

**Caroline County  
Board of Supervisors Agenda  
Executive Summary**

---

**Meeting Date:** September 27, 2022

**Title:** New Business – First Reading of Proposed Caroline County Cigarette Tax Ordinance

---

*(Check Mark)*

- |   |  |
|---|--|
| <input type="checkbox"/> Consent                      | <input type="checkbox"/> Closed Meeting          |
| <input type="checkbox"/> Action                       | <input type="checkbox"/> Public Hearing          |
| <input type="checkbox"/> No Action (Information Only) | <input type="checkbox"/> Ordinance               |
| <input type="checkbox"/> Resolution                   | <input type="checkbox"/> PowerPoint Presentation |

**Summary:** Attached is a proposed Caroline County cigarette tax ordinance for first reading at the September 27 Board of Supervisors meeting. The proposed ordinance was developed in consultation with County Attorney Ben Emerson, Commissioner of the Revenue Mark Bissoon and Deputy Commissioner David Watson. Responsibility to administer the ordinance if adopted will fall to the Commissioner’s Office.

Attached is an additional copy of a previously provided memorandum providing detailed information on the possible implementation of a local cigarette tax.

**Budget Impact:** After an updated analysis, the Commissioner’s Office estimates that a local cigarette tax would provide approximately \$430,000 in annual revenue to Caroline County (not including Sheetz).

**Requested Action from Board of Supervisors:** Conduct first reading and direct staff whether to advertise a public hearing (second reading) for an ordinance to create a cigarette tax.

# ARTICLE    . CIGARETTE TAX

## Sec. 1. Short title.

This ordinance shall be known and may be cited as the "Caroline County Cigarette Tax Ordinance."

## Sec. 2. Definitions.

The following words and terms, when used in this ordinance, shall have the following meanings unless the context clearly indicates otherwise:

*Carton* means any container, regardless of material used in its construction, that contains packages of cigarettes.

*Cigarette* means 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.

*Commissioner of the revenue and commissioner* mean the commissioner of the revenue of Caroline County, Virginia, and any of the commissioner's designees.

*County* means Caroline County, Virginia.

*County tax* means the tax specified in section 3 of this article.

*Dealer* means every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the county.

*Ordinance* means the Caroline County Cigarette Tax Ordinance.

*Package and pack* mean any container, regardless of the material used in its constructions, 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 individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily a package contains 20 cigarettes; however, "package" includes those containers in which fewer or more than 20 cigarettes are placed.

*Person* means any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, conservator, and any other legal entity. 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.

*Place of business* means 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.

*Purchaser* means every person to whom title to any cigarettes is transferred by a seller within the corporate limits of the county.

*Registrant* means every dealer, seller and other person who shall be required to report and collect the tax on cigarettes under the ordinance.

*Retail dealer* means 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 their 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.

*Sale or sell* means 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 or seller to any other person for a consideration.

*Seller* means every person who transfers title to any cigarettes or in whose place of business title to any cigarettes is transferred, within the corporate limits of the county, including retail dealers, but excluding wholesalers.

*Stamp* means a small, gummed piece of paper or decal designated for use to evidence payment of the tax levied by the Commonwealth of Virginia or the county.

*Store or storage* means the keeping or retention of cigarettes in the county for any purpose except sale in the regular course of business.

*Tax* means any and all taxes and levies under this ordinance.

*Treasurer* means the treasurer of Caroline County and any of the treasurer's designees.

*Use* means 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.

*User* means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this ordinance 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.

*Wholesaler* means any person who sells cigarettes to dealers and/or retail dealers as herein defined, for the purpose of resale only, or who sells at wholesale to institutions, commercial or industrial users.

### **Sec. 3. 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 county, upon each and every sale of cigarettes, a tax of \$0.02 per cigarette sold or to be sold within the county, the amount of such tax to be paid by the wholesaler, dealer, retail dealer or other seller, if not previously paid, in the manner and at the time provided for in this ordinance.

