

## **CHAPTER 15**

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## **ARTICLE I. TAXES IN GENERAL<sup>1</sup>**

### **Sec. 15-1. Purpose.**

This Article provides for a fiscal year for taxes on real estate, tangible personal property, and machinery and tools in accordance with the provisions of § 58.1-3010 of the Code of Virginia (1950), as amended; the semi-annual payment of real estate taxes; an exemption on real estate taxes for the elderly and the permanently disabled; and the payment of tangible personal property and machinery and tools taxes.

### **Sec. 15-2. Fiscal year.**

The fiscal year for Bath County, Virginia, shall begin on the 1st day of July and shall end on the 30th day of June of the succeeding year.

### **Sec. 15-3. Fiscal year for tax collection.**

In accordance with the provisions of § 58.1-3010 of the Code of Virginia (1950), as amended, taxes on real estate, tangible personal property, and machinery and tools, shall be levied, imposed and collected on a fiscal year basis rather than a calendar year basis, beginning July 1, 1994, and ending on June 30, 1995, and continuing for each and every fiscal year

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<sup>1</sup> Contents of this Article are based upon the following County ordinance - **Ord. of 12-8-92** pertaining to changing the calendar year to a fiscal year, real estate tax; personal property tax; etc.; **Ord. of \_\_\_-\_\_-\_\_** pertaining to change in due date for personal property tax; **Ord. of 7-13-04** pertaining to transient occupancy tax (Art. X); **Ord. of 8-10-04** pertaining to land use tax (Art. XI); and **Ord. of 2-8-05** pertaining to the exemption for the elderly and disabled.

thereafter until otherwise provided by law or ordinance adopted by the Bath County Board of Supervisors.

**Sec. 15-4. Assessment date.<sup>2</sup>**

The date of assessment for tangible personal property, machinery and tools, real estate, and public service corporation property shall be the first day of January of each year immediately preceding the fiscal year for which taxes are to be levied, imposed and collected for said tangible personal property, machinery and tools, real estate, and public service corporation property.

Adopted by the Bath County Board of Supervisors following a public hearing, duly advertised on July 27, 2007 and August 3, 2007, on August 14, 2007.

**Sec. 15-4.(a) passed 2-12-08 (see Note 3 below).<sup>3</sup>**

**Sec. 15-5. Tax rate to be set by Board of Supervisors.**

The Bath County Board of Supervisors shall set the tax rate for real estate and for tangible personal property and machinery and tools between January 1st and June 30th of each year immediately preceding the fiscal tax year.

**Sec. 15-6. Real estate tax; penalty and interest.**

Payment of taxes on real estate in Bath County, Virginia, shall be due and payable in equal installments, the first installment being due and payable on December 5th and the second installment being due and payable on June 5th of the succeeding year. A penalty shall be imposed on any installment not paid when due in the amount of five percent (5%); provided however, that the penalty shall not exceed the amount of the tax assessable. Interest on the December 5th installment shall commence on July 1st of the year following the December 5th installment and interest on the June 5th installment shall commence on January 1<sup>st</sup> of the year following the June 5th installment. Interest shall be at the rate of ten percent (10%) per annum and shall be applied to the unpaid installment and penalty thereon.

**State law reference**-Power of County to establish filing dates, penalties, interest, etc., Code of Virginia, § 58.1-3916.

**Sec. 15-7. Real estate tax; exemption for elderly and disabled.<sup>4</sup>**

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<sup>2</sup> Adopted by the Bath County Board of Supervisors on August 14, 2007, following a public hearing, duly advertised on July 27, 2007, and August 3, 2007.

<sup>3</sup> After a duly advertised public hearing, on February 12, 2008, the Bath County Board of Supervisors, on motion by the Hon. Percy C. Nowlin, III, passed unanimously the following final 2008 date for application to the Board of Equalization as an ordinance: "With reference to the reassessment of 2008, the Board of Supervisors sets April 25, 2008 as the date by which property owners or lessees must make application to the Board of Equalization regarding relief for the assessment set for their property. The Board of Supervisors sets June 13, 2008, as the final date by which all such applications for relief must be finally disposed by the Board of Equalization. These deadlines shall be clearly stated on the notice of assessment sent to the property owner."

<sup>4</sup> **State law reference**-Authority for this Section, Code of Virginia, § 58.1-3210 et seq. This section was last amended by Resolution duly adopted by the Bath County Board of Supervisors on February 8, 2005.

(a) *Basic exemption.*

(1) *Persons 65 years of age or older.* Real estate owned and occupied as the sole dwelling of a person or persons not less than sixty-five years of age shall be exempt from taxation; provided that those persons come within all the provisions, limitations, and conditions set forth in this Article, including but not limited to the Income Requirement and the Combined Net Financial Worth provisions set forth herein. The exemption herein authorized may be granted provided the person or persons occupying such dwelling and owning title or partial title thereto are sixty five years of age or older on or before December 31st preceding the fiscal tax year for which the exemption is sought.

(2) *Persons permanently and totally disabled.* Real estate owned and occupied as the sole dwelling of a person or persons who are permanently and totally disabled shall be exempt from taxation; provided, that those persons come within all the provisions, limitations, and conditions set forth in this Article, including, but not limited to, the Income Requirement and the Combined Net Financial Worth provisions set forth herein. The exemption herein authorized may be granted provided the person or persons occupying such dwelling and owning title or partial title thereto are permanently and totally disabled on or before December 31st preceding the fiscal tax year for which the exemption is sought. For purposes of this Article, the phrase "*permanently and totally disabled*" shall mean unable to engage in any substantial gainful activity by reason, of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life.

