and phrases when used in this Article shall, for the purposes of this Article have the following meanings:

*Commercial or Industrial User* means the owner or tenant of property used for commercial, industrial and all nonresidential purposes, who pays for utility service for the property.

*Consumer* means every person, who individually or through agents, employees, officers, representatives or appointees, makes a taxable purchase of local telephone exchange service, electrical service or gas service, purchased within the corporate limits of the Town of Stephens City, Virginia.

*Kilowatt hours delivers (kWh)* means 1,000 watts of electricity delivered in a one hour period by an electric provider to an actual consumer, except that in the case of eligible customer generators (sometimes called co-generators) as defined under Virginia Code Section 56-594, it means kWh supplied from the electric grid to such customer/generators, minus the kWh generated and fed back to the electric grid by such consumer/generators.

*Person* means individuals, firms, partnerships, associations, corporations and combinations of individuals or whatever form and character.

*Residential Consumer* means the owner or tenant of private residential property who pays for utility service in or for the property, including but not limited to, apartment houses and other multiple family dwellings.

*Service Provider* means the person who delivers the electric, gas or local telephone exchange service to a consumer.

*Utility Service* means local telephone exchange service, electrical service or gas service.

#### Sec. 19-81. Electric Utility Tax.

(a) **Tax Levied.** There is hereby imposed and levied by the Town of Stephens City, Virginia a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider as follows:

1. Residential Consumers: Residential Consumers shall pay a tax of \$.50 plus the rate of \$.003 on each KWh delivered monthly to residential consumers by a service provider, not to exceed 20% of the monthly amount charged to the consumer of the utility service, or \$3.00 monthly, whichever amount is lower.
2. Commercial or Industrial User: Such tax on industrial or commercial users shall be at the rates per month for the classes of non-residential consumers as set forth below:

## STEPHENS CITY CODE

- (i) Commercial Consumers – such tax shall be \$1.00 plus the rate of \$.003 on each kWh delivered monthly to commercial consumers.
- (ii) Industrial Consumers – such tax shall be \$1.00 plus the rate of \$.003 on each kWh delivered monthly to industrial consumers.

(b) **Exemptions.** The United State of America and the Commonwealth of Virginia are excluded and exempt from the tax imposed by this Ordinance.

(c) **Billing, collection and Remittance of Tax.** The service provider shall bill the electric utility tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to this jurisdiction in accordance with Virginia Code Section 58.1-3814(F) and (G) as well as Virginia Code Section 58.1-2901, or the subsequent amendments to these State laws. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer within ten days. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(d) **Computation of bills not on a monthly basis.** Bills shall be considered as monthly bills for the purposes of this Ordinance if submitted twelve times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows:

1. The kWh will be divided by two;
2. A monthly tax will be calculated using the rates set for above;
3. The tax determined by (ii) shall be multiplied by two;
4. The tax in (iii) may not exceed twice the monthly “maximum tax.”

State law reference-§58.1-2900-2901

### **Sec. 19-82. Gas Utility Consumer Tax.**

(a) **Tax levied.** In accordance with Virginia Code Section 58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by a service provider as follow:

1. Residential Consumers: Such tax shall be \$0.50 plus the rate of \$0.03 on each CCF delivered monthly to the residential consumer by a service provider, for a total monthly tax not to exceed \$3.00 per month.
2. Commercial or Industrial Users: Such tax on non-residential consumers shall be at the rates per month for the classes of consumers as set forth below:
  - (i) Commercial Consumers – such tax shall be \$0.50 plus the rate of \$0.03 on each CCF delivered monthly to commercial consumers, not to exceed 20% of the total bill to the commercial consumer.
  - (ii) Industrial Consumers – such tax shall be \$0.50 plus the rate of \$0.03 on each CCF

## TAXATION

delivered monthly to commercial consumers, not to exceed 20% of the total bill to the commercial consumer.

(b) **Billing, Collection and Remittance of Tax.** The service provider shall bill the gas utility consumer tax to all users who are subject to the tax and to whom it delivers gas and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provided to this jurisdiction in accordance with Virginia Code Section 58.1-3814(F) and (G), as well as Virginia Code Section 58.1-2901, or the subsequent amendments to these State laws. If any consumer receives and pays for gas but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer within ten days. If any consumer fails to pay a bill issued by a service provided, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for the gas service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(c) **Computation of Bills Not On a Monthly Basis.** Bills shall be considered as monthly bills for the purposes of this Ordinance if submitted twelve times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows:

1. The CCF will be divided by two;
2. A monthly tax will be calculated using the rates set forth above;
3. The tax determined by (2) shall be multiplied by two;
4. The tax in (3) may not exceed the twice the monthly "maximum tax."

