

TAXATION

Chapter 97**TAXATION**

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[HISTORY: Adopted by the Council of the Town Middleburg: Art. I, as Ch. 6, Art. I, of the 1961 Code; Art. II, as Ch. 6, Art. II, of the 1961 Code; Art. III, 12-11-75; Art. IV, 1-1-80; Art. V, 8-13-81; Art. VI, 5-13-82; Art. VII, 6-13-85; Art. VIII, 5-12-88. Sections 97-2B(1)(e)[2], 97-17, 97-18, 97-19A, 97-20 and 97-24C and D amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable. Article V amended by ordinance dated January 10, 2008; Article I amended by ordinance dated 08/14/14]

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ARTICLE I

Business License Taxes

[Adopted as Ch. 6, Art. I, of the 1961 Code.] [Amended 12-12-96]

- § 97-1. License requirement; requiring evidence of payment of business license, business personal property, meals and admissions taxes. [Amended 6-14-79; 7-12-79; 6-11-81; 8-13-98]**
- A. Whenever a license is required by this Article and whenever a license fee or license tax is imposed on any business, employment or profession, it shall be unlawful to engage in such business, employment or profession without first obtaining the required license. No business license under this Article shall be issued until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the Town have been paid which have been properly assessed against the applicant. In addition, no license shall be issued to any contractor who has not provided written certification that the such contractor is in compliance with Chapter 8 of Title 65.2, Code of Virginia, 1950, as amended, (Virginia Workers' Compensation Act), and will remain so throughout the effective period of the license.
- B. Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by this Article.
- C. The provisions of the Article are adopted pursuant to Chapter 37 of Title 58.1, Code of Virginia, 1950, as amended.

§ 97-2. Definitions [Amended 08/14/14].

For the purposes of this Article, unless otherwise required by the context:

"Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Affiliated group" means:

- (a) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation if:

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- (i) Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and
 - (ii) The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.
- (b) Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
- (i) At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and
 - (ii) More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the includable corporations, including the common parent corporation is a non stock corporation, the term "stock" as used in this subsection shall refer to the non stock corporation membership or membership voting rights, as is appropriate to the context.

“Amount in dispute”, when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

“Appealable event” means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official’s (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license. An appealable event shall include a taxpayer’s appeal of the classification

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applicable to a business, including whether the business properly falls within a business license sub-classification established by the Town, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit or any other action taken by the Town.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Assessor" or "assessing official" means the Treasurer of the Town of Middleburg.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of §58.1-3715 of the Code of Virginia, 1950, as amended, unless this Chapter provides for a different period of measuring the gross receipts for a business, such as for beginning businesses or to allow for an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

"Contractor" shall have the meaning prescribed in §58.103714.B of the Code of Virginia, 1950, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

"Definite place of business" means an office or location at which occurs a regular and continuous course of dealing for thirty (30) consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

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"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

"Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments.

"Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol or gasoline, as such terms are defined in Virginia Code §58.1-2201.

"Gas retailer" shall mean a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol or gasoline, as such terms are defined in Virginia Code §58.1-2201.

"Gross receipts" means the whole, entire, total receipts attributable to the licensed privilege, without deduction.

"Independent registered representative" shall mean an independent contractor registered with the United States Security and Exchange Commission.

"Itinerant vendor" means any person who engages in, does or transacts any temporary or transient business in the Town and who, for the purpose of carrying on such business, occupies any location for a period of less than one year. This term shall not apply to a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them, and not purchased by them for sale.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property therein; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

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“Limited Church Event” means a temporary commercial, cultural, or festive activity, event or promotion conducted in the town at a specific location, operated by a church located within the Town of Middleburg, at which the provision of space for temporary business, exhibits or sales transactions has been established, where the entire net proceeds from said event are to be used to (1) support the operations of said church, (2) for donation to a charitable non-profit organization that qualifies for 501(c)(3) status by the Internal Revenue Service or (3) to provide financial support for indigent members of the community.

“Limited Community Event” means a temporary commercial, cultural, sporting or festive activity, event or promotion conducted in the town at a specific location, operated by the Town or a non-profit organization that qualifies for 501(c)(3) status by the Internal Revenue Service, at which the provision of space for temporary business, exhibits or sales transactions has been established, where the entire net proceeds from said event shall be used entirely for (1) the operation of a non-profit organization that qualifies for 501(c)(3) status by the Internal Revenue Service, (2) for donation to a charitable non-profit organization that qualifies for 501(c)(3) status by the Internal Revenue Service or (3) to support the Town of Middleburg’s cultural, arts, economic development or tourism promotion efforts.

“Peddler” means any person who carries from place to place any goods, wares or merchandise and offers to sell or barter the same, or actually sells or barter the same. This term shall not apply to a peddler at wholesale or to those who sell ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them, and not purchased by them for sale.

"Personal services" shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this Article, or rendered in any other business or occupation not specifically classified in this Article unless exempted from local license tax by Title 58.1 of the Code of Virginia, 1950, as amended.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may List in the BPOL guidelines promulgated pursuant to §58.1-3701 of the Code of Virginia, 1950, as amended. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or "welfare" in the practice of an art or science founded on it. The word "profession" implies attainment in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for other rather than for personal profit.

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"Purchases" shall mean all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

"Real estate services" shall mean providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.

"Retailer" or "Retail Merchant" shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial or industrial users.

"Services" shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares or merchandise.

"Town" means the Town of Middleburg, Virginia.

"Wholesaler" or "Wholesale Merchant" shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

§ 97-3 License required [Amended 8/14/14]

- A. Except as exempted by §58.1-3703(C.) of the Code of Virginia, 1950, as amended, every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if:
- (i) such person maintains a definite place of business in the jurisdiction; or
 - (ii) such person does not maintain a definite office anywhere but resides in this jurisdiction; or
 - (iii) there is no definite place of business in this jurisdiction but such person operates amusement machines; is engaged as a peddler or itinerant merchant, carnival or circus as specified in §§58.1-3717, 3718, or 3728, respectively of the Code of Virginia, 1950, as amended, or is a contractor subject to §58.1-3715 of the Code of Virginia, 1950, as amended, or is a public service corporation subject to §58.1-3731 of the Code of Virginia, 1950, as amended.

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- B. A separate license shall be required for each definite place of business.
- C. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:
 - (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the Town; and
 - (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and
 - (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

§ 97-4 Due dates and penalties [Amended 08/14/14]

- A. Each person subject to a license tax shall apply for a license prior to beginning business, if he was not subject to licensing in the Town on or before January 1 of the license year, or no later than March 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the assessing official.
- B. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured on gross receipts of the business, the tax shall be based upon the gross receipts from the business' base year and shall be paid on or before March 1. If the tax is measured by the gross receipts of the business in the case of a business for which no license was required for the preceding year, the tax shall be based upon the estimated gross receipts for the license year and shall be paid upon application.
- C. The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with extension is found to be unreasonable under the circumstances, a penalty of ten percent (10%) of the portion paid after the due date.
- D. A penalty of ten percent (10%) of the tax shall be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the

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application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within thirty days the treasurer may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

- E. Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this Article from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under §58.1-3916 of the Code of Virginia, 1950, as amended.