(b) *Income requirement.*

(1) The total combined income during the immediately preceding calendar year from all sources of the owners of the dwelling living therein and of the owners' relatives living in the dwelling shall not exceed fifty thousand dollars (\$50,000.00); provided, that the first ten thousand dollars (\$10,000.00) of income of each relative, other than the spouse of the owner or Owners, who is living in the dwelling and who does not qualify for the exemption provided by Subparagraph (b) (2) below, shall not be included in such total; and provided further that the first ten thousand dollars (\$10,000.00) of income of an owner who is permanently disabled shall not be included in such total.

(2) Notwithstanding the foregoing, if a person has already qualified for this exemption and such person can prove by clear and convincing evidence that after so qualifying the person's physical or mental health has deteriorated to the point that the only alternative to permanently residing in a hospital, nursing home, convalescent home or other facility for physical or mental care is to have a relative move in and provide care for the person, and if a relative does then move in for that purpose, then none of the relative's income shall be counted toward the income limit, provided the owner of the residence has not transferred assets in excess of \$10,000.00 without adequate consideration within a three-year period prior to or after the relative moves into such residence.

(c) *Combined net financial worth.*

(1) The combined net financial worth, including equitable interests of the owners, as of the 31st day of December immediately preceding the fiscal year for which the exemption is sought, and of the spouse of any owner, excluding the value of the dwelling and the land, not exceeding ten acres, upon which it is situated, and excluding household furnishings as defined in Virginia Code § 58.1-3211.2, shall not exceed two hundred thousand dollars (\$200,000.00).

(d) *Filing requirements.*

(1) The person or persons claiming such exemption shall file annually with the Commissioner of Revenue of Bath County on forms to be provided by the Commissioner an affidavit setting forth: (1) the names of the related persons occupying said real estate; and (2) that the total combined net worth, including equitable interests of the owners and the combined income from all sources of the person or persons specified in Paragraph (b) above does not exceed the limits prescribed in this Article. Such affidavit shall be filed no later than the first day of May of each year.

(2) The Commissioner of the Revenue is hereby authorized to make such other reasonably necessary inquiry of persons seeking such exemption, requiring answers under oath, to determine their qualifications as specified herein and may also require the production of State and Federal tax returns to establish the income or financial worth of any applicant for tax relief under the provisions of this Article.

**Sec. 15-8. Tangible personal property, machinery and tools tax and returns.**

*Tangible personal property* as used in this Article shall be deemed to include but not be limited to the following: motor vehicles, trailers, mobile homes, boats, airplanes and other forms of aircraft, heavy construction equipment and machinery, and furniture and office equipment in businesses and professions.

Every person, firm, corporation, and other taxpayer owning tangible personal property, machinery and tools on January 1st of each year, physically located or normally garaged, docked, stored, or parked in Bath County, Virginia, shall be required to file a return for such tangible personal property, machinery and tools with the Commissioner of Revenue of Bath County on the form so prescribed. Such return shall be filed with the Commissioner of Revenue on or before May 1st of each year.

Payment of taxes on tangible personal property, machinery and tools shall be due and payable on December 5th of each year. The assessment for tangible personal property, machinery, and tools shall take place on January 1, 1996, for those taxes due on December 5, 1996, and shall take place on the 1st day of January of each and every year thereafter to be due on the following 5th day of December for each and every year thereafter.

Failure to pay any such tax when the same is due and payable shall result in a penalty of 5% of the tax due; provided however, that the penalty shall not exceed the amount of tax assessable. Interest at the rate of 10% per annum on the unpaid taxes and penalty thereon shall commence on January 1st of the year following the December 5th due date.

**Sec. 15-9. Tax rate on emergency vehicles.<sup>5</sup>**

One motor vehicle per household which is owned and regularly used by each active member of the volunteer fire departments and rescue squads to respond to calls may be taxed based upon its assessed value at a rate of ten cents (\$0.10) per one hundred dollars (\$100.00); provided that the chief or head of the volunteer organization shall deliver a certified list by January 2nd of each year, to the Commissioner of the Revenue which list shall contain the names of each volunteer for the organization who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, together with the motor vehicle identification number of each qualifying volunteer's motor vehicle.

**ARTICLE II. RELEASE OF TAX LIEN ON A PORTION OF REAL ESTATE<sup>6</sup>**

**Sec. 15-10. Release of tax lien on a portion of real estate.**

(a) When any individual purchases or acquires a portion of a tract of real estate in Bath County, Virginia, such individual or the Treasurer may apply to the Commissioner of the Revenue to determine the amount of any tax or assessment that is properly chargeable against such portion of real estate.

(b) The Treasurer shall release such portion of real estate from any lien for delinquent taxes upon payment of the total amount of taxes and penalty and interest due on such portion of real estate.

(c) The term *individual* as used in this article shall include any person, firm, business, corporation, partnership, or other legal entity purchasing or acquiring a portion of a tract of real estate in Bath County, Virginia.

**ARTICLE III. SALES TAX<sup>7</sup>**

**Sec. 15-11. General retail sales tax.**

Pursuant to Title 58.1, Chapter 6, § 58.1-605(B) of the Code of Virginia, a local general retail sales tax at the rate of one per cent to provide revenue for the General Fund for the County of Bath, is hereby levied. Said tax shall be added to the rate of the State sales tax imposed by §§ 58.1-603 and 58.1-604 of the Code of Virginia. It shall be subject to all provisions of Chapter 6 of Title 58.1 of the Code of Virginia, all the amendments thereto and the rules and regulations published with respect thereto.

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<sup>5</sup> **State law reference**-Authority for this section, Code of Virginia, § 58.1-605. **Contents of this section are based upon the following County ordinance – Ord. of 4-14-92;** pertaining to emergency vehicles.

