



**MEMORANDUM**

**TO:** The Honorable Mayor and Members of City Council  
**FROM:** Dori E. Martin, Assistant City Attorney  
**DATE:** August 18, 2021 (for the August 24, 2021 Council meeting)  
**SUBJECT:** Update on Disposable Plastic Bag Tax

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In 2020, the Virginia General Assembly passed legislation to authorize Virginia localities to impose a tax of five cents per disposable plastic bag provided to retail customers by grocery stores, drug stores, and convenience stores. The legislation (SB 11) charges the Virginia Tax Commissioner with developing guidelines to implement the new law.

On June 25, the state Department of Taxation (VA Tax) published draft guidelines for review and public comment. The draft guidelines include important information about how VA Tax plans to interpret and implement the legislation, such as an explanation of the types of bags that will be subject to taxation and definitions for key terms in the bill (“grocery store,” “drugstore,” and “convenience store”). While these draft guidelines provide some clarification as to how the state plans to interpret the law, the issuance of final guidelines will be critical to the City’s ultimate implementation of a new ordinance.

While we await final published guidelines from the Commonwealth, we are cognizant of the particular timing requirements mandated by state law for the enactment of a local plastic bag tax. The local ordinance imposing the tax must have an effective date of the first day of a calendar quarter (January 1, April 1, July 1, or October 1), and the City must provide a certified copy of the approved ordinance to the state Tax Commissioner three months prior to that effective date. Thus, in order to meet a tentative effective date of January 1, 2022, City Council would need to pass an ordinance no later than September 28, 2021. If Council does not act in September, the next possible effective date for the ordinance would be April 1, 2022.

Therefore, in order to give the City its best chance to enact an ordinance that will be effective at the start of the New Year, we recommend getting the process started now. We will plan to use the draft implementation guidelines to prepare the ordinance, with the understanding that an ordinance amendment may be required, either before the second reading or at later date, once the Tax Commissioner finalizes the state guidance.

It is important to note that while some of the finer interpretive details may change when final guidelines are issued, the main points of the ordinance, such as the amount of the tax (\$0.05) are provided by state statute and will remain consistent. Therefore, we recommend seeking public comment on this ordinance, in accordance with Va. Code § 58.1-3007, concurrent with the first reading. The proposed schedule will be as follows:

- **September 14:** Public Hearing and First Reading of an ordinance to impose a plastic bag tax
- **September 28:** Second Reading (with minor amendments, if final guidance has been issued); continue to accept public comments
- **September 28-30:** Certified Copy of ordinance delivered to VA Tax Commissioner, if approved
- **January 1:** Tentative effective date of ordinance.

**Attachments:** Virginia Department of Taxation Draft Guidelines

## **\*\*DRAFT\*\* GUIDELINES FOR THE VIRGINIA DISPOSABLE PLASTIC BAG TAX**

**INSERT DATE**

Legislation enacted during the Regular Session of the 2020 General Assembly (House Bill 534 (2020 *Acts of Assembly*, Chapter 1022) and Senate Bill 11 (2020 *Acts of Assembly*, Chapter 1023)) authorizes any county or city to adopt by ordinance the Virginia Disposable Plastic Bag Tax on disposable plastic bags provided to customers in grocery stores, convenience stores, and drugstores in the locality. The tax will be administered by the Virginia Department of Taxation (“the Department”). A locality must provide a certified copy of the ordinance to the Tax Commissioner at least three months prior to the date the tax is to become effective.

These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000, *et seq.*) and are being published in accordance with the requirement that the Tax Commissioner publish these guidelines pursuant to *Va. Code* § 58.1-1748, as well as the Tax Commissioner’s general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. As necessary, additional information will be published and posted on the Department’s website, [www.tax.virginia.gov](http://www.tax.virginia.gov).

These guidelines represent the Department’s interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

### **Virginia Disposable Plastic Bag Tax**

Any county or city may impose the Virginia Disposable Plastic Bag Tax in the amount of five cents (\$0.05) on each disposable plastic bag provided to purchasers by any grocery store, convenience store, or drugstore in the locality. The tax is due regardless of whether the retailer sells the bag to the customer or it is provided free of charge. The Department will administer the tax similarly to the Retail Sales and Use Tax.

### **Taxable Items**

A disposable plastic bag subject to the tax includes any plastic bag provided by a grocery store, convenience store, or drugstore to a customer at the point of purchase to transport items purchased and not intended for reuse. Dealers should not collect the tax on the following items:

- Durable plastic bags, with handles, that are specifically designed and manufactured for multiple reuse and that are at least four mils thick;
- Plastic bags that are solely used to wrap, contain, or package ice cream, meat, fish, poultry, produce, unwrapped bulk food items, or perishable food items in order to avoid damage or contamination;
- Plastic bags used to carry dry cleaning or prescription drugs; or
- Multiple plastic bags sold in packages and intended for use as garbage, pet waste, or leaf removal bags.

As the tax is imposed on each disposable plastic bag provided to a customer rather than the items purchased by the customer, refunds of the Disposable Plastic Bag Tax should not be allowed in situations where the customer returns the items purchased or the bag to the dealer.

### **Collection of the Tax**

Any grocery store, convenience store, or drugstore located in a county or city that has adopted the Disposable Plastic Bag Tax is required to collect the tax from customers who make in-store purchases, to-go purchases, delivery purchases, and curbside pick-up purchases from its establishments in such locality. Grocery stores, convenience stores, and drugstores that are not located in a county or city that imposes the tax are not subject to the tax.

