

# Collection and Remittance of Local Meals and Lodging Taxes by Virginia Tech

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## PURPOSE

For at least thirty years, officials from Virginia Tech and the Town of Blacksburg ("Town") have discussed the issue of local meals and lodging tax collection on the Virginia Tech campus. The issue first arose when the Town began levying the meals tax and asked the university to collect the tax in a restaurant in the university's owned and operated on-campus hotel. Then Virginia Tech President William Lavery contacted the Virginia Attorney General's office for a legal opinion on the university's authority to collect and remit taxes. In 1983, in response to President Lavery's request, Virginia Attorney General Gerald Baliles wrote an opinion stating that the Town does not have the authority to require the university to collect the tax (Appendix A).

In 1991, as the result of an unofficial inquiry from the Town, staff in the university dining auxiliary asked University Legal Counsel whether the university should be collecting the local meals tax in its dining facilities. University Legal Counsel advised collection of local meals tax was not required in accordance with the Attorney General's 1983 opinion (Appendix B).

For several years, local transient lodging taxes were collected by the university's Donaldson Brown Hotel and Conference Center and remitted directly to the Town. In February 1999, the university's legal office was made aware the tax was being remitted, and the university discontinued the practice at the direction of University Legal Counsel (Appendix C). The Town responded with a delinquency notice to the university (Appendix D), and the university responded to the Town notice referencing the 1983 opinion (Appendix E).

Late last year, the Town formally requested that Virginia Tech assist the Town with collecting local meals and lodging taxes on-campus. The Town requested assistance with tax collection on meals and lodging purchases by campus visitors. More specifically, the request referred to tax collection on purchases of food and beverages at athletic event food concession stands and sales of accommodations at the Inn at Virginia Tech and Skelton Conference Center (IVTSCC) for visits other than official business conducted by local government officials, federal employees, or the university (Appendix F).

This report provides a brief overview of state and local meal and lodging taxes, and a high-level summary of the university's dining program. The report then discusses meals and lodging revenue and taxes for Fiscal Year 2008-09, Hokie Passport deposits, as well as dining programs at other public higher education institutions in Virginia. Next, the university's relationship with the Town is presented highlighting the multitude of ways the two entities work together and interact in support of the overall community. The opinion of the State Attorney General on remittance of taxes by state entities, as well as the opinion of University Legal Counsel is stated. Finally, political considerations are examined, and the report concludes with a response to the Town's request for financial assistance.

## **CONTEXT**

Virginia Tech is a state agency of the Commonwealth of Virginia. As such, virtually all funds collected by Virginia Tech are classified as public funds. In turn, public funds can only be expended by an act of the Virginia General Assembly.

## **OVERVIEW OF STATE AND LOCAL MEALS AND LODGING TAXES**

In Virginia, state agencies and not-for profit entities pay state sales tax on food and beverages and Virginia retail sales tax on rooms, lodging, and accommodations. Virginia Tech collects Virginia sales tax for all university meals and lodging sales that are not associated with student-paid room and board fees. Included in the state sales tax (5 percent) is a 1 percent local option sales and use tax imposed on every county and city in Virginia as outlined in the Virginia Tax Administrative Code (23 VAC 10-210-880 Local Sales and Use Tax). Counties receive monies from the State, and through a distribution formula (subject to periodic updates) provide to its communities a proportion of one-half of the tax revenues (based upon the school-aged population in each town). In 2009, the State sent tax revenues amounting to \$786,000 to Montgomery County. Based upon the County distribution formula, the Town of Blacksburg received 26.49% (\$104,000) and the Town of Christiansburg received 30.93% (\$121,000). The balance of funds was retained by the County.

Most localities in Virginia impose a local meals tax and a local lodging tax. The Town imposes a local meals tax on prepared food and beverages purchased at local restaurants and eateries within the Town in accordance with Virginia law (Virginia statutes § 58.1- 441 (amended), §58.1-3840, § 15.2-1104) and the Town of Blacksburg Municipal Code (Article 7, section 22-700). Additionally, the Town collects a transient occupancy tax from businesses on lodging sales of 30 consecutive days or less. In accordance with the Code of Virginia (statutes §58.1-441 (amended) and §58.1-3840), localities cannot impose a meals tax and/or transient lodging sales tax on "meals used or consumed and paid for by the Commonwealth."

According to the Code of Virginia (§ 15.1-841, §58.1-3840) and the Virginia Retail Sales and Use Tax Regulation (630-10-96 (A) (4)), independent entities (as the seller of a meal) that are located on the Virginia Tech campus have the responsibility for collecting and reporting meals tax. Local meals tax is also collected by off-campus vendors who accept the Hokie Passport card (local meals tax is currently 6 percent, 5 percent in FY 2008-09). Local lodging taxes in Blacksburg (7 percent currently and in FY 2008-09) are collected on lodging sales at local hotels and inns in Blacksburg with the exception of purchases made by officials and employees on official government business for the Town of Blacksburg, the Commonwealth of Virginia, or the federal government in accordance with the Blacksburg Municipal Code §22-500, 503 (2010).

Hotels associated with Virginia Tech are the IVTSCC and the Hotel Roanoke which is owned by the Virginia Tech Foundation, Inc. As a non-state organization, the Hotel

Roanoke collects and remits state and local lodging taxes. Conversely, the IVTSCC is a university-owned auxiliary enterprise and is not required by State law to collect lodging taxes. Further, the IVTSCC does not collect local meals tax for meals sold at its restaurants, which are not affiliated with the university's dining auxiliary.

The purpose of meals and lodging taxes are to support the many services provided by the Town for its citizens for functions such as police protection, street maintenance, and water/sewer. In addition to collecting meals and transient occupancy taxes from Town residents, the Town also levies a consumer utility tax, a business license tax, a cigarette tax, and real estate tax. Virginia Tech, however, is a large university and provides itself many of the services that a local municipality normally would, such as police, rescue, road maintenance, snow removal, and electricity. For services the university does not provide, such as fire and bus services, agreements are in place to establish an appropriate relationship with the Town regarding the cost of the services. For the transit system, the agreement provides that the university will provide resources to the Blacksburg Transit sufficient to support the use of the system by university students and employees. Further, in recognition of the fire protection coverage provided by the Town, the university makes a contribution to the Town's fire protection services to support both operating costs and the cost of facilities. Services provided by the Town will be discussed in more detail later in this report.

## **DINING AND LODGING AT VIRGINIA TECH**

Virginia Tech has an award-winning dining program that has been recognized nationally for excellence in foodservice. The following section will provide a high-level overview of the university's dining and lodging programs, including dining locations on-campus, revenues for Fiscal Year 2008-09, as well as state and local taxes collected and remitted. Further detail is provided in Appendices G through M of this report as referenced below.

The university dining auxiliary owns and manages two types of dining entities: standard dining centers (that include à la carte dining centers as well as all-you-can-eat dining centers) and on-campus dining franchises located within university service dining centers. In addition, there are independent vendors that are not managed by the dining auxiliary, who rent space within G. Burke Johnston Student Center and collect the local meals tax. The dining auxiliary also operates a catering unit, Personal Touch Catering, geared mostly toward university events. The following table lists the dining locations on campus (Table 1).

**Table 1.** On-campus dining locations at Virginia Tech

Dining Center	Accepts Meal Plans	Description (University Franchises are listed in bold print) (Independent Franchises are underlined)
<b>Dietrick Dining Center at Dietrick Hall</b> (University Auxiliary Dining Service)	√	D2 Dxpress Deet's Place
<b>Shultz Dining Center at Shultz Hall</b> (University Auxiliary Dining Service)	√	Shultz Dining Center Shultz Express
<b>Owens Dining Center at Owens Hall</b> (University Auxiliary Dining Service)	√	Hokie Grill & Co. is an à la carte dining facility - Soup, salad, and fruit bar, sandwiches, BBQ - <b>Pizza Hut®</b> - <b>Chick-Fil-A®</b> , - <b>Cinnabon®</b> - <b>Carvel®</b>
	√	Owens Food Court is an à la carte dining facility - The Garden - Bowl Dynasty - Sweet Temptations - The Oasis - <b>Freshëns® Yogurt ( product w/o storefront)</b> - Flip's - The Carvery - Lotsa Pasta - Philly City - La Cantina - Frank's Deli - The Farms and Fields Project
	√	Personal Touch Catering is located in Owens Hall
<b>West End Market near Cochrane Hall</b> (University Auxiliary Dining Service)	√	West End Market is an à la carte dining facility -Bistro Firenze -Wired, Leaf & Ladle -JP's Chop House -Wrap World -Cutting Edge Delicatessen -the Fighting Gobbler Sports Lounge
<b>Squires Food Court at Squires Student Center</b> (University Auxiliary Dining Service)	√	Squires Food Court is an à la carte dining facility - <b>Sbarros®</b> - <b>Au Bon Pain ®</b>
<b>Graduate Life Center at Donaldson Brown</b> (University Auxiliary Dining Service)	√	Within the Graduate Life Center - <b>Au Bon Pain ®</b>
<b>Vet Med Café at Virginia-Maryland Regional College of Veterinary Medicine</b> (University Auxiliary Dining Service)	√	Vet Med Café is an à la carte dining facility (made-to-order products)
<b>GBJ Café/Burger King at Johnston Student Center</b> (independent vendors not affiliated with university)	X	GBJ Café - now <u>Seattle's Best Coffee®</u> (2009-10) <u>Burger King®</u> - now <u>Subway®</u> (2009-10)
<b>The Inn at Virginia Tech &amp; Skelton Conference Center</b> (not affiliated with dining auxiliary)	X	- Preston's Restaurant - Continental Divide lounge

The seven franchises located on campus are managed by the university's dining auxiliary and are staffed by university employees. The only independent vendor on campus (excluding Centerplate who will be discussed in the next section), Subway/Seattle's Best (formerly Burger King® and the GBJ Café), occupies space within G. Burke Johnston Student Center. This on-campus independent vendor is not managed by Virginia Tech, and the employees do not work for the university. The university dining auxiliary service offers a variety of meal plans and dining service programs that include Dining Dollars, the Hokie Passport Account, Personal Touch Catering, and the Guest Dining Card (Appendix G). Meal plan funds cannot be used at independent vendors located on campus.

The IVTSCC is a university-owned auxiliary enterprise located on the Virginia Tech main campus that is managed by the Hilton Hotels® Corporation. The IVTSCC features a combination of 6 suites, and 141 guestrooms. The hotel also provides space for Virginia Tech's department of Hospitality and Tourism Management program. In addition, the facility provides on-site hotel/restaurant management laboratory space, a demonstration kitchen, and a classroom. Two eateries are located within the hotel, Preston's restaurant and the Continental Divide Lounge. The restaurants at the IVTSCC are not affiliated with the university dining auxiliary but the IVTSCC is a university auxiliary and is staffed by a combination of university employees and Hilton managers.

## **Meals and Lodging Revenue**

The purpose of university auxiliaries is to furnish goods or services to students, faculty, or staff. Auxiliary enterprises are supported by a component of the comprehensive fee charged to students and/or charging for services provided. As such, the dining auxiliary is financially self-supporting. Auxiliaries are not eligible for support from Educational and General (E&G) resources, which are composed primarily of General Fund revenues (taxpayer funds) and tuition and E&G fees revenue. The following section provides an overview of revenue generated by the dining auxiliary and independent vendors, as well as revenue generated from the IVTSCC.

### University Dining Auxiliary Revenue

The university's dining auxiliary generated **\$42,054,460** in revenue. This total includes revenue from dining plan purchases, delinquent fee collection, non-dining plans purchases, Personal Touch Catering / We Care services, a portion of stadium concession sales, internal facility use transactions, and conferences (Appendix H).

Of the total dining revenue of \$42,054,460, approximately 92 percent or \$38,560,462 in revenue was generated directly from student dining plans. In addition, internal facility use agreements, also not subject to state tax, generated \$246,956 in revenues. Also included in the University's auxiliary dining service revenue described above, is revenue from on-campus dining franchises totaling \$8,091,584.

## Non-University Dining Service Revenue

### *On-Campus Independent Vendors*

Not included in the \$42 million revenue generated by the university dining auxiliary are the combined revenues for the independent vendors at G. Burke Johnston Student Center totaling \$546,354.

### *Food Concessions for Athletic Events and Ceremonies*

Food concessions for stadium/coliseum events are provided by the university dining auxiliary (Personal Touch Catering), Centerplate®, and third-party vendors. The university dining auxiliary, through Personal Touch Catering, provides food and alcoholic drinks at Lane Stadium suites and club areas. The majority of athletic games and commencement ceremonies food concessions, however, have been contracted out to Centerplate®, which merged with Boston Concessions®. Centerplate® generated gross revenues of **\$1,365,503** (revenues include state sales tax), while third-party vendors generated revenues totaling **\$238,054** (Appendix I). The university dining auxiliary, through Personal Touch Catering, generated total revenues of **\$160,530** for athletic events and other ceremonies.

### *Hokie Passport*

The Hokie Passport card is the official identification card for Virginia Tech. It permits access to university services and facilities and allows access to student meal plan accounts and Hokie Passport Accounts. The Hoke Passport Account is a debit account that can be used in various merchant locations on and off campus (including non-meal locations such as university vending machines, laundries, photocopy machines and university bookstores). The total amount of funds deposited into Hokie Passport accounts was **\$2,883,876** (Appendix J). Total revenue includes Hokie Passport office deposits, deposits made at "cash to card" machines, and online deposits. Funds deposited to the Hokie Passport cards belong to the cardholders, not the University.

The Hokie Passport Account funds have been used mainly for non-meal related purchases. Total Hokie Passport Account funds spent on meals on and off campus totaled \$543,525. This total includes purchases made at university dining centers which totaled \$127,959, and on-campus dining franchises which totaled \$37,463. Total Hokie Passport purchases made at the independently-owned franchises on campus amounted to \$72,614. Total meal-related Hokie Passport purchases made at the 42 participating off-campus vendors totaled \$305,489.

The amount of unused Hokie Passport funds and the amount of Hokie Passport account funds used for non-meal purposes amounted to **\$2,280,272**. Out of this total amount, bookstore sales on Hokie Passport accounts totaled \$1,032,844. Sales included purchases of textbooks, non-prescription drugs, office/school supplies, and Virginia Tech



merchandise including memorabilia. Additionally, out of the total amount of \$2,280,272, sales at university-operated locations such as Lab Printing, Recreational Sports, UUSA Ticket, Parking Services, Educational Media, Newman Library and Schiffert Health Center totaled \$84,229.

#### *The Inn at Virginia Tech and Skelton Conference Center*

The IVTSCC generated total revenue of **\$7,845,725** from lodging and food and beverage sales (Appendix K). Of the \$7.8 million in revenue, the IVTSCC generated **\$494,491** in unrelated business income, which represents about 6 percent of the total revenue. Approximately 94 percent of all revenues were related to official university business.

#### Meals and Lodging Taxes Collected and Remitted

As stated previously, state agencies and not-for profit entities pay Virginia sales tax on food and beverages, as well as lodging. Virginia Tech, therefore, collects Virginia sales tax for all university meals and lodging sales that are not associated with student-paid room and board fees (Appendix L). Purchases that can be tracked by the university, which occurred at independent vendors on campus, generated state tax revenue of over \$122,770 (Appendix M). Local meal taxes collected and remitted to the Town of Blacksburg by independent vendors and participating Hokie Passport vendors amounted to \$42,592 (Appendix M). Although Centerplate, who provides food concessions for athletic games and commencement ceremonies, did not remit local meals tax to the Town in Fiscal Year 2008-09, the vendor now remits taxes to the Town.

According to definitions in IRS regulations, unrelated business income (UBI) includes the income from operations that are regularly carried on but not substantially related to the express exempt purpose of the university. Any net gain from UBI activities is subject to federal taxes. The university's only units that generate UBI related to meals and lodging are Personal Touch Catering and the IVTSCC.

#### **DINING PROGRAMS AT OTHER PUBLIC VIRGINIA INSTITUTIONS**

Most of Virginia's 15 public institutions operate at least a portion of their dining services, catering, or conferences programs through contractors, such as Aramark®, Sodexo®, Chartwells®, and Thompson Hospitality®. Where contractors are the chief operators of a university dining program, the contractor is responsible for collecting and remitting local meals taxes directly to the local government, without any intervention from the university. Christopher Newport University (CNU) is the only other institution in Virginia that has a self-operating dining program operation like Virginia Tech. Newport News imposes a 6.5 percent food and beverage tax on all sales of food and beverages. CNU does NOT collect local meals tax on meals prepared on-campus. There are no independently owned franchises on the CNU campus, but there are franchises/ branded concepts that, like Virginia Tech, are under the banner of the dining services program. CNU also operates a catering service, which does not collect local meals tax. State sales tax on

food and beverages is collected on purchases made by non-students and for catering services provided for non-university business related functions. No other local taxes are collected and remitted to Newport News. A report written by officials of the Town of Blacksburg and shared with Virginia Tech cited Newport News officials as stating they receive local meals taxes from the university. CNU officials were clear, however, that the university does not collect the local meals tax.