<sup>6</sup> **State law reference**-Similar provision, Code of Virginia, § 58.1-3226.1. **Contents of this Article are based upon the following County ordinance - Ord. of \_\_-\_\_-\_\_;** pertaining to the release of lien on a portion of real estate.

<sup>7</sup> **State law reference**-Virginia retail sales and use tax act, Code of Virginia, § 58.1-600 et seq; To what extent and under what conditions cities and Counties may levy local sales taxes, etc., Code of Virginia, § 58.1-605. **Contents of this Article are based upon the following County ordinance - Ord. of \_\_-\_\_-\_\_;** pertaining to sales tax.

**Sec. 15-12. Administration and collection.**

All local sales tax levied pursuant to this Article shall be administered and collected by the State Tax Commissioner of the Commonwealth of Virginia in the same manner, subject to the same penalties as provided for the State sales tax, with the adjustments required by § 58.1-628.

**ARTICLE IV. COUNTY RECORDATION TAX<sup>8</sup>**

**Sec. 15-13. County recordation tax.**

There is hereby imposed a County (local) recordation tax in an amount equal to one-third of the amount of the State recordation tax collectible for the State on the first recordation of each taxable instrument in Bath County. No tax shall be levied pursuant to this Article when the State recordation tax imposed under Chapter 8 (§ 58.1-800 et seq. of the 1950 Code of Virginia, as amended) is fifty cents (\$0.50).

**Sec. 15-14. Collection and Compensation.**

The Clerk of the Circuit Court of Bath County shall collect the tax imposed by this Article and shall deposit all funds collected into the treasury of Bath County. The Clerk collecting the tax imposed pursuant to this Article shall be entitled to compensation for such services in an amount equal to five percent (5%) of the amount so collected and paid over.

**ARTICLE V. TAX ON PROBATE OF WILLS  
AND GRANT OF ADMINISTRATION OR TAX IN LIEU OF PROBATE TAX**

**Sec. 15-15 Imposition of tax on probate of wills or grant of administration or tax in lieu of probate tax.**

In addition to any State taxes payable for the probate of wills or grant of administration, there shall be imposed a tax on probate of wills or grant of administration of descendants' estates by the Circuit Court of Bath County. In lieu of probate tax a charge is hereby imposed on the recordation of a list of heirs or an affidavit unless a will has been probated for the decedent or there has been a grant of administration on the decedent's estate.

**Sec. 15-16. Amount of tax.**

The amount of the local tax described herein shall be equal to one-third of the State tax on the probate of wills and grant of administration in effect at the time the will is probated or letters of administration granted. A \$25 fee is hereby charged on the recordation of a list of heirs or an affidavit unless a will has been probated for the decedent or there has been a grant of administration on the decedent's estate

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<sup>8</sup> **State law reference**-Local recordation tax, Code of Virginia, §58.1-814, 58.1-3800 et seq. **Contents of this Article are based upon the following County ordinance - Ord. of 6-8-93;** pertaining to County recordation tax and County ordinance of 4-12-16 pertaining to tax in lieu of probate tax. Code of Virginia §64.2-509, 64.2-510, and 58.1-1717.1.

**Sec. 15-17. Collection and compensation.**

The tax imposed by this Article shall be collected by the Clerk of the Circuit Court of Bath County and paid into the treasury of Bath County. The Clerk shall receive compensation in an amount equal to five percent (5%) of the amount collected and remitted.

**ARTICLE VI. BANK FRANCHISE TAX<sup>9</sup>**

**Sec. 15-18. Definitions.**

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

*Bank* shall mean any incorporated bank, banking association or trust company organized by or under the authority of the laws of the Commonwealth and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in the Commonwealth or having a charter which designates any place within the Commonwealth as the place of its principal office, whether such bank or banking association is authorized to transact business as a trust company or not, and any joint stock land bank or any other bank organized by or under the authority of the laws of the United States upon which the Commonwealth is authorized to impose a tax. The term shall exclude all corporations organized under the laws of other States and doing business in the commonwealth, corporations organized not as banks under the laws of the Commonwealth and all natural persons and partnerships.

*Net Capital* of any bank shall be ascertained by adding together its capital, surplus and undivided profits to obtain gross capital and deducting therefrom (I) the assessed value of real estate as provided in § 58.1-1206, (ii) the book value of tangible personal property under § 58.1-1206, (iii) the pro rata share of government obligations as set forth in § 58.1-1206, (iv) the capital accounts of any bank subsidiaries under § 58.1-1206, and (v) (a) the amount of any reserve for loan losses which is allowable by the Internal Revenue Service in computing Federal taxable income of the bank and which amount of reserve is included in capital, surplus and undivided profits as defined hereinabove and (b) the amount of any reserve for marketable securities valuation which is included in capital, surplus and undivided profits as defined hereinabove to the extent that such reserve reflects the difference between the book value and the market value of such marketable securities on December 31 next preceding the date for filing the bank's return under § 58.1-1207.

**Sec. 15-19. Imposition of Bank Franchise Tax.**

(a) Pursuant to the provisions of § 58.1-1210 of the 1950 Code of Virginia, as amended, there is hereby imposed upon each bank located outside any incorporated town but otherwise within the boundaries of this County a tax on net capital equal to eighty (80%) percent of the State rate of taxation set forth in § 58.1-1204 of the 1950 Code of Virginia, as amended.

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<sup>9</sup> **State law reference**-Bank franchise tax, Code of Virginia, § 58.1-1200 et seq. **Contents of this Article are based upon the following County ordinances - Ord. of 1-1-80;** pertaining to bank franchise tax; **Ord. of 1-1-62;** pertaining to bank stock tax.

