

Meals Tax in Fairfax County

Updated November 2013

Description

The meals tax is a tax imposed on the purchase of all prepared and ready to eat food and beverages. All restaurants as well as grocery stores and convenience stores selling prepared foods at a delicatessen counter must collect this tax from their customers if a locality levies the tax. As authorized by §58.1-3833 of the *Code of Virginia*, counties may levy the tax if approved in a voter referendum. The voter referendum may be initiated either by a resolution of the

Board of Supervisors or on the filing of a petition signed by 10 percent of the voters registered in the County. Cities and towns may impose a meals tax without holding a referendum. In addition, several counties have been exempted from the voter referendum requirement provided that a public hearing is held before adoption and the governing body by unanimous vote adopts the tax by local ordinance. The counties that have been granted an exemption to the voter referendum requirement are Arlington County, Roanoke County, Rockbridge County, Frederick County, and Montgomery County.

As with many other local taxes, counties are restricted in their authority to levy the meals tax within an incorporated town unless the town grants authority to the county. While Fairfax County does not levy the meals tax, the Town of Vienna levies a 3.0 percent meals tax and the Town of Herndon imposes the meals tax at 2.5 percent. Other Northern Virginia localities that tax meals are: Alexandria, Arlington, Fairfax City, Falls Church, Manassas, and Manassas Park. Each of these jurisdictions levies the meals tax at 4.0 percent. The tax is in addition to the state's sales tax. According to the *2012 Tax Rates: Virginia's Cities, Counties and Selected Towns Rates*, all 39 cities, 46 counties, and 115 of the reporting towns in Virginia levied a meals tax during the 2012 tax year. The State of Maryland, Montgomery County, and Prince George's County do not levy a meals tax. Maryland's sales tax is 6.0 percent.

To what kind of items does the meals tax apply?

- A tax on prepared food and beverages (ready-to-eat) at restaurants, lunchrooms, cafeterias, coffee shops, cafes, taverns, delis, push cart operations and hot dog stands
- Includes alcoholic and non-alcoholic beverages served with a meal
- Does not apply to groceries - grocery and convenience stores only collect the tax on ready to eat foods - such as the deli or salad bar
- Does not apply to vending machines

The table below shows the meals tax rates and revenue for surrounding jurisdictions that levy a meals tax.

Meals Tax Rates and Revenue Generated

Locality	FY 2014	FY 2014	FY 2014
	Sales Tax Rate paid on meals ¹	Meals Tax Rate	Estimated Meals Tax Revenue (millions)
<i>Northern Virginia</i>			
Alexandria	6.0%	4.0%	\$17.6
Arlington	6.0%	4.0%	\$34.7
Falls Church	6.0%	4.0%	\$2.7
Fairfax City	6.0%	4.0%	\$5.4
Herndon	6.0%	2.5%	\$2.0
Vienna	6.0%	3.0%	\$1.9
District of Columbia ²	0.0%	10.0%	\$331.3

¹ Rate as of July 1, 2013.

² In DC, the Sales Tax does not apply to meals. The revenue shown for the meals tax in DC represents FY 2012 data and also includes taxes on rental vehicles.

What effect would the meals tax have on an average resident at a 4% tax rate?

- On a \$5 “fast food” meal, tax would be 20 cents
- On a \$50 meal at a “nice restaurant”, tax would be \$2.00

Revenue Estimate

Based on calendar year 2012 taxable sales at Food and Drink Places in Fairfax County, a 1.0 percent meals tax is estimated to generate approximately \$22.0 million in revenue in FY 2014. At the maximum 4.0 percent rate, a County meals tax would generate annual revenue of approximately \$88.0 million.

Tax Limitations

Counties in Virginia are limited to a rate of up to 4.0 percent and must gain voter approval in a referendum before levying the tax. There are no restrictions on the use of the tax revenue generated by the meals tax. However, some localities that levy the meals tax earmark a portion or all the revenue to a specific purpose. For example, Vienna’s meals tax revenue goes entirely to the debt service fund. Herndon dedicates approximately 1

percentage point of the 2.5 percent tax rate to economic development initiatives and capital improvement projects. Some counties that have asked voters in recent years to approve the meals tax had planned on dedicating at least a portion of the revenue to a specific purpose such as schools operating expenditures or new school construction.

Who would pay the meals tax?

- Commuters, travelers and tourists who pass through Fairfax County on a daily basis
- County residents who choose to dine out

Tourist Spending in Fairfax County

- Annual tourist spending in Fairfax County: \$2,648 million*
- Average percentage of tourist spending on eating out in Northern Virginia: 22%*
- Tourist spending on eating out in Fairfax County: \$582.6 million
- Estimated 4% meals tax revenue generated from tourists: \$23.3 million

** Source: Virginia Tourism Corporation*

Issues

- A meals tax would further diversify the County’s revenue base. **A 4.0 percent meals tax is equivalent to over 4 cents on the FY 2014 Real Estate Tax rate.** When the County increases the real estate tax, this applies to all property-owning County residents, regardless of their ability to pay. If the County imposed a meals tax, it would apply to tourists, commuters and travelers, as well as residents who choose to dine out. Based on visitor spending data from the Virginia Tourism Corporation, it is estimated that between 26 and 31 percent of meals expenditures in Fairfax County are generated by non-County residents.

