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Public Hearing: April 6, 2021 Code Update: _____
Approved on a motion by: _____

Chapter 165, Article XXI: The Clarke County Board of Supervisors shall consider amending Clarke County Code Chapter 165, creating a new Article XXI Cigarette Tax. The new article would levy an excise tax equivalent to \$0.40 per package containing 25 or fewer cigarettes effective July 1, 2021. The new article also provides definitions, methods of collection, stamp requirements, violations and penalties, and other provisions related to the levy of this tax.

Chapter 165 Taxation

Article XXI Cigarette Tax

§165-84. Definitions The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CIGARETTE -- 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.

DEALER -- 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, excluding those located or delivering within, the corporate boundaries of the Town of Berryville.

PACKAGE -- Any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual

cigarettes are ordinarily taken when they are consumed by their ultimate user.

PURCHASER -- Every person to whom title to any cigarettes is transferred by a seller within the County, excluding those located within the corporate boundaries of the Town of Berryville.

SALE -- Every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller to any other person within the County, excluding those within the corporate boundaries of the Town of Berryville.

SELLER -- means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the County, excluding those located within the corporate boundaries of the Town of Berryville, for any purpose other than resale. The term shall be synonymous with the term Retail Dealer.

STAMP -- A small heat set of paper or decalomania to be sold by the Treasurer and to be affixed to every package of cigarettes sold.

TREASURER – The Treasurer of the County of Clarke, Virginia.

§165-85. Tax levied;
amount of tax

In addition to all other taxes and fees of any kind now or hereafter imposed by law, and pursuant to authority contained in § 58.1-3830 and § 58.1-3832 of the Code of Virginia, there is hereby imposed and levied a tax equivalent to \$0.40 per each package containing 25 or fewer cigarettes. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided that the tax payable for each cigarette or cigarette package sold or used within the County shall be paid but once.

§165-86. Method of
collection

The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax at the time the stamps are purchased from the Treasurer. The Treasurer may require each dealer to register using forms provided by the Treasurer before stamps can be purchased. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax. Nothing in this section shall prohibit the Treasurer from entering into an agreement with a vendor to provide stamps directly to dealers.

The Treasurer is authorized to enter into an agreement with the Virginia Department of Taxation to allow a dealer who is a tobacco wholesaler to

use a stamp to evidence the payment of both the County and the state cigarette tax. The Treasurer shall have the authority to determine the procedures by which such an arrangement may be agreed upon by the County and Department of Taxation.

The Treasurer is authorized, following an affirmative vote by the Board of Supervisors approving such agreement, to enter into an agreement pursuant to the provisions of §15.2-1300 for the administrative and enforcement authority of this article.

§165-87. Method of payment

The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp or stamps, of the proper denominational or face value, to each and every package of cigarettes sold within the county, excluding those sold within the corporate limits of the Town of Berryville, in the manner and at the time or times provided for in this article. Every dealer and every seller in the county, once registered, shall have the right to buy such stamps from the county treasurer and to affix the same to packages of cigarettes as provided in this article.

The treasurer may permit the payment in advance of the tax levied and imposed by this article by the method of placing imprints of the stamps upon original packages by the use of meter machines, in lieu of the method of paying such tax by the purchase and affixing of gummed stamps, and may prescribe and enforce the necessary regulations setting forth the method to be employed and the condition to be observed in the use of such meter machines.

§165-88. Preparation and sale of stamps

For the purpose of making stamps available for use, the treasurer shall sell stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the county treasurer shall allow a discount of five (5%) of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes.

§165-89. General duties of dealers and sellers with respect to stamps

Every dealer in cigarettes is hereby required and it shall be his duty to purchase such stamps, at the office of the county treasurer, as shall be necessary to pay the tax levied and imposed by this article, and to affix or cause to be affixed a stamp or stamps of the monetary value prescribed by this article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any seller. Nothing herein contained shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.

Every seller shall examine each package of cigarettes prior to exposing the same for sale, for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon, as

provided by this article. 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 amount of stamps, or shall replace such packages with others to which stamps have been properly affixed or imprinted thereon.

Should a seller obtain or acquire possession of, from any person other than a 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, or the markings of a meter machine, covering the tax imposed by this article.

In the event any seller elects to purchase and affix stamps or imprints of a meter machine, before offering cigarettes for sale, any dealer delivering and furnishing cigarettes to such seller shall not be required to purchase and affix such stamps or imprints to such cigarettes so sold or furnished; provided that any such dealer shall, on the day after such delivery and furnishing, file with the treasurer a copy of the delivery memorandum showing the name and address of the seller and the quantity and type of cigarettes so delivered and furnished.