(b) In the event that any bank located within the boundaries of this County but outside any incorporated town located herein and is not the principal office but is a branch extension or affiliate of the principal office, the tax upon such branch shall be apportioned as provided by § 58.1-1211 of the Code of Virginia.

**Sec. 15-20. Filing of return and payment of tax.**

(a) On or after the first day of January of each year, not later than March 1" of any such year, all banks whose principal offices are located within the County of Bath but outside any incorporated town herein shall prepare and file with the Commissioner of the Revenue a return as provided by § 58.1-1207 of the 1950 Code of Virginia in duplicate which shall set forth the tax on net capital computed pursuant to Chapter 12 of Title 58.1 of the 1950 Code of Virginia. The Commissioner of the Revenue shall certify a copy of such filing of the bank's return and schedules and shall forthwith transmit such certified copy to the State Department of Taxation.

(b) In the event that the principal office of a bank is located outside the boundaries of Bath County or within any town located herein, and such bank has branch offices located forth in Section A hereof, any bank conducting such branch business shall file with the Commissioner of Revenue or appropriate assessing office of Bath County a copy of real estate deduction schedule, apportionment and other items which are required by § 58.1-1207, § 58.1-1211 and § 58.1-1212 of the 1950 Code of Virginia.

**Sec. 15-21. Payment of tax.**

Each bank, on or before the first day of June of each year, shall pay into the Treasurer's Office of Bath County all taxes imposed pursuant to this Article.

**State law reference**-Similar provisions, Code of Virginia (1950), § 58.1-1207.

**Sec. 15-22. Penalty upon bank for failure to comply with Article.**

Any bank which fails to file a return or pay the State tax required by this Article or fails to comply with any other provision of this Article shall be subject to a penalty of five percent (5%) of the tax due. If the Commissioner is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with § 58.1-15 of the Code of Virginia.

**State law reference**-Similar provisions, Code of Virginia, § 58.1-1216.

## **ARTICLE VII. COURTHOUSE ASSESSMENT FEES<sup>10</sup>**

### **Sec. 15-23. Assessment for courthouse construction, renovation or maintenance as part of fees incidental to criminal or traffic cases.**

(a) The Bath County Board of Supervisors ("Board") shall levy a two dollar (\$2.00) fee ("Fee") for courthouse or jail and court-related facilities construction, renovation, and maintenance, as part of the costs assessed in (i) each civil action filed in the General District or Circuit Courts for the County, and (ii) each criminal or traffic case in the General District or Circuit Courts for the County, in which the defendant is charged with a violation of any statute or ordinance.

(b) In criminal and traffic cases, the Fee shall be collected from the defendant by the clerk of the court in which the action is pending in all cases where costs are assessed. In civil actions, the Fee shall be collected from the party filing the civil action by the clerk of the court in which the action is filed.

(c) The clerk shall remit such Fees to the County Treasurer to be held by the Treasurer subject to disbursements by the County for the construction of the courthouse or jail and court-related facilities and to defray increases in the cost of heating, cooling, electricity, and ordinary maintenance of such facilities.

**State law reference**-Authority for above assessment, Code of Virginia § 14.1-133.2.

### **Sec. 15-24. Assessment for Courthouse Security.**

(a) There is hereby assessed the sum of ten dollars (\$10.00) as part of the costs in each criminal or traffic case in the district and circuit courts of Bath County in which the defendant is convicted of a violation of any statute or ordinance.

(b) The assessment shall be collected by the Clerk of the court in which case is heard, remitted to the Bath County Treasurer, and held by the Treasurer subject to appropriation by the Board of Supervisors to the Bath County Sheriff's office for the funding of the courthouse security personnel.

**State law reference**-Similar provisions, Code of Virginia, § 53.1-120.D.

### **Secs. 15-25 to 15-29. Reserved.**

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<sup>10</sup> **Contents of this Article are based upon the following County ordinances Ord. 6-8-93**, pertaining to Courthouse assessment fee, and **Ord. 7-9-02 and 6-12-07**, pertaining to courthouse security personnel.

## **ARTICLE VIII. LAW LIBRARY ASSESSMENT FEE<sup>11</sup>**

### **Sec. 15-30. Law library assessment fee.**

(a) The Bath County Board of Supervisors ("Board") shall impose a four dollar (\$4.00) fee ("Fee") for the acquisition of law books, law periodicals and computer legal research services and equipment for the establishment, use and maintenance of a law library which shall be open for the use of the public at hours convenient to the public.

In addition to the acquisition of law books, law periodicals and computer legal research services and equipment, the Fees collected may be used to compensate librarians and other necessary staff for the maintenance of said law library and to provide suitable quarters for such library. The compensation of such librarians and the necessary staff and the cost of suitable quarters for such library shall be fixed by the Board and paid out of the fund created by the imposition of such assessment of cost.

Fees collected may also be used to purchase or lease computer terminals for the purpose of utilizing and accessing the computer research services of the State Law Library.

(b) The assessment provided for herein shall be in addition to all other costs prescribed by law, but shall not apply to any action in which the Commonwealth or any political subdivision thereof or the federal government is a party and in which the costs are assessed against the Commonwealth, political subdivision thereof, or federal government. The Board is authorized to accept contributions to the law library fund from any bar association.

(c) The Fee shall be collected as part of the costs assessed in each civil action filed in the General District or Circuit Courts for Bath County. The Fee shall be collected from the party filing the civil action by the clerk of the court in which the action is filed.

(d) The clerk of court shall remit such Fees to the Treasurer for the County to be held by the Treasurer subject to disbursements by the Board.

