

MOTION: BAILEY

**November 9, 2021
Regular Meeting
Ord. No. 21-61**

SECOND: BODDYE

RE: LEVY OF CIGARETTE TAX UPON THE SALE OR USE OF CIGARETTES AT A RATE OF \$0.02 PER CIGARETTE SOLD OR \$0.40 PER PACK EFFECTIVE JANUARY 1, 2022; ADOPT AMENDMENT TO CHAPTER 26 OF THE PRINCE WILLIAM COUNTY CODE OF ORDINANCES TO ADD ARTICLE XIX TITLED CIGARETTE TAX; APPROVE COUNTY'S PARTICIPATION AND AUTHORIZE EXECUTION OF AGREEMENT WITH THE NORTHERN VIRGINIA CIGARETTE TAX BOARD; DELEGATE TO THE NORTHERN VIRGINIA CIGARETTE TAX BOARD THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF THE CIGARETTE TAX ORDINANCE; APPOINT COUNTY EXECUTIVE, OR HIS DESIGNEE, AS COUNTY'S NORTHERN VIRGINIA CIGARETTE TAX BOARD REPRESENTATIVE

ACTION: APPROVED

WHEREAS, In 2020, the Virginia General Assembly amended Code of Virginia Section 58.1-3830 to authorize localities to levy taxes upon the sale or use of cigarettes. The amendments are effective as of July 1, 2021; and

WHEREAS, pursuant to Code of Virginia Section 58.1-3830 (C)(1), as amended, the maximum tax rate a county can impose upon the sale or use of cigarettes is \$0.02 per cigarette or \$.40 per pack sold; and

WHEREAS, pursuant to Code of Virginia Section 58.1-3830 (B), as amended, a county-imposed cigarette tax shall not apply within the limits of any town located in such county that now or hereafter imposes a town cigarette tax, unless the governing body of the town provides that a county cigarette tax, as well as the town tax, shall apply within the limits of the town; and

WHEREAS, on April 27, 2021, the Prince William Board of County Supervisors (Board), by Resolution Number (Res. No.) 21-233, directed the County Executive and the County Attorney to develop a local ordinance for the purpose of levying a cigarette tax at the rate of \$0.02 per each cigarette sold or \$0.40 per pack (Cigarette Tax Ordinance); and

WHEREAS, Code of Virginia Section 58.1-3832, as amended, authorizes localities that levy a tax upon the sale or use of cigarettes to, by ordinance, provide for the administration and enforcement of the cigarette tax; and

WHEREAS, Code of Virginia Section 58.1-3832, as amended, further authorizes localities to delegate the administration and enforcement authority under their cigarette tax ordinances to an agency or authority pursuant to the provisions of Code of Virginia Section 15.2-1300, as amended; and

WHEREAS, The Northern Virginia Cigarette Tax Board (NVCTB) was established pursuant to an agreement titled the Northern Virginia Cigarette Tax Agreement (NVCT Agreement) and executed by several localities, as authorized by Code of Virginia Section 15.2-1300, as amended, to jointly administer, collect, and enforce local cigarette taxes on behalf of the localities. To date, the localities that participate in the NVCT Agreement are the County of Fairfax; the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; and the Towns of Clifton, Dumfries, Haymarket, Herndon, Hillsboro, Leesburg, Lovettsville, Middleburg, Purcellville, Round Hill, Vienna, and Warrenton; and the following counties were recently added: Prince William, Fauquier, Loudoun, Stafford, and Spotsylvania; and

WHEREAS, the Board desires Prince William County (County) to become a member of the NVCTB, participate in the NVCT Agreement, and delegate to the NVCTB its authority for the administration, collection and enforcement of the County's Cigarette Tax Ordinance under the terms as set forth in the form NVCT Agreement attached hereto, the final of which will be approved by the County Attorney before execution; and

WHEREAS, Code of Virginia Section 15.2-1300, as amended, requires localities to approve joint agreements by ordinance before entering into the agreements; and