- The Fairfax County restaurant customer base is comprised of many non-residents. For example, **348,004 individuals commute into Fairfax County** on a daily basis, almost three times more than into Arlington County:

Commuting Patterns in the Northern Virginia Region	Fairfax County	Arlington County	Prince William County	Loudoun County
People who live and work in the area	233,954	16,388	41,738	47,685
In-Commuters	348,004	118,026	59,869	81,550
Out-Commuters	264,565	89,320	135,551	110,234
Net In-Commuters (In-Commuters minus Out-Commuters)	83,439	28,706	-75,682	-28,684

Source: “Virginia Workforce Connection – Community Profiles”

- Demand for restaurant meals is relatively inelastic and therefore a meals tax would likely have minimal impact on the price or quantity of sales. The decision to eat out is not entirely an economic one but to a large extent driven by convenience, adjacency, food selection, ambience, and other non-economic factors. For example, when Arlington instituted a meals tax in 1991, the County saw restaurant revenues increase in the year after its meals tax was implemented. The National Restaurant Association reports having no research that shows an overall negative impact on restaurant sales of a restaurant meals tax. Restaurant sales are more heavily impacted by other cyclical economic trends. From 2006 to 2012, restaurant sales in Fairfax County increased 32.6 percent, or an average annual growth of almost 5 percent. During the recent economic recession, restaurant sales in the County fell 0.6 percent between 2008 and 2009.
- Sales tax on unprepared food is considered a regressive tax since lower-income households tend to spend larger fractions of their incomes on necessities such as food and clothing. This is why it is typical for unprepared foods to be taxed at a lower tax rate than other items or even to be exempt from sales taxes altogether. Restaurant meals are not necessities and, based on the Bureau of Labor Statistics Consumer Expenditure Survey, higher-income households tend to spend a larger share of their food budget on eating out.

Administering the Meals Tax

Typically, in localities that levy the meals tax, the Commissioner of the Revenue is responsible for administering the tax. All restaurants and other places that sell food and drinks in a form ready for consumption, on or off their premises, must collect this tax from their customers when the charge for the food and beverages is paid. They are then required, within a specified period, to prepare and file monthly reports and to remit to the Commissioner of the Revenue the taxes collected in the previous month. For the purpose of compensating their collection efforts and timely filing and remittance of the tax, businesses are allowed a commission or a dealer's discount, the size of which varies by locality. For example, Falls Church allows a 2 percent commission, Fairfax City and Vienna – 3 percent, and Herndon – 6 percent.

Steps to Initiate Meals Tax Referendum

- The process requires approximately a 4-month lead time
- Board of Supervisors (BOS) approves, by majority vote, a resolution to

initiate a referendum

- Office of the County Attorney writes a petition to the Circuit Court asking for an order for a special election on the meals tax question. The petition would include a certified copy of the BOS resolution and a draft order for the court to enter
- Absentee ballots must be available 45 days before the election

For a November ballot, the resolution by the Board of Supervisors would need to be approved by the end of June to early July. This is the same time frame used for a bond referendum.

These are only the requisite technical steps required by law that the Board of Supervisors must follow for a meals tax referendum. For a successful referendum outcome, a lot more needs to be done ahead of time. The Board of Supervisors would have to seek and build a broad consensus in the community including residents, businesses, neighborhood and civic organizations. This would entail actively engaging all the stakeholders in a discussion about the pros and cons of levying a meals tax.

Recent Meals Tax Voter Referendum History

- A Fairfax County meals tax was put to voter referendum in April 1992, but was defeated 58 percent to 42 percent with approximately 102,000 votes cast, representing about 25 percent of total registered voters in 1992.
- In 2004, legislation was introduced to exempt Fairfax County from the voter referendum requirement. The legislation was passed by the Senate but failed in the House.
- Loudoun County held a referendum for a meals tax in November 2008 but it failed by a vote of 70 percent to 30 percent. The new tax would have funded new school construction.
- Henrico, Chesterfield and Middlesex Counties held meals tax referendums in November 2013. Henrico's 4.0 percent meals tax was approved 51.5 percent to 48.5 percent with 102,274 votes casted. Henrico's tax will be dedicated to Henrico's schools. It should be noted that Henrico County mounted a strong public awareness campaign for the meals tax including a website and public discussions. Middlesex County also approved a 4 percent meals tax (55.8 percent to 44.2 percent, 3,816 votes casted). The revenue in Middlesex County is to be used to fund emergency services and capital improvements for the county and schools. The referendum for a 2 percent meals tax failed in Chesterfield County, 56.1 percent to 43.9 percent with 103,214 total votes.