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than thirty days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is greater.

§ 97-5 Situs of gross receipts [Amended 08/14/14]

- A. General rule. Whenever the tax imposed by this Article is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the Town. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

- (1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of §58.1-3715 of the Code of Virginia, 1950, as amended.

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- (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchases goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.
 - (3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.
 - (4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.
- B. Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule, and the affected jurisdictions are unable to reach an apportionment agreement, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.
- C. Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100% of its gross receipts from all

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locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to §58.1-3701 of the Code of Virginia, 1950, as amended, notice of the request shall be given to the other party. Notwithstanding the provisions of §58.1-3993 of the Code of Virginia, 1950, as amended, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of §Section 58.1-3986 of the Code of Virginia, 1950, as amended, the court shall enter such orders pending resolution of litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

§ 97-6 Limitations and extensions

- A. Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this Article, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
- B. Notwithstanding §58.1-3903 of the Code of Virginia, 1950, as amended, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding years.
- C. The period for collecting any local license tax shall not expire prior to the period specified in §58.1-3940 of the Code of Virginia, 1950, as amended, two years after the date of assessment if the period for assessment has been extended pursuant to this section, two years after the final determination of an appeal for which collection has been stayed pursuant to the following subsection §97-7(B.) or §97-7(D.) of this Article, or two years after the final decision in a court application pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended or similar law for which collection has been stayed, whichever is later.

§ 97-7 Administrative Appeals to Assessing Officials [Amended 08/14/14]

Filing and Contents of Administrative Appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this Article, may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the assessing official. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in assessment, the grounds

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upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claim and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.

The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license sub-classification established by the Town. However, the appeal of the classification of the business shall not apply to any license year for which the Tax Commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.

Notice of right of appeal and procedures. Every assessment made by the assessing official pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the Town, the name and address to which the appeal should be directed, an explanation of the required contents of the appeal, and the deadline for filing the appeal.

For the purposes of facilitating an administrative appeal of the classification applicable to a taxpayer's business, the Town shall maintain on its website the specific procedures to be followed with regard to such appeal and the name and address to which the appeal should be directed.

Suspension of Collection Activity During Appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the assessing official shall be suspended until a final determination is issued by the assessing official, unless the assessing official (i) determines that collection would be jeopardized by delay as defined in §Section 97-2 of this Article; (ii) the taxpayer has not responded to the request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in § 97-2 of this Article. Interest shall accrue in accordance with the provisions of § 97-4 of this Article, but no further penalty shall be imposed while collection action is suspended.

Procedure in Event of Non-Decision. Any taxpayer whose administrative appeal to the assessing official pursuant to the provisions of Section 97-7 of this Article, has been pending for more than one year without the issuance of a final determination may, upon not less than thirty (30) days' written notice to the assessing official, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner in accordance with the provisions of Section 97-7.1 of this Article. The Tax Commissioner shall not consider an appeal filed pursuant to the

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provisions of this sub-section if he finds that the absence of a final determination on the part of the assessing official was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessing official to make his determination.

§ 97-7.1 Administrative Appeal to the Tax Commissioner [Added 08/14/14]

Any person assessed with a local license tax as a result of a determination or that has received a determination with regard to the person's appeal of the license classification or sub-classification applicable to the person's business, upon an administrative appeal to the assessing official pursuant to §97-7 of this Article, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment or determination to the Tax Commissioner within ninety (90) days of the date of the determination of the assessing official. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the assessing official. The Tax Commissioner shall permit the assessing official to participate in the proceedings, and shall issue a determination to the taxpayer within ninety (90) days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to §58.1-1821 of the Code of Virginia, 1950, as amended, and the Tax Commissioner pursuant to §58.1-1822 of the Code of Virginia, 1950, as amended, may issue an order correcting such assessment or correcting the license classifications or sub-classifications of the business and the related license tax or fee liability.

Suspension of Collection Activity During Appeal to Tax Commissioner. On receipt of a notice of intent to file an appeal to the Tax Commissioner under §97-7.1 of this Article, collection activity with respect to the amount in dispute relating to any assessment by the assessing official shall be suspended until a final determination is issued by the Tax Commissioner, unless the assessing official (i) determines that collection would be jeopardized by delay as defined in §97-2 of this Article; (ii) is advised by the Tax Commissioner that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the Tax Commissioner that the appeal is frivolous as defined in §97-2 of this Article. Interest shall accrue in accordance with the provisions of §97-4 of this Article, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to §97-7.1 of this Article is filed and served on the necessary parties within thirty (30) days of the service of notice of intent to file such appeal.

Implementation of Determination of Tax Commissioner. Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to Section 97-7.1 of this Article, the assessing official shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer in accordance with the provisions of this Article.

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- (i) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the assessing official shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this Article, within thirty (30) days of the date of the determination of the Tax Commissioner.
- (ii) If the determination of the Tax Commissioner sets forth a refund due, the assessing official shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within thirty (30) days of the date of the determination of the Tax Commissioner.
- (iii) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the assessing official to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within sixty (60) days of the date of the determination of the Tax Commissioner, or within sixty (60) days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The assessing official shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized under this Article, within thirty (30) days of the date of the new assessment.
- (iv) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the assessing official to undertake a new or revised assessment that will result in an obligation on the part of the Town to make a refund of taxes previously paid, the assessing official shall promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or sub-classification of the business, and provide the same to the taxpayer within sixty (60) days of the date of the determination of the Tax Commissioner, or within sixty (60) days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The assessing official shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within thirty (30) days of the date of the new assessment or determination of the amount of the refund.

§ 97-7.2 Judicial Review of Determination of Tax Commissioner
[Added 08/14/14]

Judicial review. Following the issuance of a final determination of the Tax Commissioner pursuant to §97-7.1 of this Article, the taxpayer or assessing official may apply to the Loudoun County Circuit Court for judicial review of the determination, or any part thereof, pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or

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any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

Suspension of payment of disputed amount of tax upon taxpayer's notice of intent to initiate a judicial review. On receipt of a notice of intent to file an application for a judicial review, pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended, of a determination of the Tax Commissioner pursuant to §97-7.1 of this Article, and upon payment of the amount of the tax relating to any assessment by the assessing official that is not dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the assessing official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in §97-2 of this Article; (ii) collection would be jeopardized by delay, as defined in §97-2 of this Article; or (iii) suspension of collection would cause substantial economic hardship to the Town. For purposes of determining whether substantial economic hardship to the Town would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the town by different taxpayers that allege common claims or theories of relief.

Upon determination that the appeal is frivolous, that collection may be jeopardized by delay or that suspension of collection would result in substantial economic hardship to the Town, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute or the application does not relate to any assessment by the assessing official.

The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended, is filed and served on the necessary parties within thirty (30) days of the service of the notice of intent to file such application.

