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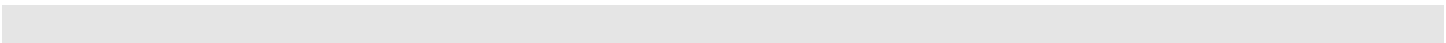
MEALS TAX

CHAPTER 8

CIGARETTE TAX ORDINANCE

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Chapter 1 CIGARETTE TAX ORDINANCE**Sec. 8-1. DEFINITIONS.**

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

Board or NVCTB shall mean the Northern Virginia Cigarette Tax Board.

Carton means any container, regardless of material used in its construction, in which packages or cigarettes are placed.

Cigarette shall mean and include 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.

Cigarette Machine Operator means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.

Dealer shall mean and include every manufacturer's representative, wholesaler, retailer, cigarette machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the Town.

Package shall mean and include 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. Ordinarily, a package contains twenty (20) cigarettes; however, "package" includes those containers in which fewer or more than twenty (20) cigarettes are placed.

Person shall mean and include any individual, firm unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members, thereof, and as applied to a corporation, shall include all the officers and directors thereof.

Place of Business shall mean and include any place where cigarettes are sold, placed, stored, offered for sale, or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption, or distribution, including vending machines, by a dealer within the Town.

Registered Agent shall mean and include every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this Chapter.

Retailer Dealer shall mean and include every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the Town to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the Town of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the Town to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

Sale or Sell shall mean and include every act or transaction, regardless of the method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the Town from a dealer as herein defined to any other person for a consideration.

Stamp shall mean a small gummed piece of paper or decalomania used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold or used within the Town.

Store or Storage shall mean and include the keeping or retention of cigarettes in this Town for any purpose except sale in the regular course of business.

Town shall mean the Town of Clifton, Virginia.

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Use shall mean and include the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

User shall mean any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this Article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

Wholesale Dealer shall mean any individual, partnership or corporation engaged in the sale of cigarettes for resale into or within the Town.

Sec. 8-2. LEVY AND RATE.

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the Town upon every person who sells or uses cigarettes within the Town from and after the effective date of this Chapter an excise tax equivalent to forty (40) cents for each package of cigarettes sold or used within the Town. 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 Town shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

Sec. 8-3. METHODS OF COLLECTION.

The tax imposed by this Chapter shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Board to carry out the provisions of this Chapter. 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 and report all packages of cigarettes on forms prescribed for this purpose by the Board, (1) the quantity of NVCTB stamped cigarettes sold or delivered to (a) each registered agent appointed by the Board for which no tax was collected, (b) each manufacturer's representative and (c) each separate person and place of business within the Town during the preceding calendar month, and, (2) the quantity of NVCTB stamps on hand, both affixed and unaffixed on the first day and the last day of the preceding calendar month and the quantity of NVCTB stamps or NVCTB stamped cigarettes received during the preceding calendar month, and (3) the quantity of cigarettes on hand to which the NVCTB stamp had not been affixed on the first and last day of the preceding calendar month and the quantity of cigarettes received during the preceding calendar month to which the NVCTB stamp had not been affixed, and (4) such further information as the Administrator for the Board may require for the proper administration and enforcement of this Chapter for the determination of the exact number of cigarettes in the possession of each dealer or user.

Each dealer or other person liable for the tax shall file such reports with the Board and pay the tax due to the Board between the first (1st) and twentieth (20th) day of each calendar month, and shall furnish a copies of all cigarette tax reports submitted to the Virginia Department of Taxation.

When, upon examination and audit of any invoices, records, books, cancelled checks, or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the Board of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The Board shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid and impose a penalty of ten (10) per cent and may impose interest of three-quarters (3/4) per cent per month of the gross tax due.

When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of a tax, the Board shall revoke such dealer's permit to affix revenue stamps. Additionally, a dealer may be subject to a civil penalty of \$500.00 for each day after the due date that a dealer fails or refuses to file a report required under this ordinance.

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The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty, and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the NVCTB stamp has been affixed thereto prior to offering them for sale.

Any dealer or other person liable for the tax who shall receive cigarettes not bearing the NVCTB stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the NVCTB stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any dealer or other person liable for the tax who has notified the Board that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the Board) without affixing the stamps required by this Chapter. Any such interstate or intrastate stock shall be kept entirely separate and apart from the NVCTB stamped stock, in such a manner as to prevent the co-mingling of the interstate or intrastate stock with the NVCTB stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

It shall also be the duty of each dealer or other person liable for the tax to maintain and keep for a period of three (3) years, not including the current calendar year, records of all cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, whether the same were stamped or unstamped, and to make all such records available for audit, inspection and examination and to make available at all reasonable times, as well as provide the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Board.