**State law reference**-Authority for above assessment, Code of Virginia Section 42.1-70.

## **ARTICLE IX. GROSS RECEIPTS TAX<sup>12</sup>**

### **Sec. 15-31. Gross receipts tax on entities providing heat, light and power.**

There is hereby levied upon every corporation or other entity providing heat, light and power within the County, for the privilege of doing business within the County, a license tax equal to one half of 1 percent of the gross receipts, as defined in Virginia Code 58.1-3702 and, 3732, accruing from sales to the ultimate consumer in the County.

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<sup>11</sup> After a duly advertised public hearing held on September 8, 2009, on motion by the Hon. Stuart L. Hall, with a unanimous 5-0 vote in favor, the Board of Supervisors voted to increase the Law Library Fee from \$2.00 to \$4.00. **State law references** are Section 17.1-281 (A) and Section 42.1-70.

<sup>12</sup> **State law reference**- Authority for this section, Code of Virginia, § 58.1-3737. **Contents of this section are based upon the following County ordinance-Ord. of 11-9-99.**

**ARTICLE X. TRANSIENT OCCUPANCY TAX ON  
HOTELS, MOTELS, AND BOARDING HOUSES<sup>13</sup>**

**Sec. 15-32. Definitions.**

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

*Commissioner of Revenue.* The Bath County Commissioner of Revenue.

*Lodging.* Any space or room furnished to any transient.

*Person.* Any individual.

*Place of Lodging.* Any public or private hotel, motel, boarding house, travel campgrounds, or other facility offering guest rooms within Bath County and rented out for continuous occupancy by the same person or entity for fewer than 30 consecutive days.

*Rental.* The total charge, exclusive of any tax imposed on any such charge, made by any Place of Lodging furnished to any transient. If the charge made by any Place of Lodging to a transient includes any charge for services or accommodations in addition to that of lodging, then such portion of the total charge as represents only lodging rental shall be distinctly set out and billed to such transient by such Place of Lodging as a separate item.

*Transient.* Any person or entity who, for any period of time less than thirty (30) consecutive days, either at his own expense or at the expense of another person or entity, obtains lodging in any Place of Lodging, as hereinabove defined, for which lodging a charge is made. This definition shall not apply to any person who pays for lodging on a daily or weekly basis provided such person continuously occupies the same room or space for thirty (30) or more days.

*Treasurer.* The Bath County Treasurer.

**Sec. 15-33. Levy and rate.<sup>14</sup>**

(a) In addition to all other taxes imposed by law, there is hereby imposed and levied on each and every Place of Lodging, a tax equivalent to two percent of the total amount of charge by a Place of Lodging for room rental for the occupancy of any room or space by or for any such transient.

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<sup>13</sup> **State law reference** - Authority for this Article, Code of Virginia, § 58.1-3819. **Contents of this Article are based upon the following County ordinance - Ord. of 7-13-04**; pertaining to a transient occupancy tax.

<sup>14</sup> Section 15-33 (b), including the designation of Section 15-33 (a), was considered by the Board of Supervisors after a duly advertised public hearing held on June 9, 2009. On June 9, 2009, the passage of the amendment was moved by the Honorable Stuart L. Hall and passed 5-0 in favor, to be effective August 1, 2009, with 5% of the proceeds collected to be retained as a commission as stated in Section 15-35, "Collection and commissions", of the Bath County Code.

(b) Effective August 1, 2009, in addition to the transient occupancy tax levied in Section 15-33 (a), there is hereby imposed an additional transient occupancy tax of two percent of the amount of the charge for the occupancy of any room or space occupied.

(1) The revenues collected from the additional tax shall be designated and spent as follows:

(i) One-half of such revenue shall be designated and spent solely for tourism and travel, marketing of tourism, or initiatives that, as determined after consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

(ii) One-half of such revenue shall be designated and spent solely for the design, operation, construction, improvement, acquisition, and debt service for such expenses on debt incurred after July 31, 2009, of tourism facilities, historic sites, beautification projects, promotion of the arts, regional tourism marketing efforts, capital costs related to travel and transportation including air service, public parks and recreation, and information centers that attract travelers to the locality and generate tourism revenues in the locality.

(2) All other provisions of Article X shall apply to the additional transient occupancy tax imposed under Section 15-33 (b) as they do to Section 15-33 (a).

(3) All tax collections pursuant to Section 15-33 (a) and (b) shall be deemed to be held in trust for Bath County.

**Sec. 15-34. Exceptions.**

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home or home for the aged.

**Sec. 15-35. Collection and commissions.**

(a) Every person or entity which receives any payment for lodging rental with respect to which a tax is levied by this Article shall collect the amount of tax hereby imposed from the transients, or from the person or entity paying for such lodging rental, at the time payment for such lodging rental is made. The taxes required to be collected hereunder shall be deemed to be held in trust by the person or entity required to collect such taxes until remitted as hereinafter required.

(b) Five percent of the amount of tax due and accounted for hereunder may be deducted as a commission for the services of the person or entity collecting the tax; provided, however, that no commission shall be allowed if the amount due is delinquent.

**Sec. 15-36. Reports and remittances.**

The person or entity which collects the tax levied by this Article shall complete a report upon such forms, and setting forth such information, as the Commissioner of Revenue may prescribe and require, which shows the amount of lodging rental charges collected and the tax required to be collected, and shall sign and deliver such report to the Commissioner of Revenue, along with a remittance of the tax due. Such reports and remittances shall be made on or before the twentieth day of each month covering the tax for the preceding month, the first report hereunder being due on or before the 20th day of October, 2004, covering the tax for the month of September, 2004. The Commissioner of Revenue shall be responsible for enforcement of this Section and shall further determine whether the report is in proper form and upon such determination, the Commissioner of Revenue shall cause a copy of the report to be delivered to the Treasurer. All remittances made hereunder shall be delivered to the Treasurer. Any remittances made by check or money order shall be made payable to the Bath County Treasurer.