### **Sec. 4. Duty to pay tax.**

- (a) No person shall sell cigarettes in Caroline County that do not lawfully display bona fide county and Virginia state cigarette tax stamps as prescribed by this ordinance and otherwise under state law.
- (b) This ordinance shall be effective on xx/xx/xxxx. In the event that a retail dealer has a bona fide inventory of cigarettes in their possession in the county on such effective date that are unstamped as a result of a bona fide purchase in the due course of business and not made in an attempt to evade or circumvent this ordinance, then such retail dealers may sell such unstamped cigarettes for a period of not more than sixty (60) days from the effective date. Each seller shall still pay and be liable for all other taxes related to such sales. In no event shall any unstamped cigarettes be sold in the county after the expiration of such sixty (60) day period.
- (c) The tax imposed by this ordinance shall be paid by each person liable for the tax under a reporting method deemed by the commissioner to carry out the provisions of this ordinance.
- (d) Every dealer shall report on forms prescribed for this purpose by the commissioner the following information:
  - (1) A list of each seller within the county to whom cigarettes were sold.

- (2) The quantity of county stamps on hand, both affixed and unaffixed on the first day of the period of request; and
- (3) Such further information as the commissioner may require for the proper administration and enforcement of this ordinance for the determination of the exact number of cigarettes in the possession of each dealer and/or seller in the county.

**Sec. 5. Methods of collection.**

- (a) Payment of all county taxes imposed by this ordinance shall be evidenced by affixing or causing to be affixed a valid county stamp or stamps, of the proper denominational and face value to each and every package of cigarettes sold within the county, in the manner and at the time or times provided for in this ordinance.
- (b) Every dealer and seller in the county shall have the right to buy such county stamps from the commissioner, or treasurer if so directed by the commissioner, and to affix the same to packages of cigarettes as provided in this ordinance. The stamps shall be affixed permanently in such a manner that will prevent their unlawful removal or reuse.

**Sec. 6. Authority to promulgate rules and regulations.**

The commissioner is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of the county stamps and to any and all other matters pertaining to the administration and enforcement of the provisions of this ordinance.

**Sec. 7. Reports and records.**

- (a) Each person liable for the county tax must maintain records as set forth in this ordinance and/or under the rules and procedures promulgated under this ordinance for a period of three years, not including the current calendar year, records of cigarettes received, sold, stored, possessed, transferred or handled by them in any manner whatsoever, to make all such records available for audit, inspection and examination and to make available at all reasonable times, the means, facilities and opportunity for making such audit, inspection or examination upon demand of the commissioner.
- (b) Every dealer shall file such reports with the commissioner by the 20th day after the close of each calendar month.
- (c) The commissioner may, at any time and without prior notice, examine books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale or displayed for sale by a seller.
- (d) When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage, exchange or possession of cigarettes taxed herein, any dealer or other person liable for the county tax is unable to furnish evidence to the commissioner of sufficient tax payments to cover cigarettes that were sold, used, stored, received, purchased or possessed by them, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by them without the proper tax having been paid. The commissioner shall, from the result of such examination and audit based upon the best information available, assess the tax due and unpaid and shall impose a penalty of ten percent of the gross tax due which shall be added to the tax due. Interest shall accrue on taxes due and delinquent at the rate of nine (9) percent per annum or the maximum allowed by law.
- (e) When any 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 commissioner shall administratively assess the tax due and unpaid and impose a penalty of 50 percent. The person liable for the tax shall be notified by registered mail or hand delivery to such person of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten business days after notice of such deficiency has been issued.