The suspension of collection activity authorized by this section shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended, without prior exhaustion of the appeals provided by §97-7 and §97-7.1 of this Article.

Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review. Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to §97-7.1 of this Article shall be suspended if the locality assessing the tax serves upon the taxpayer, within sixty (60) days of the date of the determination of the Tax Commissioner, a notice of intent to

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file an application for judicial review of the Tax Commissioner's determination pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended, and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous as defined in §97-2 of this Article.

No suspension of refund activity shall be permitted if the Town's application for judicial review fails to identify with particularity the amount in dispute.

The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended, is filed and served on the necessary parties within thirty (30) days of the service of the notice of intent to file such application.

Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of §97-4 of this Article, but no further penalty shall be imposed while collection activity is suspended.

§ 97-7.3 Rulings [Added 08/14/14]

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the assessing official. Any person requesting a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license sub-classification established by the Town.

Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

§ 97-7.4 Record keeping and audits [Amended 08/14/14]

Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor or establish whether a particular receipt is directly attributable to the taxable privilege

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exercised within the Town. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

§ 97-7.5 Exclusion and deductions from "gross receipts." [Amended 8-13-98; 08/14/14]

A. General Rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

The following items shall be excluded from gross receipts:

- (1) Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, or any amounts received for any federal or state excise taxes on motor fuels.
- (2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- (3) Any amount representing returns and allowances granted by the business to its customer.
- (4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.
- (5) Receipts representing the return of principal of a loan, transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
- (6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.

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- (7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.
 - (8) Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.
 - (9) Wages, salaries, payroll taxes or other employee benefits paid by an employee leasing firm or temporary employee services firm to or for employees employed by a client company, as provided in § 58.1-3732.4 or the Code of Virginia, 1950, as amended.
- B. The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:
- (1) Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the same time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.
 - (2) Any receipts attributable to business conducted in another state or foreign country in which the taxpayer (or its shareholders, partners or members in lieu of the taxpayer) is liable for an income or other tax based upon income.
 - (3) Amounts received by any real estate broker which arise from real estate sales transactions, to the extent that such amounts are paid to a real estate agent as a commission on any real estate sales transaction and the agent is subject to the business license tax on such receipts. The broker claiming the exclusion shall identify on its license application each agent to whom excluded receipts have been paid and the jurisdiction in Virginia to which the agent is subject to business license taxes.

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- (4) Any amount collected by a provider of funeral services on behalf of (and paid to) a third party providing related goods or services in connection with a funeral; provided that each such person to whom excluded receipts were paid, and the amount of excluded receipts, shall be disclosed on the license application.
- (5) Gross receipts of a security broker or security dealer for license tax purposes under this Chapter shall not include amounts received by the broker or dealer that arise from the sale or purchase of a security to the extent that such amounts are paid to an independent registered representative as a commission of any sale or purchase of a security.

§ 97-7.6 License tax [Amended 08/14/14]

Except for those persons or businesses assessed under the provisions of Subsection C., below, every person or business subject to licensure under this Article shall be assessed and required to pay annually, as a license tax, the greater of the following:

- A. Thirty dollars (\$30.00); or
- B. A license tax on all the gross receipts of such persons or business as provided in this Article at the rate set forth below for the class of enterprise listed:
 1. For contractors and persons constructing for their own account for sale, 12 cents per \$100 of gross receipts;
 2. For retailers, 15 cents per \$100 of gross receipts.
 3. For financial, real estate and professional services, 23 cents per \$100 of gross receipts.
 4. For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in the Article or otherwise by law, 22 cents per \$100 of gross receipts;
 5. For wholesalers, 5 cents per \$100 of purchases [see §58.1-3716 of the Code of Virginia, 1950, as amended for limitations];
- C. For those persons or businesses engaged in the specific enterprises listed below, the license fee shall be as designated in the following:
 - (1) For carnivals, circuses and speedways, \$500.00 for each performance held in this jurisdiction [see §58.103728 of the Code of Virginia, 1950, as amended for limitations];

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- (2) For direct sellers as defined in §58.1-3719.1 of the Code of Virginia, 1950, as amended with total annual sales in excess of \$4,000, 20 cents per \$100 of total annual retail sales or 5 cents per \$100 of total annual wholesale sales, whichever is applicable;
- (3) For itinerant merchants or peddlers, \$500.00 per year [see limitation in §58.1-3717 of the Code of Virginia, 1950, as amended];
- (4) For photographers with no regularly established place of business in the Commonwealth, \$10 per year;
- (5) For savings and loan associations and credit unions, \$50 per year;
- (6) For vendors and craftsmen selling at limited church or community events as defined in §97-2 of this Article, \$10 per day per event;
- (7) As allowed under §58.1-3731 of the Code of Virginia, 1950, as amended, for (i) telephone and telegraph (ii) water companies, and (iii) heat, light and power companies, one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer within the corporate limits of the town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation.

§ 97-7.7 Proration of license tax

In the event a person, firm or corporation ceases to engage in a business, trade or calling within the Town during a year for which a license tax based on gross receipts has already been paid, the taxpayer shall be entitled upon application, to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the Town. The Town may elect to remit any refunds in the ensuing fiscal year and may offset against such refund any amount of past-due taxes owed by the same taxpayer. In no event shall the Town be required to refund any part of a flat fee or minimum flat tax.

ARTICLE II

Fixing and Assessing Real and Personal Property Taxes
[Adopted as Ch. 6, Art. II, of the 1961 Code]

§ 97-8 Assessment; payment; penalty for late payment. [Amended 6-14-79; 1-12-95; 8-8-02.]

The Council of the Town of Middleburg shall annually, before the first day of July, fix the tax rates on all real and personal property subject to taxation within and by the town, and assess such taxes as may be required to provide for the needs and purposes of the town. As soon as practicable after such taxes are assessed, the Treasurer shall make for

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each taxpayer a tax ticket substantially in the form prescribed by the State Department of Taxation and shall send by mail to each taxpayer a bill for such taxes. All taxes are due and payable as soon as such bills are sent. Except as provided in Section 97-8.1B, any person, firm or corporation failing to satisfy said tax bills on or before December 5 for taxes assessed on real property and on personal property, shall incur a penalty of ten percent (10%) of the total taxes due. Interest at the rate of ten percent (10%) per annum shall be collected upon the principal and penalty from June 30 of the year next after such taxes were assessed.

§ 97-8.1 Proration of Tax on Motor Vehicles and Trailers. [Added 1-12-95.]