To determine the pattern of local tax collection at public Virginia institutions, inquiries were made to the university controllers (or similar finance office) at each of the public Virginia institutions of higher education (Appendix N). As stated previously, CNU is the most comparable to Virginia Tech, as they are the only other public institution that has a self-operated dining program.

### **VIRGINIA TECH'S RELATIONSHIP WITH THE TOWN OF BLACKSBURG**

Virginia Tech and the Town have an extremely positive relationship and partner on numerous projects and events that promote the university, the Town, and the local economy. The success of both the university and the Town requires ongoing communication and collaboration. Representatives from both agencies work together in a multitude of ways. An economic impact study conducted 10 years ago found that Virginia Tech and its affiliates generated \$1.287 billion in annual economic activity and 15,000 jobs in the Roanoke and New River Valley region. Virginia Tech has grown tremendously in the last decade, and its economic impact on the region and the Town is likely significantly more than \$1.3 billion. Further, the Virginia Tech Corporate Research Center, one of the largest economic generators created in Blacksburg since Virginia Tech was founded, was created at no cost to the Town or its citizens.

The university and Town partner on a number of long-term projects and initiatives to provide services and benefits to the community. The university and the Town have mutual aid agreements for police and rescue. A Town-Gown Committee was established to expand the lines of communication and develop partnerships among community groups. The Town-Gown Committee is co-chaired by the university's Associate Vice President for Student Affairs and the Deputy Town Manager. Additionally, members from the university's senior leadership team meet with Town officials monthly to discuss opportunities for the university and the Town to partner, as well as to address concerns that arise.

Current and recent collaborations between the university and the Town include:

- Submittal of a joint application named "Future Forward Blacksburg" for Google's "Think Big with a Gig" experiment to build ultra-high speed fiber to the home networks in a number of locations across the country
- The Summer Arts Festival
- Sustainability Week with numerous activities, events and tours focused on building and sustaining a greener community

- Following the unfortunate collapse of the Blacksburg High School gymnasium, the university entered into an Agreement with the Montgomery County School Board to provide no-cost assistance at the Old Christiansburg Middle School
- Multimodal facility
- Blacksburg Transit (BT) Bus Tracker
- College Avenue Redevelopment
- The university provides significant funding for the Blacksburg Transit

Additionally, members from university administration and the Town serve on several local authorities together in support of the management of community resources and services, including:

- Blacksburg-Christiansburg-VPI Water Authority
- Virginia Tech/Montgomery Regional Airport Authority
- Montgomery Regional Solid Waste Authority
- Blacksburg-VPI Sanitation Authority
- Regional 9-1-1 Emergency Communications Authority

As mentioned earlier, Virginia Tech does not receive from the Town many of the services that a municipality would typically provide. The university has its own police department and rescue squad. During football season when the Town police, as well as police from several jurisdictions, assist the university with security at the football games, the university reimburses the non-university officers' time. As a state agency, the university is not subject to local building code requirements and now employs its own building code official. The university provides an annual contribution to the Town for fire services. In 2008-09, \$200,280 was contributed for fire services and approximately \$2.1 million was provided towards the Blacksburg Transit operation.

In 1960, the Town and Virginia Tech established an electric service franchise agreement (Ordinance 285) granting franchise rights to the university for providing electrical service to a portion of the Town. The franchise agreement, amended in 1986, includes an annual franchise fee to be paid for the use of town streets (Appendix O). The Town receives taxes and fees via the Virginia Tech Electric Service (VTES) for utility services used within the town limits. Specifically, the university pays an electric service franchise fee, a state consumption tax (of which a portion is sent to the town) and voluntarily collects a town utility tax on sales in the Town. The university currently pays \$250,000 annually for the franchise fee. The annual franchise fee totaled 5 percent of the gross receipts derived from the "distribution, transmission, supply or sale of electricity within the Town," not to exceed \$250,000, when the gross receipts from Town customers would reach \$5,000,000. The franchise was capped at \$250,000 cap because the university "historically has never passed this fee through to its customers as a separate line item." The fee was paid out of university operating expenses. VTES has continued to remit the monthly franchise fee for the use of Town streets. The university has also been voluntarily collecting the town utility tax on sales in the Town since sometime after 1986, which aligns with the tax description in the formal franchise agreement amended and

signed in 1986. The town utility tax correlates to the numbers of residential and commercial customers times the respective rate per month. For fiscal year 2008-09, the total amount of town utility tax VTES collected and remitted to the Town was \$169,196. Since FY 2000-2001, the university has also collected the state electric utility consumption tax (a tax on consumers), from which the Town receives a portion set by the state (Code of Virginia §58.1-2900 and §58.1-2901). As of 2001, the State consumption tax replaced three existing corporate taxes, the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local utility license tax. The tax rate is approximately equal to 0.5 percent of gross receipts from customers. The agreement includes language that both parties (Virginia Tech and the Town) acknowledged that the university maintained that the Town did not have legal authority to require the university to collect the tax. Virginia Tech, as grantee, has agreed willingly to collect the tax to assist the Town. Due to a difference in the type of university accounting system used prior to 1989, payment records of the local utility tax cannot be retrieved. The practice of collecting and remitting taxes to the Town through this agreement will be discontinued at the advice of University Legal Counsel when the agreement is renewed.

Virginia Tech through its Communications Network Services unit (CNS) also maintains a franchise agreement with the Town of Blacksburg for a telecommunications license to serve voice and data transmissions on properties that Virginia Tech rents from the Town (Appendix P). The annual franchise fee is equal to the number of miles of Virginia Tech facilities located in the town streets multiplied by an annual multiplier per mile or equal amount. Annually this amount has averaged less than \$500.

### **LEGAL BACKGROUND**

The earliest document available relating to the meals tax issue is the Annexation Agreement adopted and approved by the Town of Blacksburg and Virginia Tech on April 9, 1968 (Appendix Q). Section (2) of this agreement states:

“The Town of Blacksburg shall not have any power or authority to tax or regulate in any manner, any business or commercial activity carried on on the property of Virginia Polytechnic Institute, or to tax or regulate in any way any athletic, cultural, social or academic event, or any gathering, meeting or function whatsoever, or the spectators or participants therein, held on the property of Virginia Polytechnic Institute.”

In the early 1980s, the university requested an opinion of the Virginia Attorney General as to whether the Town of Blacksburg could impose local meals tax collection responsibilities upon Virginia Tech, in accordance with the Town of Blacksburg Charter, and the Code of Virginia that permits “local taxes on transient room rentals and meals.” Exempted from this tax, under Virginia Administrative Code 23 VAC 10-210-4020, is the sale of meals “included in room, board or tuition charges or fees.” In addition, for meals, not exempt according to the State sales tax exemption, the Attorney General found that

the Town has “no authority to impose on the university (as a state agency) the duty to collect and report the local meals tax. The basis of the opinion was that:

*“without express legislative authority, a locality may not impose a tax or the economic incidence of a tax on the Commonwealth or its agencies and instrumentalities. The state’s immunity from local taxation rests on the fundamental principle that the functions of government are not to be unduly impeded, a principle that applies in equal measure to a requirement that the sovereign act as a collector of a local tax” [Appendix A].*

More recently, in a 1997 opinion, the Virginia Attorney General considered the question as to the authority of the City of Harrisonburg to require James Madison University (JMU) or a private company providing management services to the university, to “collect the city meals tax on the meals the University sells to its students through its dining services” (Appendix R). Given that a private company provides only management services for the university dining program, JMU is still considered as the operator of its dining service program. Specifically, the majority of employees who work for the dining program are employees of the university. University employees purchase, prepare, serve and sell the food. As university employees conduct the bulk of operations associated with the university dining program, the program is considered to be under their purview; therefore, meals are considered to be “sold by the university” and as such, the 1983 opinion “controls to prohibit the city from requiring the University to collect the city meals tax.”

*“Because the private company did not manage the University’s dining facilities, the city could not impose a tax collection duty on the private company. The 1997 Opinion also noted whether the private company has assumed responsibility for the operation of the University’s dining system was a question of fact...To permit the city to impose a tax collection duty on the private company under these circumstances would be inconsistent with the 1983 opinion [Appendix A].*

The opinion of Virginia Tech’s Legal Counsel is that the Town cannot require the university to collect the meals tax, but any non-affiliate Virginia Tech entities (e.g. Centerplate® for athletic games food concessions, third-party caterers, etc.) are required to collect the meals tax. The Town Code, Section 22-704 (d) (3) states that the meals tax shall not be levied upon “food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth of the United States.”

In addition, University Legal Counsel opined that the university cannot legally collect the meals tax or the lodging tax for the Town of Blacksburg. Further, the university should not be collecting and remitting the Town utility tax, for the same reasons noted herein.

The Constitution of Virginia, Article X, Section 7 deals with taxation and the collection and disposition of State revenues and provides, in relevant part, as follows:

*All taxes . . . and other revenues of the Commonwealth shall be collected by its proper officers and paid into the State Treasury. No money shall be paid out of the State Treasury except in pursuance of appropriations made by law.*

Therefore any sales tax collected by Virginia Tech, as a state agency (whether it was for meals or lodging) would have to be paid into the State Treasury (Code of Virginia § 58.1-13) and Virginia Tech would not have legal authority to remit it to the Town of Blacksburg unless appropriated by the Virginia General Assembly.

### **POLITICAL CONSIDERATIONS/CLIMATE**

Although it is clearly delineated in the Code of Virginia that the university as a State agency cannot collect and remit taxes to the Town, the following presents several internal and external considerations associated with the collection and remittance of local meals and lodging taxes.

#### **Internal Considerations**

Virginia Tech's legal counsel is a Special Assistant Attorney General for the Commonwealth of Virginia, and reports directly to the Attorney General. The university makes every attempt to adhere to state laws without exception. Although the university could collect the local meals and lodging taxes the university could not remit the funds to the Town in accordance with the Constitution of Virginia. Remitting taxes to the Town would be in violation of State law and not in accordance with guidance from both the State Attorney General and the Special Assistant Attorney General.

Further, if the university chose to collect local meals and lodging taxes, there would be administrative costs associated with the change. In order to begin the collection of local meals tax, university systems at the IVTSCC would require modifications, thus significant additional administrative costs would be incurred. At the IVTSCC, all three internal systems would require an upgrade to accommodate the collection and tracking of more than one tax, separately from other revenue. There would also be a definite increase in labor to establish the processes necessary for remission, reconciliation, and record keeping. Current internal systems used by the university's auxiliary dining service are equipped to collect state taxes only, and would have to be modified to collect local taxes. Current internal systems used by the university Controllers' Office are equipped to collect state taxes only, and would also need to be modified to collect local taxes. Investing labor and operating funds in collecting and remitting taxes would actually hinder the university from conducting the true business of the university and therefore the State. It should, however, be noted that the Town has advised that if the university collected the taxes it would be entitled to retain a percentage of taxes collected like any other vendor.

Vendors typically retain 3% of the taxes collected; however, the Town is willing to negotiate a different percentage with the university.

### **External Considerations**

A report submitted by the Town Manager to the Blacksburg Town Council, as well as official correspondence between the Town and the university, assists in defining the Town's perspective on the meals tax issue as well as their understanding of meals and lodging revenue and tax collection on the Virginia Tech campus (Appendix S).

At least three community groups have organized discussions surrounding the meals tax issue, including (1) Blacksburg United for Responsible Growth, (2) the PlayFairTech campaign that is associated with the group Progress and Main, and (3) Citizens First for Blacksburg. Blacksburg United for Responsible Growth (established in 2007), as well as the PlayFairTech campaign, have the perspective that Virginia Tech has an unfair competitive advantage by not collecting meals and lodging taxes at its dining hall eateries, university dining franchises, Personal Touch Catering, and the IVTSCC. It is highly unlikely that campus consumers are making choices of this nature based on cost. The university is also seen as receiving services such as fire protection, utilities, and public safety from the Town at no cost, while not providing adequate compensation. However, as discussed previously, this is not factual. These community groups are not familiar with the arrangements between the university and the Town to pay for and/or provide the services that the university is seen as receiving at no cost.

A decision by the university to collect and remit meals and lodging taxes to the Town could have a negative impact on other Virginia institutions of higher education. As noted in this report, CNU operates its own dining programs and does not collect and remit meals taxes to the City of Newport News. Further, the City of Norfolk is seeking an admissions tax from Norfolk State University, and Virginia Tech's decision to collect and remit taxes to the Town could have a negative impact on Norfolk State University as well. To date, on questions of whether state agencies would be responsible to pay specific types of local taxes, the Attorney General opined that instrumentalities of the Commonwealth of Virginia are not required to collect admissions tax on non-university events (Appendix T).

### **CONCLUSION AND RESPONSE TO THE TOWN**

While State sales taxes on food and beverages have been collected by Virginia Tech on meal purchases that are not associated with student meal plans, local meals and lodging taxes are not collected by the university. Currently, on-campus meal purchases made from external (third-party) catering companies, purchases made at independent franchises in G. Burke Johnston Student Center, and purchases made with Hokie Passport Account Funds off-campus, are subject to local meals tax and are remitted directly to the Town of Blacksburg. All other non-exempt meal or lodging purchases are currently not subject to local meals and lodging taxes on-campus.

As a state agency, Virginia Tech should not collect taxes that the university does not have the authority to remit to a local municipality. First, the Town has the authority and ability to directly collect local meals taxes from all external vendors on campus, including those providing services for athletic concessions in the same way it collects local meals taxes from the other non-affiliated restaurant franchises located on campus. As such, local meals taxes have been collected by most independent entities on-campus, however, with the exception of Centerplate® and other third party vendors that sell food concessions at athletic events. During the local business license renewal process, the Town recently advised Centerplate® to begin collecting and remitting local meals taxes. External non-affiliated catering companies that provide meals on the Virginia Tech campus already remit local meals taxes directly to the Town.

Some have argued that the university should be collecting and remitting meals and lodging taxes for those activities related to meals and lodging that the IRS defines as unrelated business income. The university, however, cannot by law **remit** any taxes to the Town directly. All taxes collected by the university must be remitted to the State Treasury. Hypothetically, if the university was to collect local taxes on such unrelated business income, AND the university could legally remit taxes to the Town, the university would only have remitted \$39,205 (less a vendor discount which would be a negotiated percentage of total tax liability) to the Town for FY 2008-09.

In conclusion, the opinion of the Attorney General and the Special Assistant Attorney General (also University Legal Counsel) is that the Town does not have the authority to require the university to collect local meals and lodging taxes and the university does not have the legal authority to voluntarily remit the local meals tax or lodging tax to the Town. All taxes collected by Virginia Tech must be paid into the State Treasury. Virginia Tech does not have legal authority to directly remit the taxes collected to the Town. Virginia Tech must adhere to State law and cannot alter its current tax collection and remittance process by collecting and remitting local meals and/or lodging taxes on the Virginia Tech campus. Virginia Tech would like to continue working with the Town to identify joint programs and initiatives to promote the local economy. Unfortunately, Virginia Tech is not in a position where the university can comply with the Town's request.



## APPENDICES

- A September 7, 1983 Opinion from Virginia Attorney General Gerald L. Baliles
- B January 9, 1991 Memorandum from Special Assistant Attorney General Kay Heidbreder to dining staff regarding authorization to collect Town of Blacksburg meals tax
- C February 16, 1999 Memorandum from Special Assistant Attorney General Jerry Cain to dining staff advising that the university discontinue remittance of local lodging tax
- D September 9, 1999 Final Notice from the Town of Blacksburg to Virginia Tech regarding the Donaldson Brown Hotel and Conference Center's Lodging Tax for the months of January – June 1999
- E October 1, 1999 Letter from Virginia Tech to the Town of Blacksburg advising that the university was discontinuing remittance of the local lodging tax
- F September 15, 2009 Letter from Town of Blacksburg Mayor Ron Rordam to President Charles W. Steger requesting university assistance with local tax collection
- G Overview of University Meal Plans and Dining Programs
- H University Dining Auxiliary Revenue for FY 2008-09
- I Food Concessions for Athletic Games and Ceremonies for FY 2008-09
- J Hokie Passport Account Deposits and Purchases for FY 2008-09
- K The Inn at Virginia Tech and Skelton Conference Center Revenue for FY 2008-09
- L State and Local Meals and Lodging Taxes Collected in FY 2008-09
- M State and Local Meals and Lodging Taxes Collected by Independent Vendors Located On Campus in FY 2008-09
- N Local Meals and Lodging Taxes Collected at Public Virginia Institutions
- O Virginia Tech Electric Service Franchise Agreement with the Town of Blacksburg

- P Virginia Tech Communication Network Services Franchise Agreement with the Town of Blacksburg
- Q Annexation Agreement between the Town of Blacksburg and Virginia Tech
- R September 22, 1997 Attorney General Opinion to James Madison University
- S Town of Blacksburg Meals Tax Collection on the Virginia Tech Campus Report dated May 26, 2009 submitted to the Blacksburg Town Council
- T October 2, 2009 Attorney General William Mims Opinion regarding the collection of admissions tax on persons attending non-university events at George Mason University



COMMONWEALTH of VIRGINIA  
Office of the Attorney General

Gerald L. Batiles  
Attorney General

William G. Broadous  
Chief Deputy Attorney General

September 7, 1983

Donald C. Gehring  
Deputy Attorney General  
Criminal Law Enforcement Division

Morton T. Jacks  
Deputy Attorney General  
Human & Natural Resources Division

Elizabeth S. Lacy  
Deputy Attorney General  
Judicial Affairs Division

Walter A. McFarlane  
Deputy Attorney General  
Finance & Transportation Division

Karl E. Bran  
Director of Administration

The Honorable W. E. Lavery, President  
Virginia Polytechnic Institute  
and State University  
Blacksburg, Virginia 24061

My dear President Lavery:

You have asked whether the Town of Blacksburg may impose tax collection responsibilities upon a State educational institution's officers and employees for a tax on meals sold by the institution. The recently enacted ordinance provides for a two percent tax on each prepared meal purchased within the town limits. The ordinance does include a limited number of exemptions.