**Sec. 15-37. Penalty and interest for nonpayment.**

If any person shall fail or refuse to remit to the Commissioner of Revenue or the Treasurer the tax required to be collected and paid pursuant to this Article or shall fail or refuse to submit the reports required pursuant to this Article within the time and in the amount specified herein, there shall be added to such unpaid tax by the Treasurer:

- (a) interest at the rate of ten percent (10%) per annum on the amount of tax that is delinquent, which interest shall commence on the first day of the month following the month in which such taxes are due; and
- (b) a penalty of ten percent (10%) of the amount of tax that is delinquent.

**Sec. 15-38. Failure to collect, report, or remit tax; action by Commissioner of Revenue.**

If any person or entity fails or refuses to collect, in whole or in part, or properly to report or remit, the tax levied by this Article within the time required, the Commissioner of Revenue shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Commissioner of Revenue has procured such facts and information, he or she shall make an estimate of the tax due and proceed to determine and assess against such person or entity the estimated tax due together with the penalties and interest, and the total amount thereof shall be payable within ten days of the date of notice to such person or entity; provided, however, that before any determination and assessment is made under this Section by the Commissioner of Revenue that any person or entity is liable for the tax, penalty and interest, he or she shall give such person or entity notice and an opportunity to be heard concerning such possible determination and assessment.

**Sec. 15-39. Records.**

It shall be the duty of every person or entity liable for the collection and payment to Bath County of the tax imposed by this Article to keep and preserve for a period of three years complete and accurate records which shall show the number of rooms or spaces occupied, the date thereof, the amount of the charge for the occupancy of each such room or space, and the amount

of tax imposed. The Commissioner of Revenue and the Treasurer shall have the right to inspect such records at all reasonable times.

**Sec. 15-40. Cessation of business.**

Whenever any person or entity, required to collect and remit to Bath County a tax pursuant to this Article, shall cease to operate or shall otherwise dispose of his business, any tax payable hereunder to Bath County shall become immediately due and payable and such person or entity shall immediately submit a report and pay the tax due.

**Sec. 15-41. Duties of Commissioner of Revenue.**

It shall be the duty of the Commissioner of Revenue to ascertain the name of every person or entity operating a Place of Lodging in Bath County, liable for collection of the tax levied by this Article, and to enforce the payment, collection, and remittance of the tax herein levied.

**Sec. 15-42. Penalty for violation of Article.**

Any person or entity violating or failing to comply with any of the provisions of this Article shall, upon conviction thereof, be guilty of a Class 3 Misdemeanor, punishable pursuant to Section 18.2-11 of the Code of Virginia (as amended), and each violation or failure to comply shall constitute a separate offense. The punishment provided for in this Section shall be in addition to any other penalty imposed or remedy for the collection of taxes provided for by law.

**Secs. 15-43 to 15-49. Reserved.**

**ARTICLE XI. LAND USE TAX**

**Sec. 15-50. Findings.**

The Bath County Board of Supervisors finds that the preservation of real estate devoted to agricultural use within its boundaries is in the public interest and, having heretofore adopted a land-use plan, hereby provides that such real estate shall be taxed in accordance with the provisions of Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia; the standards prescribed by the Virginia Commissioner of Agriculture and Consumer Services and this Article.

**Sec. 15-51. Definitions.**

For the purposes of this article the following special classification of real estate is established and defined:

*"Real estate devoted to agricultural use"* shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Service in accordance with the Administrative Process Act (Virginia Code § 2.2-4000 et seq.), or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for a profit or otherwise, shall be considered real estate devoted to

agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

**Sec. 15-52. Applications for special assessment; fees.**

(a) Applications for taxation of real estate on the basis of use assessment shall be submitted to the Bath County Commissioner of Revenue (hereinafter the "Commissioner" or "Commissioner of Revenue") on forms provided by the Virginia Department of Taxation and supplied by the Commissioner. The application shall include such additional schedules, photographs, and drawings as may be required by the Commissioner of Revenue.

(b) Applications shall be submitted:

(1) At least sixty days preceding the tax year for which such taxation is sought;  
or

(2) In any year in which general reassessment is being made, within thirty days after the notice of increase in assessment has been mailed to the property owner in accordance with Section 58.1-3330 of the Code of Virginia, or sixty days preceding the tax year, whichever is later.

(c) The application shall be signed by all owners of the subject property. An owner of an undivided interest in the property may apply on behalf of owners that are minors or that cannot be located, upon submitting an affidavit attesting to such facts.

(d) A separate application shall be filed for each parcel or tract shown on the land book.

(e) An application fee of Ten dollars (10.00) shall accompany each application.

(f) An application shall be submitted whenever the use or acreage of such land previously approved changes; provided, however, that no application fee shall be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action of condemnation of a portion of any land previously approved.

(g) If any tax on the land affected by an application is delinquent when the application is filed, then the application shall not be accepted. Upon payment of all delinquent taxes, interest and penalties relating to such land, the application shall then be treated in accordance with this section.

(h) Such property owner must revalidate annually with the Commissioner of Revenue, on or before each June 5th, on forms provided by such Commissioner, any application previously approved. A revalidation fee of \$10.00 shall accompany each application for revalidation every sixth year. Late filing of a revalidation form must be made on or before the effective date of the assessment and accompanied with a late filing fee of \$5.00.

