

CHAPTER 9

RESTAURANT PRIVILEGE TAX

SECTION

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5-901. Levy of tax. There is hereby levied a privilege tax upon the privilege of purchasing prepared food from any establishment selling prepared food in the City of Sevierville, whether for consumption on-premises or off-premises, including but not limited to restaurants, cafes, cafeterias, caterers delicatessens, snack bars, ice cream parlors, lunch rooms or counters within other retail businesses, and other similar establishments engaged in selling prepared food. Without limiting the forgoing, the establishments covered by this chapter include, but are not limited to, any "food service establishment" as defined in Tennessee Code Annotated, Title 68, and include commercially operated establishments located within hospitals. Said privilege tax shall be in an amount equal to two percent (2%) of the consideration charged by the operators of said establishments. Said tax so imposed is a privilege upon the purchasing of food by patrons of said establishments and is to be collected and distributed as hereinafter provided.

As used in this Chapter, "prepared food" means any of the following:

- (a) Food sold in a heated state or heated by the seller;
- (b) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item;
- (c) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or
- (d) Nonalcoholic beverages, except for beverages sold in unopened containers to be consumed off premises.

"Prepared food" in subparagraph (b), above, does not include food that is only cut, repackaged, or pasteurized by the seller, or eggs, fish, meat, poultry, and foods containing these raw animal foods that should be cooked as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses.

5-902. Tax added to food invoice. Said tax shall be added by each and every operator of establishments covered by this chapter to each invoice prepared by the operator of said establishment. Said invoice shall be given directly to the purchaser and shall be collected by the operator from the purchaser at the time of sale. Where the tax calculated includes any fraction of a cent, the next highest full cent shall be charged.

5-903. Remittance to City Recorder. The tax hereby levied shall be remitted by all operators of establishments subject to said tax to the City Recorder. Said tax shall be remitted to the City Recorder not later than the twentieth day of each month next following collection from the purchaser. The City Recorder may promulgate reasonable rules and regulations for the enforcement and collection of the tax, shall prescribe any necessary forms, and may, by regulations, set other reporting and paying dates and periods.

5-904. Exemptions. The provisions of this chapter shall not apply to food prepared to be served at churches, schools, senior citizen centers or nursing homes, and at boarding houses where the cost of food is included in the rental rate. The provisions of this chapter shall not apply to the sale of alcoholic beverages in any form, manner, time or place.

5-905. Penalties and interest for delinquency. Taxes collected by an operator which are not remitted to the City Recorder on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of six percent (6%) per annum and in addition for penalty of one-half of one percent ($\frac{1}{2}$ of 1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Willful refusal of an operator to collect or remit the tax or willful refusal of a purchaser to pay the tax imposed is hereby declared to be unlawful and shall be punishable upon conviction by a fine not in excess of fifty dollars (\$50.00). The fine levied herein shall be applicable to each individual transaction involving food services paid by a customer to the operator in those cases where the operator fails or refuses to pay the tax payable to the City Recorder.

5-906. Records. It shall be the duty of every operator liable for the collection and payment of this tax, to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax for whose collection and payment to the municipality he may have been liable, which records the City Recorder shall have the right to inspect at all reasonable times.

5-907. Administration. In administering and enforcing the provisions of this chapter, the City Recorder shall have as additional powers the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, title 67 or otherwise provided by law for county clerks.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, Title 67, it being the intent of this chapter that the provisions of law which apply to the recovery of taxes illegally assessed

and collected shall apply to the tax collected under the authority of this chapter. The City Recorder shall possess those powers and duties provided in Tennessee Code Annotated § 67-1-707 with respect to the adjustment and refund of the taxes provided for in this chapter. With respect to the adjustment and settlement with taxpayers of all errors of taxes collected by the City Recorder under the authority of this chapter, the City Recorder shall have the power to refund same. Notice of any tax paid under protest shall be given to the City Recorder, and suit for recovery shall be brought against the City Recorder.

5-908. Tax is additional tax. The tax herein levied shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

5-909. Rules and regulations. The City Recorder shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter or other laws, for the enforcement of the provisions of this chapter and the collection of revenues hereunder. Further the City Recorder shall design, prepare, print and make available to all persons who are subject to this chapter, all necessary forms for filing returns and instructions to insure full compliance with the provisions of this chapter.

5-910. Use of proceeds. Tax proceeds generated by the provisions of this chapter shall be used as determined by the board of Mayor and Alderman of the City of Sevierville; provided, however, that seventy- five percent (75%) of the proceeds shall be used for tourism promotion, tourism advertising or tourism infrastructure, including, but not limited to, municipally owned or operated event centers and golf courses.

5-911. Severability. If any provision of this chapter is deemed by a court of competent jurisdiction to be invalid, such invalidity shall not affect the other provisions or applications of this chapter which can be given effect without the invalid application, and to that end, the provisions of this chapter are declared severable.