- (f) Every person liable for the tax or acting on behalf of any person liable for the tax shall examine each package of cigarettes to ensure that the state and county stamps have been affixed thereto prior to storing them on a retail premises and/or offering them for sale in the county.
- (g) Any person liable for the county tax found to have had unstamped cigarettes that have been lost whether by negligence, theft or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

### **Sec. 8. Extensions.**

The commissioner, upon a finding of good cause, may grant an extension of time to file a tax report upon written application therefor, until the end of the calendar month in which any county tax report is due hereunder, for a period not exceeding 30 days. In no case shall a request for extension of time to file a tax report be granted by the commissioner when such request is not received within the due date for filing such tax report. Where such extension is granted beyond the end of the calendar month in which any tax report is due, hereunder, interest shall accrue at the rate of nine (9) percent per annum or the maximum allowed by law on any amount due and unpaid.

### **Sec. 9. Preparation and sale of stamps generally.**

For the purpose of making county stamps available for use, the commissioner shall prescribe, prepare, furnish, and sell to the wholesalers stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this article.

### **Sec. 10. General duties of dealers and sellers with respect to stamps.**

- (a) No wholesaler shall sell any cigarettes to any retail dealer without first having purchased and affixed all required state and county stamps.
- (b) No seller, dealer, or other person employed by or acting on behalf of a seller or dealer shall purchase from a wholesaler or sell any cigarettes that do not contain all required state and county stamps.
- (c) Every seller or other person employed by or acting on behalf of a seller shall examine each package of cigarettes intended for sale, for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon, as provided by section 7(f). If upon such examination, unstamped or improperly stamped packages of cigarettes are discovered, the seller, where such cigarettes were obtained from a dealer, shall immediately notify such dealer, and upon such notification, such dealer shall forthwith either affix to or imprint upon such unstamped or improperly stamped packages the proper number of stamps, or shall exchange such packages with others to which stamps have been properly affixed or imprinted thereon.
- (d) Should a seller obtain or acquire possession of, from any person other than a local dealer, any unstamped or improperly stamped cigarettes, such seller shall forthwith, before selling or offering or exposing such cigarettes for sale in the county, purchase and affix or cause to be affixed to such packages of cigarettes the proper stamps covering the county tax imposed by this ordinance.

### **Sec. 11. Visibility of stamps.**

Stamps shall be placed upon each package of cigarettes in such manner as to be readily visible to purchaser.

### **Sec. 12. Altering design of stamps.**

The commissioner may, from time to time, and as often as the commissioner may deem advisable, provide for the issuance and exclusive use of county stamps of a new design and forbid the use of stamps of any other design.

**Sec. 13. Use by wholesaler of dual die to evidence payment.**

The commissioner may enter into an arrangement with the state department of taxation under which any tobacco wholesaler who so desires may use a dual die to evidence the payment of both the tax levied by this ordinance and the state tax on cigarettes.

**Sec. 14. Refund for unused stamps.**

Should any person, after acquiring from the county any stamps provided for in this ordinance, cease to be engaged in a business necessitating the use thereof, such person shall be entitled to a refund of the denominational or face amount of any whole roll of stamps so acquired and not used, less five percent of the denominational or face amount thereof, upon presenting such stamps to the commissioner and furnishing the commissioner with an affidavit showing, to the commissioner's satisfaction, that such stamps were acquired by such person and have not in any manner been used and the reason for requesting such refund.

All refunds for unused county stamps provided for under this section are hereby authorized to be made on vouchers approved by the commissioner and, when made, the same shall be charged against the sums collected for the sale of such stamps.

**Sec. 15. Registration.**

- (a) Every person selling, storing or possessing cigarettes for sale within the county must register with the commissioner on a form prescribed by the commissioner.

**Sec. 16. Notice of intention by retail dealers.**

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes into the county, shall notify the commissioner, in writing, of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business.

No retail dealer who shall have complied with the provisions of this ordinance and who purchases only county tax paid cigarettes for each separate place of business shall be required register.

**Sec. 17. Tax is in addition to other taxes.**

The tax levied and imposed by this ordinance shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law.

**Sec. 18. Sale of cigarettes in vending machines; contraband.**

Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the county. Any vending machine located within the county containing cigarettes upon which the state and county stamps have not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamps through the viewing area as provided for by the vending machine manufacturer shall be in violation of this ordinance.

Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this ordinance shall be declared contraband goods and may be seized by the commissioner or his designee. Forfeiture shall be effective upon expiration of the notice and administrative appeals procedure specified in section 22. In addition to any county tax due, the dealer, seller, and any employee or other person acting on their behalf in violation of this ordinance shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the commissioner or his designee 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 an unauthorized person shall be a violation of this ordinance. Nothing in this ordinance shall prevent the seizure of any vending machine at any time after it is sealed.

## **Sec. 19. Seizures, sales and proceeds.**

All assets, monies and proceeds collected as a result of any seizure, forfeiture, and/or sale under this ordinance shall be paid to the county. Proceeds, if any, from forfeitures and sales shall go to the general fund of the county unless otherwise required by law.

## **Sec. 20. Seizure, forfeiture, and sale of unstamped cigarettes; civil penalty assessed.**

- (a) Whenever the commissioner or his designee shall discover any quantity of greater than six cartons of cigarettes without county stamps (to which a presumption of county tax evasion applies as stated in section 25 below in the absence of county stamps), the commissioner or his designee is hereby authorized and empowered to forthwith seize and take possession of such cigarettes, which shall thereupon be deemed to be forfeited to the county after expiration of the notice and administrative appeals procedure specified in section 22.
- (b) Upon discovery of more than six cartons of cigarettes or seizure of any cigarettes without county stamps or seizure of any cigarettes pursuant to the above, the commissioner or his designee shall, within ten days, assess the unpaid taxes, a penalty of 50 percent, and any applicable interest and costs. Costs shall include reasonable costs of enforcement not to exceed \$500.00 per occurrence. Payment shall be due within ten days from the date of assessment.
- (c) Tobacco products found within the county in quantities of more than six cartons and lacking county stamps within the county shall be presumed for sale or use within the county and may be seized and confiscated if:
  - (1) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part; or
  - (2) They are in transit and are accompanied by a bill of lading or another document indicating:
    - a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or district of destination has been paid and the said products bear the tax stamps of that state or district; or
    - b. 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, a Virginia retail cigarette license and, where applicable, both a business license and retail cigarette license issued by the local jurisdiction of destination; or
    - c. They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the taxing jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.
- (d) On or after forfeiture, commissioner or his designee may elect to dispose of forfeited cigarettes by one or more of the following procedures:
  - (1) After written notice posted at the front door of the courthouse at least five days before the sale, forfeited cigarettes may be sold in the time, place, and manner designated in such notice. The proceeds of such sale shall be forwarded to the treasurer. The required tax stamps shall be affixed prior to sale.
  - (2) Upon an agreement between the commissioner or his designee and the person from whom the property was forfeited, the cigarettes may be sold back at a reasonable wholesale rate to such person

or their designee. The proceeds of such sale shall be forwarded to the treasurer. Payment of assessed taxes, penalties, interests, and costs shall be a condition of such an agreement.

- (3) Property may be transferred to any federal, state, or local law enforcement agency for the purposes of training or conducting operations.
- (4) Forfeited cigarettes may be destroyed.
- (e) Proceeds, if any, from forfeitures and sales shall go to the general fund of the county unless otherwise required by law. No credit from a sale or other disposition of forfeited property pursuant to this article shall be allowed toward any taxes, interests, costs, or penalties owed.
- (f) Forfeiture and sale or other disposition of cigarette or other forfeited property shall not be deemed to relieve any person from any criminal penalties or fines arising from this article. No credit from a sale or other disposition of forfeited property pursuant to this article shall be allowed toward any criminal penalties or other costs owed.