The tax is levied upon the purchaser. The seller of the meal is charged with the responsibility of collecting the tax, as well as preparing reports of meals purchased which will be submitted to the town. Failure to comply with the ordinance may result in the assessment of penalties and interest.

You furnished a copy of the ordinance which recites that it is enacted under the authority of § 2.03 of the Charter for the Town of Blacksburg, Virginia and § 15.1-841. The Charter for the Town of Blacksburg, Ch. 619, Acts of Assembly of 1975, provides in § 2.03 that "[t]he powers set forth in Chapter 18 of Title 15.1 of the Code of Virginia as in force on January 1, 1975, and any acts amendatory thereof or supplemental thereto, are hereby conferred on and vested in the town of Blacksburg." Within Ch. 18 of Title 15.1 is § 15.1-841, which reads as follows:

"A municipal corporation may raise annually by taxes and assessments on property, persons and other subjects of taxation, which are not prohibited by law, such sums of money as in the judgment of the municipal corporation are necessary to pay the debts, defray the expenses, accomplish the purposes and perform the functions of the municipal corporation, in such manner as the municipal corporation deems necessary or expedient."

The Honorable W. E. Lavery, President  
September 7, 1983  
Page 2

The town ordinance also cites § 58-441.49(a) of the Code which permits "local taxes on transient room rentals and meals...to the extent authorized by law...." This language is not itself a grant or power to impose such a tax. Rather, it is an exception to the prohibition of § 58-441.49(a) against all local general sales taxes except the one percent local sales and use tax authorized by § 58-441.49(b). See Opinion to the Honorable Alson H. Smith, Jr., Member, House of Delegates, dated June 2, 1983 (copy enclosed).

Before turning to your question, it is helpful to consider one of the exemptions because it narrows the scope of the purported duty imposed upon the University. As noted, above, the ordinance contains exemption provisions, including one which exempts the sale of any meal which is exempt from taxation under the Virginia Retail Sales and Use Tax Act. The Virginia Department of Taxation has issued Virginia Retail Sales and Use Tax Regulations (January 1, 1979) which pertain to your question. Although there is no express exemption provision for the University under § 1-64 of the regulations pertaining to meals, there is a limited exemption afforded by § 1-96, interpreting the exemption of § 58-441.6(t) relating to colleges or other institutions of learning. That regulation, § 1-96(a), states that "the institution must collect the tax on retail sales of meals to students or others if the price of the meals is not included in room, board or tuition charges or fees." In other words, meals which are included in room, board or tuition charges or fees are not subject to the State tax. Therefore, under the ordinance, those meals are not subject to the tax imposed by the Town of Blacksburg.

For any meal transactions which are not exempt under the specific provision just described, I believe that the town does not have authority to impose upon a State institution the duty to collect the tax and report the purchases of meals. "Generally, the State and its agencies are not bound by any statute, unless the statute in express terms is made to extend to the State." See 1979-1980 Report of the Attorney General at 404.1 <sup>1</sup>Virginia Polytechnic Institute and

<sup>1</sup>See, also, Opinion to the Honorable Douglas K. Baumgardner, Commonwealth's Attorney for Rappahannock County, dated October 28, 1982 (copy enclosed) (in a zoning context, the powers of governmental bodies extend to other governmental bodies of equal or lesser authority than the local government seeking to apply them).

The Honorable W. E. Lavery, President  
September 7, 1983  
Page 3

State University "is a State agency for purposes of the State's general exemption from statutory and local requirements." Id.

It is the policy of the Commonwealth that "[t]axes are not to be assessed against it or its subdivisions unless the right to tax is made plain." Norfolk v. Nansemond Supervisors, 168 Va. 606, 626, 192 S.E. 588, 596 (1937). Although a number of jurisdictions hold that a constitutional exemption from property taxation accorded the State and its political subdivisions is limited to ad valorem taxes on specific property and does not extend to exemption from excise and privilege taxes, the rule in the Commonwealth is otherwise. Pelouze v. Richmond, 183 Va. 805, 33 S.E.2d 767 (1945).

The Pelouze case held that because the legislature neither expressly required nor made any specific provision with respect to the payment of a privilege tax in the form of a writ tax on suits brought in court by municipal corporations, the court presumed that the legislature did not intend to require imposition of the tax upon municipalities. Pelouze, supra, at 811, 33 S.E.2d at 769; see, also, O'berry v. Mecklenburg County, 198 N.C. 357, 151 S.E. 880, 67 A.L.R. 1304 (1930) (general statutes do not bind the sovereign unless the sovereign is expressly mentioned and it will not be presumed, in the absence of express statutory declaration, that the legislature intended to require payment of an excise tax).

Thus, the decision to permit the economic incidence of a municipal tax to be imposed upon the Commonwealth rests with the General Assembly. Cf. United States v. Forst, 442 F.Supp. 920, 923 (W.D. Va. 1977) (Congress determines whether a state tax may be placed upon the United States). Had the ordinance of the Town of Blacksburg sought to impose the tax upon the University as the seller of the meals, it would be my opinion that such an ordinance would be ultra vires with respect to the Commonwealth and her instrumentalities, including the University.

Among the reasons given by the court in Pelouze for requiring express legislative intention to impose excise or privilege taxes on the State, its political subdivisions or instrumentalities, was a statement that "[t]his immunity rests upon fundamental principles of government, being

The Honorable W. E. Lavery, President  
September 7, 1983  
Page 4

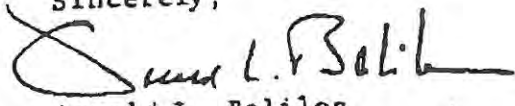
necessary in order that the functions of government shall not be unduly impeded, as well as for other reasons." Pelouze, supra, at 811 [quoting 51 Am. Jur. Taxation § 557 (1944)].

This same rationale applies in equal measure to a requirement that the sovereign act as a collector of a local tax. Therefore, I am persuaded that the prohibition against local taxes being imposed upon the Commonwealth in the absence of express statutory authority extends as well to prohibit the imposition upon the Commonwealth of the duty to collect and make reports for any local tax.

In summary, the tax is imposed upon the purchasers of meals within the town. Under the terms of the ordinance, the tax would not be applicable to meals purchased through general room, board and tuition charges paid to the University. With respect to other meals purchased individually, the town does not have authority to require the University to collect the tax. Thus, for practical purposes, the town is without authority to enforce collection of the tax in facilities owned and operated by the University.

With kindest regards, I am

Sincerely,



Gerald L. Baliles  
Attorney General

5:2/173-55  
Enclosure



## VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Office of the General Counsel

219 Burruss Hall

Blacksburg, Virginia 24061-0121

January 9, 1991

Phone: (703) 231-6293

Facsimile: (703) 231-6474

## M E M O R A N D U M:

TO: Vera Kidd

FROM: Kay Heidbreder *KH*

SUBJECT: Town Sales Tax

In accordance with your recent request, attached please find a copy of an opinion from the Attorney General's Office regarding the Town's Meals Tax. As you will note, the Attorney General has opined that Virginia Tech, as a State Agency, is not required to collect the Town's Meals Tax.

If you have any questions or would like to discuss this matter further, please let me know.

KH/gsk

cc: Bill Vest

attachment



Office of the General Counsel  
 219 Burruss Hall, Blacksburg, Virginia 24061-0121  
 Office Phone: (540) 231-6293 Fax: (540) 231-6474

**MEMORANDUM:**

**TO:** Peggy Pearson

**FROM:** Jerry Cain

**SUBJECT:** Transient Lodging Tax

**DATE:** February 16, 1999

I have examined your internal audit information on the transient lodging tax. After my conversation with you, I am of the opinion that the transient lodging tax is essentially analogous to the Town's Meals Tax and pursuant to the Attorney General's Opinion, this is not something that the University is required to collect and remit.

Consequently, my recommendation is that you discontinue the remittances of this tax.

JDC/gsk

Post-It® Fax Note	7671	Date	# of pages 1
To	<i>Peggy Pearson</i>	From	<i>J. Cain</i>
Co/Dept		Co.	
Phone #		Phone #	
Fax #	<i>1-2135</i>	Fax #	



# Town of Blacksburg



## FINAL NOTICE

September 9, 1999

Donaldson Brown Hotel & CEC  
201 Otey St.  
Blacksburg Va 24061

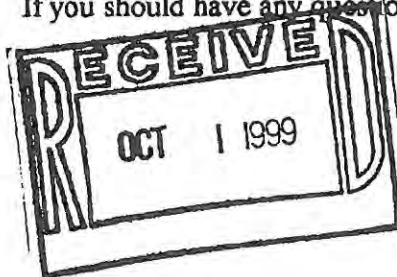
Dear Sir/Madam:

In a review of our meals tax receivable, we noted that we did not receive Donaldson Brown Hotel's 4% lodging tax for the months of January - June 1999. Since this payment is late, the following penalties and interest charges have been added to your meals tax remittance.

1. Forfeit of the 3% collection discount
4. Penalty of 10% of tax owed (*including the 6% discount*)
5. Interest at 10% per year which equals .0274% for each day late

If we do not hear from you or receive payment on this item by September 22, 1999, we will proceed to take legal action.

If you should have any questions, please call me at (540) 961-1109. Thank you.



Very truly yours,

Susan H. Kaiser, CPA  
Director of Financial Services

Cc: Controller's Office  
SHK:klq



FAX 951-2180

300 South Main Street ♦ Post Office Box 90003 ♦ Blacksburg, Virginia 24062-9003

Continuing Education

Donaldson Brown Hotel and Conference Center  
Otey Street, Mail Code 0104  
Blacksburg, Virginia 24061-0001  
(540) 231-8000 Fax: (540) 231-3746

October 1, 1999

Ms. Susan H. Kaiser, CPA  
Director of Financial Services  
Town of Blacksburg  
300 South Main Street  
Post Office Box 90003  
Blacksburg, VA 24062-9003

Dear Ms. Kaiser:

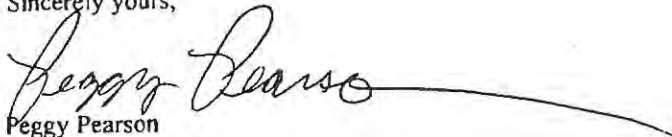
My apologies for not contacting you sooner. I was newly arrived at the University in February when our internal auditors questioned our remittance of the lodging tax to the town of Blacksburg. I thought our Controller's Office had contacted you at that time.

Enclosed is a copy of a memo to me from our General Counsel stating that in his opinion "the transient lodging tax is essentially analogous to the Town's Meals Tax and pursuant to the Attorney General's Opinion, this is not something that the University is required to collect and remit."

His recommendation was to discontinue remittance of this tax which we apparently did.

Please feel free to contact me if you think this matter requires further discussion.

Sincerely yours,



Peggy Pearson  
Business Manager  
Donaldson Brown Hotel and Conference Center  
Phone: 540-231-4205  
Fax: 540-231-2135  
E-mail: ppearson@vt.edu

Enclosures

September 15, 2009

Dr. Charles W. Steger  
President, Virginia Polytechnic Institute and State University  
Office of the President  
210 Burruss Hall  
Blacksburg, Virginia 24061

Dear Dr. Steger:

On behalf of the Town of Blacksburg and the Town Council, this letter is a request for Virginia Polytechnic Institute and State University ("Virginia Tech") to assist the Town of Blacksburg in collecting certain meals and lodging taxes on the campus of Virginia Tech. Doing so will ensure that these taxes are administered in a fair and even manner throughout the Town.

It is important to re-state that in no way does the Town propose taxing student meal plans or Virginia Tech as an entity. The taxes in question are taxes on purchasers of lodging and meals, not taxes on Virginia Tech. Furthermore, the Town Code, at § 22-704, excludes from taxation meals "sold by any college or university to its students or employees." The Town Code, at § 22-503, also exempts lodging transactions related to university business.

As a practical matter, these taxes would fall on visitors to the campus, such as persons lodging at the Inn or buying food at athletic events. Virginia Tech's collection of these taxes (or requiring its business partners such as Boston Concessions or Hilton Hotels to collect the taxes) would have a beneficial community relations effect by easing local business' concerns about unfair competition. And, like any other vendor, the collecting entities would be entitled to retain a percentage of the taxes collected.

Based on the above, the Town is requesting Virginia Tech to take the following actions:

- a. require Boston Concessions and other concessionaires to collect the Town's meal tax on food and beverages sold at athletic events on campus;



b. arrange for Hilton Hotels Corporation, in its capacity as manager of the Inn at Virginia Tech Hotel & Conference Center, to collect the Town's meal and lodging tax on non-exempt sales of lodging and meals; and

c. have Virginia Tech dining facilities collect the Town's meal tax on food and beverages sales that are not exempt under Town Code § 22-704.

In recent years, Virginia Tech and the Town have worked together on many projects that benefit each other. I look forward to Virginia Tech's cooperation on this matter as well, and hope to meet with you soon to discuss this important issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ron Rordam". The signature is fluid and cursive, with a large initial "R" and "R".

Ron Rordam  
Mayor

c: Marc Verniel, Town Manager

## OVERVIEW OF UNIVERSITY MEAL PLANS AND DINING PROGRAMS

The university dining auxiliary service offers a variety of meal plans and dining service programs, which are presented in Table 1. On-campus residents must purchase the Premium Flex (Fall 2010), Mega Flex, or Major Flex Plans. Off-campus students may choose the Minor Flex Plan, the Commuter Cash dining plan, or Dining Dollars. Additionally, meal plans are available to students during the summer sessions. Meal plan funds cannot be used at independent vendors located on campus (currently Subway/Seattle's Best). Visitors attending conferences that require meals are provided prepaid Guest Dining Cards that can be used at specific university auxiliary dining centers.

**Table 1.** Description of University Dining Auxiliary Service Meal Plans

Dining Option	Description	Where Plan is Used
Flex Meal Plans [Premium Flex (2010-2011), Mega Flex, Major Flex, and Minor Flex] <sup>a</sup>	Base cost + meal cost	Can be used at university auxiliary dining centers at a discount (50-67%); can be used to purchase catering services
Summer Dining Plans [Summer Flex Plan, Summer 7 Meal Plan, Summer 19 Meal Plan] <sup>a</sup>	Varies with type of plan	Varies with type of plan
Commuter Cash Dining Plan <sup>a</sup> -smallest meal plan available	Retail price (undiscounted)	Can be used at university auxiliary dining centers, with no discount
Dining Dollars <sup>a</sup>	Door price; refillable debit account	Can be used at university auxiliary dining centers, with 5% discount for purchases by students
Guest Dining Card <sup>a</sup> (for temporary use)	Retail price (undiscounted)	Can be used at university auxiliary dining centers, with no discount

<sup>a</sup> These funds cannot be used at independent vendors located on campus (currently, Subway and Seattle's Best Coffee at G. Burke Johnston Student Center).

Each of the abovementioned meal plans are described in more detail in the following section.

## **Meal Plans**

### Flex Plans

Flex meal plans (Premium Flex as of Fall 2010, Mega Flex, Major Flex, Minor Flex, and Summer Flex) are composed of a fixed base cost (\$843) and "Flex Dollars" (food cost). The fixed base amount includes overhead costs, such as utilities and labor. Flex meal plan funds (Flex dollars) can be used at all university dining centers with deep discounts on food purchases and function much like debit accounts. Additional funds (Flex Additions funds) can be added to the Premium, Mega and Major Flex meal plans once the initial Flex Dollars are used. Meal plan funds cannot be used at independent vendors located on campus or the Inn at Virginia Tech and Skelton Center (IVTSCC).

### Summer Dining Plans

During the summer, on-campus summer session students purchase a Summer Flex Plan or a 19 Meals Plan (in lieu of major and minor Flex Plans, which are not available during the summer). Off-campus summer session students also have the option of purchasing the 7 meals plan. The summer 7 or 19 meal plans include a set number of meals; summer meal plan funds cannot be used at Squires Food Court or Deet's Place.

### Commuter Cash Dining Plan

The Commuter Cash Dining Plan is a small (\$201 per semester) plan that is not discounted in the dining centers. The Minor Flex Plan is similar to the larger on-campus flex plans, and receives the same discount; however, additional deposits cannot be added to the Minor Flex Plan. Commuter Cash and Minor Flex Plan funds cannot be used at independent vendors located on campus or the IVTSCC.

