

Meals Tax in Fairfax County

Updated May 2014

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.

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

Meals Tax in Other Jurisdictions

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 publication, *2013 Tax Rates: Virginia's Cities, Counties and Selected Towns Rates*, all 39 cities levy the

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NOTE: Includes sources in bold italics if not previously indicated.

meal tax. In addition, 47 counties, and 104 of the reporting towns in Virginia levied a meals tax during tax year 2013. Two additional counties will begin levying the meals tax in 2014. 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.

The table below shows the meals tax rates and revenue for surrounding jurisdictions that levy a meals tax. **(Sources: Locality budget documents)**

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 ²	6.0%	3.0%	\$1.9
District of Columbia ³	0.0%	10.0%	\$331.3

¹ Rate as of July 1, 2013.

² The revenue for the meals tax in Vienna also includes the lodging tax.

³ 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.

Revenue Estimate

Based on calendar year 2013 taxable sales at Food and Drink Places **(Source: Virginia Department of Taxation)** in Fairfax County, a 1.0 percent meals tax is estimated to generate approximately \$22.5 million in revenue in FY 2015. At the maximum 4.0 percent rate, a County meals tax would generate annual revenue of approximately \$90.0 million.

What effect would the meals tax have on an average resident at a 4.0% 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

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 1.0 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.

Under state law, a county meals tax does not apply within the limits of a town that has its own meals tax. Since Herndon and Vienna levy their own meals tax, a Fairfax County meals tax would not apply within their limits. The Town of Clifton currently does not have a meals tax. State law also provides that a county meals tax would apply in a town without a meals tax only if the town’s governing body approves. Therefore, a Fairfax County meals tax would not apply to Clifton unless the Town Council allowed it to apply within the town.

Issues

Who would pay the meals tax?

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

well as residents who choose to dine out.

- 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 2015 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

Tourist Spending in Fairfax County

- 2012 total tourist spending in Fairfax County: \$2,745 million*
- Estimated tourist spending on eating out in Fairfax County: \$631.4 million
- Estimated 4.0% meals tax revenue generated from tourists: \$25.3 million

* Source: Virginia Tourism Corporation

- Based on visitor spending data from the Virginia Tourism Corporation, it is estimated that approximately 28 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, **352,738 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	241,394	19,686	44,996	52,378
In-Commuters	352,738	120,568	62,543	86,751
Out-Commuters	273,669	91,933	145,348	120,263
Net In-Commuters (In-Commuters minus Out-Commuters)	79,069	28,635	-82,805	-33,512

Source: "Virginia Workforce Connection – Community Profiles, March 2014"

- Demand for restaurant meals is relatively inelastic (**Source: "Brown, Douglas M., "The Restaurant and Fast Food Race: Who's Winning": Southern Economic Journal 56(4), April 1990: 984-95**) 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 is 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 (**Taxable Sales, Restaurants & Taverns, Virginia Department of Taxation**). The National Restaurant Association reports having no research that shows an overall negative impact on restaurant sales of a restaurant meals tax (**phone call request**). Restaurant sales are more heavily impacted by other cyclical economic trends. From 2006 to 2013, restaurant sales in Fairfax County increased 35.1 percent, or an average annual growth of 4.4 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 (**Source: A Revenue Guide for Local Government, International City Management Association, 1989, page 59**) 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, localities may allow businesses to deduct 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. Alexandria and Arlington do not provide a commission.

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 numerous public discussions. Middlesex County also approved a 4.0 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 2.0 percent meals tax failed in Chesterfield County, 56.1 percent to 43.9 percent with 103,214 total votes.