**Sec. 21. Seizure, forfeiture, and sale of vending machines and counterfeit stamp or impression devices.**

- (a) Any vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or bogus state or county stamp, or any cigarettes upon which the tax has not been paid, may be declared contraband property and be subject to confiscation and sale as provided in section 23. When any such vending machine is found, it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machine used in an illegal evasion of the county tax, it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by the commissioner or his designee. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.
- (b) Any counterfeit stamps or counterfeit impression devices found may also be seized, forfeited, and destroyed as provided in this ordinance.

**Sec. 22. Erroneous assessment; appeals; notices and hearings in the event of sealing of vending machines or seizure of contraband property.**

Any person assessed by the commissioner with unpaid county taxes, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this ordinance who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the commissioner for a correction of such assessment and the return of such property seized or sealed.

Where holders of a property interest in cigarettes, vending machines or other property are known at time of seizure or sealing, notice of seizure or sealing shall be mailed by certified or registered mail or hand delivered to such person. A copy of any such notice given to an employee or agent shall also be sent to a person known or believed to have ownership by certified or registered mail if a registrant or other person's address is known. 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 to request an administrative hearing to appeal the seizure or sealing and seek for the return of such property seized or sealed.

A request for a hearing must be submitted to the commissioner in writing within ten business days of the applicable 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 business days after receipt of such hearing request, the commissioner shall notify the petitioner by certified or registered mail of a date and time for the informal presentation of evidence at a hearing to be held within 15 business days of



the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest have not been paid as required or if the request is received more than ten business days from first notice to the petitioner of such seizure or sealing. Within five business days after the hearing, the commissioner shall notify the petitioner, by certified or registered mail, whether their request for a correction has been granted or refused.

Appropriate relief shall be given by the commissioner if they are convinced by the preponderance of the evidence that an affirmative defense applies. If the commissioner is satisfied that the tax was erroneously assessed, they shall correct the assessment and the treasurer 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 unsatisfied with the written decision of the commissioner may, within 30 days of the date of said decision, appeal such decision to the Caroline County Circuit Court.

### **Sec. 23. Disposal of seized other forfeited property.**

Any forfeited vending machines or other property used in the furtherance of any illegal evasion of the county tax may be disposed of by any method authorized by section 20(d) after petitioner has exhausted all administrative appeal procedures pursuant to section 22. No credit from any sale of vending machines or other property seized shall be allowed toward any tax and penalties assessed. All proceeds from such disposal shall go to the general fund of the county unless otherwise required by law.

### **Sec. 24. Illegal acts.**

It shall be unlawful and a violation of this ordinance for any person:

- (a) To perform any act or fail to perform any act for the purpose of evading the payment of any tax subject to this ordinance or of any part thereof, or to fail or refuse to perform any of the duties imposed upon them under the provisions of this ordinance or to fail or refuse to obey any lawful order that may be issued under this ordinance; or
- (b) To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any county 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
- (c) To sell, offer for sale, or authorize or approve the sale of any cigarettes upon which the state and county stamps have not been affixed; or
- (d) To possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than six cartons upon which state and county stamps have not been affixed; or
- (e) To transport, authorize or approve the transportation of any cigarettes, in quantities of more than six cartons into or within the county upon which the state and county stamps have not been affixed, if they are:
  - (1) Not accompanied by a 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
  - (2) Accompanied by a bill of lading or other documents which is false or fraudulent in whole or part; or
  - (3) Accompanied by a bill of lading or another document indicating:
    - a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax of the state

or district of destination has been paid and said cigarettes bear the tax stamps of that state or district; or

- b. 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, a Virginia Retail Tobacco License and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination; or
- (f) To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or
- (g) To remove from any package any state or county stamp with intent to use or cause the same to be used after same have 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 that had theretofore been used for evidence of the payment of any tax subject to this ordinance or to sell, or offer to sell, any stamp provided for herein.

### **Sec. 25. Presumption of violation.**

In the event any packages or cartons of cigarettes are found in the possession of a seller, or any person employed by or acting on behalf of the seller, without the proper state and county stamps being affixed thereto, there shall be a rebuttable presumption that such cigarettes are being kept with the intent to violate this ordinance. Such possession of cigarettes without the proper state and county stamps shall also serve as prima facie evidence of a violation of section 24.