## **Other University Auxiliary Dining Service Programs**

### Dining Dollars

Dining Dollars is a dining debit account that is automatically activated as part of the Hokie Passport identification cards. Students, faculty, and staff can make deposits to their individual Dining Dollars account at any time. A Dining Dollars account does not require the purchase of a Flex meal plan. As it is a debit account, deposits can be made in-person, online, or at several cash-to-card machines throughout campus. Dining Dollars can be used at university auxiliary dining centers only; they are not accepted at independent vendors located on campus or the IVTSCC.

### Guest Dining Card

Guest Dining Cards are issued to individuals who participate in conferences and camps, which require access to university dining centers. Payments for meals accessed on the Guest Dining Cards are included in fees for conference or camp tuition.

### Personal Touch Catering (including We Care packages program)

The university's dining auxiliary operates Personal Touch Catering, a full-service event planning service located at the Owens Banquet Room within Owens Food Center. Personal Touch Catering provides services for university as well as non-university events. The university's dining auxiliary also participates in stadium concessions through Personal Touch Catering, providing food and non-alcoholic beverages for stadium suites and club areas. We Care is a student-operated program within the Personal Touch Catering department that creates ready-to-purchase "care" packages for students. Flex Dollars can be used for purchases from Personal Touch Catering, including We Care gift packages; no discounts apply.

### Hokie Passport Account

The Hokie Passport card, the Virginia Tech Identification card for students, faculty, and staff, is also used as a university debit account; it also serves as a building access key and bus pass. As a debit account, deposits can be made in-person, online or at several cash-to-card machines throughout campus. On campus, Hokie Passport debit account funds can be used for meal purchases served in university dining centers, on-campus dining franchises, and independent vendors, as well as non-meal purchases at university vending machines, laundries, and university bookstores. Hokie Passport users pay retail cost without discounts at auxiliary dining centers. Off campus, a Hokie Passport account can be used at participating off-campus restaurants and retail vendors.

### New Student Orientation Program

The New Student Orientation program offers new freshman and new transfer students one or two-day workshops that are geared toward helping them experience a smooth transition into college life. Students and their parents (if they stay on campus) pay an orientation fee that includes dormitory lodging and/or meals.

### University Dining Internal Facility Use Agreements

A Facility Use Agreement documents the assignment of university space between academic departments, auxiliaries, student organizations and/or university related corporations. University Dining Auxiliary transactions occur in university space that was formerly managed by the Office of Student Programs - Housing and Dining Services, but has been converted into space for university academic units and administrative offices. University Policy 5420 states that facility use agreements are to "ensure consistent reimbursement rates in recovering operating costs and/or lost revenue of used space. It is not intended to encourage departments to rent space for a profit, nor should departments surrendering space experience a financial loss." Revenue is paid to Housing and Residential Life by various internal university units.

## UNIVERSITY DINING AUXILIARY REVENUE FOR FY2008-09

The university's dining auxiliary generated **\$42,054,460** in revenue; this total includes revenue from dining plan purchases, non-dining plans purchases, Personal Touch Catering / We Care services, internal facility use agreements, conferences, delinquent fee collection, and a portion of stadium concession sales through Personal Touch Catering. University Dining Service also participates in athletic games food concessions, providing food and non-alcoholic drinks for stadium suites and club areas at Lane Stadium. Table 1 shows the breakdown of University Dining Service revenues. Of the total dining revenue of **\$42,054,460**, revenue directly related to dining plans (Meal Plans, Dining Dollars, Flex Additions, Major Flex Plan Base Charges for Each Vacancy at Oak Lane, Delinquent Fee Collection) in the total amount of **\$38,560,462** was exempt from state sales taxes. In addition, internal facility use agreements, which are not subject to state tax, generated **\$246,956** in revenues. State sales tax was collected on non-meal plan purchases (cash, Hokie Passport Accounts, new student orientation, and conferences) and catering for which the total revenues were **\$3,247,042**.

**Table 1. University Dining Auxiliary Service revenues [FY2008-09]**

University Dining Category	Revenue
<b>Meal Plans (See table 2 for details on on-campus dining franchises)</b>	
Meal Plan Purchases	\$35,613,222
Dining Dollars	\$1,913,278
Flex Additions	\$ 824,413
Delinquent Fee Collection	\$56,789
Major Flex Plan Base Charges for Oak Lane Vacancies	<u>\$152,760</u>
Meal Plan Subtotal	\$38,560,462
<b>Non-Meal Plan Purchases</b>	
Cash	\$1,044,819
Hokie Passport Account Funds	<u>\$141,754</u>
Non-Meal Plan Purchases Subtotal	\$1,186,573
<b>Catering</b>	
Personal Touch Catering (includes We Care Packages)	\$1,045,064
Athletic Games Food Concessions - Stadium Suites, Club Areas	<u>\$160,530</u>
Catering Subtotal	\$1,205,594
<b>Other</b>	
Internal Facility Use Agreements	\$246,956
New Student Orientations	\$114,741
Conferences	<u>\$740,134</u>
Other Subtotal	\$1,101,831
<b>TOTAL</b>	<b><u>\$42,054,460</u></b>



**NOTE: On Campus Dining Franchises.** Included in the University's auxiliary dining service revenue described above, is revenue from on-campus dining franchises totaled **\$8,091,584** (includes cash, Hokie Passport Accounts, meal plan funds, and Dining Dollars). This total includes purchases from the on-campus dining franchises Au Bon Pain®, Sbarros®, Cinnabon®, Carvel®, Freshens®, Chick-Fil-A®, and Pizza Hut® (Table 2).

**Table 2.** Total revenue for on-campus dining franchises FY2008-09 [as a portion of overall University Dining Service revenue]<sup>a</sup>

<b>On-Campus Dining Franchises</b>	<b>Revenue</b>
Au Bon Pain – Squires	\$3,812,936
Au Bon Pain – Donaldson-Brown	\$453,919
Sbarro	\$1,071,012
Cinnabon	\$176,920
Carvel	\$85,122
Chick-Fil-A	\$1,626,500
Pizza Hut	\$865,175
<b>TOTAL</b>	<b>\$8,091,584</b>

<sup>a</sup> includes cash, Hokie Passport accounts, meal plan funds, guest dining program, and Dining Dollars

## FOOD CONCESSIONS FOR ATHLETIC GAMES AND CEREMONIES

Food concessions for stadium/coliseum events are provided by the university dining auxiliary (Personal Touch Catering), Centerplate®, and third-party vendors. The university dining auxiliary, through Personal Touch Catering, provides food and alcoholic drinks at Lane Stadium suites and club areas. The majority of athletic games food concessions, however, have been contracted out to the company, Centerplate®, which merged with Boston Concessions®, the previous contractor. Centerplate also contracts with local third-party vendors to provide concessions for athletic events.

Contractors provide concessions for football, basketball, soccer, volleyball, baseball, softball, wrestling, and indoor track; tennis, swimming, and lacrosse are rarely managed by contractors. Centerplate® also manages concessions for commencement ceremonies held at Lane Stadium and Cassell Coliseum.

For Centerplate and its third-party vendors, football game concessions provided about 75 percent of athletic games food concessions revenue. Basketball game concessions provided about 20 percent of revenues, with about 5 percent of revenue coming from the concessions for other sports and events. Nonprofit organizations staff the concession stands and receive 11 percent of their sales as their commissions. In the contract between Centerplate® and Virginia Tech, Centerplate® designates 40 percent of football concessions revenues and 30 percent of concessions revenue from other sports and events to the Virginia Tech Athletic Department. The Athletic Department also receives 50 percent of third-party vendor revenue in rent payments. Thirty percent of total revenue earned by third-party vendors is paid to Centerplate®, of which 50 percent is paid to the Athletics department

Centerplate® generated gross revenues of **\$1,365,503** (not including state sales tax), while third-party vendors generated revenues totaling **\$238,054**. The university dining auxiliary, through Personal Touch Catering, generated total revenues of **\$160,530**.

**Table 1.** Food concession revenues for athletic games and Lane Stadium ceremonies [FY 2008-09]

Concessions Revenue Unit	Revenue
<b>Centerplate® / Boston Concessions®</b>	
Centerplate® / Boston Concessions® Gross Sales Revenue	\$1,365,503
<b>University Dining</b>	
Catering – Stadium Suites, Club Areas and Concessions	\$160,530
<b>Other</b>	
Third-Party Vendor Revenue	\$238,054

## HOKIE PASSPORT ACCOUNT DEPOSITS AND PURCHASES

The total amount of funds deposited into Hokie Passport Accounts in FY 2008-09 was **\$2,883,876** (Table 1). The total included Hokie Passport office deposits, deposits made at "cash to card" machines, and online deposits. The Hokie Passport Account funds have been mainly used for non-meal related purchases.

**Table 1. Total amount of Hokie Passport account funds deposited [FY2008-09]**

Category	Amount
Funds Spent on meals	\$603,604
Funds spent on non-meals and unused funds	\$2,280,272
<b>TOTAL funds spent on meals</b>	<b>\$2,883,876</b>

**Table 2. Total amount of Hokie Passport account funds spent on meals by dining location [FY2008-09]**

Dining Location	Amount	Amount Including State and Local Taxes and Commissions <sup>a</sup>
Funds Spent in University Dining Service Centers <sup>b</sup>	\$127,959	\$134,357
Funds Spent in On-Campus Dining Franchises <sup>b</sup>	\$37,463	\$39,336
Funds Spent at Independent Vendors Located On-Campus	\$72,614	\$82,112
Funds Spent in Participating Off-Campus External Vendors	\$305,489	\$347,799
<b>TOTAL funds spent on meals</b>	<b>\$543,525</b>	<b>\$603,604</b>

<sup>a</sup> Only the 5% state tax was charged for Hokie Passport Account purchases at university dining service centers and on-campus dining franchises. For purchases at independent vendors located on-campus, the 5% local tax and 2.8% commission to Hokie Passport were charged, in addition to the 5% state tax. For purchases at participating off-campus external vendors, the 5% state tax, 5% local tax and 3.5% commission to Hokie Passport were charged.

<sup>b</sup> According to the university's dining program, the total amount of Hokie Passport Account funds spent at the university's dining service centers and on-campus franchises for non-meal plan purchases was \$141,754, whereas it is \$165,422 (\$127,959 plus \$37,463) according to the Hokie Passport Office. The variance in the amount of \$23,668 is due to (1) the funds deposited by the patrons in prior fiscal years (i.e. carryover funds for unused deposits) and (2) the deposits made to the patron accounts by non-traditional means such as the university's payroll deductions, journal entries, and the transfers from the Bursar's Office.

## THE INN AT VIRGINIA TECH AND SKELTON CONFERENCE CENTER REVENUE

The Inn at Virginia Tech and Shelton Conference Center (IVTSCC) is a university-owned auxiliary enterprise on the Virginia Tech main campus that is managed by the Hilton Hotels® Corporation. The IVTSCC generated total revenue of **\$7,845,725** from lodging and food and beverage sales (Table 1).

**Table 1. Total Revenue for The Inn at Virginia Tech and Skelton Conference Center [FY2008-09]**

Category	Revenue
<b>Gross Revenue</b>	
Lodging	\$4,338,955
Food & Beverages	\$3,506,770
<b>SUBTOTAL – Lodging &amp; F&amp;B</b>	<b>\$7,845,725</b>
Conferences, Rentals & Other Income	\$1,326,233
<b>Unrelated Business Income</b>	
Lodging	\$242,267
Food & Beverages	\$252,224
<b>TOTAL UBI</b>	<b>\$494,491</b>
<b>TOTAL GROSS REVENUE</b>	<b>\$9,171,958</b>

## STATE AND LOCAL MEALS AND LODGING TAXES COLLECTED IN FY 2008-09

**Table 1.** State and local meals tax collection related to meals, catering, The Inn at Virginia and Skelton Conference Center, and athletic events food concessions FY 2008-09.

Category	Virginia Sales Tax (Food/Beverage) 5%	Local Meals Tax (5%)
<b>University Dining Centers</b> <ul style="list-style-type: none"> <li>• Shultz Dining Center</li> <li>• Dietrick Dining Center</li> <li>• West End Market</li> <li>• Vet Med Café</li> <li>• Owens Dining Center</li> </ul>	<p style="text-align: center;"><b>NO</b></p> <p>For students using meal plan Flex Dollars, Dining Dollars, or Flex Additions funds)</p> <hr/> <p style="text-align: center;"><b>YES</b></p> <p><b>Collected</b> on non-meal plan purchases Paid by</p> <ul style="list-style-type: none"> <li>- Faculty</li> <li>- staff</li> <li>- students who did not purchase a meal plan</li> <li>- visitors who attend events that include meals and lodging (tax is applied to fees)</li> </ul>	NO
<b>On-Campus Dining Auxiliary Franchises</b> <ul style="list-style-type: none"> <li>• Au Bon Pain® – Squires, GLC</li> <li>• Pizza Hut Express® - within Owens</li> <li>• Chick-Fil-A® - within Owens</li> <li>• Cinnabon® – within Owens</li> <li>• Sbarro® - Squires</li> </ul>	<p style="text-align: center;"><b>NO</b></p> <p>For students with meal plans, they can use Flex Dollars or Dining Dollars</p> <hr/> <p style="text-align: center;"><b>YES</b></p> <p><b>Collected</b> on payments with cash/Hokie Passport by those with NO meal plan</p> <ul style="list-style-type: none"> <li>-faculty</li> <li>- staff</li> <li>- students who did not purchase a meal plan</li> </ul>	NO
<b>Independent Vendors</b> that rent space on campus (Burger King® and GBJ Café in FY 2008-09) <ul style="list-style-type: none"> <li>• Seattle's Best Coffee® - GBJ</li> <li>• Subway® - GBJ</li> </ul> (collected and remitted directly to the Town of Blacksburg)	<p style="text-align: center;"><b>YES</b></p> <ul style="list-style-type: none"> <li>- Cash/Hokie Passport only</li> <li>- meal plan funds cannot be used</li> </ul>	YES
<b>Personal Touch Catering /We Care</b>	<p style="text-align: center;"><b>YES<sup>a</sup></b></p> <p>(Student purchases of We Care Packages with Dining Dollars or Flex Dollars are not taxed)</p>	NO
<b>The Inn at Virginia Tech &amp; Skelton Conference Center</b>	<p style="text-align: center;"><b>YES<sup>a</sup></b></p> <p>Customers also pay lodging tax</p>	NO
<b>Hokie Passport</b> meal purchases off-campus (collected & remitted tax directly to the Town of Blacksburg)	<p style="text-align: center;"><b>YES</b></p> <p>Cash/Hokie Passport</p>	YES
<b>External Caterers</b> (collected and remitted tax directly to the Town of Blacksburg)	<p><b>YES<sup>a</sup></b></p>	YES
<b>Athletic Events Food Concessions</b>	<p><b>YES<sup>a</sup></b></p>	NO

<sup>a</sup> Exemption from state sales tax does not apply to the sale of prepared meals, beverages, and lodging to non-profit and government entities

**Table 2. State Sales Tax, Local Meals Tax And Unrelated Business Income Tax (UBIT) Paid By Category**

Category	Revenue FY 2008-09	5% State Sales Taxes Collected on Purchases	5% Local Meals or Lodging Taxes Collected on	Revenue Subject to UBI
<b>University Meal Plans</b>				
Dining Center Flex plans and other meal plans	\$35,613,222	NO	NO	NO
• Total On-Campus Dining Franchise		NO	NO	NO
• Non-Student Meal Plans		YES, \$2,523	NO	NO
Total Dining Dollars (includes Faculty Dining Dollars)	\$1,913,278	NO	NO	NO
Flex Additions Funds	\$824,413	NO	NO	NO
Delinquent Fee Collection	\$56,789	NO	NO	NO
Oak Lane Vacancies	\$152,760	NO	NO	NO
<b>Total University Meal Plans</b>	<b>\$38,560,462</b>	<b>\$2,523</b>	<b>\$0</b>	
<b>Non-Meal Plan Dining</b>				
Cash at University Dining Centers	\$1,044,819	YES, \$52,241	NO	NO
Hokie Passport Accounts at Dining Centers (including On-Campus Dining Franchises)	\$141,754	YES, \$7,088	NO	NO
Hokie Passport Accounts at Off-Campus Vendors	\$305,489	YES, \$15,274	YES \$15,274	NO
On-Campus Independent Vendors (Johnson Student Center)-	\$546,354	YES, \$27,318	YES \$27,318	NO
<b>Total Non-Meal Plan Dining</b>	<b>\$2,038,416</b>	<b>\$101,921</b>	<b>\$42,592</b>	
<b>University Catering</b>				
Personal Touch Catering	\$1,017,786	YES, \$50,889	NO	YES <sup>a</sup>
We Care Packages	\$27,278	YES, \$1,364	NO	NO
Stadium Concessions (Stadium Suites and Club Areas)	\$160,530	YES, \$8,027	NO	NO
<b>Total Catering</b>	<b>\$1,205,594</b>	<b>\$60,280</b>	<b>\$0</b>	<b>\$0</b>
<b>Other Programs</b>				
New Student Orientation	\$114,741	YES, \$5,737	NO	NO
Conferences Groups	\$740,134	YES, \$37,007	NO	NO
Centerplate® Athletic Food Concessions	\$1,365,503	YES, \$68,275	NO	N/A
Third-Party Vendor Athletic Food Concessions	\$238,054	YES, \$11,903	NO	N/A
The Inn - Food and Beverage Sales	\$3,506,770	YES, \$175,339	NO	YES <sup>a</sup>
The Inn - Lodging Sales	\$4,338,955	YES, \$216,948	NO	YES <sup>a</sup>
Internal Rentals	\$246,956	NO	NO	NO
<b>Total of Other Programs</b>	<b>\$10,551,113</b>	<b>\$515,209</b>	<b>\$0</b>	
Variance <sup>b</sup>		\$14,731		
<b>TOTAL TAX PAID</b>		<b>\$694,663</b>	<b>\$42,592</b>	

Notes: Table 2

<sup>a</sup> The University's Catering Service and The Inn have some activities that are subject to UBIT. The Inn had unrelated business income of \$494,491 out of gross revenues of \$7.8 million, related to lodging, food and beverages. Personal Touch Catering had \$289,615 in unrelated business income out of gross revenues of \$1,045,064 related to lodging, food and beverages

<sup>b</sup> The variance represents the following:

- (1) \$14,925 for Dining Programs mainly due to:
  - a. previous fiscal year's accounts receivable collected in FY08-09
  - b. accounts receivable billed but not collected during FY08-09
  - c. part of catering revenue not taxable (e.g. rental, service charge)
  - d. standing balance in the university's tax funds
- (2) \$(195) for The Inn due to the fact that:
  - a. some guests are tax exempt (e.g. federal government)
  - b. some charges are tax exempt (e.g. service charge, room rental, rental of equipment, etc.)
  - c. The Inn receives a Dealer's discount of 0.171, reducing the actual tax remission amounts
  - d. time delay between the month the revenue is recognized on the Inn's internal reports and when the tax is charged in Banner
  - e. time delay between when the revenue is recognized and when the customer actually pays.

