

ORDINANCE NO. 21-15()

AN ORDINANCE TO AMEND CHAPTER 15, TAXATION, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 15, Taxation, is hereby amended as follows:

By Adding:

- Sec. 15-1500 Definitions.
- Sec. 15-1501 Levy and rate.
- Sec. 15-1502 Methods of collection.
- Sec. 15-1503 Registered agents.
- Sec. 15-1504 Requirements for retail dealers.
- Sec. 15-1505 Presumption of illegality; seizure of contraband goods, sealing/seizing of machines.
- Sec. 15-1506 Illegal acts.
- Sec. 15-1507 Jeopardy assessment.
- Sec. 15-1508 Erroneous assessment: notices and hearings in event of sealing of vending machines or seizure of contraband property.
- Sec. 15-1509 Disposal of seized property.
- Sec. 15-1510 Extensions.
- Sec. 15-1511 Penalty for violation of article.
- Sec. 15-1512 Each violation a separate offense.
- Sec. 15-1513 Severability.
- Sec. 15-1514 Application within towns.

Chapter 15. Taxation

Article 15. Cigarette Tax

Sec. 15-1500 Definitions.

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

Board or BRCTB means the Blue Ridge Cigarette Tax Board, or its administrator, in cases where the Board has delegated its duties or authority to the administrator.

Cigarette has the meaning given in Virginia Code § 58.1-1000.

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

Dealer means both "retail dealer" and "wholesale dealer," as those terms are defined in Virginia Code § 58.1-1000.

Package means any container of cigarettes from which they are consumed by a user. Ordinarily, a package contains 20 cigarettes; however, "package" includes those containers in which fewer or more cigarettes are placed.

Registered agent means any person who pays the tax or makes the report imposed under this article.

Retail dealer has the meaning given in Virginia Code § 58.1-1000.

Sale or sell means the transfer of cigarettes from a dealer to another person, for consideration, and includes the use of vending machines.

Stamp has the meaning given in Virginia Code § 58.1-3832(2).

Storage or store has the meaning given in Virginia Code § 58.1-1000.

Use has the meaning given in Virginia Code § 58.1-1000.

Wholesale dealer has the meaning given in Virginia Code § 58.1-1000.

Sec. 15-1501 Levy and rate.

A tax upon the sale or use of cigarettes within the County is hereby imposed, at a rate of \$0.02 for each cigarette sold, stored, or received. The tax payable for each cigarette sold or used within the County shall be paid but once.

State law reference – Va. Code § 58.1-3830.

Sec. 15-1502 Methods of collection.

- A. Upon paying the tax imposed by this article, the taxpayer shall affix a stamp to the package for which the tax was paid, and shall report to the Board, in whatever form the Board provides. Stamps shall be affixed in such a manner that their removal will require continued application of water or steam. The report to the Board shall include the following:
1. The quantity of cigarettes sold or delivered to:
 - a. Each registered agent appointed by the Board for which no tax was collected;
 - b. Each manufacturer's representative;
 - c. Each person during the preceding calendar month;
 2. The quantity of BRCTB-stamped cigarettes on hand on the first and the last day of the preceding month, the quantity of BRCTB stamps received during that month, and the quantity of BRCTB-stamped cigarettes received during that month;
 3. The quantity of cigarettes on hand to which the BRCTB stamp had not been affixed on the first and last day of the preceding month, and the quantity of cigarettes received during that month to which the BRCTB stamp had not been affixed; and
 4. Any other information that the Board deems necessary to administer or enforce this article.
- B. Each registered agent shall report and pay the tax to the Board by the 10th day of the following month and shall provide to the Board copies of all cigarette tax reports submitted to the Virginia Department of Taxation.
- C. If a registered agent is unable to show the Board that it has purchased sufficient stamps, relative to the cigarettes that it sold or used, there is a presumption that those cigarettes were sold or used without the proper tax having been paid. The Board shall impose a penalty of 10 percent and may impose interest of 3/4 percent of the gross tax due per month.
- D. If a registered agent files a false report, fails to file a report, or acts to evade payment of the tax, the Board shall assess the tax and impose a penalty not to exceed 50 percent of the tax due and interest of 3/4 percent of the gross tax due per month. These taxes, penalties, and interest are due within 10 days after the Board issues notice of the deficiency.