WHEREAS, a public hearing was duly advertised as required by law for the purposes of adopting the amendments to Chapter 26 of the Prince William County Code of Ordinances to add Article XIX, titled Cigarette Tax, approving the County's participation in the NVCT Agreement, delegating the Boards' administrative and enforcement authority under the Cigarette Tax Ordinance to the NVCTB, and appointing the County Executive, or his designee, as the County's NVCTB representative. The public hearing was conducted on November 9, 2021, and all interested citizens were heard; and

WHEREAS, the Board has determined the enactment of a cigarette tax and the County's participation in the NVCT Agreement to administer and enforce the cigarette tax ordinance support the public health, safety, and welfare of the County residents;

NOW, THEREFORE, BE IT ORDAINED that the Prince William Board of County Supervisors hereby levies a cigarette tax, effective January 1, 2022, upon the sale or use of cigarettes at the rate of \$0.02 per cigarette sold or \$0.40 per pack and hereby permits the use of meter impressions or stamps to evidence its payment;

BE IT FURTHER ORDAINED that the Prince William Board of County Supervisors hereby adopts the amendment to Chapter 26 of the Prince William County Code of Ordinances to add Article XIX, titled Cigarette Tax, a copy of which is attached hereto;

November 9, 2021
Regular Meeting
Ord. No. 21-61
Page Three

BE IT FURTHER ORDAINED that the Prince William Board of County Supervisors hereby approves and accepts the provisions of the Northern Virginia Cigarette Tax Agreement as substantially set forth in the form Northern Virginia Cigarette Tax Agreement attached hereto, the final to be approved as to form by the County Attorney before the County's execution, and authorizes the County Executive to execute the Northern Virginia Cigarette Tax Agreement that is approved as to form by the County Attorney;

BE IT FURTHER ORDAINED that the Prince William Board of County Supervisors hereby delegates to the Northern Virginia Cigarette Tax Board the powers to administer, collect, and enforce the County's Cigarette Tax Ordinance as set forth in Sec. 26-268 of Chapter 26, Article XIX of the Code of Prince William County, and authorizes the Northern Virginia Cigarette Tax Board to issue a uniform meter impression, or common revenue stamp, to evidence payment of the cigarette tax;

BE IT FURTHER ORDAINED that the Prince William Board of County Supervisors hereby appoints the County Executive, or his designee, to be the County's representative to the Northern Virginia Cigarette Tax Board;

BE IT FURTHER ORDAINED that the Prince William Board of County Supervisors hereby authorizes the Chair, the County Executive, and the Director of Finance to execute all documents, as approved to form by the County Attorney, necessary to effectuate the actions set forth in this ordinance, and directs the County Executive, the Director of Finance, and the County Attorney to take all other necessary steps to implement all actions set forth in this ordinance.

ATTACHMENTS: Northern Virginia Cigarette Tax Agreement
Article XIX - Cigarette Tax Amendment to Chapter 26 – Taxation, Prince William
County Code

Votes:

Ayes: Angry, Bailey, Boddye, Franklin, Wheeler

Nays: Candland, Lawson, Vega

Absent from Vote: None

Absent from Meeting: None

For Information:

Director of Finance
County Attorney

ATTEST: Andrea P. Madden
Clerk to the Board

NORTHERN VIRGINIA CIGARETTE TAX AGREEMENT

THIS AGREEMENT, is entered into and dated as of the latest execution and acknowledgment by any party hereto, by and between

- (1) Fairfax County, Virginia;
- (2) City of Alexandria, Virginia;
- (3) City of Falls Church, Virginia;
- (4) City of Fairfax, Virginia;
- (5) Town of Clifton, Virginia;
- (6) Town of Herndon, Virginia;
- (7) Town of Vienna, Virginia;
- (8) Town of Warrenton, Virginia;
- (9) City of Manassas, Virginia;
- (10) Town of Leesburg, Virginia;
- (11) Town of Purcellville, Virginia;
- (12) Town of Dumfries, Virginia;
- (13) Town of Haymarket, Virginia;
- (14) Town of Middleburg, Virginia;
- (15) Town of Hillsboro, Virginia;
- (16) Town of Lovettsville, Virginia;
- (17) Town of Round Hill, Virginia;
- (18) City of Fredericksburg, Virginia;
- (19) City Of Manassas Park, Virginia;
- (20) Fauquier County, Virginia;
- (21) Loudoun County, Virginia;
- (22) Prince William County, Virginia;
- (23) Spotsylvania County, Virginia;
- (24) Stafford County, Virginia or any two or more of the foregoing;