§165-90. Visibility of stamps or meter markings

Stamps or the printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

§165-91. Altering design of stamps

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

§165-92. Refund for unused stamps or meter imprints

Should any person, after acquiring from the treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use thereof, or should any such stamps become mutilated and unfit for use, other than by cancellation as provided in this article, such person shall be entitled to a refund of the denominational or face amount of any stamps so acquired and not used by him, less five (5) percent of the denominational or face amount thereof, upon presenting such stamps to the treasurer and furnishing the treasurer with an affidavit showing, to his satisfaction, that such stamps were acquired by such person and have not in any manner been used and the reason for requesting such refund. In the case of any authorized meter machine, should any imprints of such machine theretofore paid for not be used, such person shall, upon furnishing the treasurer with a

similar affidavit, be entitled to a refund of the denominational or face amount thereof, less five (5) percent of the denominational or face amount of such imprints of such machine not so used.

All refunds for unused and mutilated stamps and for nonuse of imprints of stamps by meter machines provided for under this section are hereby authorized to be made on vouchers approved by the treasurer and, when made, the same shall be charged against the sums collected for the sale of such stamps and for the use of such imprints.

§165-93. Seizure and sale of unstamped cigarettes

Whenever the treasurer shall discover cigarettes in quantities of more than six (6) cartons within the county which are subject to the tax imposed by this article and upon which the tax has not been paid or upon which stamps have not been affixed or evidence of such tax shown thereon by the printed markings of an authorized meter machine, as this article requires, such cigarettes shall be conclusively presumed for sale or use within the county and the treasurer may forthwith seize and confiscate such cigarettes, if:

A. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the cosigner or seller and of the cosigner 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

B. They are in transit and are accompanied by a bill of lading or other documents indicating:

(1) 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, and unless the tax of the state or district of destination has been paid and the said products bear the tax stamp of that state or district; or

(2) A consignee or purchaser in the Commonwealth but outside the county 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 tobacco license issued by the local jurisdiction of destination; or

(3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with

the treasurer that those cigarettes are temporarily within the county and will be sent to consignees or purchasers outside the county in the normal course of business.

All cigarettes seized and confiscated according to this section shall thereupon be deemed to be forfeited to the county and may be sold within a reasonable time thereafter, after proper notice of such seizure is given to the known holders of property interests in the cigarettes. Such notice shall be given to known holders of property interests, if any, by certified mail and by written notice posted on the bulletin board of the court house of the county at least seven (7) days before the date of sale. Such notice shall contain the time and place at which the sale is to occur and procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders. All moneys collected under this section shall be paid to the county treasurer and treated as other taxes collected under this article. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

§165-94 Seizure and sale of coin-operated vending machines and counterfeit stamp or impression devices.

Any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or false tobacco tax stamp or impression or any unstamped cigarettes, 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 165-93. When any such vending machine is found containing such cigarettes, 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 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 authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

Any counterfeit stamps or counterfeit impression devices found may also be seized and confiscated.

§165-95. Dealers' and sellers' records

It shall be the duty of every dealer and seller to maintain and keep, for a period of two (2) years, such records of cigarettes sold and delivered by him as may be required by the treasurer and to make all such records available for examination by such treasurer, upon demand, at any and all reasonable times.

§165-96. Rules and regulations for enforcement and administration of article; examination of books, records, etc.

The treasurer may prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps and to all other matters pertaining to the administration and enforcement of the provisions of this article. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

The treasurer may 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 or dealer.

§165-97. Violations of article—Generally

Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty (50) percent and interest not to exceed three quarters of one percent per month upon any tax found to be overdue and unpaid. Conviction and payment of a fine for such violation shall not relieve any person from the payment of any tax imposed by this article.

Each violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense and shall subject every person convicted thereof to the penalties prescribed.

§165-98. Same— Prohibited acts enumerated

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

To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof; or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which the treasurer may issue under this article.

To falsely or fraudulently make, forge, alter or counterfeit any stamp or the printed markings of any meter machine or to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine or to knowingly and willfully alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings of a meter machine.

To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.

To reuse or refill with cigarettes any package from which cigarettes, for which the tax imposed has been theretofore paid, have been removed.

To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps or printed markings of a meter machine to any person, or to reuse any stamp or printed markings of a meter machine which had theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the county treasurer, to sell or offer to sell any stamps or printed markings of a meter machine provided for in this article.

§165-99. Same—
Presumption of violation
by seller

In the event any package of cigarettes is found in the possession of a seller, without the proper stamps being affixed thereto or without authorized printed markings of a meter machine thereon, and the seller shall be unable to submit evidence establishing that he received such package within the immediately preceding forty-eight (48) hours and that he has not offered the same for sale, the presumption shall be that such package is being kept by such seller in violation of the provisions of this article and shall subject him to the penalties provided for such violation.

Any cigarettes placed in any coin-operated vending machine located within the county shall be presumed for sale within the county. Any vending machine located within the county containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as not to allow visual inspection of the stamp through the viewing areas as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the treasurer. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the treasurer may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of the seal from a vending machine by any unauthorized person shall be in violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

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