- E. A registered agent that receives cigarettes not bearing the BRCTB stamp shall, within one hour of receipt, commence, and diligently complete, affixing the BRCTB stamp to each package.
- F. A registered agent that has notified the Board that it holds cigarettes for sale outside the jurisdiction of the Board, may hold such cigarettes without affixing the stamps required by this article. Any such cigarettes shall be kept separate from the BRCTB cigarettes, in such a manner as to prevent their commingling.
- G. A registered agent that loses untaxed cigarettes, whether by negligence, theft, or any other means, shall pay the tax imposed by this article.
- H. Registered agents shall keep all records of cigarettes sold or used, whether stamped or unstamped, for three years, and shall make all such records available for examination by the Board.

State law reference – Va. Code §§ 58.1-3830, 3832.

Sec. 15-1503 Registered agents.

- A. Any person required to pay or report the tax under this article shall first file an application with the Board to qualify as a registered agent, in the manner specified by the Board, and provide a surety bond equal to 150 percent of its anticipated average monthly tax liability, made out by a surety company authorized to do business in Virginia. By filing an application, a person appoints the Board as its agent for service of process.

Upon receipt and review of an application and surety bond, the Board shall issue a registered agent permit to sell and use within the County.

- B. When any registered agent's monthly report and payment of the tax is not received when due, a late reporting penalty of 10 percent of the tax due shall be assessed. The penalty shall be imposed on the day after the report and tax are due and, once it is imposed, it becomes a part of the tax. The Board may revoke or suspend any registered agent's permit for failure to timely report or pay the tax, or if the registered agent's surety bond becomes impaired for any reason.
- C. All money collected as taxes under this article are held in trust by the dealer until remitted to the Board.
- D. The Board may conduct audits to determine any variance between the number of stamps purchased and the number of stamps reported to have been purchased. An assessment shall be made for all unaccounted-for stamps. Assessment of registered agents located outside the jurisdiction of the Board shall be based upon the average sale by locality during the audit period. Assessments of registered agents located within the jurisdiction of the Board shall be based upon the tax rate of the jurisdiction in which they are located. A penalty for not reporting shall be assessed, in the same manner and amount as in subsection (b).

State law reference – Va. Code § 58.1-3832.

Sec. 15-1504 Requirements for retail dealers.

- A. Retail dealers shall purchase cigarettes only from a registered agent and give the registered agent the business trade name and address of the location where the cigarettes will be offered for sale to the public. Retail dealers cannot sell cigarettes that were previously purchased for personal use. Only licensed retail stores may sell cigarettes to the public. To be licensed, a retail store must have a valid Virginia state sales and use tax certificate and valid retail business license. Cigarettes must be purchased and stored separately for each

business location. Retail dealers shall retain copies of cigarette purchase invoices and receipts for three years and provide them to the Board upon request. The Board may seize a retail dealer's cigarettes for failure to provide cigarette invoices or receipts, until it is able to verify that the tax has been paid. The Board shall seize cigarettes found without the appropriate stamp.

- B. The Board may make a search of any location at which it reasonably suspects that cigarettes are kept, to ensure that all cigarettes are properly stamped.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1505 Presumption of illegality; seizure of contraband goods, sealing/seizure of machines.

- A. If any person is found to possess cigarettes without the proper tax stamp affixed, there is a rebuttable presumption that such cigarettes are untaxed in violation of this article.

- B. There is rebuttable presumption that cigarettes in a vending machine were placed there as an offer to sell. If a vending machine contains packages upon which the BRCTB stamp has not been affixed, or contains packages placed in a manner that does not allow inspection of the BRCTB stamp without opening the vending machine, there is a rebuttable presumption that the machine contains untaxed cigarettes in violation of this article.

- C. Cigarettes, vending machines, stamps, and other goods violating this article are contraband goods and may be seized by the Board.

- D. Additionally, the Board may seal a vending machine to prevent continued illegal sale or removal of cigarettes. The removal of a seal from a vending machine is a violation of this article.

- E. The owner of a vending machine shall plainly mark it with the owner's name, address, and telephone number.

State law reference – Va. Code § 58.1-3832.

Sec. 5-1506 Illegal acts.