WHEREAS, the parties hereto desire to enter an Agreement for the purpose of the reestablishment of the Northern Virginia Cigarette Tax Board for the joint administration, collection and enforcement of their respective Cigarette Tax Ordinances pursuant to the provisions of these ordinances and Section 15.2-1300 and 58.1-3832, *et seq.*, of the Code of Virginia, (1950), as amended;

NOW THEREFORE, the parties enter into the following agreement, which hereby revokes and replaces any prior similar agreements between or among the parties.

1. **NAME AND DURATION**

The Board shall be called the Northern Virginia Cigarette Tax Board. Its duration shall be perpetual, subject to the provisions of Paragraph 8 hereof.

2. **MEMBERSHIP AND VOTING POWERS**

The Board shall be composed of one representative from each jurisdiction hereinbefore named or later added with consent of the Northern Virginia Cigarette Tax Board. Said representative may designate an alternate to attend meetings and vote in his or her place; however, each jurisdiction shall be entitled to only one vote. Seven members of the Board must be present at a meeting to constitute a quorum, and the vote of a majority of the quorum is necessary for any action taken. Regular attendance at Board meetings by a jurisdiction's representative or alternate is a requirement for continued membership in the Board. If a

jurisdiction's representative or alternate fails to attend three consecutive meetings it may lead to a vote to remove that member jurisdiction for violation of this requirement in accordance with section 9 of this Agreement.

3. **OFFICERS AND MEETINGS**

Each year, the Board shall elect a Chairman, Vice-Chairman and Secretary/Treasurer, who shall serve at the pleasure of the Board. The Officers of the Board shall be chosen from the jurisdictional representatives. Said officers shall be empowered to sign in the name of the Board on all legal documents, including bank deposits and withdrawals. The Board shall meet from time to time as deemed necessary by the Chairman.

4. **POWERS OF THE BOARD**

The Board shall be delegated the following powers:

- a. Assessment, collection and disbursement of the cigarette tax for each participating jurisdiction;
- b. Audit of the sale or use of cigarettes within each participating jurisdiction;
- c. Provision of information for criminal prosecution by the affected participating jurisdictions;
- d. Designation of an Administrator;
- e. Management of a general operating fund to ensure proper funding of Board operations on an ongoing basis;
- f. Employment of an Auditor;
- g. Designation of a depository bank or banks;

h. Contracting with a member jurisdiction for provision of administrative services;

i. To hold and convey personal property. The Board shall have no power to hold or convey real property;

j. To enter into contracts;

k. To hire, supervise and discharge its own employees;

l. To contract for benefits for Board Employees; and

m. Any other powers granted to the Board by the respective local ordinances and the Code of Virginia (1950), as amended.

5. **LIABILITY INSURANCE**

The Board shall maintain and have authority to secure insurance coverage as deemed appropriate. General liability insurance shall be maintained through a commercial policy, in limits of not less than \$500,000.00. Any liability in excess of the amounts of insurance coverage will be shared by the members of the Board proportionately based upon each jurisdiction's share of the number of taxable packs of cigarettes reported in the twelve (12) months preceding the incident which gave rise to the liability, as compared to the taxable packs of cigarettes reported during that same time period in all the participating jurisdictions.

6. **ADMINISTRATOR**

Normal routine duties of the Board in administration and supervision of the Cigarette Tax Ordinances shall be delegated to an Administrator, who shall be appointed by the Board to serve at the will of the Board under such terms and conditions as it deems appropriate. Actions and decisions of the Administrator shall bind the Board unless patently wrongful or the result of willful misconduct, but the Board may at anytime overrule a decision or action by the Administrator subject to lawful rights of third parties.