### **Sec. 26. Enforcement and penalties.**

- (a) Any person violating any of the provisions of this ordinance shall be guilty of a Class 1 misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax imposed by this ordinance.
- (b) The term "corporate partnership or limited liability company officer," as used in this section means an officer or employee of a corporation, or a member, or employee of a partnership or member, manager or employee of a limited liability company who, as such officer, employee, member or manager, is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who (i) had actual knowledge of the failure or attempt as set forth herein and (ii) had authority to prevent such failure or attempt.
- (c) Any corporate or partnership officer as defined in this section and in Code of Virginia § 58.1-3906, as amended, or any other person required to collect, account for and pay over any county taxes, who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall, in addition to any other penalties proved by law, be guilty of a Class 1 misdemeanor.
- (d) Each violation of or failure to comply with this ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this ordinance.
- (e) Any court to which any violation of this ordinance is brought and heard may, along with any other penalties prescribed by law, order injunctive relief, forfeiture, and/or sale of any item covered under this ordinance upon motion of the county. All such proceeds shall be ordered to be paid to the county. Only the circuit court shall have the authority to order release of forfeited property or order assignment of sales proceeds, if any, from property forfeited pursuant to sections of this ordinance other than this section 26.
- (f) The commissioner of the revenue, treasurer, Caroline County Sheriff's Office and any other law enforcement officers or departments, including the office of the commonwealth's attorney and county attorney, and any other entities designated by the board or commissioner are empowered to enforce this ordinance. All costs

of enforcement shall first be paid through any asset forfeitures under this ordinance, and then, if insufficient, by appropriation at the discretion of the board of supervisors through general funds representing the revenue generated from the taxes under this ordinance.

**Sec. 27. Severability.**

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

# MEMORANDUM



To: Board of Supervisors

From: Charles M. Culley, Jr., County Administrator  
Alan L. Partin, Deputy County Administrator

Date: March 3, 2022

Subject: Possible Implementation of Local Cigarette Tax

---

## **Background**

As of July 1, 2021, all localities in Virginia may impose a cigarette tax of up two cents per cigarette (\$0.02) or 40 cents (\$0.40) per pack of 20 cigarettes. This local tax is in addition to the 60 cents per pack tax imposed by the Commonwealth of Virginia. Prior to the new law taking effect, only cities, towns and two counties (Arlington and Fairfax) were authorized to tax cigarettes.

The tax applies only to cigarettes. It does not apply to cigars, chewing tobacco, electronic cigarettes (“vaping”) or other tobacco products.

The Commissioner of the Revenue’s Office is working on an estimate of the amount of annual revenue that a cigarette tax would generate in Caroline County, but it is likely to be in excess of \$100,000 at a minimum. The memorandum is intended to give the Board of Supervisors the

information it needs to decide whether to move forward with the implementation of a cigarette tax.

**What Counties in Proximity to Caroline Have Done**

The table below depicts whether localities in proximity to Caroline County have implemented a local cigarette tax as of March 3, 2022:

Locality	Cigarette Tax	Amount of Tax
Hanover	No	N/A; not currently under consideration
Essex	Yes	\$0.40 per pack of twenty cigarettes
King George	Yes	\$0.40 per pack of twenty cigarettes
Orange	Yes	\$0.12 per pack
Spotsylvania	Yes	\$0.30 per pack of 20; \$0.02 for each cigarette in packages of fewer or more than 20
Stafford	Yes	\$0.30 per pack of 20
King & Queen	No	N/A
King William	No	N/A; possible implementation has been previously discussed; still under consideration
Middlesex	Yes	Forty cents (\$0.40) for each package containing 20 cigarettes and two cents (\$0.02) for each cigarette
Lancaster	Yes	\$0.40 per pack of twenty cigarettes
Westmoreland	Yes	Forty cents (\$0.40) for each package containing 20 cigarettes and two cents (\$0.02) for each cigarette

**Options to Implement, Administer and Enforce**

There appear to be two options available to implement, administer and enforce a cigarette tax: 1) join a regional cigarette tax board; or 2) implement the tax on our own through the Commissioner of the Revenue’s Office (referred to as “self-implementation”).