- A. Personal property tax shall be levied upon motor vehicles and trailers which have a situs within the town as of January 1 of any tax year. Personal property tax shall be levied upon motor vehicles and trailers which acquire a situs within the town after January 1 of any tax year for the remaining portion of the tax year.
- B. Payment of taxes for any motor vehicle or trailer for which a return is filed with Loudoun County on or before June 15 of a tax year shall be paid by October 15 of the tax year. Payment of taxes for any motor vehicles and trailers for which a return is filed with Loudoun County after June 15 of a tax year shall be paid by February 5 of the ensuing year.
- C. When any motor vehicle or trailer loses its situs in the town or changes ownership after January 1 of a tax year, any tax assessed on such vehicle shall be relieved and any amount of the tax already paid shall be refunded, on a prorated basis, for the remaining portion of the tax year. However, no refund shall be made if the motor vehicle or trailer acquires a situs within the Commonwealth in a nonprorating locality.
- D. For purposes of this section, proration shall be determined on a monthly basis, with a period of one-half month or more counted as a full month, and a period of less than one-half month not counted as a month.
- E. A motor vehicle or trailer is exempt from taxation under this section for any tax year or portion thereof during which it was assessed by another jurisdiction in the Commonwealth and on which a tax has been paid.
- F. Any person who moves from a non prorating locality to the town in a single year shall be entitled to a property tax credit in town if:
 - (1) The person was liable for personal property taxes on a motor vehicle and has paid such taxes to a nonprorating locality, and;
 - (2) The owner replaces, for any reason, the original vehicle upon which taxes are due to the nonprorating locality for the same tax year.

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The town shall provide a credit against the total tax due on the replacement vehicle in an amount equal to the tax paid to the nonprorating locality for the period of time commencing with the disposition of the original vehicle and continuing through the close of the tax year in which the owner incurred tax liability to the nonprorating locality for the original vehicle.

**§ 97-9 Tax exemption for certain rehabilitated residences. [Added 9-8-83]
[Deleted 5-12-94.]**

**ARTICLE III
Tax on Purchase of Telephone Services
[Repealed and Reenacted 9-14-00]**

§ 97-10 Definitions

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

Commercial or Industrial User - The owner or tenant of property which is not residential in character or is used for commercial, professional or industrial purposes, including the owner of master metered apartment buildings who pays for utility service for said property.

Person - Includes individuals, firms, partnerships, associations, corporations, and combinations of individuals of whatever form and character.

Purchaser - Includes every person who purchases telephone services.

Residential User - The owner or tenant of private residential property used in maintaining a place of abode or in normal framing operations or a tenant of an apartment who pays for telephone services in or for said property.

Seller - Includes every person, whether a public service corporation, political subdivision within the county or private corporation, or not, who sells or furnishes telephone services within the Town of Middleburg.

§ 97-11 Imposition of Tax

There is hereby imposed and levied by the Town of Middleburg, Virginia, upon each and every purchaser of telephone services, a tax in the following amounts:

- A. Residential local exchange telephone service: (1) On the first fifteen dollars (\$15) of net charge per residential user per month: fifteen percent (15%).

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- B. Commercial or industrial users (local exchange telephone services): (1) On the first three hundred dollars of net charge per commercial user per month: eleven percent (11%).

§ 97-12 Monthly bills; billings based on more than one month's service

Bills shall be considered monthly bills if submitted twelve times annually for a period of approximately one (1) month or portion thereof. In case bills are submitted by a seller for more than one (1) month's service, the amount of said bill included in computing the tax shall be the net charges allowed herein multiplied by the number of months for which said bill is submitted.

§ 97-13 Duties of sellers

- A. It shall be the duty of every seller in acting as the tax collecting medium or agency for the Town of Middleburg to collect from the purchaser for the use of the town the tax hereby imposed and levied at the time of collecting the purchase price charged therefore, and the taxes collected during each calendar month shall be reported by each seller to the Treasurer, and, simultaneously, each seller shall remit the amount of tax shown by said report to have been collected to the Treasurer on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax. The tax levied or imposed under this Article with respect to local telephone serves on charges first appearing on bills render on January 1, 1976, and thereafter.
- B. In all cases where the seller collects the price for service in stated periods, the tax imposed and levied by this Article shall by computed on the amount of purchase during the month or period according to each bill rendered, provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed.
- C. Each and every seller shall keep complete records showing all purchases in the town, which records shall show the price charged against each purchaser with respect to each purchase, the date of payment thereof, and the amount of tax imposed thereunder, and such record shall be kept open for inspection by the duly authorized agents of the town at reasonable times, and the duly authorized agents of the town shall have the right, power and authority to make such transcripts or copies thereof during such times as they may desire.

§ 97-14 Collection of taxes from seller

The Treasurer shall be charged with the power and duty of collecting the taxes levied and imposed hereunder and shall cause the same to be paid into the general fund of the town.

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§ 97-1. Exceptions

- A. The tax imposed and levied by this Article on purchasers with respect to telephone service shall apply to all charges made for local telephone exchange service except as follows:
- (1) Coin box telephone. The total amount of the guaranteed charge on each bill rendered for semipublic coin box respect to the purchaser of such service, but no other tax shall be imposed on telephone service paid for by inserting coins in coin-operated telephones.
 - (2) Flat-rate service. With respect to flat-rate service, the tax shall apply to only the amount payable for the local area service and shall not apply to any specific charge for calls to point outside the municipality or to any general charge or rate differential payable for the privilege of calling points outside the municipality or for mileage service charges.
 - (3) Message rate service. Where purchasers of telephone service are charged on a message-rate basis, the tax shall apply only to the basic charge for such service and shall not apply to any charge for additional message units.
- B. The United States of America, diplomatic personnel exempted by the laws of the United States, the Commonwealth of Virginia, and the political subdivisions, boards, commissions and authorities thereof are hereby exempted from the payment of the tax imposed and levied by this Article with respect to the purchase of utility services used by such governmental agencies.

§ 97-16 Violations and penalties

Any purchaser failing, refusing or neglecting, after five (5) days from receipt of notice by the Treasurer for the town that the tax is delinquent, to pay the tax imposed or levied by this Article, and any seller violating the provisions of this Article and any officer, agent, or employee of any seller violating the provisions of this Article shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than ten dollars (\$10) nor more than three hundred dollars (\$300) or by imprisonment in jail for not more than three (3) months, or by both such fine and imprisonment. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of such tax as provided by this Article.

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ARTICLE IIIA**ELECTRIC AND NATURAL GAS CONSUMERS TAX
[Repealed and Reenacted 9-14-00]****§ 97-16.1 DEFINITIONS**

Consumer means every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas services in the Town of Middleburg.

Gas Utility means a public utility authorized to furnish natural gas service in Virginia.

CCF means the volume of gas at standard pressure and temperature in units of 100 cubic feet.

Kilowatt hours (kWh) delivered means 1000 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 cogenerators) as defined in Virginia Code § 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 customer-generators.

Person means any individual, corporation, company or other entity

Pipeline distribution company means a person, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

Residential consumer means the owner or tenant of property used primarily for residential purposes, including but not limited to, apartment houses and other multiple-family dwellings.

Service provider means a person who delivers electricity to a consumer or a gas utility or pipeline distribution company, which delivers natural gas to a consumer.

Used primarily relates to the larger portion of the use for which electric or natural gas utility service is furnished.

