

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

Meeting Date: September 27, 2022

Title: Unfinished Business – Continued Discussion of Possible Admissions Tax

(Check Mark)

- | | |
|---|--|
| <input type="checkbox"/> Consent | <input type="checkbox"/> Closed Meeting |
| <input checked="" 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 |

Background

At the direction of Chairman Underwood, the Board of Supervisors discussed the possibility of levying an admissions tax in Caroline County at its August 9, 2022 meeting. At the conclusion of the August 9 discussion, Chairman Underwood directed staff to place further discussion of the admissions tax on the agenda for the September 27 Board meeting.

Listed below are the relevant sections of the Code of Virginia regarding the ability of counties to levy an admissions tax.

§ 58.1-3818. Admissions tax in counties.

A. Any county, except as provided in subsection C, is hereby authorized to levy a tax on admissions charged for attendance at any event. The tax shall not exceed 10 percent of the amount of charge for admission to any such event. Notwithstanding any other provisions of law, the governing bodies of such counties shall prescribe by ordinance the terms, conditions, and amount of such tax and may classify between events conducted for charitable purposes and events conducted for non-charitable purposes.

B. Notwithstanding the provisions of subsection A, localities may, by ordinance, elect not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the

event will be transferred to an entity or entities that are exempt from sales and use tax pursuant to § [58.1-609.11](#).

C. No tax under this section shall be authorized in any county in which a state sales and use tax, in addition to the taxes authorized pursuant to §§ [58.1-603](#) and [58.1-604](#), is imposed at a rate of at least one percent, a portion of which is dedicated to the promotion of tourism.

§ 58.1-3817. Classification of events to which admission is charged.

In accordance with the provisions of Article X, Section 1 of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:

1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.
2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.
3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
4. Admissions charged to participants in order to participate in sporting events.
5. Admissions charged for entry into major league baseball games and events at any major league baseball stadium which has seating for at least 40,000 persons.
6. All other admissions.

Code of Virginia § 58.1-3817 enables localities to apply an admissions tax at different rates for different classifications.¹ For example, Roanoke County applies the following rates based on the following classifications:

- (a) Upon admissions to any event, the gross receipts of which go wholly to a charitable purpose or purposes, **at the rate of zero (0) percent;**
- (b) Upon admission to any event at a public or private elementary, secondary or college sponsored event, including events sponsored by a student organization

¹ Section 58.1-3817 “is a classification statute that permits the taxing authority to treat certain classes of admissions separately.” 1998 Va. Op. Att’y Gen. 125 (1998); “Nothing in the statute... prohibits [a locality] ... from imposing different rates on the different classes.” *City of Portsmouth v. Portsmouth Cath. Elementary Sch. P. T. A.*, 217 Va. 199, 200, (1976).

sponsored by such school, and athletic events authorized by such school **at the rate of zero (0) percent;**

(c) Upon admission into any museum, botanical or similar garden or zoo **at the rate of five (5) percent;**

(d) Upon admission as a participant in any sporting event **at the rate of five (5) percent;**

(e) Upon admissions to all other taxable events **at the rate of five (5) percent**

What Constitutes an Event to Which an Admissions Tax Would Apply?

The term “event” is not defined in the Code of Virginia enabling legislation and is presumably left to individual localities to define by ordinance.

As an example, New Kent County defines an “event” as an occurrence, affair or other occasion, whether occurring sporadically or on a regular basis. To be subject to the tax imposed, admission must be charged for attendance at the event. Examples of events included in this definition are dances, athletic competitions, automobile races, musical festivals, and/or other happenings or gatherings at which admission is charged for attendance and shall also include events, whether sporadic or regularly occurring, at establishments and places of business which charge a cover charge or admissions charge for the right to attend, such as dance halls, bars, theater performances, whether live or by tape or film, carnivals or circuses, recreation facilities and amusement parks.

Roanoke County applies an admissions tax on the price of admissions for any public amusement, entertainment, performance, exhibition, sport or athletic event occurring in Roanoke County.