Sec. 8-4. REGISTERED AGENTS.

Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within, or into the Town, shall first make application to the Board to qualify as a Registered Agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the Board deems necessary for the administration and enforcement of this Chapter. There is a yearly Registration Fee for all Wholesale Dealers and for all Cigarette Machine Operators. Such applicant shall provide a surety bond to the Board of one hundred and fifty (150) per cent of his average monthly tax liability with a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. Any applicant whose place of business is outside the Town shall automatically, by filing his application, submit himself to the Board's legal jurisdiction and appoint the Administrator for the Board as his agent for any service of lawful process.

Upon receipt of the properly completed application forms, and the required surety bond executed, the Board shall determine whether the said applicant qualifies to be a registered agent. The Board will issue to said qualified applicant a yearly Registered Agent Permit to qualify him to purchase, sell, use, store, possess, distribute or transport within or into the Town, NVCTB stamped cigarettes. Registered Agents shall agree to the reporting and payment requirements placed upon him by this Chapter and the rules and regulations as from time to time may be promulgated by the Board. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Board shall impose a late reporting penalty of ten (10) per cent of the gross tax due or ten (10) dollars whichever is greater, but in no event more than one thousand (1000) dollars. The Board may also require such registered agent to provide proof that he has complied with all applicable laws of the Commonwealth or Virginia to legally conduct such business and to file financial statements showing all assets and liabilities. The Board may revoke any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes dues or if the cigarette tax surety bond should become impaired for any reason.

All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the Board.

Registered agents must account for all NVCTB authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported and an assessment will be made for all unaccounted for stamps. Any assessment of registered agents located outside the jurisdictions of the Board will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For registered agents located within the jurisdictions of the Board, any assessment will be based upon the tax rate of the jurisdiction in which they are located. In addition, there will be a penalty for non-reporting of ten per cent of the gross tax due.

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Sec. 8-5. REQUIREMENTS FOR RETAIL DEALERS.

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the Town, shall purchase cigarettes only from registered agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia State Sales and Use Tax Certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchase invoices/receipts must be retained by the retailer for a period of three years and shall be made available to agent of the NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the agents of the Board.

Retail dealers must make their place of business available for inspection by tobacco revenue agents to insure that all cigarettes are properly stamped and all cigarettes taxes are properly paid.

Sec. 8-6. PRESUMPTION OF ILLEGALITY; SEIZURE OF CONTRABAND GOODS, SEALING/SEIZING OF MACHINES

If any cigarette machine operator or other person liable for the tax imposed by this article is found to possess any cigarettes without the jurisdictional tax paid or the proper tax stamp affixed, there shall be a rebuttable presumption that any such operate or other person shall be in possession of untaxed cigarettes in violation of this section.

If any cigarettes placed in any vending machines within the town, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the town. If any vending machine located within the town contains cigarettes upon which the NVCTB tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as to not allow visual inspection of the NVCTB tax stamp through the viewing area as provided for by the vending machine manufacturer, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this article.

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

In lieu of seizure, the Board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by an unauthorized person shall be a violation of this Chapter. Nothing in this Chapter 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 said machine.

Sec. 8-7. ILLEGAL ACTS.

It shall be unlawful and a violation of this Chapter for any dealer or other person liable for the tax:

- a. To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Chapter or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this Chapter or to fail or refuse to obey any lawful order which may be issued under this Chapter.
- b. To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently force, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true and false, altered, forged or counterfeited stamp or stamps.
- c. To sell, offer for sale, or distribute any cigarettes upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

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- d. To possess, store, use, authorize, or approve the possession, storage or use of any cigarette packages upon which the NVCTB stamp has not been affixed or upon which the jurisdictional tax has not been paid.
- e. To transport, authorize, or approve the transportation of any cigarette packages, in quantities of more than sixty (60) packages into or within the Town upon which the NVCTB stamp has not been affixed, if they are:
 - 1. Not accompanied by a receipt/bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or
 - 2. Accompanied by a receipt/bill of lading or other document which is false or fraudulent in whole or part; or
 - 3. Accompanied by a receipt/bill of lading or other document indicating:
 - A. 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 unless the tax of the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of that State or District; or
 - B. A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax certificate and, where applicable, any licenses issued by the Commonwealth or local jurisdiction of destination.
- f. To re-use or refill with cigarettes any package, from which cigarettes have been removed, for which the tax imposed has been theretofore paid;
- g. To remove from any package any stamp with intent to use or cause the same to be used after same have already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to re-use any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this Chapter or to sell, or offer to sell, any stamp provided herein.
- h. To sell, offer for sale or distribute any loose or single cigarettes.
- i. To perform any act that violates the resolutions promulgated by the Board.
- j. To transport, possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty (60) packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

Sec. 8-8. POWERS OF THE NORTHERN VIRGINIA CIGARETTE TAX BOARD.