§ 97-16.2 ELECTRIC UTILITY CONSUMER TAX [Amended 10-20-00]

- A. In accordance with Virginia Code §58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:

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- (1) *Residential consumers*: Such tax shall be \$1.26 plus the rate of \$0.013424 on each kWh delivered monthly to residential consumers by a service provider not to exceed \$2.70 per meter monthly times the number of dwelling units served.
 - (2) *Non-residential consumers*: Such tax on non-residential consumers shall be at the rates per month for the classes of non-residential consumers set forth below:
 - (i) *Commercial consumers* - Such tax shall be \$1.26 plus the rate of \$0.007421 on each kWh delivered monthly to commercial consumers, not to exceed \$33.00 per meter monthly.
 - (ii) *Industrial consumers* - Such tax shall be \$1.26 plus the rate of \$0.007421 on each kWh delivered monthly to industrial consumers, not to exceed \$33.00 per meter monthly.
 - (3) The conversion of tax pursuant to this ordinance to monthly kWh delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the town shall be in effect.
- B. *Exemptions*: The following consumers of electricity are exempt from the tax imposed by this section B.
- (i) Any public safety agency as defined in Virginia Code §58.1-3813 **[optional]**.
 - (ii) The United States of America, the Commonwealth and the political subdivisions thereof, including the town.
- C. *Billing, collection and remittance of tax*. The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to the town on a monthly basis. Such taxes shall be paid by the service provider to the town in accordance with Virginia Code §58.1-3814, paragraphs F. and G. and Virginia Code §58.1-2901. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify the town of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider shall follow its normal collection procedures and upon collection of the bill or any part thereof shall apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to the town.

Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the town.

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- D. *Computation of tax on bills rendered on other than monthly basis.* Bills shall be considered as monthly bills for the purposes of this ordinance if submitted 12 times per year for periods of approximately one month each. Bills calculated on a longer or shorter basis than monthly shall be subject to the tax on a pro rata basis. For example, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows (i) the kWh will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax".

§ 97-16.3 LOCAL NATURAL GAS UTILITY CONSUMER TAX
[Amended 10-20-00]

- A. In accordance with Virginia Code §58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers" as such term is defined in Virginia Code §58.1-3814 J., as follows:
- (1) *Residential consumers:* Such tax on residential consumers of natural gas shall be at the rate of \$0.0288 on CCF delivered monthly to residential consumers, not to exceed \$3.00 per meter per month times the number of dwelling units served.
 - (2) *Non-residential consumers:* Such tax on non-residential consumers shall be at the rates per month shown for each CCF delivered by a pipeline distribution company or a gas utility for the classes as set forth below:
 - (i) Commercial consumers - such tax shall be at the rate of \$0.0790 on each CCF delivered monthly to commercial consumers, not to exceed \$33.00 per meter monthly.
 - (ii) Industrial consumers - such tax shall be at the rate of \$0.0790 on each CCF delivered monthly to industrial consumers, not to exceed \$33.00 per meter monthly.
 - (3) The conversion of tax pursuant to this ordinance to monthly CCF delivered shall not be effective before the first meter reading after December 31,2000, prior to which time the tax previously imposed by the town shall be in effect.
- B. *Exemptions.* The following consumers of natural gas shall be exempt from the tax imposed by this section C:
- (i) Any public safety agency as defined by Virginia Code §58.1-3813. **[optional].**

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- (ii) The United States of America, the Commonwealth and the political subdivisions thereof, including the town.
- C. *Billing, collection and remittance of tax.* The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to the town on a monthly basis. Such taxes shall be paid by the service provider to the town in accordance with Virginia Code §58.1-3814, paragraphs H. and I., and Virginia Code §58.1-2901. If any consumer receives and pays for natural gas billed but refuses to pay the tax imposed by this section, the service provider shall notify the town of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider shall follow its normal collection procedures and upon collection of the bill or any part thereof shall apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to the town.
- Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the town.
- D. *Computation of tax on bills rendered on other than monthly basis.* Bills shall be considered to be monthly bills for the purposes of this ordinance if submitted 12 times per year for periods of approximately one month each. Bills calculated on a longer or shorter basis than monthly shall be subject to the tax on a pro rata basis. For example, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the CCF will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax".

§ 97-16.4 PENALTIES

Any consumer of electricity or natural gas failing, refusing or neglecting to pay the tax imposed and levied under this ordinance, and any officer, agent or employee of any service provider violating the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$300, or by imprisonment in jail for not more than three months, or by such fine and imprisonment. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of the tax as provided in this ordinance.

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ARTICLE IV

**Bank Franchise Tax
[Adopted 1-1-80]****§ 97-17 Definitions.¹**

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

BANK - As defined in § 58.1-1201, Code of Virginia.

NET CAPITAL - A bank's net capital computed pursuant to § 58.1-1205, Code of Virginia.

§ 97-18 Imposition of tax.²

- A. Pursuant to the provisions of Chapter 12 of Title 58.1 of the Code of Virginia, there is hereby imposed upon each bank located within the boundaries of this town a tax on net capital equaling eighty per centum (80%) of the state rate of franchise tax set forth in § 58.1-1204, Code of Virginia.
- B. In the event that any bank located within the boundaries of this town is not the principal office but is a branch extension or affiliate of the principal office located outside the corporate limits hereof, the tax upon such branch shall be apportioned as provided by § 58.1-1211, Code of Virginia.

§ 97-19 Filing of return; payment**A. Filing.³**

- (1) On or after the first day of January 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 Commissioner of Revenue or comparable local assessing officer a return as provided by § 58.1-1207, Code of Virginia, in duplicate which shall set forth the tax on net capital computed pursuant to Chapter 12 of Title 58.1, Code of Virginia. The Commissioner of Revenue or comparable assessing officer shall certify a copy of such filing of the bank's return and schedule and shall forthwith transmit such certified copy to the State Department of Taxation.
- (2) In the event that the principal office of a bank is located outside the corporate boundaries of this town and such bank has branch offices

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

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located within this town, in addition to the filing requirements set forth in Subsection (1) hereof, any bank conducting such branch business shall file with the Commissioner of the Revenue or appropriate assessing officer of this county a copy of the real estate deduction schedule, apportionment and other items which are required by §§ 58.1-1211, 58.1-1207 and 58.1-1212, Code of Virginia.

- A. Each bank, on or before the first day of June of each year, shall pay into the Treasurer's office or other appropriate official of this town all taxes imposed pursuant to this Article.

§ 97-20 Penalty for failure to comply.⁴

Any bank which shall fail or neglect to comply with any provisions of this Article shall be fined five percent (5%) of the tax due, shall be recovered upon motion, after five (5) days' notice in the Circuit Court of this locality. The motion shall be in the name of the commonwealth and shall be presented by the Attorney for the Commonwealth of this locality.

ARTICLE V

Tax Exemption for Elderly and Disabled
[Adopted 8-13-81; Amended 7-8-99; Amended 1-10-08]

§ 97-21 Definitions

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

COMMISSIONER OF REVENUE - The Commissioner of Revenue of Loudoun County, Virginia, or any of his duly authorized deputies or agents.