### **Sec. 19-83 – 19-85. Reserved**

### **Sec. 19-86. Bottled Gas Excluded.**

The tax hereby imposed and levied shall not apply to the purchase of bottled gas.  
(Ord. of 11-4-97)

### **Sec. 19-87. Irregular billing.**

In all cases where the seller collects the price for utility services other than a monthly basis, the tax hereby imposed and levied may be computed on the aggregate amount of purchases during the period billed for, provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed. (Ord. of 11-4-97)

### **Sec. 19-88. Penalties.**

Any purchaser failing, refusing, or neglecting to pay the tax hereby imposed or levied and any seller violating the provisions hereof, and any officer, agent, or employee or any seller violating the provisions hereof, shall upon conviction, be subject to a fine, of not more than Twenty-Five Dollars (\$25.00). Each failure, refusal, neglect or violation and each day's continuance thereof, shall constitute a separate offense. (Ord. of 11-4-97)

### **Sec. 19-89. Reserved.**

## STEPHENS CITY CODE

### ARTICLE IV. TAXATION OF TRANSIENT OVERNIGHT ACCOMODATIONS

#### **Sec. 19-90. Definitions.**

Within Article IV of this Chapter, the following words have the following meanings:

*Hotel* means any public or private hotel, inn, hostelry, tourist home, motel, rooming house, or other lodging place within the Town offering lodging for compensation to any transient.

*Transient* means any person who, for a period of not more than 60 consecutive days, either at such person's own expense or at the expense of another, obtains lodging in any hotel.

#### **Sec. 19-91. Levy.**

There is hereby imposed and levied on each transient a tax equivalent to five percent (5%) of the total amount paid for the lodging by or for any such transient to any hotel.

#### **Sec.19-92. Exceptions.**

No tax shall be payable under this article on charges for lodging paid to any hospital, medical clinic, convalescent home, or home for aged people.

#### **Sec. 19-93. Collection.**

Every person receiving any payment for lodging with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying for such lodging at the time payment for such lodging is made. The tax required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

#### **Sec. 19-94. Reports and Remittances.**

The person collecting any taxes provided in section 19-93 shall make out a report showing the amount of lodging charges collected and the tax required to be collected, and shall sign and deliver such report to the Town Treasurer with remittance of such tax. Such report and remittance shall be made on or before the 20<sup>th</sup> day of each month covering the amount of tax collected during the preceding month.

#### **Sec. 19-95. Penalty and Interest.**

If any owner or operator of a hotel shall fail or refuse to report and remit to the Town Treasurer the tax and report required under this article within the time and in the amount provided for in this article, there shall be added to such tax by the Town Treasurer a penalty in the amount of ten percent (10%) of the tax due, or the sum of \$10.00, whichever is greater. Interest shall accrue from the date due until paid at the legal judgment rate.

## TAXATION

### **Sec. 19-96. Cession of Business.**

Whenever any person required to collect and pay to the Town a tax imposed by this article shall cease to operate, go out of business or otherwise dispose of his business, any tax then payable to the Town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the Town Treasurer.

Ord. of 10-7-98

**State law reference**-Code of Virginia §15.2-1104; §58.1-3819(C)(D)(E);§15.2-1427(G)

### **Sec. 19-97. Tourism and Travel Promotion**

From the amounts collected for transient accommodations, 60% of these funds shall be dedicated to promotion of tourism and travel to the Town; including promotion of the Newtown Heritage Festival.

## **ARTICLE VII. CIGARETTE EXCISE TAX**

### **Sec.19-99. Definitions.**

*Cigarette* means and includes any roll of any size or shape of tobacco or other plant or substitute for tobacco.

*Cigarette Pack* means and includes any container, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packs are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a pack contains twenty cigarettes.

*Retail Cigarette dealer* means every person who purchases or receives cigarettes from any source whatsoever for the purpose of sale within the town to the ultimate consumer; or any person who, owns, leases, or otherwise operates within his own place of business, one or more cigarette vending machines for the purposes of sale within the town of cigarettes to the ultimate consumer.

*Cigarette Tax Stamp* means a small gummed piece of paper or decal used to evidence provision for payment of the tax as required to be affixed to every package of cigarettes sold, distribute, or used within the town.