**STATE MEALS AND LODGING TAXES COLLECTED IN FY 2008-09**

**Table 3. State sales tax collected by the university [FY 2008-09]**

<b>Unit</b>	<b>State Sales Tax (5%) Collected</b>
<b>Campus Dining Centers and On-Campus Dining Franchises</b>	
Non-Student Flex Plan (Tax Paid with Plan Purchase)	\$2,523
Cash Purchases	\$52,241
Hokie Passport Account Funds - Dining Centers including On-Campus Dining Franchises	\$7,088
<b>Catering</b>	
Personal Touch Catering	\$50,889
We Care Packages	\$1,364
Stadium Concessions	\$8,027
<b>Other</b>	
Conference Groups	\$37,007
New Student Orientation	\$5,737
The Inn - Food and Beverage Sales	\$175,339
The Inn - Lodging Sales	\$216,948
Variance <sup>a</sup>	\$14,731
<b>TOTAL</b>	<b>\$571,893</b>

<sup>a</sup> Details of variance are described in Table 2 notes .



## STATE AND LOCAL MEALS TAXES COLLECTED BY INDEPENDENT VENDORS LOCATED ON-CAMPUS

Independent vendors on campus collect and remit state sales tax on food and beverages as well as local meals tax, directly to the state and local government. The independent vendors were Burger King® and GBJ café in G. Burke Johnston Student Center, off-campus vendors who participated in the Hokie Passport program, the food concessions' contractor Centerplate®, and other third-party vendors that provided food concessions for athletic events. Table 1 outlines sales taxes that were collected by independent vendors associated with Virginia Tech.

**Table 1.** State sales tax and local meals tax collected by independent vendors [FY 2008-09]

	State Sales Tax (5%)	Local Meals Tax (5%)
On Campus Independent Vendors	\$27,318	\$27,318
Centerplate® Athletic Games Food Concessions	\$68,275	Not collected
Athletic Food Concessions : Third-Party Vendors	\$11,903	Not collected
Participating Hokie Passport Vendors <sup>a</sup>	\$15,274	\$15,274
<b>TOTAL</b>	<b>\$122,770</b>	<b>\$42,592</b>

**NOTE: Does not include external catering or cash sales at local restaurants**

<sup>a</sup> local meals tax revenues for participating Hokie Passport vendors include local meals tax of 5% remitted directly to the Town of Blacksburg and local meals tax of 6% to the Town of Christiansburg.

### Independent Vendors Renting Space On-Campus

Independent vendors who rent space on the campus collected Virginia sales tax (5 percent) and local meal taxes (5 percent) and remitted these funds directly to the Town of Blacksburg. Customers who pay with cash or their Hokie Passport account paid these taxes. Vendors collected state sales tax amounting to **\$27,318**, and local meal tax (5 percent) amounting to **\$27,318**. Cash and Hokie Passport funds are accepted at these locations. Dining Dollars or Flex Dollars are not accepted at these locations. The total Hokie Passport Account purchase from the independent on-campus vendors (Burger King and GBJ Café) was **\$72,614**.

### Athletic Events Food Concessions

Concessions for stadium/coliseum events are provided through three sources: Centerplate®, third-party vendors, and University Auxiliary Dining Services (Personal Touch Catering). The majority of athletic concessions are contracted to the company, Centerplate®. All organizations that provide concessions collect state sales tax (5 percent) on athletic concession sales. As Centerplate® uses non-profit organizations to staff the concession stands, no tax is paid on the non-profit commissions. Centerplate® paid **\$68,275** in state sales tax. No local meals tax was collected. Third-party vendors paid state sales tax of **\$11,903**. No local meals tax was collected.

### Taxes Collected by Participating Off-Campus Hokie Passport Vendors

Hokie Passport Account purchases made at participating off-campus eateries are subject to Virginia sales tax and local meal tax. Independent vendors collect, record, and remit state sales tax (5 percent) and local meals tax (5 percent) to the Town of Blacksburg. State sales tax (5 percent) collected amounted to an estimated **\$15,274**. The local meal tax (5 percent) collected amounted to an estimated **\$15,274**. Included in the local tax revenue of **\$15,274**, are the revenues of four vendors, which were located in Christiansburg; these vendors remitted local meal taxes (6 percent) to the Town of Christiansburg of \$473.

### Cash Sales at Other Off-Campus Restaurants

Data on taxes associated with cash purchases (paid with cash or cash equivalents) made at off-campus eateries are not tracked by the university, and would require an in-depth economic analysis. Therefore, the corresponding tax data are not included in this report.

### External Catering

When university units employ external caterers, both the Virginia sales taxes (5 percent), and the local meal taxes (5 percent) are collected. External catering companies are responsible for collecting and remitting taxes directly to the state and the Town of Blacksburg.

## Local Meals and Lodging Taxes Collected at Public Virginia Institutions

Institution	Dining Program Operation	Local Meals Taxes Collected by the University	Meals Tax Collected by Vendor on campus	Lodging Tax Collected by University
Christopher Newport University	Self-operated	No	NA	NA
College of William and Mary	Aramark	No	Yes	NA
George Mason University	Sodexo	No	Yes	NA
James Madison University	Aramark	No	Yes	NA
Longwood University	Aramark	No	Yes	Yes
Norfolk State University	Thompson hospitality	No	Yes	NA
Old Dominion University	Aramark	No	Yes	NA
Radford University	Chartwells, Inc	conference meals <sup>1</sup>	Yes	Yes
University of Mary Washington	Sodexo	No	Yes	Yes
University of Virginia and UVA at Wise	Aramark	No	Yes	No
Virginia Commonwealth University	Aramark	No	Yes	NA
Virginia Military Institute	Aramark	No	Yes	NA
Virginia State University	Thompson Hospitality	No	Yes	NA
<b>Virginia Tech</b>	<b>Self-operated</b>	No	Yes	No

**Notes**

<sup>1</sup>This is in accordance with Radford City Code

AN ORDINANCE GRANTING A FRANCHISE  
TO VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY  
FOR THE CONDUCT OF ELECTRICAL DISTRIBUTION AND SALE OPERATIONS

WHEREAS, in April and May, 2000, the Town advertised for bids for a proposed electric franchise;

WHEREAS, at its meeting on May 9, 2000, Council was to have received bids for the franchise but no bids were submitted;

WHEREAS, §15.2-2103 Code of Virginia (1950), as amended, provides for the award by ordinance of the franchise to any person making application therefor, in a case where no formal bids are received;

WHEREAS, Virginia Polytechnic Institute and State University (Virginia Tech) has by letters to the Town and through the subsequent negotiation with the Town concerning the franchise applied for a franchise from the Town;

WHEREAS, the negotiations having been completed, the Town proposes to grant an electric franchise in the form of this ordinance to Virginia Polytechnic Institute and State University.

THEREFORE, BE IT ORDAINED by the Council of the Town of Blacksburg, that:

**Section I. Definitions**

The following words and phrases shall have the following meaning, unless a contrary intent appears from the context of the provisions used.

- (a) "Town" means the Town of Blacksburg, Virginia.
- (b) "Grantee" means Virginia Polytechnic Institute and State University.

- (c) "Street" means the public streets, alleys, avenues, highways, bridges, public utility easements and other public ways or places owned by or subject to the control of the Town of Blacksburg, in the Town , and such locations in public parks and public places of and in the Town as are on May 9, 2000, occupied by poles, towers, wires, conduits, lines, manholes, cable, equipment and appliances used for the purpose of distributing, transmitting, supplying and selling electric current.
- (d) "In the streets" shall include "under, along, or over the streets," when the physical situation so applies.
- (e) "Facilities" means the wires, conduits, lines, manholes, cables, fixtures, and equipment, and all necessary appurtenances and appendages thereto, for the provision of electric service.

#### Section II. Grant Authority, Term

Subject to the provisions, conditions and restrictions set forth within this ordinance, the Council grants to Grantee the right to acquire, construct, repair, replace, and operate Grantee's electrical facilities in the streets of the Town of Blacksburg such right to continue for ten (10) years from the date Grantee accepts this franchise. The rights and privileges herein set forth are granted and conferred upon the Grantee upon the express condition and understanding that it will render to the public in the Town of Blacksburg at all times during the term of this franchise, adequate and efficient electric service at reasonable rates and that it will maintain its properties, works, structures and facilities located within the Town of Blacksburg in good order throughout the terms of this franchise.

### **Section III. Nondiscrimination**

Grantee shall make its services available to any customer within its service area who shall request such service, without discrimination as to the terms, conditions, rates or charges for its electric services; provided, however, that nothing shall prohibit Grantee from making any reasonable classifications among differently situated customers.

### **Section IV. Territorial Area Involved**

The franchise relates to the present territorial limits of the Town and to any area added to the territorial limits of the Town during the term of this franchise.

### **Section V. Rights granted; franchise nonexclusive**

This franchise shall be nonexclusive. Nothing herein shall be deemed to convey any right, title or interest in the public rights-of-way, but shall be deemed a franchise only to use and occupy the public rights-of-way for the limited purposes and term stated herein. Nothing in this franchise shall be construed to prevent the Town from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work. Further, this franchise shall not be construed as any warranty of title.

### **Section VI. Use of Streets**

- (a) Grantee shall have the right to open and excavate in the streets subject to the terms and conditions specified herein and those prescribed by the general ordinances of the Town from time to time adopted.
- (b) Grantee shall obtain a permit from the Town prior to opening the surface of any street. The Town shall grant or deny the permit within forty-five days from application. If the Town

denies an application, it shall state the reasons therefore in writing, with the actions required to cure the denial. In opening the surface of any street and in making any excavation therein for any purpose, the Grantee shall not unnecessarily obstruct or impede traffic upon the streets and shall avoid any interference with, or injury to, the water, sewer mains and lines of the Town or any facilities of any public utility.

(c) Whenever the Grantee shall open or excavate in the streets, it shall act diligently in completing the necessary work and immediately after completion of the work it shall refill such opening or excavation in a manner acceptable to the Town. Grantee shall promptly restore, in accordance with the standards of the Virginia Department of Highways and Transportation, pavement, sidewalks, curbs, gutters, or other portions of streets or public ways damaged, disturbed or destroyed by such work.

(d) Grantee shall have the right to remove, trim, cut and keep clear of its facilities the trees located in or over the streets. Grantee shall not cut, remove, trim, or otherwise injure such trees to any greater extent than is reasonably necessary for the installation, maintenance and use of its facilities.

(e) In an emergency, Grantee may conduct any maintenance, repair or other remedial measures without notice to Town. As soon after the termination of the emergency as is reasonably possible, Grantee shall report in writing to the Town any such emergency operations.

#### **Section VII. Franchise Fee**

(a) Grantee shall pay annually to the Town as a franchise fee for the privilege of using the streets as hereinbefore provided a sum equal to five percentum of its gross receipts derived from the distribution, transmission, supply or sale of electricity within the Town, provided, however, that this fee shall not exceed for any year of July 1 through June 30, \$250,000. The franchise fee shall be remitted to the Town on a monthly basis by the fifteenth of each month based upon the gross revenue of the previous

month. The annual franchise fee is capped because Grantee historically has never passed this fee through to its customers as a separate line item. Rather, Grantee pays the franchise fee from its operating expenses. Removal of the cap would require Grantee to increase its rates, which is not the intent of this franchise. In the event that Grantee begins a practice of passing the franchise fee directly to customers as a separate line item, then the Town Council will amend this franchise to remove the annual cap.

(b) The parties acknowledge that Grantee maintains that the Town does not have the legal authority to require Grantee, as a State agency and institution of the Commonwealth of Virginia, to collect and remit to Town, the consumer utility tax imposed upon purchasers of utility service and authorized by general law of this State and by ordinance of Town's Town Council, as amended from time to time, but Grantee voluntarily agrees to do so to assist the Town. Further, the parties agree that the voluntary collection of the consumer utility tax does not constitute a waiver by Grantee of its right to oppose any future efforts by Town to impose any tax or tax collection responsibilities upon Grantee.

#### **Section VIII. Franchise subject to local, and state laws.**

The rights and privileges granted herein are expressly and continuously subject to the conditions, limitations and provisions contained in the general ordinances and Code of the Town of Blacksburg and the laws of the Commonwealth of Virginia so far as they may be applicable to this franchise, and so far as they may be applicable to Grantee. This franchise is subject to any and all ordinances and laws which may be hereafter passed by the Town of Blacksburg and the Commonwealth of Virginia in the exercise of the powers vested in the Town and Commonwealth, insofar as such ordinances and laws may be applicable to Grantee.

#### **Section IX. Insurance and Bond Requirements**

(a) Grantee will obtain and maintain during the life of this franchise the insurance provided by the Commonwealth of Virginia self-insurance program, as it now exists and as it may from time to time be amended by the General Assembly.



#### **Section X. Liability**

Grantee is an agency of the Commonwealth of Virginia and enjoys the sovereign immunity of the Commonwealth. Liability of Grantee is governed solely by the statutes and laws of the Commonwealth as they now exist or may from time to time be amended.

#### **Section XI. Award Fee and Franchising Costs**

Grantee shall reimburse the town for all reasonable costs, including publication fees, expended in the soliciting, processing and awarding of the franchise up to a maximum of \$1,000.00. Payment shall be made by grantee, at the time of acceptance of this franchise. The payment made pursuant to this section shall not be deemed to be a "franchise fee."

#### **Section XII. Street Vacation or Abandonment**

(a) In the event that any street or portion thereof used by grantee shall be vacated by the town or the use thereof discontinued by grantee, during the term of this franchise, grantee shall, at grantee's expense, forthwith remove its facilities therefrom unless specifically permitted by the town to continue the same, and on the removal thereof restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of grantee, after thirty (30) days notice by the town to remove any facilities or to repair, restore, reconstruct, improve or maintain such street portion, the town may do such work or cause it to be done, and the cost thereof as found and declared by the town shall be paid by grantee as directed by the town and collection may be made by any available remedy.

(b) The Town will notify grantee of any proposed street vacation. If grantee notifies the Town that it has facilities within the subject street, and if the facilities are presently in use, then the Town will not vacate the right of way without reserving a public utilities easement.

### **Section XIII. Temporary Movement or Relocation of Facilities**

(a) In the event it is necessary temporarily to move or remove any of grantee's facilities, in order to lawfully move a large object, vehicle, building or other structure over the streets of the town, upon two (2) weeks notice by the town to grantee, grantee shall move at the expense of the person requesting the temporary removal such facilities as may be required to facilitate such movements.

(b) In the event it is necessary temporarily to move or remove any of grantee's facilities, in order to effect a repair of town facilities, upon two (2) weeks notice by the town to the grantee or upon such shorter time period as may be available in an emergency as deemed by the Town, grantee shall move at its expense such facilities as may be required to facilitate such repair. Should grantee fail, refuse or neglect to comply with such notice, the facilities may be moved or removed by the town, the cost of which shall be paid for by the grantee, and the town shall not be liable to the grantee for any damages resulting from such removal, alteration or relocation.