EXEMPTION - Exemption from the Town of Middleburg real estate tax according to the provisions of this Article.

PERSON - Natural person.

PROPERTY - Real property.

TAXABLE YEAR - The calendar year, from January 1 until December 31, for which exemption is claimed.

TOWN - The Town of Middleburg, Virginia.

⁴ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

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§ 97-22 Grant of exemption

A real estate tax exemption is provided for elderly and disabled property owners who are found to be eligible by the Commissioner of Revenue according to the terms of Chapter 872 of the Loudoun County Code, as amended from time to time, for exemption of taxes assessed upon property within the Town at the same rate for the same taxable year(s) approved by the Commissioner, *mutatis mutandis*. Persons qualifying for exemption are deemed to be bearing an extraordinary real estate tax burden in relation to their income and financial worth.

§ 97-23 Administration

The exemption shall be administered by the Treasurer according to the provisions of this Article using the list of qualified persons supplied by the Commissioner.

§ 97-24 Violations and penalties

Any person or persons falsely claiming an exemption shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000.) for the offense.

ARTICLE VI
Interest Rate for Unpaid Bills
[Adopted 5-13-82]

§ 97-29 Rate established

Except as specifically provided elsewhere in this chapter and in other chapters, interest shall accrue on all unpaid bills, fees and accounts due to the town at the rate of one and five-tenths percent (1.5%) per month, beginning thirty (30) days from the date that such bill or fee is due.

ARTICLE VII
Meals Tax
[Adopted 6-13-85; Repealed and reenacted 6-8-00; Amended 12-14-06]

§ 97-30 through 97-44 (Reserved).

§ 97-44.1 Definitions

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

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

COLLECTOR - The Town Treasurer of Middleburg or designee.

TREASURER - The Treasurer and any duly designated deputies, assistants, inspectors or other employees.

FOOD - 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 - 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 shop, caterer's kitchen or premises, 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 - shall mean 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 herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

TOWN - The Town of Middleburg.

§ 97-44.2 Imposition of tax

There is hereby imposed and levied by the town on each person a tax at the rate of four (4) percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not and whether consumed on the premises or not. There shall be no tax if the total amount paid is fifty cents (\$0.50) or less; on larger amounts a fractional cent of tax due shall be rounded to the next higher cent.

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§ 97-44.3 Collection of tax by seller

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

§ 97-44.4 Exemptions; limits on application

- (a) The tax imposed under this Article shall not be levied on the following items when served exclusively for off-premises consumption:
- (1) Factory prepackaged candy, gum, nuts and other items of essentially the same nature.
 - (2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature;
 - (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); provided however, that a bulk sale shall not be deemed to include any meal or meals catered or delivered by a food establishment for off-premises consumption.
 - (4) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
 - (5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts, issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
 - (6) Any food or food product purchased for human consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. §2012, as amended except for hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (c) (3), (4) and (5) hereinbelow.

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- (b) A grocery store, supermarket or convenience store shall not be subject to the tax except sales from a delicatessen or other area designated for the sale of prepared foods and beverages.
- (c) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:
 - (1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
 - (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
 - (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
 - (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
 - (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
 - (6) Food and beverages sold on an occasional basis by 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.

§ 97-44.5 Gratuities and service charges

If 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 Article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

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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, shall be deemed a part of the selling price of the food and beverages and shall be subject to the tax imposed by this Article.

§ 97-44.6 Payment or absorption of tax by seller

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of the tax imposed under this Article will be paid or absorbed by the seller.

§ 97-44.7 Reporting of taxes collected; remittance; preservation of records

It shall be the duty of every person required by this Article to collect the taxes imposed by this Article to make a report thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this Article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Article. Such reports shall be made and the taxes required to be collected by section 97-44.3 shall be remitted to the Treasurer within ten (10) days of the conclusion of each calendar quarter. All records related to the calculation and imposition of the tax shall be kept and preserved for a period of five (5) years. The Treasurer or his/her duly authorized agents shall be entitled 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 Article, and to make copies of all or any parts thereof.

§ 97-44.8 Procedure upon cessation 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.

§ 97-44.9 Penalty and interest upon failure to report or remit tax

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this Article within the time and in the amount required, there shall be added to the tax by the Treasurer a penalty in the amount of ten percent (10%) of the tax, and interest thereon at the rate of ten percent (10%) per annum, which shall be computed upon the tax and penalty from the date such were due and payable.

§ 97-44.10 Violations and penalties

- (a) Any person willfully failing or refusing to file a report or make payment as required under this Article shall, upon conviction thereof, be guilty of a class I misdemeanor except that any person failing to file such a return shall be guilty of

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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 Article shall be guilty of a class I misdemeanor.

- (b) Except as provided in subsection (a) above, any corporate or partnership officer, as defined in Virginia Code §58-1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this Article, 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 I misdemeanor.
- (c) Each violation of or failure to comply with this Article 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 Article.

§ 97-44.11 Regulations for administration and enforcement

The Treasurer may issue regulations for the administration and enforcement of this Article.

ARTICLE VIII

Transient Lodging Tax

[Adopted 5-12-88; Amended 12-14-06]

§ 97-45 Definitions

For the purpose of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section unless the context clearly indicates a different meaning:

ADMINISTRATOR - The Town Administrator of Middleburg.

HOTEL - Any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house or other lodging place within the town offering lodging as defined in this section, for compensation to any transient, as hereinafter defined in this section.

LODGING - Room or space furnished any transient.

PERSON - Any individual, corporation, company, association, firm, copartnership or any group of individuals acting as a unit.

TRANSIENT - Any person who, for a period of not more than ninety (90) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space at any hotel, for which lodging or use of space a charge is made.

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§ 97-46 Imposition of tax

There is hereby levied and imposed, in addition to all other taxes and fees of every kind imposed by law, on each transient obtaining lodging or the use of space at any hotel, a tax equal to five percent (5%) of the total amount paid for such lodging or the use of space by or for any such transient to any hotel. Such tax shall be collected from such transient at the time and in the manner provided by this Article.

(amended 6-12-99 per adopted budget)

§ 97-47 Collection and payment of tax; collections to be held in trust

Every person receiving any payment for lodging or the use of space 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 taxes required to be collected under this Article shall be deemed to be held in trust by the person required to collect such taxes until the same shall have been remitted to the Administrator.

§ 97-48 Reports and remittances

The person collecting any tax as provided in this Article shall make out a report thereof upon such forms setting forth such information as the Administrator may prescribe and require, showing the amount of lodging charges collected and the tax required to be collected and shall sign and deliver such reports with the remittance of such tax to the Administrator. Such reports and remittances shall be made quarterly on or before the 20th day of the calendar month following the quarter being reported.

§ 97-49 Penalty and interest upon failure to report or remit tax

If any person shall fail or refuse to report and remit to the Administrator the tax required to be collected and paid under this Article within the time and in the amount as provided for in this Article, there shall be added to such tax by the Administrator a penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax due. The Administrator shall also assess interest on the tax and penalty at the rate of ten percent (10%) per year from the day after the tax is due until paid.