The duties of the Administrator shall include, but are not limited to, the following:

a. Preparation of annual administrative cost estimates;

b. As authorized by the Board, employment of or contracting for staff assistance, equipment and supplies; providing employee benefits; and the establishment and administration of a retirement system covering officers and employees of the Board not covered by the retirement systems of participating jurisdictions or the Commonwealth of Virginia;

c. Preparation of reports as the Board may require;

d. Authorization of disbursements from Board accounts including, but not limited to, disbursements to the participating jurisdictions.

7. **COLLECTION OF THE CIGARETTE TAX**

The cigarette tax shall be assessed and collected on the basis of the "reporting method" according to the respective ordinances and according to the rules, regulations and procedures adopted by the Board.

8. **DISBURSEMENT OF RECEIPTS, MANAGEMENT OF FUNDS**

a. Disbursements shall be made to each participating jurisdiction on a monthly basis. Prior to disbursement to jurisdictions, expenses for the month shall be deducted from total revenues and allocated to the jurisdictions proportionately based upon the number of taxable packs of cigarettes reported within the jurisdiction during the month as compared to the total number of taxable packs of cigarettes reported in all the participating jurisdictions. The disbursement to each participating jurisdiction shall be determined by the tax rate of the jurisdiction multiplied by the taxable packs of cigarettes reported within the jurisdiction, plus interest and penalties, plus the jurisdiction's proportional share of all other revenues, less discounts and proportional expenses.

b. Total expenses for the fiscal year shall not exceed six (6) percent of total Board revenues for that year. The Board may authorize an increase in expenses not to exceed an amount greater than an additional one (1) percent of the total Board revenues for that year. The Board shall maintain an operating fund of \$25,000.00.

c. All monies shall be deposited in the name of the Northern Virginia Cigarette Tax Board. All checks drawn on Board accounts shall require signature by the Administrator and one Board Officer.

9. **TERMINATION**

a. In the event any participating jurisdiction decides, by ordinance, to terminate its participation in the Board, notice to the Board shall be given sixty (60) days prior to its date of termination. The terminating jurisdiction shall receive within thirty (30) days of its date of termination its share of total revenues less proportionate expenses, operating fund, and depreciated value of physical property used by the Board. The representative of such terminating jurisdiction shall not serve on the Board beyond the termination date.

b. In the event a member jurisdiction fails to provide a representative or an alternate at three consecutive Board meetings, the Board may, terminate that jurisdiction's membership in the Board. If the Board votes to terminate a jurisdiction's membership in the Board, then the termination will be effective on the date of the vote, unless some other date is chosen in the vote as the effective date of termination. The effective date of termination is referred to as the "termination date." The jurisdiction whose membership is terminated shall receive, within thirty (30) days of the termination date, its share of total revenues less proportionate expenses. The representative of any jurisdiction whose membership is terminated may not serve on the

Board beyond the termination date.

c. In the event the number of jurisdictions which desire to continue to participate in the Board is less than two (2) in number, the Board shall be dissolved and shall cease to exist. In such event, the Board shall liquidate all assets and disburse to each jurisdiction participating at the time each such jurisdiction's share of the liquidated assets and all proceeds and monies held. Such distribution shall be based upon each jurisdiction's proportionate share of the number of taxable packs of cigarettes reported in the preceding twelve (12) months as compared to the taxable packs of cigarettes reported during that same time period in all the jurisdictions participating in the Board at the time the Board is dissolved.

10. **IMPLEMENTATION**

Each jurisdiction shall by ordinance signify its desire to be a member of the Board and its acceptance of the provisions of this Agreement.

This Agreement shall take effect upon the signature of the proper officials of any two (2) of the jurisdictions below and shall take effect as to any other jurisdiction upon signature of the proper official of such jurisdiction.