**Sec. 15-53. Determination of use value and assessment.**

(a) Promptly upon receipt of an application, the Commissioner of Revenue shall determine whether the subject property meets the criteria for use value assessment and taxation under this Article, Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia, and applicable standards prescribed thereunder by the Commissioner of Agriculture and Consumer Services.

(b) Minimum acreage.

(1) Real estate devoted to agricultural use shall consist of a minimum of five acres;

(2) The foregoing requirement for minimum acreage shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots titled in the same ownership. For purposes of this section, properties separated only by a public right of way are considered contiguous.

(c) In addition to meeting the foregoing requirement for minimum acreage, real estate devoted to agricultural use shall meet the following standards:

(i) Pasture must have per five acres: one head of the cattle family for twelve months, or two head for six months, or four head for three months, etc.; or sixty-six turkeys or one hundred chickens per twelve months; or one horse; or other animals that meet criterion as adopted from time to time by the Commissioner of Agriculture and Consumer Services.

(ii) Pasture must have per one acre: one swine or one sheep for twelve months; or

(iii) One acre of crop land shall qualify as one acre of agricultural use.

(d) If the Commissioner of Revenue determines that the property does meet such criteria, the Commissioner shall determine the value of such property for its qualifying use, as well as its fair market value.

(e) In determining whether the subject property meets the criteria for "agricultural use" the Commissioner of Revenue may request an opinion from the Commissioner of Agriculture and Consumer Services. Upon the refusal of the Commissioner of Agriculture and Consumer Services to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the respective director, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor it may issue an order which shall serve in lieu of an opinion for the purposes of this ordinance.

#### **Sec. 15-54. Taxation based on qualifying use.**

The use value and fair market value of any qualifying property shall be placed on the land book before delivery to the Bath County Treasurer (hereinafter the "Treasurer") and the tax shall be based on the use value. Continuation of valuation, assessment and taxation based upon land

use shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as required in Section 58.1-3235 and compliance with other requirements of Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia, the applicable standards prescribed by the Virginia Commissioner of Agriculture and this Article, and not upon continuance in the same owner of title to the land.

**Sec. 15-55. Delinquent taxes.**

If on April 1 of any year the taxes for any prior year on any parcel of real property which has special assessment as provided for in this Article are delinquent, the Treasurer shall send notice of that fact and the general provisions Section 58.1-3235 of the Code of Virginia to the property owner by first-class mail. If after sending such notice, such delinquent taxes remain unpaid on June 1, the Treasurer shall notify the Commissioner who shall remove such parcel from the land use program under this Article. Such removal shall be effective for the current tax year.

**Sec. 15-56. Change in use, zoning or area; roll-back taxes.**

(a) There is hereby imposed a roll-back tax, and interest thereon, in such amounts as may be determined under Virginia Code Section 58.1-3237, on real estate which has qualified for assessment and taxation on the basis of use under this Article, upon one or more of the following occurrences:

- (1) when the use by which it qualified changes to a nonqualifying use;
- (2) when it is rezoned to a more intensive use at the request of the owner or his agent, as described in Section 58.1-3237 of the Code of Virginia; or
- (3) when one or more parcels, lots or pieces of land are separated or split off from the real estate, as described in Section 58.1-3241 of the Code of Virginia.

(b) If the roll-back tax and interest thereon are not timely paid as required under Virginia Code § 58.1-3237, the Treasurer shall impose a penalty and interest in the amount of the roll-back tax, including interest for prior years, in accordance with Virginia Code § 58.1-3915 and § 58.1-3916.

**Sec. 15-57. Failure to report changes, misstatements in application.**

(a) The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the Commissioner of Revenue on such forms as may be prescribed. The Commissioner of Revenue shall forthwith determine and assess the roll-back tax, which shall be paid to the Treasurer within thirty days of assessment. On failure to report within sixty days following such change in use and/or failure to pay within thirty days of assessment, such owner shall be liable for an additional penalty equal to ten per centum of the amount of the roll-back tax and interest, which penalty shall be collected as a part of the tax. In addition to such penalty for failure to make required report, there is hereby imposed interest of one-half per centum of the amount of the roll-back tax, interest and penalty, for each month or failure thereof during which the failure continues.

(b) Any person making material misstatement of fact other than a clerical error in any application filed pursuant to this Article shall be liable for all taxes, in such amounts and at such times as if such property has been assessed on the basis of fair market value as applied to other real estate, together with interest and penalties thereon. If a material misrepresentation was made with the intent to defraud Bath County, he shall be further assessed with an additional penalty of one hundred percent of such unpaid taxes. The term "material misstatement of fact" shall have the same meaning as it has under Section 58.1-3238 of the Code of Virginia.

**Sec. 15-58. Application of Title 58.1 of the Code of Virginia.**

The provisions of Title 58.1 of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis* including without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments, and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

**Sec. 15-59. Effective date.**

This Article shall be effective for all tax years beginning on and after July 1, 2005.

**ARTICLE XII. COUNTY FOOD AND BEVERAGE TAX<sup>15</sup>**

**Sec. 15-60. Levy.**

There is hereby imposed and levied by the county a tax at a rate of four percent (4%) on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of Virginia Code § 35.1-1, such local tax not to exceed four percent of the amount charged for such food and beverages (hereinafter jointly referred to as "food").

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in Virginia Code § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to any sales tax currently imposed by the county pursuant to the authority of Virginia Code § 58.1-600 et seq.