§ 97-50 Procedure when tax not collected or reported

If any person shall fail or refuse to collect the tax imposed under this Article and to make within the time provided herein any report and remittance required, the Administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base the tax due. As soon as the Administrator shall secure such facts and information as he is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and to make such

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report and remittance, he shall proceed to determine the assess against such person such tax and penalty and interest as provided for in this Article and shall notify such person by registered mail, sent to his last place of known address, the amount of such tax and penalty and interest, and the total amount thereof shall be payable within ten (10) days of mailing of such notice. The Administrator shall have the power to examine such records for the purpose of administering and enforcing the provisions of this Article as are provided by law.

§ 97-51 Preservation of records

It shall be the duty of every person liable for the collection and payment to the town of any tax imposed by this Article to keep and preserve for a period of two (2) years such suitable records as may be necessary to determine the amount of such tax as he may have been responsible for collecting and paying to the town. The Administrator shall have the right to inspect such records at all reasonable times.

§ 97-52 Procedure upon cessation 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 Administrator.

§ 97-53 Exceptions

- A. No tax shall be payable hereunder with respect to any payment for lodging or the use of space paid by or for any federal, Virginia, County of Loudoun or Middleburg official or employee when on official business.
- B. With respect to those places of lodging at public institutions whose operating costs are financed by legislative appropriations, no tax shall be payable hereunder with respect to any payment for lodging or the use of space paid by or for:
 - (1) Any person obtaining lodging at such places in connection with or as a part of any bona fide educational conference or program arranged by such public institution.
 - (2) Any person who is an invited guest of the public institution where such payment was made by said public institution.

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§ 97-54 Violations and penalties

Any person who shall violate any of the provisions of this Article shall, upon conviction thereof, be fined not less than five dollars (\$5.) nor more than five hundred dollars (\$500.) or confined in jail for not more than thirty (30) days, either or both. Every violation and each day's continuance thereof shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, collection or remittance of said tax as provided in this Article.

**ARTICLE IX
Alcoholic Beverage License Tax****§ 97-55 Persons subject to tax**

Pursuant to Chapter 1 of Title 4.1 of the Code of Virginia of 1950, as amended, there is hereby assessed an annual license tax upon the sale of alcoholic beverages in the following sums:

- (1) Retail on - premises wine and beer: thirty seven dollars and fifty cents (\$37.50).
- (2) Retail off - premises wine and beer: thirty seven dollars and fifty cents (\$37.50).
- (3) Retail on - premises beer: twenty five dollars (\$25.).
- (4) Retail off - premises beer: twenty five dollars (\$25.).
- (5) Mixed Beverages: Persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, shall be assessed the following:
 - (a) Two hundred dollars (\$200.) per year for each restaurant with a seating capacity at tables for 50 to 100 persons;
 - (b) Three hundred fifty dollars (\$350.) per year for each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons; and
 - (c) Five hundred dollars (\$500.) per year for each restaurant with a seating capacity at tables for more than 150 persons.

A private nonprofit club operating a restaurant located on the premises of such club shall be assessed three hundred fifty dollars (\$350.) per year.

§ 97-56 Assessment of tax; payment

The tax imposed by this article shall be assessed for all or any portion of a calendar year during which the licensee may sell alcoholic beverages. The tax shall become due and payable on or before March 1 of each license tax year. In all cases where the person has

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received from the Alcoholic Beverage Control Board a license for establishments located within the Town, upon which a license tax is imposed under this article, after March 1 of any license tax year, such license tax shall become due immediately upon such person's receiving such license, and payment shall be made within thirty days of the time such person received such license from the Alcoholic Beverage Control Board.

§ 97-57 Penalty for delinquency

There shall be a penalty of ten percent (10%) of the sum of the tax added to all alcoholic beverage license taxes imposed under this article that are unpaid after the due date (i.e. March 1 of each license year). Any such penalty when so assessed shall become a part of the tax. In the case of any person who is in his first license tax year and who has received an alcoholic beverage license after March 1 of any taxable year, the same penalty shall be added to all taxes imposed under this article that are unpaid for more than thirty days after such person has received an alcoholic beverage license.

§ 97-58 Delinquency interest

In addition to the penalty for failure to pay the tax imposed under this article on time, interest shall accrue on the sum of the tax and penalty at the maximum interest rate allowed under title 58.1, Section 3916, of the Code of Virginia of 1950, as amended, and Section 6621 of the Internal Revenue Code. Interest shall be computed from the first day following the day on which the tax was due and payable.

ARTICLE X
Cigarette Tax
{Adopted 12-14-06}

§ 97-60 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:

- (a) *Board* or *NVCTB* means the Northern Virginia Cigarette Tax Board.
- (b) *Carton* means any container, regardless of material used in its construction, in which packages of cigarettes are placed.
- (c) *Cigarette* means and includes any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

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- (d) *Cigarette Machine Operator* means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.
- (e) *Dealer* means and includes every manufacturer's representative, self-wholesaler, wholesaler or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the Town.
- (f) *Package* means and includes any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Ordinarily a package contains twenty cigarettes; however, "package" includes those containers in which fewer or more than twenty cigarettes are placed.
- (g) *Person* means and includes any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, shall include all the officers and directors thereof.
- (h) *Place of Business* means and includes any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the Town.
- (i) *Registered Agent* means and includes every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this Article.
- (j) *Retail dealer* means and includes every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the Town to the ultimate consumer; or any person who, in the usual course of business, owns, leases or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale of cigarettes within the Town to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers or deals in cigarettes for the purpose of sale within the Town to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.
- (k) *Sale or sell* means and includes every act or transaction, regardless of the method or means employed, including barter, exchange or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the Town from a dealer as herein defined to any other person for a consideration.

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- (l) *Stamp* means a small gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold, distributed, or used within the Town.
- (m) *Store or storage* means and includes the keeping or retention of cigarettes in this Town for any purpose except sale in the regular course of business.
- (n) *Town* means the Town of Middleburg, Virginia.
- (o) *Use* means and includes the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.
- (p) *User* means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this Article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.
- (q) *Wholesaler Dealers* means any individual, partnership or corporation engaged in the sale of cigarettes for resale into or within the Town.