NORTHERN VIRGINIA CIGARETTE TAX BOARD AGREEMENT

SIGNATURE PAGE

Fairfax County, Virginia

By: _____

Printed Name

Title

City of Alexandria, Virginia

By: _____

Printed Name

Title

City of Falls Church, Virginia

By: _____

Printed Name

Title

City of Fairfax, Virginia

By: _____

Printed Name

Title

City of Manassas, Virginia

By: _____

Printed Name

Title

Town of Clifton, Virginia

By: _____

Printed Name

Title

Town of Dumfries, Virginia

By: _____

Printed Name

Title

Town of Haymarket, Virginia

By: _____

Printed Name

Title

Town of Herndon, Virginia

By: _____

Printed Name

Title

Town of Leesburg, Virginia

By: _____

Printed Name

Title

Town of Middleburg, Virginia

By: _____

Printed Name

Title

Town of Purcellville, Virginia

By: _____

Printed Name

Title

Town of Vienna, Virginia

By: _____

Printed Name

Title

Town of Warrenton, Virginia

By: _____

Printed Name

Title

Town of Hillsboro, Virginia

By: _____

Printed Name

Title

Town of Lovettsville, Virginia

By: _____

Printed Name

Title

Town of Round Hill, Virginia

By: _____

Printed Name

Title

City of Fredericksburg, Virginia

By: _____

Printed Name

Title

City of Manassas Park, Virginia

By: _____

Printed Name

Title

Fauquier County, Virginia

By: _____

Printed Name

Title

Loudoun County, Virginia

By: _____

Printed Name

Title

Prince William County, Virginia

By: _____

Printed Name

Title

Spotsylvania County, Virginia

By: _____

Printed Name

Title

Stafford County, Virginia

By: _____

Printed Name

Title

**CODE OF ORDINANCES
PRINCE WILLIAM COUNTY, VIRGINIA
CHAPTER 26 – TAXATION**

* * *

Secs. 26-248 – 26-259. Reserved

ARTICLE XIX – CIGARETTE TAX

Sec. 26-260. - Short title.

This Article shall be known and may be cited as the “Prince William County Cigarette Tax Ordinance.”

Sec. 26-261. - 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) *Carton* means any container, regardless of material used in its construction, in which packages of cigarettes are placed.
- (b) *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.
- (c) *Cigarette Machine Operator* means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.
- (d) *County* means Prince William County, Virginia.
- (e) *Dealer* means and includes every manufacturer's representative, wholesaler, retailer, cigarette machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the County.

(f) *Dual Virginia-NVCTB Stamp* means a cigarette tax stamp issued by the Virginia Department of Taxation to indicate the payment of both the state tax and the tax of the various member jurisdictions of the NVCTB.

(g) *NVCTB* means the Northern Virginia Cigarette Tax Board.

(h) *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. Packages are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a package contains twenty cigarettes; however, "package" includes those containers in which fewer or more than twenty cigarettes are placed.

(i) *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, includes all the officers and directors thereof.

(j) *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 County.

(k) *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.

(l) *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 County 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 within the County of cigarettes 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 County to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

(m) *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 County from a dealer as herein defined to any other person for a consideration.

(n) *Stamp or Tax Stamp* means any authorized stamp, decal, sticker or meter impression required to be used to evidence provision for payment of the tax as authorized by the NVCTB, required to be affixed to every package of cigarettes sold, distributed, or used within the County.

(o) *Store or storage* means and includes the keeping or retention of cigarettes in this County for any purpose except sale in the regular course of business.

(p) *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.

(q) *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.

(r) *Wholesale Dealers* means any individual, partnership or corporation engaged in the sale of packages of cigarettes for resale into or within the County.

26-262. – Levy and rate; effective date; administration, collection and enforcement.

(a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the County upon every person who sells or uses cigarettes within the County an excise tax at a rate of \$0.40 per pack or \$0.02 cents per each cigarette sold. The effective date of the tax is January 1, 2022. 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 County shall be paid but once.

(b) The tax shall be administered, collected, and enforced by the Northern Virginia Cigarette Tax Board pursuant to a joint exercise of powers agreement authorized by Code of Virginia, 58.1-3832 (as amended) and executed by the County in accordance with the provisions of Code of Virginia, 15.2-1300 (as amended). The powers of the NVCTB shall be as set forth in Sec. 26-268 of this Article.