### Option #1 - Regional Cigarette Tax Board

The majority of counties enacting a cigarette tax have opted to join a regional cigarette tax board, which administers and enforces the tax on behalf of its member localities.

The following regional cigarette tax boards currently exist in the Commonwealth of Virginia:

**Blue Ridge Cigarette Tax Board** – member localities are Albemarle, Augusta, Charlottesville, Fluvanna, Greene, Madison County, Town of Madison and Orange County.

**Chesapeake Bay Region Cigarette Tax Board** – member localities are Colonial Beach, Essex, Lancaster, Middlesex, Montross, Urbana, Warsaw and Westmoreland.

**Mount Rogers Cigarette Tax Board** – member localities are Bland, Chilhowie, Dublin, Marion, Pulaski County, Rural Retreat, Saltville, Smythe, Wythe and Wytheville.

**Northern Virginia Cigarette Tax Board** – member localities Alexandria, Clifton, Dumfries, Fairfax City, Fairfax County, Falls Church, Fauquier, Fredericksburg, Haymarket, Herndon, Hillsboro, Leesburg, Loudoun, Lovettsville, Middleburg, Prince William, Purcellville, Manassas, Manassas Park, Round Hill, Spotsylvania, Stafford, Vienna and Warrenton.

The Northern Neck Planning District Commission (NNPDC) serves as the administrative fiscal agent for the newly formed Chesapeake Bay Region Cigarette Tax Board (CBRCTB). Staff has spoken with NNPDC Executive Director Jerry Davis and determined that the CBRCTB will readily accept Caroline County as a member should the County adopt a cigarette tax. The Board of Supervisors would only need to approve the attached Chesapeake Bay Region Cigarette Tax Agreement to join the regional board.

## **How the Chesapeake Bay Region Cigarette Tax Board Works**

Cities, towns and counties that impose a local cigarette tax require the use of their own tax stamp that must be placed on every pack of cigarettes sold in each locality. Wholesalers pay the tax by purchasing rolls of stamps from each locality or a regional board. The appropriate local stamp is then placed on the cigarettes that wholesalers distribute to retail establishments.

In the case of the Chesapeake Bay Region Cigarette Tax Board, a single stamp has been created for all member localities. The Northern Neck Planning District Commission (acting as the fiscal administrative agent) has an agreement in place that allows wholesalers to purchase dual CBRCTB/Commonwealth of Virginia cigarette stamps directly from the Virginia Department of Taxation. Wholesalers then provide a monthly report to the NNPDC indicating how many stamps and cigarettes have been sold by locality and individual retail location and the amount of tax money generated. NNPDC verifies the numbers, collects the tax money from the distributors and pays each locality its share each month, minus a 5% administrative fee. The 5% charge covers all costs to implement the cigarette tax including periodic spot checks at retail stores to ensure compliance.

No inquiry has been made to date about possible Caroline membership in the Northern Virginia Cigarette Tax Board. Staff will do so at the Board's direction.