§ 97-61 Levy and rate

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the Town upon every person who sells or uses cigarettes within the Town from and after the effective date of this Article an excise tax equivalent to fifty-five cents (\$0.55) for each package containing twenty cigarettes sold or used 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. (amended 5/22/2008; 5/28/2009)

§ 97-62 Methods of collection

- (a) The tax imposed by this section shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Board 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 dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax and report all packages of cigarettes on forms prescribed for this purpose by the Board:

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- (1) The quantity of NVCTB-stamped cigarettes sold or delivered to:
 - (A) Each registered agent appointed by the Board for which no tax was collected;
 - (B) Each manufacturer's representative; and
 - (C) Each separate person and place of business within the Town during the preceding calendar or fiscal month; and
 - (2) The quantity of NVCTB 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 NVCTB stamps or NVCTB stamped cigarettes received during the preceding calendar or fiscal month; and
 - (3) The quantity of cigarettes on hand to which the NVCTB stamp had not been affixed on the first and last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the NVCTB stamp had not been affixed; and
 - (4) Such further information as the Administrator for the Board 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 dealer or user.
- (b) Each dealer or other person liable for the tax shall file such reports with the Board and pay the tax due to the Board prior to the due date, and shall furnish copies of all cigarette tax reports submitted to the Virginia Department of Taxation.
 - (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 Board 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 Board shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and 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 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 Board 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.

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- (e) The 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 (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to insure that the NVCTB stamp has been affixed thereto prior to offering them for sale.
- (f) Any dealer or other person liable for the tax who shall receive cigarettes not bearing the NVCTB stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the NVCTB 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 dealer or other person liable for the tax who has notified the Board 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 NVCTB-stamped stock, in such a manner as to prevent the commingling of the interstate or intrastate stock with the NVCTB 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 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 cigarettes received, sold, stored, possessed, transferred or handled by him in any manner 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 by the Board.

§ 97-63 Registered agents

- (a) Any 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 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. There is a yearly Registration Fee for all Wholesale Dealers and for all Cigarette Machine Operators. Applicant shall provide a surety bond to the Board of one hundred and fifty percent of his average monthly tax liability with a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from

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year to year. Any applicant whose place of business is outside the Town shall automatically, by filing his application, submit himself to the Board's legal jurisdiction and appoint the Administrator for the Board as his agent for any service of lawful process.

Upon receipt of the properly completed required application forms, and the required surety bond executed, the Board shall determine whether the said applicant qualifies to be a registered agent. The Board will issue to said qualified applicant a yearly registered agent permit to qualify him to purchase, sell, use, store, possess, distribute or transport within or into the Town, NVCTB-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 Board. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Board 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 Board may also 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 Board may revoke or suspend any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes due or if the cigarette tax surety bond should become impaired for any reason.
- (c) All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the Board.
- (d) Registered agents must account for all NVCTB 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 Board 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 Board, 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.

§ 97-64 Requirements for retail dealers

- (a) Retail 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. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail

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- stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first 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. 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 NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the Agents of the Board.
- (b) Retail dealers must make their place of business available for inspection by Tobacco Revenue Agents to insure that all cigarettes are properly stamped and all cigarettes taxes are properly paid.

§ 97-65 Presumption of illegality; seizure of contraband goods, sealing/ seizing of machines

- (a) If any cigarette machine operator or other person liable for the tax imposed by this Article is found to possess any cigarettes without the jurisdictional tax paid or the proper tax stamp affixed, there shall be a rebuttable presumption that any such operator or other person shall be in possession of untaxed cigarettes in violation of this section.
- (b) If any cigarettes placed in any vending machines within the Town, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the Town. If any vending machine located within the Town contains cigarettes upon which the NVCTB tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as to not allow visual inspection of the NVCTB tax stamp through the viewing area as provided for by the vending machine manufacturer, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this Article.
- (c) 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 Board. In addition to any tax due, the 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.
- (d) In lieu of seizure, the Board 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.

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Nothing in this Article shall prevent the seizure of any vending machine at any time after it is sealed.

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

§ 97-66 Illegal acts

- (a) It shall be unlawful and a violation of the Article for any 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 or refuse to perform any of the duties imposed upon him under the provisions of this Article or to fail or refuse to obey any lawful order which may be issued under this Article; or
 - (2) To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently 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 any cigarettes upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or
 - (4) To possess, store, use, authorize or approve the possession, storage or use of any cigarette packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or
 - (5) To transport, authorize or approve the transportation of any cigarette packages in quantities of more than sixty packages into or within the Town upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, 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 fraudulent in whole or part; or

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- (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 that 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 the Commonwealth of Virginia 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 package 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 theretofore 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.
- (9) To perform any act that violates the resolutions promulgated by the Board.
- (b) It shall be unlawful and a violation of this Article for any person or individual to transport, possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

§ 97-67 Powers of the Northern Virginia Cigarette Tax Board

The Board may delegate any of its powers to its Administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this Article.

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- (a) The Board shall be granted the following powers:
- (1) To assess, collect and disburse the cigarette tax for each participating jurisdiction;
 - (2) To audit dealer sales of cigarettes for each participating jurisdiction;
 - (3) To provide information to Commonwealth's attorneys, County, City or Town attorneys for each participating jurisdiction;
 - (4) To designate an Administrator;
 - (5) To manage the Northern Virginia Cigarette Tax Funds;
 - (6) To retain a certified public accountant to audit its books;
 - (7) To designate a depository bank or banks;
 - (8) To contract with member jurisdictions for administrative services;
 - (9) To hold and convey real and personal property;
 - (10) To enter into contracts;
 - (11) To hire, supervise and discharge its own employees;
 - (12) To sue and be sued in its own name;
 - (13) To prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers,
 - (14) To establish different classes of taxpayers,
 - (15) To promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and
 - (16) To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all Resolutions of the Board.
- (b) The Board may employ legal counsel, bring appropriate court action in its own name to enforce payment of the cigarette tax or penalties owed and file tax liens against property of taxpayers hereunder.

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- (c) The Board is authorized to enter into an agreement with the Virginia Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia Revenue Stamps, may qualify to purchase dual Virginia-NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia-NVCTB stamps is granted solely by the Board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the Board.
- (d) The Board may appoint certain employees as Tobacco Revenue Agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this Article and shall have the power of arrest upon reasonable and probable cause that a violation of this Article has been committed. The Board is authorized to provide its tobacco revenue agents with (1) firearms for their protection; (2) emergency equipped vehicles while on duty; and (3) other equipment deemed necessary and proper.
- (e) The Board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

§ 97-68 Jeopardy assessment

If the Administrator for the Board 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, he 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 Administrator 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.

§ 97-69 Erroneous assessment: notices and hearings in event of sealing of vending machines or seizure of contraband property

- (a) Any person assessed by the Board with a cigarettes tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this Article, who has been aggrieved by such assessment, seizure or sealing may file a request for a hearing before the Administrator for the Board for a correction of such assessment and the return of such property seized or sealed.

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- (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 and 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 request 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 thirty days of the date of such decision, appeal such decision to the appropriate Court in the jurisdiction where the seizure or sealing occurred.

§ 97-70 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 Board 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.

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§ 97-71 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.

§ 97-72 Penalty for violation of Article

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$2,500.00 or imprisonment for not more than twelve months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this Article.

§ 97-73 Each violation a separate offense

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

§ 97-74 Severability

If any section, phrase or part of this Article should for any reason be held invalid by a Court of competent jurisdiction, such decision shall not affect the remainder of the Article; and every remaining section, clause, phrase or part thereof shall continue in full force and effect.