Additional Information on Topics Raised by Board Members During August 9 Discussion

During the discussion at the August 9 Board meeting, views expressed by Board members appeared to fall into one of the following categories:

Category #1 – Support for an Admissions Tax Provided a Portion of the Revenue is Utilized for Meadow Event Park Related Improvements

Some members of the Board appeared to support the imposition of an admissions tax, provided that a portion of the revenue derived from the tax is utilized for undefined improvements to Meadow Event Park (possibly to mitigate its impact on surrounding neighbors).

While the Board is certainly entitled to deploy the County’s resources as it deems reasonable and appropriate, the County Attorney’s Office wishes to highlight that the adoption of an admissions tax would apply uniformly throughout the County, and the proceeds from such a tax would not be tied in any way to producing revenue to reinvest in any specific taxpayer, including Meadow Event Park. Should the Board adopt an

admissions tax, it will apply to venues other than MEP both now and increasingly in the future. For this reason, the decision regarding whether to levy the tax should be independent of whether any particular entity or business will benefit from the revenue produced.

This same principle applies to allowing any entity to assert undue influence on whether to levy an admissions tax and, if so, under what circumstances.

Category #2 Concern that an Admissions Tax will be a Burden to Small Businesses/Groups that Would Have to Collect It

During the August 9 discussion, Mr. Forehand brought up concerns about the potentially burdensome impact on small businesses or groups that would have to collect an admissions tax. As examples, he cited wrestling and jujitsu tournaments held in rented space at MEP, Rappahannock Electric Cooperative (REC) renting out MEP for a utility rodeo and music concerts at Mr. B's on Gatewood Road north of Ladysmith.

As a baseline, it is clear from the Code of Virginia and examples of other local ordinances that localities can choose not to levy an admissions tax on:

- 1) Any event in which the gross receipts go wholly to a charitable purpose or purposes; and
- 2) Any event at a public or private elementary, secondary or college sponsored event, including events sponsored by a student organization sponsored by such school, and athletic events authorized by such school.

With regard to the wrestling and jujitsu tournaments held at MEP mentioned by Mr. Forehand, whether or not an admissions tax would apply would depend on whether the organizer charges admission for spectators to attend the event. For the REC example, it appears that REC charges no admission fee to attend the utility rodeo at Meadow Event Park. Provided this is the case, any admissions tax levied by Caroline County would not apply in this circumstance. Finally, it seems clear that an admissions tax would apply to concerts at Mr. B's facility on Gatewood Road.

In general, it appears that the intent of most localities that have adopted an admissions tax ordinance is to apply the tax to any for-profit entity that charges admission to attend an event (unless the proceeds go wholly to a charitable purpose or purposes).

Possible Methods to Mitigate Impact on Small Business or Organizations

As previously indicated, § 58.1-3818 of the Code of Virginia enables counties to prescribe by ordinance the terms, conditions, and amount of an admissions tax. Staff believes, and County Attorney Chris Mackenzie concurs, that this language enables the Board to put certain conditions in place to mitigate the impact on small businesses and organizations should it so choose. For example, we believe the Board could consider establishing a minimum attendance threshold such as 250 people (note: 250 is merely an illustration; the Board can establish any number it so desires) for the admissions tax.

Under this scenario, events that plan to sell no more than 250 tickets to attend an event (or know that 250 or less will attend) would not be subject to the admissions tax.

As another example, tickets sold under a certain dollar value could be excluded from the admissions tax. In either example, the County would have to develop procedures to effectively manage and enforce any such exemption.

Potential Budget Impact: The Commissioner’s Office estimates that an admissions tax would generate the following new revenue for the County depending on the tax percentage applied:

Tax Rate	Estimated Revenue
10%	\$657,020
9%	\$591,318
8%	\$525,616
7%	\$459,914
6%	\$394,212
5%	\$328,510
4%	\$262,808
3%	\$197,106
2%	\$131,404
1%	\$65,702

Requested Action from Board of Supervisors: Discuss and direct staff on the following issues: 1) does the Board wish to move forward with consideration of an ordinance creating an admissions tax in Caroline County? and 2) if so, (a) what percentage admissions tax should be proposed for each classification and (b) does the Board want any exemptions included based on event size or ticket cost?