### Advantages of Joining Regional Cigarette Tax Board

- Easiest and least burdensome way to implement tax
- Commissioner of the Revenue's Office does not have to purchase and maintain inventory of stamps locally

- Stamps purchased and sold by regional board through an agreement with the Virginia Department of Taxation

#### Disadvantages of Joining Regional Cigarette Tax Board

- Tax distributed to localities after retail sale of cigarettes, not when stamps are sold to wholesalers/distributors
- County pays for service out of taxes collected, thereby reducing total revenue
- Must rely on regional tax board to confirm accuracy of cigarette stamp sales by locality

#### Option #2 – Self-Implementation

Under the self-implementation option, the County itself (the Commissioner of the Revenue's Office) would buy stamps and sell them to cigarette wholesalers and distributors. Upon adoption of an ordinance by the Board of Supervisors, the Commissioner of the Revenue's Office would send a notice to retail businesses licensed to sell cigarettes in Caroline notifying them of the upcoming tax, applicable regulations and the implementation date. The letter would require the retailer to send back a form identifying where they purchase cigarettes. The Commissioner's Office would then purchase and maintain an inventory of stamps and send stamp ordering information to these wholesalers and distributors. The wholesalers and distributors would purchase County stamps from the Commissioner's Office and affix them to cigarettes sold to Caroline retailers.

The local cigarette tax would be collected upon the sale of stamps to the wholesaler.

Staff and Commissioner of the Revenue Mark Bissoon met with a representative of Ashton Potter (one of two companies that manufacture cigarette stamps) to discuss how the self-implementation process works. Stamps are most commonly sold in rolls of 15,000 with 36 rolls



to a case (or 540,000 stamps). The cost is typically quoted per thousand stamps at a cost of less than \$6 per thousand stamps. Stamp inventory would be maintained by the Commissioner's Office and sold to wholesalers on an as needed basis.

#### Advantages of Self-Implementation

- County receives maximum available revenue without having to pay administration fee
- Tax received immediately upon sale of stamps to wholesaler/distributor. County does not have to rely on accurate tracking of retail sales by third-party to collect revenue

#### Disadvantages of Self-Implementation

- More work for Commissioner of Revenue staff
- Must determine how compliance will be audited at retail establishments

#### **Analysis of Options**

To date, King George and Page County are the only localities that staff is aware of that have opted for self-implementation of the cigarette tax through the Commissioner of the Revenue's Office. County Administrator Charles Culley, Deputy County Administrator Alan Partin and Commissioner of the Revenue Mark Bissoon spoke with Page County Commissioner Becky Smith about her office's experience with self-implementing the local cigarette tax. Ms. Smith shared that implementing the tax had not proven to be burdensome for her office and indicated that it "one of the easiest programs she has ever done." She believes selling the Page County cigarette stamp to wholesalers through her office rather than a regional board is well worth it to obtain the maximum possible revenue for the County. She also shared that no new positions have been added and compliance with the cigarette tax is being handled by the Commissioner's Office.

We also spoke with King George County Commissioner Judy Hart, who has also had a good experience with administering the cigarette tax from her office rather than using a regional cigarette tax board.

As a result of these conversations, Mr. Bissoon is comfortable with assuming responsibility for implementing and possibly enforcing the program.

### **Recommendation**

After analyzing the available information, the County Administrator's Office recommends self-implementation should the Board of Supervisors decide to move forward with a local cigarette tax. As previously indicated, this approach will generate the maximum revenue for the County by eliminating the need to pay an administrative fee of 5% to a regional board to implement the tax. In addition, the County will collect the tax immediately upon the sale of stamps to wholesalers and any concerns about whether retail sales are being properly tracked and reported will be eliminated.

While not a financial windfall, a cigarette tax will provide a significant new source of revenue for Caroline County. As can be seen, many neighboring localities have previously chosen to implement the tax with no apparent negative impact. The contiguous counties of Hanover, King William and King and Queen have yet to adopt the tax to date. However, staff does not believe the implementation of a cigarette tax in Caroline will drive consumers to purchase cigarettes from other non-tax localities in any meaningful way.

### **Next Steps**

If the Board wishes to move forward it will need to conduct a public hearing on an ordinance to establish, levy, administer and enforce a local tax upon the sale of cigarettes within Caroline County. Staff has been gathering sample ordinances from other localities that have already

implemented a cigarette tax. If the Board wishes to proceed, staff and County Attorney Ben Emerson will develop an ordinance for a first reading at an upcoming Board meeting.