### **Section XIV. Open Books and Records**

The town shall have the right to inspect, upon seven days written notice, all books, records, and maps and other like materials of grantee relating to the franchise which are reasonably necessary to monitor compliance with the terms of this franchise, including, but not limited to, the records containing the data required to calculate the franchise fee. Grantee will provide copies of such records which are not voluminous to the Town for its inspection at a location designated by the Town. Records which are voluminous or which cannot otherwise reasonably be transported will be made available at the location where such records are maintained or at a mutually agreeable alternative location.

### **Section XV. Amendment**

This franchise may be amended upon the written agreement of the parties. In the event the grantee requests an amendment, the grantee shall reimburse the Town for the reasonable costs

and expenses related thereto. In the event the town requests the amendment, the town shall bear its costs and expenses related thereto.

#### **Section XVI. Forum Selection**

By virtue of accepting this franchise, Grantee agrees and submits itself to a court of competent jurisdiction in Montgomery County, Virginia and further agrees that this franchise is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes, and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws.

#### **Section XVII. Approval of Transfer**

Subject to the prior written approval by resolution of the Blacksburg Town Council, which approval shall not be unreasonably withheld or delayed, all rights and privileges hereby granted to Grantee may be exercised by any successor or successor, assigns or assignees of the Grantee, and said successor or successors, assigns or assignees shall be subject to all provisions, obligations and stipulations and penalties herein prescribed. Approval of the Blacksburg Town Council shall not be required if such successor (s) or assign(s) is an entity into which Grantee is merged or consolidated or which acquires substantially all of Grantee's assets and property as a going concern; provided that any such entity assumes all of the obligations and liabilities of Grantee hereunder and first agrees in writing to be governed by and subject to this franchise and its provisions, mutatis mutandis.

#### **Section XVIII. Provisions Inconsistent with General Laws.**

Where any provision of this franchise is in conflict with any federal, state or local law or of any other duly constituted body or commission legally authorized to prescribe rules governing the conduct of the Grantee within the Town, so that the Grantee cannot reasonably comply with both

the provisions of this franchise and the law or rule of such commission or body, then the Grantee shall comply with such law or specific rule instead of the conflicting provision of this franchise, but the Grantee shall comply with each and all of the provisions of this franchise where such can be done without violating the law or rules of the said commission or body. Whenever Grantee has knowledge of such a conflict, Grantee shall immediately notify the Town Manager in writing.

#### **Section XIX. Separability**

If any section, subsection, sentence, clause, phrase or portion of this franchise ordinance is for any reason held invalid by any court or agency of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions of the franchise ordinance.

#### **Section XX. Default**

- (a) If the Grantee willfully or negligently fails to do any material act required in this franchise, it shall be in default if it has not performed the act within 30 days after written notice from the Town specifying the default.
- (b) The Grantee may apply to the Town for additional time in which to cure a specified default, which permission will not be unreasonably withheld. Failure to cure within the specified extension shall place the Grantee in default.
- (c) If the Grantee is in default, it shall be liable to the Town for liquidated damages in the amount of \$250.00 per occurrence. Each day the default continues shall be deemed a separate occurrence.
- (d) The Grantee shall not be in default if failure to perform is caused by circumstances beyond the Grantee's control, including but not limited to fire, windstorm, flood or other acts of

God or other events beyond the Grantee's control, provided that the Grantee takes all reasonable steps to cure the failure to perform in as timely a manner as possible under the circumstances.

(e) In addition to any other remedy available to it, the Town may, by ordinance, declare a forfeiture of this franchise if Grantee has defaulted on a material provision of this ordinance.

#### Section XXI. Notices

All notices and other communications hereunder this ordinance shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, certified mail, return receipt requested, postage paid to the following addresses:

To the Town:

Town Manager  
P.O. Box 15225  
300 South Main Street  
Blacksburg, VA 24060

To Grantee:

Engineering Manager  
1421 N. Main Street  
Blacksburg, VA 24060

#### Section XXII. Method of Acceptance.

Grantee shall have thirty (30) days from the date of adoption of this ordinance to accept this franchise. This Ordinance shall be and become effective when signed by the Grantee. Grantee shall reimburse the Town for its costs for advertising this ordinance prior to its acceptance of this ordinance.

Roger S. Hedgepeth  
Mayor

ATTEST:

Linda L. Blunsed  
Acting Town Clerk

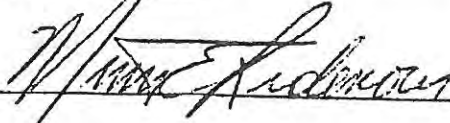
1st Reading: April 11, 2000

2nd Reading & Adoption: May 9, 2000

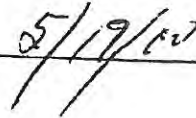
ACCEPT:

VIRGINIA POLYTECHNIC INSTITUTE AND  
STATE UNIVERSITY

By:

A handwritten signature in cursive script, appearing to read "W. E. Rudman", written over a horizontal line.

Date:

A handwritten date "5/19/00" written in cursive script over a horizontal line.

AN ORDINANCE GRANTING A LICENSE TO VIRGINIA POLYTECHNIC  
INSTITUTE AND STATE UNIVERSITY FOR THE CONDUCT OF  
UNIVERSITY VOICE AND DATA COMMUNICATIONS

WHEREAS, in August and September, 1998, the Town advertised for bids for a proposed telecommunications license to serve the voice and data transmission requirements of Virginia Polytechnic Institute and State University;

WHEREAS, at its meeting on September 8, 1998, Council was to have received bids for the license, but no bids were submitted;

WHEREAS, §15.2-2103 Code of Virginia (1950), as amended, provides for the award by ordinance of the license to any person making application therefor, in a case where no formal bids are received;

WHEREAS, Virginia Polytechnic Institute and State University has by letters to the Town and through the subsequent negotiation with the Town concerning the license, applied for a license from the Town;

WHEREAS, the negotiations having been completed, the Town proposes to grant a voice and data communications license in the form of this ordinance to Virginia Polytechnic Institute and State University.

THEREFORE, BE IT ORDAINED by the Council of the Town of Blacksburg, that:

**Section I. Definitions**

The following words and phrases shall have the following meaning, unless a contrary intent appears from the context of the provisions used.

- (a) "Town" means the Town of Blacksburg, Virginia.
- (b) "Grantee" means Virginia Polytechnic Institute and State University.
- (c) "Street" means the public streets, alleys, avenues, highways, bridges, public utility easements and other public ways or places owned by or subject to the control of the Town of Blacksburg, in the Town.
- (d) "In the streets" shall include "under, along, or over the streets," when the physical situation so applies.
- (e) "Facilities" means the wires, conduits, lines, manholes, cables, fixtures, facilities, and equipment, and all necessary appurtenances and appendages thereto, for the distribution of university voice and data communications.

#### **Section II. Grant Authority, Term**

Subject to the provisions, conditions and restrictions set forth within this ordinance, the Council grants to Grantee the right to acquire, construct, erect, extend, repair, replace, renew, and use Grantee's facilities in the streets of the Town of Blacksburg for the transmission of university voice and data communications, including University communications research, such right to continue for fifteen (15) years from September 9, 1998. Grantee certifies that it is not a "certificated telecommunications provider," as that term is used in Virginia Code §56-468.1.

#### **Section III. Territorial Area Involved**

The license relates to the present territorial limits of the Town and to any area added to the territorial limits of the Town during the term of this license.



#### **Section IV. Rights granted; license nonexclusive**

This license shall be nonexclusive. Nothing herein shall be deemed to convey any right, title or interest in the public rights-of-way, but shall be deemed a license only to use and occupy the public rights-of-way for the limited purposes and term stated herein. Further, this shall not be construed as any warranty of title.

#### **Section V. Use of Streets**

- a. Grantee shall have the right to open and excavate in the streets subject to the terms and conditions specified herein and those prescribed by the general ordinances of the Town from time to time adopted; provided that grantee shall not be required to post a performance bond as a condition of obtaining a permit to work in the streets because it is a state agency.
- b. Grantee shall reasonably notify the Town prior to conducting work in the streets. In opening the surface of any street and in making any excavation therein for any purpose, the Grantee shall not unnecessarily obstruct or impede traffic upon the streets and shall avoid any interference with, or injury to, the water, sewer mains and lines of Town or any facilities of any public utility.
- c. Whenever the Grantee shall open or excavate in the streets, it shall act diligently in completing the necessary work and immediately after completion of the work it shall refill such opening or excavation in a manner acceptable to the Town. Grantee shall promptly restore, in accordance with the standards of the Virginia Department of Highways and Transportation, pavement, sidewalks, curbs, gutters, or other portions of streets or public ways damaged, disturbed or destroyed by such work.

d. Grantee shall have the right to remove, trim, cut and keep clear of its facilities the trees located in or over the streets. Grantee shall not cut, remove, trim, or otherwise injure such trees to any greater extent than is reasonably necessary for the installation, maintenance and use of its facilities.

e. In an emergency, Grantee may conduct any maintenance, repair or other remedial measures without notice to Town. As soon after the termination of the emergency as is reasonably possible, Grantee shall report in writing to the Town any such emergency operations.

#### **Section VI. Approval of Transfer**

No sale, lease, or assignment by Grantee of this license or the privileges granted hereunder shall be effective until approved in advance by Council of the Town. The approval shall not be unreasonably withheld and may be subject to conditions and amendment of this license.

#### **Section VII. License Fee**

Grantee shall pay a license fee to the Town at a rate equal to the number of miles of Grantee's facilities located in the Town streets multiplied by an annual multiplier per mile, or an amount equal to the annual multiplier per mile, whichever is greater. The annual multiplier per mile is \$250.00 from October 1, 1998, through September 30, 1999; \$300.00 per mile for the year October 1, 1999, through September 30, 2000; \$350.00 per mile for the year October 1, 2000, through September 30, 2001; and \$425.00 per mile beginning October 1, 2001, and thereafter. The license fee shall be paid on an annual basis, on or before October 15 of each year.

#### **Section VIII. Insurance and Bond Requirements**

(a) Grantee will obtain and maintain during the life of this license the insurance and bonds required by this section. Any required insurance or bond shall be effective prior to the beginning of any work within the Town. Grantee shall maintain:

- (1) One Million Dollars (\$1,000,000.00) for bodily injury or death to any one (1) person;
- (2) Three Million Dollars (\$3,000,000.00) for bodily injury or death resulting from any one accident;
- (3) Three Million Dollars (\$3,000,000.00) for all other types of liability.

(b) All insurance shall meet the following requirements:

- (1) The Grantee shall furnish the Town a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles.
- (2) The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the Town of Blacksburg."
- (3) Insurance coverage shall be in a form and with an insurance company approved by the Town which approval shall not be unreasonably withheld. Any insurance company providing coverage shall be authorized to do business in the Commonwealth of Virginia.

(c) At the end of ten (10) years from the grant of the license, the Town shall have the right to require increases in the amounts of insurance specified above. Any adjustments shall bear a reasonable relation to any change in the cost of living or cost of repair or replacement, as measured by changes in the Consumer Price Index of the United States Bureau of Labor Statistics applicable to the Commonwealth of Virginia or comparable measure if the Consumer Price Index is no longer being used.

(d) Because Grantee is a state agency, it will not be required to post a performance bond in favor of the Town for the life of the license.

**Section IX. Liability**

Grantee shall keep and hold the Town free and harmless from any liability on account of injury or damage to persons or property growing out of or directly or indirectly resulting from (a) grantee's use of the public streets of the Town; (b) grantee's acquisition, construction, reconstruction, erection, installation, operation, maintenance, repair or extension of grantee's utility facilities; (c) grantee's exercise of any right or privilege granted by or under this license; or (d) grantee's failure, refusal, or neglect to perform any duty imposed upon or assumed under this license. Because grantee is a state agency, grantee is not required to indemnify the Town as a condition of this license.

**Section X. Method of Acceptance**

This Ordinance shall be and become effective when signed by the Grantee. Grantee shall reimburse the Town for its costs for advertising this ordinance prior to its acceptance of this ordinance.

Roger E. Hedgepeth  
Mayor

ATTEST:

Donna Caldwell  
Town Clerk

1st Reading: August 11, 1998

2nd Reading & Adoption: Aug 8, 1998

ACCEPT:

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

By:

Minnis E. Ridenour  
Minnis E. Ridenour, Vice President

PROPOSED STIPULATION TO BE ENTERED INTO BY THE TOWN OF  
BLACKSBURG AND VIRGINIA POLYTECHNIC INSTITUTE IN ANY  
ANNEXATION PROCEEDING INSTITUTED BY THE SAID TOWN OF  
BLACKSBURG AGAINST THE COUNTY OF MONTGOMERY AND  
VIRGINIA POLYTECHNIC INSTITUTE

It is hereby stipulated and agreed by the Town of Blacksburg and Virginia Polytechnic Institute that in the event a decree is entered in any subsequent annexation proceeding in which all or any part of the property of Virginia Polytechnic Institute is annexed to the Town of Blacksburg, that;

(1) The Town of Blacksburg shall not have or exercise any jurisdiction or control whatsoever over any of the lands or property of Virginia Polytechnic Institute, real or personal, now owned or hereafter acquired, for the purpose of zoning, planning, enforcement of building codes, law enforcement, levying taxes, and other assessments, or raising revenue of any kind or for any governmental purpose whatsoever.

(2) The Town of Blacksburg shall not have any power or authority to tax or regulate in any manner, any business or commercial activity carried on on the property of Virginia Polytechnic Institute, or to tax or regulate in any way any athletic, cultural, social or academic event, or any gathering, meeting or function whatsoever, or the spectators or participants therein, held on the property of Virginia Polytechnic Institute.

(3) The Town of Blacksburg shall neither have nor exercise any power or authority to levy any capitation tax or personal property tax upon any bona fide student of Virginia Polytechnic Institute when such student resides upon the grounds of Virginia Polytechnic Institute.

(4) The Town of Blacksburg shall not require the purchase of a license tax for, nor impose any tax or charge whatsoever upon any motor

vehicle owned by a bona fide student at Virginia Polytechnic Institute when such student resides upon the grounds of Virginia Polytechnic Institute and when such motor vehicle is kept primarily upon the grounds of Virginia Polytechnic Institute.

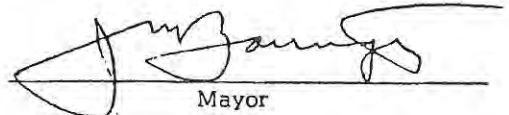
(5) The Town of Blacksburg shall not be required to furnish any municipal services whatsoever to the said Virginia Polytechnic Institute not shall the Town be required to exercise any governmental or administrative functions within the present and future bounds of Virginia Polytechnic Institute and the furnishing of any such services shall not be made a part of the terms and conditions of any annexation decree.

(6) Neither the Town of Blacksburg or Virginia Polytechnic Institute may unilaterally modify any of the foregoing terms and conditions.

(7) Nothing herein shall be construed to prevent the Town of Blacksburg and Virginia Polytechnic Institute from mutually entering into any cooperative agreement for the purpose of fire protection, or for any other lawful purpose, should it become necessary or convenient.

It is further stipulated and agreed by the parties hereto that this stipulation shall be filed with the record in said annexation proceedings and shall be made a part of any decree of annexation which provides for the annexation of any of the properties of Virginia Polytechnic Institute, by the Town of Blacksburg.

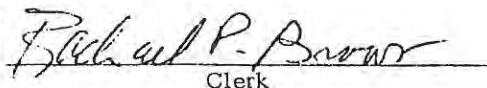
Adopted and approved by the Council of the Town of Blacksburg at a regular meeting held on April 9, 1968.


  
Mayor

(SEAL)

WARREN S. NEELY, JR.  
ATTORNEY & COUNSELOR  
AT LAW  
BLACKSBURG, VIRGINIA

ATTEST:

  
Clerk

  
Rector of the Board of Visitors

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary of the Board of Visitors

WARREN S. NEELY, JR.  
ATTORNEY & COUNSELOR  
AT LAW  
BLACKSBURG, VIRGINIA

# Attorney General Opinions

Opinion Number: 09221997-1  
 Tax Type: Meals Tax; Retail Sales and Use Tax  
 Description: Local sales and use taxes; City excise tax on state university's meals  
 Topics: Exemptions; Local Taxes Discussion  
 Date Issued: 09/22/1997

Dr. Ronald E. Carrier

President, James Madison University

You ask whether the City of Harrisonburg may require James Madison University (the "University") or a private company that provides management services to the University to collect the city meals tax on the meals the University sells to its students through its dining services.<sup>1</sup>

In a 1983 opinion, the Attorney General considers whether the Town of Blacksburg could impose upon the officers and employees of a state university the obligation to collect the town meals tax for the meals sold by the university.<sup>2</sup> The opinion concludes that the town has no authority to impose on the university the duty to collect and report the local meals tax.<sup>3</sup> The rationale for the former opinion is that, without express legislative authority, a locality may not impose a tax or the economic incidence of a tax on the Commonwealth or its agencies and instrumentalities.<sup>4</sup> The state's immunity from local taxation rests on the fundamental principle that the functions of government are not to be unduly impeded,<sup>5</sup> a principle that "applies in equal measure to a requirement that the sovereign act as a collector of a local tax."<sup>6</sup>

The General Assembly is presumed to acquiesce in the Attorney General's published interpretation of the law when it takes no legislative action to change the law.<sup>7</sup> The General Assembly has taken no action to alter the conclusion reached in the 1983 opinion. Accordingly, it is my view that the earlier opinion controls to prohibit the city from requiring the University to collect the city meals tax.