### **Sec. 19-100. Levy and rate.**

There is hereby levied an excise tax on the retail sale of cigarettes at a rate of twenty-five cents for each cigarette pack containing twenty cigarettes and one and one-quarter (\$0.0125) cents for each cigarette contained in packages of fewer or more than twenty cigarettes sold within the town. 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 town shall be paid but once. The tax shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

## STEPHENS CITY CODE

### **Sec. 19-101. Delegation of administration.**

(a) The town manager is authorized to administer all provisions of this ordinance, or to delegate to the Town Clerk and Town Treasurer for administration, enforcement and collection of these terms. The Town Manager is authorized to promulgate such rules and regulations governing:

1. The display of cigarette stamps in vending machines;
2. The placement of tax liens against property of taxpayers hereunder;
3. The extending of varying discount rates;
4. The establishing of different classes of taxpayers or those required to collect and remit the tax;
5. The requirements concerning keeping and production of records;
6. The administrative and jeopardy assessment to tax where reasonably justified;
7. The required notice to authorities of sale of taxpayer's business;
8. The audit requirements and authority;
9. The criteria for authority of distributors and others to possess untaxed cigarettes.

(b) Any agency or authority so delegated by the town manager on behalf of the Town of Stephens City pursuant to the provisions of paragraph (a) of this section immediately hereinabove, is authorized to:

1. Issue a common revenue stamp;
2. Employ legal counsel;
3. Bring appropriate court action in its own name where necessary to enforce payment of the cigarette taxes or penalties;
4. Provide cigarette tax agents and the necessary enforcement supplies and equipment needed to effectively enforce the cigarette tax ordinance.e

### **Sec. 19-102. Methods 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 retail cigarette dealer or other person liable for the tax under a reporting method deemed by the Town 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 retail cigarette dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect pay the tax and report all packages of cigarettes on forms prescribed for this purpose:

1. The quantity of Town stamped cigarettes sold or delivered to:
  - a. Each registered agent appointed by the Town for which no tax was collected;
  - b. Each manufacturer's representative; and
  - c. Each separate person and place of business during the preceding calendar or fiscal month; and
2. The quantity of Town tax stamps on hand, both affixed and unaffixed on the first and the last day of the preceding calendar or fiscal month and the quantity of Town stamps or stamped cigarettes received during the preceding calendar or fiscal month; and
3. The quantity of cigarettes on hand on which the Town stamp had not been affixed on the first and last day of the preceding calendar or fiscal month and the

## TAXATION

quantity of cigarettes received during the preceding calendar or fiscal month to which the Town stamp had not been affixed; and

4. Such further information as the administrator for the Town 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 retail cigarette dealer or user.

(b) Each retail cigarette dealer or other person liable for the tax shall file such reports with the Town and pay the tax due to the Town between the first and twentieth day after the close of each calendar or fiscal month, and shall furnish copies of all cigarette tax reports submitted to the Virginia Department of Taxation for the previous month.

(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 Town 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 Town shall, from the results of such examination and audit, based upon such direct or indirect information available, assess the tax due, impose a penalty of ten per cent and may impose interest of three-quarters per cent per month of the gross tax due.

(d) When any retail cigarette 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 Town shall administratively assess the tax due and impose a penalty not to exceed fifty per cent of the tax due and interest of three-quarters per cent per month of the gross tax due.

(e) The retail cigarette dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued. Every retail cigarette dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Town stamp has been affixed prior to offering them for sale.

(f) Any retail cigarette dealer or other person liable for the tax who shall receive cigarettes not bearing the Town stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the Town stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any retail cigarette dealer or other person liable for the tax who has notified the Town that he is engaged in interstate or intrastate business shall be permitted to set aside such 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 such interstate or intrastate stock shall be kept entirely separate and apart from the Town-stamped stock, in such a manner as to prevent the commingling of the interstate or intrastate stock with the Town 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 retail cigarette dealer or other person liable for the tax to maintain and keep for a period of three years, not including the current calendar year, records of all of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner,

## STEPHENS CITY CODE

whatsoever, whether the same were stamped or unstamped, to make all such records available for audit, inspection and examination at all reasonable times as well as the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Town.

### **Sec. 19-103. Registered agents.**

(a) Any retail cigarette dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the Town shall first make application to the Town or its designee board to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant, as the board deems necessary for the administration and enforcement of this article. Any applicant whose place of business is outside the town shall automatically, by filing his application, submit himself to the Town's legal jurisdiction and appoint the Town Manager as his agent for any service of lawful process.