For purposes of the tax:

- “Grocery store” means an establishment that has an enclosed room in a permanent structure and that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals.
- “Drugstore” means an establishment that sells medicines prepared by a licensed pharmacist pursuant to a prescription and other medicines and items for home and general use.
- “Convenience store” means an establishment that (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

(See Va. Code § 4.1-100)

Larger retailers that contain a grocery store, a convenience store, or a drug store are subject to the tax. However, no store will be considered a convenience store solely because it offers a limited selection of snacks and beverages for sale at the point of sale.

In order to be subject to the tax in a locality, a grocery store, convenience store, or drug store must maintain regular business hours at a fixed place of business in the locality.

### **Dealer Discount**

To compensate dealers for the cost of collecting, accounting for, and remitting the tax, dealers are permitted to keep a portion of the tax collected. Dealers must account for the discount in the form of a deduction when submitting their tax return and paying the amount due in a timely manner. The amount of the discount will decrease over time as follows:

- Beginning January 1, 2021, and ending January 1, 2023, dealers are allowed to retain two cents (\$0.02) from the tax collected on each disposable plastic bag
- Beginning January 1, 2023, dealers are allowed to retain one cent (\$0.01) from the tax collected on each disposable plastic bag

### **Returns**

Any dealer with a grocery store, convenience store, or drugstore located in a county or city that imposes the Disposable Plastic Bag Tax shall report the number of disposable plastic bags and amount of tax for each locality to the Virginia Department of Taxation.

The return must be filed and the tax paid by the dealer to the Virginia Department of Taxation on or before the 20th day of each month for the period ending the previous month.

### **Examples**

#### **Example 1**

A customer purchases food and other grocery items in a grocery store located in a county that imposes the Disposable Plastic Bag Tax. At checkout, the customer is provided five plastic bags to carry the items. None of the plastic bags provided are in the non-taxable categories. The dealer is required to charge the customer \$0.25 (5 x \$0.05) in tax. The dealer is required to report this amount and remit \$0.25 to the Department of Taxation, less the applicable dealer discount.

#### **Example 2**

The facts are the same as Example 1, except the customer purchases a pre-packaged box of plastic garbage bags and several produce items that the customer has placed in bags provided by the retailer in its produce section. The customer is provided 5 bags

when checking out to carry the groceries. The tax would remain \$0.25 (5 x \$.05), as the prepackaged box of garbage bags and the bags used for the produce items are exempt from the tax. The dealer is required to report and remit the tax in the same way as in Example 1. The dealer is not required to report the exempt plastic bags.

### **Example 3**

A convenience store located in a city that imposes the Disposable Plastic Bag Tax provides disposable plastic bags at check-out, free of charge, to its customers to carry the groceries out of the store. These bags are subject to the tax.

### **Example 4**

A customer who resides in a county that imposes the Disposable Plastic Bag Tax orders groceries to be delivered from a grocery store to the customer's home address. The groceries are delivered in disposable plastic bags. The grocery store from which the groceries are ordered is located in a city that does not impose the Disposable Plastic Bag Tax. No plastic bag tax is due on this transaction.

### **Example 5**

A customer who resides in a city that does not impose the Disposable Plastic Bag Tax orders groceries for curbside pick-up from a grocery store in a locality that does impose a plastic bag tax. This transaction would be subject to the plastic bag tax for the locality where the store is physically located.

### **Example 6**

A convenience store retailer located in a county that imposes the Disposable Plastic Bag Tax files a return with the Department on June 20, 2022. The retailer reports 200 taxable disposable plastic bags provided to customers in the month of May. The total tax collected should be \$10.00 (200 x \$.05 = \$10.00) for the month. The retailer should report this amount on the return and remit \$6.00 (200 x \$.03 = \$6.00) with the return and keep \$4.00 (200 x \$.02 = \$4.00) as a dealer discount.

### **Example 7**

The same retailer reports 200 taxable plastic bags provided to customers on its return due June 20, 2023. The tax on the 200 bags would be \$10.00 (200 x \$.05 = \$10.00), the same as above. The tax remitted would be \$8.00 (200 x \$.04). The discount would be \$2.00 (200 x \$.01 = \$2.00).

## **Adoption of the Tax**

In order for the Disposable Plastic Bag Tax to be imposed in any county or city, the tax must be adopted by an ordinance enacted by its governing body. Each local ordinance imposing the tax must provide for the tax to become effective on the first day of a calendar quarter and the effective date must not be before January 1, 2021.

The county or city must provide a certified copy of the ordinance to the Tax Commissioner at least three months prior to the date the tax is to become effective. The ordinance must be certified by the clerk of the city council or board of supervisors and sent to the Tax Commissioner at the address below:

Virginia Department of Taxation  
Attention: Disposable Plastic Bag Tax  
600 E. Main Street, 15th Floor  
Richmond, VA 23219

### **Revenues**

All revenues accruing to a county or city from the Disposable Plastic Bag Tax must be appropriated by the locality for the purposes of environmental cleanup, providing education programs designed to reduce environmental waste, mitigating pollution and litter, or providing reusable bags to recipients of Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children Program (WIC) benefits.

### **Additional Information**

These guidelines are available online under the Guidance Documents section of the Department's website at <http://tax.virginia.gov/guidance-documents>. The Department will issue additional guidance regarding this law change if necessary. Information regarding which localities have imposed a plastic bag tax will be available on the Department's website at [\[insert address\]](#). This information will be updated as additional localities enact ordinances imposing the tax. For additional information, please visit [www.tax.virginia.gov](http://www.tax.virginia.gov) or contact the Department at (804) 367-8037.

### **Approved:**

Craig M. Burns  
Tax Commissioner