You also ask whether, notwithstanding the earlier opinion, a private company that provides management services to the University's dining services unit may be required to collect and submit the city meals tax. The 1983 opinion concludes that a municipality has no authority to enforce collection of the tax "in facilities owned and operated by the University."<sup>8</sup> Whether the private company has assumed responsibility for the operation of the University's dining system is basically a question of fact.

The information you provide indicates that the University operates its own dining system. Only seven of approximately 900 employees of the University's dining service are employees of the private company.<sup>9</sup> Employees of the University purchase the food, prepare and serve the meals, and collect the charges for the meals.<sup>10</sup> The private company has no responsibility for handling, processing or accounting for any funds received by the dining services unit. While the



private company may provide "management services" in these and other aspects of operation of the University's dining facilities, the private company does not manage the University's dining facilities. To permit the city to impose a tax collection duty on the private company under these circumstances would be inconsistent with the 1983 opinion.

<sup>1</sup> Section 58.1-3840 of the *Code of Virginia* authorizes cities or towns with general taxing powers established by charter to impose excise taxes on meals. For purposes of this opinion, we assume that the language of the city ordinance would encompass meals sold through the University's dining facilities. The Office of the Attorney General has a long-standing policy, however, of not rendering opinions interpreting local ordinances. See Op. Va. Att'y Gen.: 1986-1987 at 347, 348; 1976-1977 at 17.

<sup>2</sup> 1983-1984 Op. Va. Att'y Gen. 381.

<sup>3</sup> *Id.* at 383. The opinion noted first that, under the ordinance and state retail sales tax regulations, meals included in students' room, board or tuition charges are exempt from the local meals tax. *Id.* at 382. You state that the University and the commissioner of the revenue for the City of Harrisonburg likewise agree that the city meals tax may not be imposed on meals included within the students' room, board or tuition charges or fees. This opinion, therefore, deals only with meals not exempt from imposition of the tax.

<sup>4</sup> *Id.* at 382-83. State tax regulations imposing on universities the obligation to collect the tax imposed under the state retail sales and use tax statutes are not relevant to the question you ask. See 23 VAC 10-210-4020(A)(4) (Law. Co-op. 1996) (institution must collect tax on retail sales of meals to students or others if price of meals is not included in room, board or tuition).

<sup>5</sup> *Id.* at 383. For this principle, the opinion cited *Pelouze v. Richmond*, 183 Va. 805, 811, 33 S.E.2d 767, 769 (1945).

<sup>6</sup> 1983-1984 Op. Va. Att'y Gen., *supra* note 2, at 383.

<sup>7</sup> See *Deal v. Commonwealth*, 224 Va. 618, 299 S.E.2d 346 (1983); Op. Va. Att'y Gen.: 1995 at 63, 64; 1992 at 42, 44; 1991 at 1, 2.

<sup>8</sup> 1983-1984 Op. Va. Att'y Gen., *supra* note 2, at 383.

<sup>9</sup> In addition to the seven management employees of the private company, the University dining service has 19 of its own management employees.

<sup>10</sup> The company receives a fixed fee and an incentive fee based on the results of satisfaction surveys and the University's attainment of specific budget and operational goals set by the University. The company's fees are unrelated to the University's profit or loss from operating the facilities.

**To:** Town Council  
**From:** Marc A Verniel, Town Manager  
**Date:** May 26, 2009  
**Re:** Meals Tax Collection on the Virginia Tech Campus

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### **Background**

The issue of collecting taxes on the Virginia Tech Campus has been discussed in Blacksburg for decades. In 1983 the Attorney General concluded that "the town does not have the authority to impose upon a State institution the duty to collect the tax and report the purchases of meals." However, while the Town may not be able to compel the University to collect taxes, there is nothing that prohibits the University from collecting local taxes.

In 1997, the Attorney General addressed the issue again in the context of the City of Harrisonburg and James Madison University. The Attorney General opined that James Madison University's dining services were not operated by a private company, so Harrisonburg could not require the company to collect the city meals tax.

### **The Virginia Tech Dining Services Program**

At Virginia Tech, dining services is an auxiliary of the University and not operated by a third party contractor. It is organized similar to a Town enterprise fund where the operation is fully funded by revenues generated by the dining program.

Meal plans at Virginia Tech are organized around "flex plans" and "dining dollars." Rather than having a set number of meals per week on a dining plan, students pay for a meal plan that covers administrative costs of the dining program and are credited with flex dollars on their Hokie Passport. The student can then purchase meals at all-you-can-eat dining facilities or al la cart dining facilities at a discounted rate. Students can also add additional dining dollars to their Hokie Passport and purchase additional meals at the same discounted rate. Both flex dollars and dining dollars are considered part of the student's meal plan and only meals can be purchased with these funds. The Hokie Passport can also act as a debit card for other purchases on campus and at facilities in town that accept Hokie Passport. Flex Dollars and Dining Dollars allow students to receive discounts on their food and beverage purchases, while using cash or the Hokie Passport debit account does not entitle students to those discounts.

### **Dining Facilities**

There are two all-you-care-to-eat dining centers; D2 in Dietrick Dining Center with eight venues and Shultz Dining Center, in the Upper Quad. There are also nine a la carte dining centers on-campus. These include the West End Market; the Hokie Grill and Co., including franchises Chik-fil-A and Pizza Hut;

Owens Food Court; Deet's Place; DXpress; Shultz Express; Vet Med Café in the Virginia-Maryland Regional College of Veterinary Medicine; Squires Food Court, including franchises Sbarro and Au Bon Pain; and Au Bon Pain at Donaldson Brown. The University also operates Personal Touch Catering, the university's full-service catering department.

### On-Campus Franchises

The first franchise, a Freshens, came to Virginia Tech in 1991 in Owens Hall. Virginia Tech owns the franchise and licensing agreements with their on-campus franchises. There are six franchises on-campus, with the University acting as the franchisee. The Burger King in Johnston Hall is the only exception. A local Burger King franchisee rents space from the university, renews its contract on a yearly basis, and customers pay the local meal tax on purchases.

The university operated franchises are the following:

Owens Hall - Freshens, Carvel

Hokie Grill – Chik-fil-A, Freshens, Pizza Hut, and Cinnabon

Squires Student Center – Sbarro and Au Bon Pain

Graduate Life Center – Au Bon Pain

All franchises on-campus are staffed entirely by Virginia Tech employees.

### Virginia Tech Dining Services Revenues

Last fall the Town Manager's Office Intern Emily Howard and I met with representatives from Virginia Tech Student Affairs and Virginia Tech Dining Programs. We requested financial information so that we could better understand how the dining programs were operated and the revenues generated. The actual numbers for the FY 2007-08 are in Figure A below.

**Figure A - Actual Revenue: Virginia Tech Dining Programs FY 2007-2008**

REVENUE	CATEGORY	ACTUAL
<b>FEE RELATED INCOME</b>		
	Fall Fees	\$16,280,904
	Spring Fees	15,221,026
	Summer School Fees	339,156
	Oak Lane Vacancies for Board	156,300
	Orientation	180,903
	Breaks/Misc.	68,191
	<b>Subtotal Fee Income</b>	<b>\$32,246,379</b>
<b>SELF-GENERATED INCOME</b>		
	Dining Dollars	\$2,795,368
	Debit Card Sales	134,326
	Cash-Retail	610,855
	Cash-Board	351,122
	Conference/Non-Conference Groups	874,653
	Rentals	210,981
	Catering and "We Care" Packages	1,307,989
	<b>Subtotal Self-Generated Income</b>	<b>\$6,285,294</b>
<b>TOTAL INCOME FOR OPERATIONS</b>		<b>\$38,531,673</b>

In FY 2007-08 Virginia Tech Dining Programs generated a total of \$38,531,673 in revenue. Of that revenue, \$32,246,379 was fee related income directly related to meal plans and exempt from state sales taxes. Another \$2,795,368 was "dining dollars" revenue, also related to meal plans and exempt from state sales taxes.

If you remove all meal plan related revenues from the total, you are left with a total of \$3,489,926 in self-generated income. Some of the non-meal plan revenues (catering and rentals) may be paid for by other departments of the University which would be exempt from state taxes as well. The state sales tax exempts meal plan transactions at Virginia Tech's dining facilities. No local taxes are collected on any transactions in university dining facilities. Collection of any local taxes from dining services would rely on the University agreeing to collect the tax voluntarily.

### **Localities Interviews**

Town Manager's Office Intern Emily Howard conducted interviews with officials in localities across Virginia with 4-year public universities. The issue of meals tax and university relations is not unique to Blacksburg. There are fifteen 4-year, public universities in Virginia as set forth below:

- Christopher Newport University (Newport News)
- College of William and Mary (Williamsburg)
- George Mason University (Fairfax)
- James Madison University (Harrisonburg)
- Longwood University (Longwood)
- Mary Washington (Fredericksburg)
- Norfolk State University (Norfolk)
- Old Dominion University (Norfolk)
- Radford University (Radford);
- University of Virginia (Charlottesville)
- University of Virginia's College at Wise (Wise)
- Virginia Commonwealth University (Richmond)
- Virginia Military Institute (Lexington)
- Virginia State University (Petersburg)
- Virginia Tech (Blacksburg)

The localities who granted interviews were Radford, Fredericksburg, Charlottesville, Albemarle County, Harrisonburg, Williamsburg, and Newport News. The following information was compiled after phone conversations with officials from other localities with state universities. In some cases, localities with smaller universities did not seem as sure of the meals tax policies on-campus as cities with larger universities. The manner of operation also varies; some universities use private companies to provide dining services. The following summaries are the result of those conversations.

## Summary of Interview Findings by Locality

**Radford:** The Commissioner of Revenue for the City of Radford emphasized all prepared meals were taxed and she was unsure whether meal plans were exempt. The Commissioner was not entirely clear from where on-campus they collected revenue. Radford University contracts with The Compass Group.

**Fredericksburg:** Fredericksburg only collects meals tax on a coffee shop in the bookstore at Mary Washington because the other campus dining facility is cafeteria style and considered tax-exempt. The office of the Commissioner of the Revenue noted that if more franchises open on campus, the city will collect meals taxes from them. The University contracts with Sodexo.

**Albemarle County/Charlottesville:** In Albemarle County, cash transactions are subject to tax and purchases on meal plans are exempt. According to the Charlottesville Commissioner of Revenue, food purchased on meal plans and in the traditional cafeterias are tax exempt, but food purchases from a third party vendor (food courts or franchises) are taxed. The University contracts with Aramark.

**Harrisonburg:** In Harrisonburg, purchases by students with meal plans are tax exempt. Students purchasing from franchises on-campus and customers without meal plans are taxed. The University contracts with Aramark.

**Williamsburg:** Williamsburg collects taxes from university cafeterias, although it is unclear if individuals purchasing food with meal plans are included in that taxation. The City of Williamsburg is under the impression that all prepared food is eligible for taxation, although they were not sure. The University contracts with Aramark.

**Newport News:** The City of Newport News does not tax meal plans and food purchased with the meal plan at the cafeteria. Students cannot use their meal plans to purchase food from third party vendors, so those purchases at food courts or franchises are not tax exempt.

## Highlights from Localities Interviews

- All of the cities with a university levy a meals tax. All localities interviewed collect meals tax on some part of the food purchases on campus in their locality.
- All of the cities with universities have an exemption for state universities and education institutions identical to the exemption found in Blacksburg's town code.
- All but two of the universities contract out their dining services to a corporate third party. Virginia Tech and Christopher Newport University are the only universities with an in-house dining services program, including meal preparation and employment.
- The City of Harrisonburg cited difficulty with Aramark collecting the meals tax. Aramark has argued that a state entity is not required to collect local meals taxes, so therefore they should not have to collect meals tax. Aramark has not been successful with this argument and James Madison has continued to collect the meals tax.
- Most university towns reported that there was not any issue with the university cooperating to collect the meals tax. Most of the cities receive the meals tax money from the third party dining

services vendor, and those vendors, with the exception of Harrisonburg, have not had any issue collecting the tax.

- Typically, meals paid for with meal plans were not charged the local meals tax. It is unclear whether the portion of the contract with the third party vendors were subject to meals taxes in some localities.

**Figure B - Locality Interview Summary**

	Year Meals Tax Approved	Third party vendor?	Collect tax from vendor?	Collect from University?
<b>Radford</b>	1986	Yes	Yes	No
<b>Fredericksburg</b>	1995	Yes	Yes	No
<b>Charlottesville/ Albemarle County</b>	1983/1986	Yes	Yes	No
<b>Harrisonburg</b>	1985	Yes	Yes	No
<b>Williamsburg</b>	Unknown	Yes	Yes	Yes
<b>Newport News</b>	1987	No	No	Yes

**Figure C - Locality Interview Summary**

	What is exempt?	What is taxed?	Collecting from vendor or University?	If no, why?	Name of third party vendor
<b>Radford</b>	Unclear	All prepared meals (unclear)	Vendor	N/A	The Compass Group
<b>Fredericksburg</b>	Traditional cafeterias	Coffee shop on-campus	Vendor	N/A	Sodexo
<b>Charlottesville/ Albemarle County</b>	Meal plans	Any purchase in which money is exchanged (except purchased by meal plans)	Vendor	N/A	Aramark
<b>Harrisonburg</b>	Students with meal plans who purchased food from cafeteria	Students purchasing from franchises on-campus; customers without meal plans	Vendor	N/A	Aramark
<b>Williamsburg</b>	Unclear	All prepared food	University, but unclear	N/A	Aramark
<b>Newport News</b>	Meal plans and food purchased with the meal plan at the cafeteria	Purchases at food courts or franchises are not tax exempt	University	N/A	None

## REPORT ROUGH DRAFT

### Issue Statement

The Town is interested in the relationship between Virginia Tech and the local sales taxes (the meals tax) on food purchases on-campus. The town has a meals tax of 5% of the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not and whether consumed on the premises or not (Municode website). The meals tax is effective within town limits, but the university is not presently collecting this tax on-campus at both its university-owned franchises and dining halls. The Town Manager's Office is interested in the historical and legal precedent of sales tax collection from the university food services program, the way the university's dining services program operates and is organized, and how similar college towns have worked with universities in their town/city limits on meals tax issues.

### Background Information

#### Legal Background

This issue has been discussed at the state level and has a legal precedent dating back to 1983. In an Attorney General of Virginia opinion from 1983-1984 the Attorney General Gerald L. Baliles investigated the following question: "You have asked whether the Town of Blacksburg may impose tax collection responsibilities upon a State educational institution's officers and employees for a tax on meals sold by the institution." He also notes that "the seller of the meal is charged with the responsibility of collecting the tax, as well as preparing reports of meals purchased which will be submitted to the town" (Westlaw). After looking at a number of local and state taxation exemptions, the Attorney General writes "In other words, meals which are included in room, board or tuition charges or fees are not subject to the State tax. Therefore, under the ordinance, those meals are not subject to the tax imposed by the Town of Blacksburg" (Westlaw). Further, the Attorney General states,

"For any meal transaction which are not exempt under the specific provision just described, I believe that the town does not have the authority to impose upon a State institution the duty to collect the tax and report the purchases of meals. 'Generally the State and its agencies are not bound by any statute, unless the statute in express terms is made to extend to the State'" (Westlaw). "This same rationale applies in equal measure to a requirement that the sovereign act as a collector of a local tax. Therefore, I am persuaded that the prohibition against local taxes being imposed upon the Commonwealth in the absence of express statutory authority extends as well to prohibit the imposition upon the Commonwealth of the duty to collect and make reports for any local tax" (Westlaw).

And finally,

"In summary the tax is imposed upon the purchasers of meals within the town. Under the terms of the ordinance, the tax would not be applicable to meals purchased through general room, board and tuition charges paid to the University. With respect to other meals purchased individually, the town does not have authority to require the University to collect tax. Thus, for practical

purposes, the town is without authority to enforce collection of the tax in facilities owned and operated by the University" (Westlaw).

The position of the Attorney General states the public, state university is exempt from having to collect local taxes. The statement does not prohibit the university from collecting them, but the university is not compelled to.

The University has accepted this ruling as their legal guidelines. In a University memo issue January 9, 1991, the University attorney stated "In accordance with your recent request, attached please find a copy of an opinion from the Attorney General's Office regarding the Town's Meals Tax. As you will note, the Attorney General has opined that Virginia Tech, as a State Agency, is not required to collect the Town's Meals Tax" (memo, citation needed).

In a similar ruling, The Virginia Attorney General in 1997 addressed the issue again in the context of the City of Harrisonburg and James Madison University. The question was, "You ask whether the City of Harrisonburg may require James Madison University (the "University") or a private company that provides management services to the University to collect the city meals tax on the meals the University sells to its students through its dining services" (Westlaw). This ruling takes into account the possibility of a private company managing a university's dining services, and if that presence of a third party (a non-state entity) would entitle a locality to impose local tax collection of the university.