**Sec. 15-61. Exemptions; limits on application.**

- (1.) The tax imposed under this ordinance shall not be levied on food and beverages sold through vending machines or by:
  - (i) boardinghouses that do not accommodate transients;

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<sup>15</sup> At its March 9, 2010, regular meeting, following a public hearing continued from the regular meeting on February 9, 2010, on a motion by the Hon. Percy C. Nowlin, III, with an effective date of July 1, 2010, the Food and Beverage Tax was originally approved by the Bath County Board of Supervisors at a rate of 1%, on a unanimous vote (5 in favor, none opposed, 0 absent, 0 abstain). At its May 10, 2011, regular meeting, following an advertised public hearing, on a motion by the Hon. Stuart Hall, with an effective date of July 1, 2011, the Food and Beverage Tax was amended by the Bath County Board of Supervisors to be set at a rate of 4%, on a unanimous vote (5 in favor, none opposed, 0 absent, 0 abstain).

- (ii) cafeterias operated by industrial plants for employees only;
- (iii) restaurants to their employees as part of their compensation when no charge is made to the employee;
- (iv) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes;
- (v) churches that serve meals for their members as a regular part of their religious observances;
- (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees;
- (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof;
- (viii) day care centers;
- (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or
- (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

(2.) The tax imposed under this ordinance shall not be levied on food and beverages:

- (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or
- (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or
- (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

(3.) Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

(4.) The tax imposed under this ordinance shall not be levied upon

- (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price;
- (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or

- (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

**Sec. 15-62. Collection of tax by seller.**

Every seller of food with respect to which a tax is levied under this article shall collect the amount of tax imposed under this article from the purchaser on whom the tax is levied at the time payment for such food becomes due and payable, whether payment is to be made in cash or on credit by means of a credit card or otherwise. The amount of tax owed by the purchaser shall be added to the costs of the food by the seller, who shall pay the taxes collected to the county as provided in this article. All such tax collections shall be deemed to be held in trust for the county.

**Sec. 15-63. Reports and remittances; preservation of records.**

Every seller of food with respect to which a tax is levied under this article shall make out a report, upon such forms and setting forth such information as the commissioner of the revenue may prescribe and require, showing the amount of food charges collected and the tax required to be collected, and shall sign and deliver such report to the commissioner of the revenue with a remittance of such tax. Such reports and remittance shall be made on or before the 20th day of each month, covering the amount of tax collected during the preceding month. Such records shall be kept and preserved for a period of five (5) years. The commissioner of the revenue shall be responsible for enforcement of this Section and shall further determine whether the report is in proper form and upon such determination, the commissioner of the revenue shall cause a copy of the report to be delivered to the treasurer. All remittances made hereunder shall be delivered to the treasurer. Any remittances made by check or money order shall be made payable to the Bath County Treasurer. The commissioner of the revenue shall have the power to examine such records of the seller on which the amount of tax submitted was based, at reasonable times and without unreasonable interference with the business of the seller, for the purpose of administering and enforcing this article, and to make copies of all or any parts thereof.

**Sec. 15-64. Advertising payment or absorption of tax prohibited.**

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

**Sec. 15-65. Duty of seller when going out of business.**

Whenever any seller required to collect and pay to the county a tax under this article shall cease to operate or otherwise dispose of his business, any tax payable under this article shall become immediately due and payable, and such person shall immediately make a report and pay the tax due.

**Sec. 15-66. Discount.**

For the purpose of compensating sellers for the collection of the tax imposed by this article, every seller shall be allowed three percent of the amount of the tax due and accounted for in the form of a deduction on his monthly return, provided the amount due is not delinquent at the time of payment.

**Sec. 15-67. Enforcement; duty of commissioner.**

The commissioner of the revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall be the duty of the commissioner of the revenue to ascertain the name of every seller liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or to make the reports and remittance required by this article. The commissioner of the revenue may have issued a summons for such person and may serve a copy of such summons upon such person in the manner provided by law. One return of the original summons shall be made to the general district court for the county. Police powers are conferred upon the commissioner of the revenue and his duly authorized deputies, assistants, employees and agents while engaged in their duties pursuant to this article, and they shall exercise all the powers and authorities of police officers in performing such duties.

**Sec. 15-68. Procedure upon failure to collect or report.**

If any seller, whose duty it is to do so, shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the commissioner of the revenue shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner of the revenue shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any seller who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such seller the tax and penalties provided for by this article and shall notify such seller, by registered mail sent to his last known place of address, of the total amount of such tax and penalties. The total amount thereof shall be payable within ten days from the date such notice is sent.

**Sec. 15-69. Duties of Treasurer.**

The treasurer shall have the power and the duty of collecting the taxes imposed and levied under this article and shall cause the taxes to be paid into the general treasury for the county.

**Sec. 15-70. Interest and penalty for late remittance or false return.**

If any seller, whose duty it is to do so, shall fail or refuse to file any report required by this article or to remit to the treasurer the tax required to be collected and paid under this article, there shall be added to such tax by the treasurer interest at the rate of ten percent (10%) per annum on all amounts due, which shall accrue until paid in full. There shall be levied a penalty of five percent (5%) of the amount of tax that is delinquent, with a minimum penalty of \$2.00.

For a false or fraudulent return with intent to defraud the county of any tax due under this article, a penalty of 50 percent (50%) of the tax shall be assessed against the person required to collect such tax, together with interest at the rate of ten percent per annum which shall continue to accrue until paid in full.

**Sec. 15-71. Violations of article.**

Any person violating, failing, refusing or neglecting to comply with any section of this article shall be guilty of a class 3 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this article. An agreement by any person to pay the taxes provided for in this article by a series of installment payments shall not relieve any person of criminal liability for violation of this article until the full amount of taxes agreed to be paid by such person is received by the treasurer. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense.

The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to Virginia Code § 18.2-111.

**Sec. 15-72 to 79. Reserved.**