The Board may delegate any of its powers to its Administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this Chapter.

The Board shall be granted the following powers:

- a. To assess, collect, and disburse the cigarette tax for each participating jurisdiction;
- b. To audit dealer sales of cigarettes for each participating jurisdiction;
- c. To provide information to Commonwealth's attorneys County, City or Town attorneys for each participating jurisdiction;
- d. To designate an Administrator;
- e. To manage the Northern Virginia Cigarette Tax Board Fund;
- f. To retain a certified public accountant to audit its books;

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- g. To designate a depository bank or banks;
- h. To contract with member jurisdictions for administrative services;
- i. To hold and convey real and personal property;
- j. To enter into contracts;
- k. To hire, supervise, and discharge its own employees;
- l. To sue and be sued in its own name;
- m. To prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers;
- n. To establish different classes of taxpayers;
- o. To promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and
- p. To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all resolutions of the Board.

The Board may employ legal counsel, bring appropriate Court action in its own name to enforce payment of the cigarette tax or penalties owed, and file tax liens against property of taxpayers hereunder.

The Board is authorized to enter into an agreement with the Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia Revenue Stamps, may qualify to purchase Dual Virginia-NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia-NVCTB stamps is granted solely by the Board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the board.

The Board may appoint certain employees as Tobacco Revenue Agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this Chapter and shall have the power of arrest upon reasonable and probable cause that a violation of this Chapter has been committed. The Board is authorized to provide its Tobacco Revenue Agents with (1) firearms for their protection; (2) emergency-equipped vehicles while on duty; and, (3) other equipment deemed necessary and proper.

The Board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

Sec. 8-9. JEOPARDY ASSESSMENT.

If the Administrator for the Board determines that the collection of any tax or any amount of tax required to be collected and paid under this Chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer, together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the Administrator may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this Chapter for filing a return and paying the tax has expired.

Sec. 8-10. ERRONEOUS ASSESSMENT: NOTICES AND HEARINGS IN THE EVENT OF SEALING OF VENDING MACHINES OR SEIZURE OF CONTRABAND PROPERTY.

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Any person assessed by the Board with a cigarette tax, penalties, and interest, or any person whose cigarettes, vending machines, and other property have been sealed or seized under process of this Article, who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the Administrator for the Board for a correction of such assessment and the return of such property seized or sealed.

Where holders of property interest in cigarettes, vending machines, or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four (24) hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

Such hearing shall be requested within ten (10) days of the notice of such assessment, seizure, or sealing, and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines, or other property should be returned or released. Within five (5) days after receipt of such hearing request the Administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen (15) days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten (10) days from first notice to the petitioner of such seizure or sealing. Within five (5) days after the hearing, the Administrator shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

Appropriate relief shall be given by the Administrator if he is convinced by the preponderance of the evidence that and that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed, together with any interest and penalties paid thereon and shall return any cigarettes, vending machines, or other property seized or sealed to the petitioner. Any petitioner who is dissatisfied with the written decision of the Board may, within thirty (30) days of the date of said decision, appeal such decision to the appropriate Court in the jurisdiction where the seizure or sealing occurred.

Sec. 8-11. DISPOSAL OF SEIZED PROPERTY.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Board after any petitioner has exhausted all Administrative appeal procedures. No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax and penalties assessed.

Sec. 8-12. EXTENSIONS.

The Administrator, upon finding of good cause, may grant an extension of time to file a tax report upon written application for a period not exceeding thirty (30) days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension.

Sec. 8-13. PENALTY FOR VIOLATIONS OF CHAPTERS.

Any persons violating any of the provisions of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand, five hundred (2,500) dollars or imprisonment for not more than twelve (12) months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty, or interest imposed by this Chapter.

Sec. 8-14. EACH VIOLATION A SEPARATE OFFENSE.

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the NVCTB stamp has not been affixed, nor provision for the jurisdictional tax to be paid, shall be and constitute a separate offense. Each continuing day of violation shall be deemed to constitute a separate offense.

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Sec. 8-15.SEVERABILITY.

If any section, phrase, or part of this Chapter should for any reason be held invalid by a Court of competent jurisdiction, such decision shall not effect the remainder of the Chapter; and every remaining section, clause, phrase, or part thereof shall continue in full force and effect.