It is a violation of this article for any person:

- A. To make any act or omission for the purpose of evading the full or partial payment of the tax imposed by this article, or to fail to obey a lawful order issued under this article;

- B. To falsely make, or cause to be made, an invoice or report; or to alter or counterfeit, or cause to be altered or counterfeited, any stamp; or to knowingly and willfully offer any false invoice or report, or altered or counterfeited stamp;

- C. To sell or offer for sale cigarettes upon which the BRCTB stamp has not been affixed or upon which the tax has not been paid;

- D. To use cigarettes upon which the BRCTB stamp has not been affixed or upon which the tax has not been paid; or

- E. To transport or authorize the transportation of 1,200 cigarettes or more in the county upon which the BRCTB stamp has not been affixed or upon which the tax has not been paid, if they are:

1. Not accompanied by a receipt or other document indicating the true name and address of the seller and purchaser and the brands and quantity of cigarettes;

2. Accompanied by a receipt or other document that is false;
3. Accompanied by a receipt or other document that fails to indicate that:
 - a. The non-Virginia purchaser is authorized by the law of that other jurisdiction to possess the cigarettes, and on which the taxes imposed by that other jurisdiction have been paid; or
 - b. The Virginia purchaser possesses a Virginia Sales and Use Tax Certificate and any license required by the locality of destination;

F. To refill with cigarettes a stamped package from which cigarettes have been removed;

G. To reuse or remove a stamp from a package with the intent to use it or cause it to be used again, after it has already been used to evidence the payment of the tax imposed by this article; or

H. To sell, offer for sale or distribute any loose or single cigarettes.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1507 Jeopardy assessment.

If the Board determines that the collection of a tax under this article would be jeopardized by delay, it shall assess the tax, along with penalties and interest, and mail or otherwise issue a notice of the assessment to the taxpayer, together with a demand for immediate payment. In such cases, immediate payment is required, regardless of the due date for paying and reporting the tax under this article.

State law reference – Va. Code §§ 58.1-3832, 58.1-3832.1.

Sec. 15-1508 Erroneous assessment: notices and hearings in event of sealing of vending machines or seizure of contraband property.

- A. Any person aggrieved by a tax, penalty, or interest assessment or by a seal or seizure under this article may request a hearing before the Board, in the manner provided by the Board.
- B. The Board shall send notice within 24 hours of a seizure or sealing to each known holder of an interest in the property seized or sealed. Where the identity of a property interest holder is unknown at time of seizure or sealing, the Board shall post notice to a door or wall of the building that contained the seized or sealed property. The notice shall state the manner of requesting a hearing before the Board, as well as the affirmative defenses available under this section.
- C. A hearing must be requested within 15 days of the date that notice was postmarked. The request must be on the form provided by the Board and set forth the reasons why the Board's action should be reversed. Within five days after receiving a request, the Board shall notify the requester, by the method selected on the request form, of the hearing date and time, where the Board will accept an informal presentation of evidence. The hearing shall be within 15 days of the date of that notification. A request for hearing shall be denied if the assessed tax, penalties, or interest has not been paid, or if the request is untimely. Within five days after the hearing, the Board shall notify the requester of its decision, by the method selected on the request form.
- D. The Board shall grant appropriate relief if it determines that seized or sealed cigarettes were in the possession of a person other than the requester without the requester's consent. If the Board determines that a tax, penalty, or interest was erroneously assessed, it shall refund

the amount erroneously assessed and shall return any property seized or sealed to the requester.

State law reference – Va. Code §§ 58.1-3832, 58.1-3832.1.

Sec. 15-1509 Disposal of seized property.

Any seized property used to evade a tax imposed by this article may be disposed of by sale or other method the Board deems appropriate, after the owner has exhausted its appeals. The credit from any such sale shall not be credited to the owner.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1510 Extensions.

If the Board determines that good cause exists, it may grant an extension of up to 30 days to report or pay a tax. No interest or penalty shall accrue during such an extension.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1511 Penalty for violation of article.

A person convicted of violating a provision of this article shall be guilty of a misdemeanor, punished by a fine of not more than \$2,500.00 or imprisonment for not more than 12 months, or both. Such person shall remain liable for any underlying tax, penalty, or interest.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1512 Each violation a separate offense.

Each violation of this article constitutes a separate offense. Each day that a violation continues constitutes a separate offense.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1513 Severability.

If any portion of this article is invalidated by a Court of competent jurisdiction, that decision shall not affect the remainder of the article; and the remainder of the article shall continue in full force and effect.

State law reference – Va. Code § 58.1-3832.

Sec. 15-1514 Application within towns.

The tax imposed by this article shall not apply within the limits of towns. However, if the governing body of a town provides that the county cigarette tax, as well as the town cigarette tax, applies within that town, then the tax imposed by this article shall be imposed within that town.

State law reference – Va. Code § 58.1-3830(B).

This ordinance shall be effective on an after January 1, 2022.

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of ____ to ____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Gallaway	_____	_____
Ms. LaPisto-Kirtley	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Ms. Price	_____	_____