26-263. – 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 NVCTB 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, pay the tax and report all packages of cigarettes on forms prescribed for this purpose by the NVCTB:

- (1) The quantity of NVCTB-stamped cigarettes sold or delivered to:
 - (A) Each registered agent appointed by the NVCTB for which no tax was collected;
 - (B) Each manufacturer's representative; and
 - (C) Each separate person and place of business during the preceding calendar or fiscal month; and
 - (2) The quantity of NVCTB stamps on hand, both affixed and unaffixed on the first and the last day of the preceding calendar month and the quantity of NVCTB stamps or NVCTB stamped cigarettes received during the preceding calendar 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 NVCTB 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 NVCTB and pay the tax due to the NVCTB 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 NVCTB 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 NVCTB shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due, impose a penalty of ten per cent and may impose interest of three-quarters per cent per month of the gross tax due.

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

(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 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 ensure 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 NVCTB 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 NVCTB) 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 of the NVCTB.

26-264. – 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 County shall first make application to the NVCTB 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 NVCTB deems necessary for the administration and enforcement of this article. There is a yearly Registration Fee for all Wholesale Dealers [and] all Cigarette Machine Operators. Applicant shall provide a surety bond to the NVCTB of 150 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 year to year. Any applicant whose place of business is outside the County shall automatically, by filing his application, submit himself to the NVCTB's legal jurisdiction and appoint the administrator for the NVCTB as his agent for any service of lawful process.

(b) Upon receipt of the properly completed required application forms, and the required surety bond executed, the NVCTB shall determine whether the said applicant qualifies to be a registered agent. The NVCTB 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 County, NVCTB-stamped cigarettes.

(c) 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 NVCTB. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the NVCTB shall impose a late reporting penalty of ten per cent of the gross tax due or \$10.00, whichever is greater, but in no event more than \$1,000. The NVCTB also may require such registered agent to provide proof that he has complied with all applicable laws of the Commonwealth of Virginia to legally conduct such business and to file financial statements showing all assets and liabilities. The NVCTB 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.

(d) 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 NVCTB.

(e) 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 NVCTB 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 NVCTB, 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 percent of the gross tax due.

26-265. – 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 County 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 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 NVCTB to verify the proper tax has been paid. It is the responsibility of each retail location to ensure 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 NVCTB.

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

26-266. – 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 are placed in any vending machines within the County, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the County. If any vending machine located within the County 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 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 NVCTB. 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 NVCTB may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this Article. Nothing in this Article shall prevent the seizure of any vending machine at any time after it is sealed.

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

26-267. – 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 county 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

(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 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; or
- (9) To perform any act that violates the resolutions promulgated by the NVCTB.

(b) It shall be unlawful and a violation of the Article for any person or individual to transport, possess, store, use, authorize or approve the possession, storage or use of any cigarette 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.

26-268. – Powers of the Northern Virginia Cigarette Tax Board.

The NVCTB 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.

- (a) The NVCTB shall be granted the following powers:
 - (1) To assess, collect and disburse the cigarette tax for each participating jurisdiction;
 - (2) To audit sales of cigarettes for each participating jurisdiction;
 - (3) To provide information to Commonwealth's attorneys or County attorney for each participating jurisdiction;
 - (4) To designate an administrator;
 - (5) To manage the Northern Virginia Cigarette Tax Board 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 NVCTB.

(b) The NVCTB 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.

(c) The NVCTB 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 NVCTB and may be revoked or suspended for violations of this ordinance or resolutions adopted by the NVCTB.

(d) The NVCTB 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 NVCTB 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 NVCTB 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.

26-269. – Jeopardy assessment.

If the administrator for the NVCTB 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.

26-270. – Erroneous assessment; notices and hearings in event of sealing of vending machines or seizure of contraband property.

(a) Any person assessed by the NVCTB 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 NVCTB for a correction of such assessment and the return of such property seized or sealed.

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

(c) Such hearing shall be requested within ten days of the notice of such assessment, seizure or sealing and shall set forth the reasons why said tax, penalties and interest, cigarettes, vending machines or other property should be returned or released. Within five days after receipt of such hearing request the administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten days from first notice to the petitioner of such seizure or sealing. Within five days after the hearing, the administrator shall notify the petitioner, by registered mail, whether his 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 NVCTB 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.

26-271. – 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 NVCTB 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.

26-272. – 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.

26-273. – 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.

26-274. – 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.

26-275. – 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.