Upon receipt of the properly completed required application forms, the Town shall determine whether the applicant qualifies to be a registered agent. The Town will issue to any qualified applicant a yearly registered agent permit to qualify him to purchase, sell, use, store, possess, distribute or transport within or into the town, Town-stamped cigarettes.

(b) Registered agents shall agree to the reporting and payment requirements placed upon him by this article and the rules and regulations as from time to time may be promulgated by the Town. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Town shall impose a late reporting penalty of ten per cent of the gross tax due or ten dollars whichever is greater, but in no event more than \$1,000.00. The Town also may require such registered agent to provide proof that he has complied with all applicable laws of the Commonwealth of Virginia to legally conduct such business and to file financial statements showing all assets and liabilities. The Town may revoke or suspend any registered agent's permit due to failure to file tax reports in a timely manner, or for non-payment of taxes due.

(c) All money collected, as cigarette taxes under this article shall be deemed to be held in trust by the retail cigarette dealer collecting the same until remitted to the Town.

(d) Registered agents must account for all Town 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 Town 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 Town, 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. 19-104. Requirements for retail cigarette dealers.**

(a) Retail cigarette dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the Town, 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. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a

## TAXATION

retail store must first have a valid Virginia state sales and use tax certificate and valid Town 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 Town upon request for use in conducting audits and investigations.

(b) Retail dealers must make their place of business available for inspection by tobacco revenue agents to insure that all cigarettes are properly tax-stamped and all cigarette taxes are properly paid.

### **Sec. 19-105. Presumption of illegality; seizure of contraband goods, sealing/seizing of machines.**

(a) Any cigarettes placed in any vending machines within the Town shall be presumed for sale within the town. All cigarettes within the vending machines shall be placed as to allow visual inspection of the tax stamp through the viewing area as provided for the vending machine manufacturer; any cigarettes within the vending machine in which the tax stamp cannot be seen, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this ordinance.

(b) 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 Town. In addition to any tax due, the retail cigarette 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.

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

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

### **Sec. 19-106. Illegal acts.**

(a) It shall be unlawful and a violation of the article for any retail cigarette 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 to perform any of the duties imposed under him under the provisions of this article or to fail to obey any lawful order which may be issued under this article; or
2. To falsely make, or cause to be made, any invoices or reports, or to forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such 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 of any cigarettes upon which the Town tax stamp has not been affixed; or
4. To possess, store, use, authorize or approve the possession, storage or use of any cigarettes packages upon which the Town tax stamp has not been affixed; or
5. To transport, authorize or approve the transportation of any cigarette packages in

## STEPHENS CITY CODE

quantities of more than sixty packages into or within the Town upon which the Town tax stamp has not been affixed, 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 in whole or part; or
- c. Accompanied by a receipt/bill of lading or other document indicating:
  - (i). 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 such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of the jurisdiction; or
  - (ii) 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 licenses issued by a state or local jurisdiction of destination; or
6. To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or
7. To remove from any cigarette pack 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 therefore 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 Town.

### **Sec. 19-107. Jeopardy assessment.**

If the Town 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, the Town shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such 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 Town may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such 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 such 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. 19-108. Erroneous assessment; notices and hearings in the event of sealing of vending machines or seizure of contraband property.**

(a) Any person assessed by the Town 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 Town for a correction of such assessment and the return of such

## TAXATION

property seized or sealed.

(b) Where holders of property interest in cigarettes, vending machines or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four hours. Where such holders of property interests 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 contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

(c) Such hearing shall be requested within ten days of the notice of such assessment, seizure, or sealing and shall set forth the reasons why said; tax, penalties and interest, cigarettes, vending machines or other property should be returned or released. Within five days after receipt of such 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 fifteen days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten 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 requests for a correction has been granted or refused.

(d) 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 dissatisfied with the written decision of the board may within 30 days of the date of such decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.

### **Sec. 19-109. Disposal of seized property.**

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Town after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.

### **Sec. 19-110. 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 thirty days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension.

### **Sec. 19-111. Penalty for violation of article.**

## STEPHENS CITY CODE

Any persons violating any of the provisions of this article shall be guilty of a class one misdemeanor. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

### **Sec. 19-112. Each violation a separate offense.**

The sale of any quantity, the use, possession, storage or transportation of more than sixty packs of cigarettes upon which the tax stamp has not been affixed shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

### **Sec. 19-113. Severability.**

If any part of this ordinance should be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the ordinance, and every remaining part shall continue in full force and effect.

**State Law References:** Virginia Code Sections 15.2-1300; 58.1-1011; 58.1-3830, 58.1-3831; 58.1-3832; 58.1-3840;