### **Virginia Tech Dining Services, Programs, and Meal Plans**

#### **The Dining Plans at Virginia Tech**

The University offers Major, Mega, and Minor dining Flex Plans. On-campus residents are required to purchase either the Major or Mega Flex Plan. The dining plans are not taxable. Students who do not select a dining plan are automatically assigned the Major Flex Plan. Minor dining Flex Plans are designed for the off-campus student. Major flex plans cost \$1,144 per semester and Mega flex plans cost \$1,244 per semester. According to the Tech website, "Both Flex Plans comprise a \$731 base cost and a balance of Flex Dollars. Students with *Mega Flex* receive \$513 in Flex Dollars and students with *Major Flex* receive \$413 in Flex Dollars." The base cost covers maintenance and administrative fees while the rest of the cost goes directly for food purchases. The Tech website offers "Flex Plan holders receive a 50 percent discount in our a la carte facilities and at least a 67 percent discount in our all-you-care-to-eat dining centers." The base cost allows the Flex Plan holder to simply pay for the cost of the meal, while a diner without a Flex Plan pays a higher price that includes administrative costs.

*The Minor Flex Plan* is designed for the off-campus, non-residential student. The Minor Flex Plan requires a \$380 base cost and a \$252 remainder in Flex Dollars for food and beverages. This plan also benefits from a 50% discount at a la carte dining centers and at least a 67% discount in the all-you-care-to-eat dining centers. Minor Flex Plans holders cannot purchase Flex Additional Dollars but they may purchase Dining Dollars to extend their dining plans.



*The Commuter Cash Dining Plan* costs \$201 per semester. According to the Tech website, the student must deposit money in addition to the purchase of the plan to be eligible for the 5% Dining Dollars discount. All \$201 is available for food and beverage purchases. This plan expires at the end of the academic year in which it was purchased, although additional Dining Dollar deposits roll over from year to year.

The student's fall semester dining plan will be automatically assigned to spring semester unless a change is specified.

### **Flex Dollars, Dining Dollars, Hokie Passport Account, and cash**

Dining Dollars and the Hokie Passport Account are all kept on the Hokie Passport. The passport is used like a debit card at dining facilities until the balance is at zero. The Hokie Passport Account can be used for other university purchases such as laundry facilities while Dining Dollars can only be used at dining centers. Students cannot transfer money between the two accounts or use one account for the purchases only the other can make. Flex Dollars are part of the dining flex plans. Flex Dollars allow students to treat their meal plan money like a debit account instead of having a set number of meals they can eat per day. The Flex plan is designed to accommodate non-traditional eating schedules and purchasing from the a la carte dining facilities. Flex Additional Dollars allow students to add money to their Flex Dining Plans and continue to receive the same discounts as they would from their Flex Dining Plan. Flex Additional Dollars are only accepted in Student Programs dining centers. Flex Additional Dollars carry over from year to year and remain on the Hokie Passport until the student is no longer enrolled. Flex Dollars and Dining Dollars allow students to receive discounts on their food and beverage purchases while using cash does not entitle students to those discounts.

### **Carry Over Money**

Flex Dollars purchased during fall semester will carry over to the spring semester if the student purchases another dining plan for the spring semester. Flex Additional Dollars carry over from semester to semester and entitle the holder to the Flex Discount. According to the website, "Unlike the major dining plans, you may not purchase Flex Additional Dollars and receive the 50 percent discount. You may buy Dining Dollars at any time and receive a five percent on each purchase."

### **Dining Facilities**

There are two all-you-care-to-eat dining centers; D2 in Dietrick Dining Center with eight venues and Shultz Dining Center, in the Upper Quad Community, featuring a "traditional all-you-care-to-eat facility". There are also nine a la carte dining centers on-campus. These include the West End Market; the Hokie Grill and Co., including franchises Chik-fil-A and Pizza Hut; Owens Food Court; Deet's Place; DXpress; Shultz Express; Vet Med Café in the Virginia-Maryland Regional College of Veterinary Medicine; Squires Food Court, including franchises Sbarro and Au Bon Pain; and Au Bon Pain at Donaldson Brown. The University also operates Personal Touch Catering, the university's full-service catering department.

### **On-Campus Franchises**

The first franchise, a Freshens, came to Virginia Tech in 1991 and opened up in Owens Hall. Virginia Tech owns the franchise and licensing agreements with their on-campus franchises. There are six franchises on-campus, with the University acting as the franchisee. The Burger King in Johnson Hall is the exception. The franchise is not controlled by the university; Burger King rents space from the university, renews its contract on a yearly basis, and customers pay the local meal tax on purchases.

The franchises are:

Owens Hall - Freshens

Hokie Grill - Chik-fil-A, Freshens, Pizza Hut, and Cinnabon

Squires Student Center - Sbarro and Au Bon Pain

Graduate Life Center - Au Bon Pain

All franchises on-campus are staffed entirely by Virginia Tech employees.

### **The Virginia Tech Dining Services Program**

Dining services is an auxiliary of the university. Any reserve from the auxiliary goes back into the program. Sale of dining plans allows for renovations and improvements to dining halls and equipment. There is no state money for renovations; the dining program must raise its own revenue for that. Dining and Housing have two different budgets, and occasionally share expenses. The majority of the budget goes towards their own costs. The revenue is fee-generated and self-generated. Fee revenue is the biggest revenue source in the budget. Self-generated revenue includes fees associated with summer conferences, orientation, sports camps, etc. Dining Services also has to pay the Hokie Passport department to manage meal plans, etc. The Hokie Passport department runs the Dining Services computer system. Dining Services pays for their own large scale repairs from their operating budget. Salary and benefits make up two thirds of the Dining Services labor costs. Food costs are second to labor costs. If Dining Services makes more income than expected they ask for additional labor money to cover those expenses. Dining Services pays a "university tax" for the university's services, like Human Resources. Most of the Dining Services budget is spoken for, there is very little discretionary funding. The budget office gets the list of purchases and expenditures, which goes to the reserve, then comes back to Dining Services. All fees collected by the university are considered state money. Debt services goes through state first, not markets. For the expenses they cannot cover they sell debt (public bonds) through the state. Dining Services pays back the principal and interest through housing and dining surplus funds. They pay expenses through cash, reserve, and capital debit.

## **Programs**

Dining Services also offers You're Eating Smarter (Y.E.S.) nutrition education program, organized through the Housing and Dining Services' registered dietician. Sick meals are available to students who are sick and unable to go to a dining facility. A Family Flex Bonus allows students to treat their families and guests to a meal at a dining center. Each student with a meal plan is given \$6.25 in Flex Dollars on their Hokie Passport exclusively for the Family Flex Bonus. Students are not allowed to use these Flex Dollars for their own meals. There are also occasional special events and theme dinners.

## **Localities Interviews**

The issue of meals tax and university relations is not unique to Blacksburg. To gain a better sense of how other Virginia cities manager their university and town relationships, interviews were conducted in several college towns. These interviews provided information about how other towns handle the same issue and how they perceive Blacksburg's relationship with VT.

### **Methods:**

I created a list of all cities/towns in Virginia with a public, four-year university within town limits or partially within town limits. I created a list of interview questions about the meals taxes in that city and the way the university handles those meals taxes and the nature of the relationship between the city and the university as it related to the meals tax. These questions were approved by the Blacksburg Town Manager and Blacksburg Town Attorney. I called the Treasurer's Department, Finance Department, or Commissioner of the Revenue for each city; depending on which department oversaw the meals tax administration. The responses to the interview questions were recorded by hand. No tape recorder was used, and responses were recorded in paraphrasing form, not direct quotes.

There are fifteen 4-year, public universities in Virginia. They are (the cities they reside in are in parentheses): Christopher Newport University (Newport News); College of William and Mary (Williamsburg); George Mason University (Fairfax); James Madison University (Harrisonburg); Longwood University (Longwood); Norfolk State University (Norfolk); Old Dominion University (Norfolk); Radford University (Radford); University of Mary Washington (Fredericksburg); University of Virginia (Charlottesville); University of Virginia's College at Wise (Wise); Virginia Commonwealth University (Richmond); Virginia Military Institute (Lexington); Virginia State University (Petersburg); Virginia Tech (Blacksburg). The towns and cities who granted interviews were: Radford, Fredericksburg, Charlottesville, Albemarle County, Harrisonburg, Williamsburg, and Newport News. The interview questions can be found in the appendix.

## **Summaries from Localities Interviews**

**1. What percentage of the participants (participating cities) levies a meals tax?**

All of the cities with a university levy a meals tax. The average meals tax is 5.36%, with the range 4-6.5% tax. This means that all public universities in Virginia must manage university and town relations about meals taxes. The Blacksburg meals tax rate is 6%.

**2. Is the university within town limits?**

Of all public universities in Virginia, 60% are within the city limits of the city or town they are associated with. Some universities, like University of Virginia, are both within city and county limits. Other universities are strictly within the county.

**3. Are university's dining services managed by a third party private group?**

Of all universities, all but two contract out their dining services to a corporate third party. Virginia Tech and Christopher Newport University are the only universities with an in-house dining services program, including meal preparation and employment. The other universities contract out to Sodexo, Aramark, Thompson Hospitality, and Compass Group. Virginia Tech has a unique dining services department because they, unlike most Virginia universities, keep their dining services operations in-house. One of the implications of this is the university, not a third party, would be responsible for collecting the meals tax. Some universities have had difficulty enforcing meals tax collection with the third party food services provider. The Commissioner of Revenue in Harrisonburg, home of James Madison University, cited difficulty with Aramark collecting the meals tax. Over the years Aramark has argued that a state entity is not required to collect meals tax for a local ordinance, so therefore they should not have to collect meals tax as part of a state entity. Aramark has not been successful and James Madison has continued to collect the meals tax.

**4. Does the meals tax ordinance exempt food purchased at universities?**

All of the cities with universities have an exemption for state universities and education institutions identical to the exemption found in Blacksburg's town code.

**5. Does the university collect the meals tax at their on-campus food sales?  
Does that include food purchased on a meal plan?**

Some universities do not collect the meals tax, the third party contractor does. Radford, Charlottesville, and Harrisonburg all cited they collect meals tax revenue from the third party contractors, not the universities. Fredericksburg only collects meals tax on a coffee shop in the bookstore at the University of Mary Washington because the other campus dining facilities are cafeteria style and considered tax-exempt. The Office of the Commissioner of the Revenue mentioned if more franchises come to their university the city will collect meals taxes from them. Williamsburg collects taxes from their university cafeterias, although it is unclear if individuals purchasing food with meal plans are included in that taxation. Christopher Newport University also collects meals tax revenue

for the town. Christopher Newport is the only other university from this study with an in-house dining services operation like Virginia Tech.

**6. What is taxed? Who are taxed (people with meal plans versus without meal plans)?**

For all of the universities studied, meals paid for with meal plans were not charged the local meals tax, with the exception of Radford University. The Commissioner of Revenue for the city of Radford emphasized all prepared meals were to be taxed and she did not think meal plans were exempt. The city of Fredericksburg exempts all purchases from the university cafeteria, but that it is also the only dining hall on-campus. The city would require meals tax collection on future on-campus franchises. In Harrisonburg, the only people who are meals tax exempt are students with meal plans who purchased food from the cafeteria. Students purchasing from franchises on-campus and people without meal plans are not meals tax exempt. The city of Williamsburg is under the impression that all prepared food is eligible for taxation, although they were not sure. Some of the cities will smaller universities did not seem as sure of the meals tax policies on-campus as cities with larger universities. In Albemarle County, individuals with a meals plan are charged, but their meal plans are not. The policy is to tax on any purchase in which money is exchanged, but not the purchase of the meal plan itself. According to Charlottesville (the university sits between the city and county) food purchased on meal plans and in the traditional cafeteria are tax exempt, but food purchased from a third party vendor, like food courts or franchises, are not meals tax exempt, even for students with meal plans (students cannot use meal plans to purchase food from third party vendors). The county also collects taxes on football games and all restaurants. Aramark, their dining services vendor, collects the taxes at the university. For transient, hotel, and meals taxes, the individual pays and the entity/vendor collects the taxes. The vendor gets a 3% discount up to \$100 on meals taxes. The county does not tax any public or private schools. Christopher Newport University has tax exemption on their meal plans and food purchased with the meal plan at the cafeteria. Students cannot use their meal plans to purchase food from third party vendors, so those purchases at food courts or franchises are not tax exempt.

**7. When did the town introduce the meals tax? When did the university begin collecting the tax?**

Most of the meals taxes policies are over a decade old and the universities began collecting the tax immediately. Radford started theirs in 1986 and recalls the university began collecting as soon as it was implemented. The city of Fredericksburg believes their meals tax was passed about ten years ago, and they opened an account with the university September of 2005. The Commissioner of the Revenue believes this is when the first coffee shop opened up on-campus. Charlottesville started the tax in 1983, and has not pushed the university to collect it. The county and city collect from the third party vendors, but not the university. The city of Harrisonburg began collecting meals tax in 1985, and the university followed the mandate immediately. The city of Newport News introduced the meals tax in 1987 and the university complied immediately. Albemarle County started the meals tax in 1998. The university began collecting the tax immediately.

**8. Have there been any previous issues with the university about the tax collection? If the university does not collect the meals tax?**

No university town expressed there was any issue with the university cooperating to collect the meals tax. Most of the cities receive the meals tax money from the third party dining services vendor, and those vendors, with the exception of Harrisonburg, have not had any issue collecting the tax. Radford reports the university and vendor have been cooperative with the city. Fredericksburg also reports the city simply sent the university a collections requests and no further communication has been recorded. Charlottesville emphasizes they wish to keep their good relationship with the university and do not feel it is worth risking over the meals tax. The city of Harrisonburg reported no problems with the university complying with the meals tax. The city noted they felt it was unfair to charge the meals tax to area restaurants and non-university vendors but not to the university. The city of Newport News reports there was no issue with the university complying, the city did not consider that the university might fight collecting the tax. There have been no issues with the university as the third party vendor collects the tax.

The Dining Services organizational Chart will be added here



# COMMONWEALTH OF VIRGINIA

Office of the Attorney General

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October 2, 2009

The Honorable David L. Bulova  
Member, House of Delegates  
P.O. Box 106  
Fairfax Station, Virginia 22039

Dear Delegate Bulova:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

### Issue Presented

You ask whether Fairfax County may adopt an ordinance requiring the private corporation that manages the George Mason University Patriot Center to collect admissions tax on persons who pay to attend non-university events held at the Patriot Center.

### Response

It is my opinion, based upon the facts you provide, that Fairfax County may adopt an ordinance requiring the private corporation that manages the George Mason University Patriot Center to collect admissions tax on persons who pay to attend non-university events.

### Background

You relate that George Mason University has a large multi-purpose facility on its Fairfax County campus known as the Patriot Center ("Center"). You advise that the Center is a successful venue that is the site of many university functions and is also used for non-university functions. You relate that non-university functions include musical concerts and various other entertainment shows. The Center is managed by a private corporation that also manages other multi-purpose venues.

### Applicable Law and Discussion

Section 58.1-3818, entitled "[a]dmissions tax in certain counties," provides that:

A. Fairfax ... Count[y is] hereby authorized to levy a tax on admissions charged for attendance at any event. The tax shall not exceed 10 percent of the amount of charge for admission to any such event. Notwithstanding any other provisions of law, the governing bodies of such counties shall prescribe by ordinance the terms, conditions and amount of such tax and may classify between events conducted for charitable and those conducted for noncharitable purposes.

Thus, § 58.1-3818(A) authorizes Fairfax County to levy a tax on admissions charged for attendance at any event. Further, the County is authorized to prescribe the terms, conditions, and amount of such admissions tax. Finally, § 58.1-3817 divides events into six classes:

In accordance with the provisions of Article X, Section 1 of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:

1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.
2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.
3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
4. Admissions charged to participants in order to participate in sporting events.
5. Admissions charged for entry into major league baseball games and events at any major league baseball stadium which has seating for at least 40,000 persons.
6. All other admissions.

In a prior opinion ("2001 Opinion"), the Attorney General considered whether the City of Norfolk could require Norfolk State University to collect and remit the admission tax imposed by ordinance by the City of Norfolk.<sup>1</sup> The 2001 Opinion concludes that the Norfolk ordinance, which purports to impose a duty on the Commonwealth or its instrumentalities to collect an admission tax, is *ultra vires*.<sup>2</sup> In a similar vein, another opinion ("1983 Opinion") considered whether the Town of Blacksburg could impose upon the officers and employees of a state university the obligation to collect the town meals tax for the meals sold by the university.<sup>3</sup> The 1983 Opinion also concluded that the town has no authority to impose on the university the duty to collect and report the local meals tax.<sup>4</sup>

Finally, a 1997 opinion ("1997 Opinion") considered whether the City of Harrisonburg may require James Madison University or a private company that provides management services to the University to collect the city meals tax on the meals the University sells to its students through its dining services.<sup>5</sup> Because the private company did not manage the University's dining facilities, the city could not impose a tax collection duty on the private company.<sup>6</sup> The 1997 Opinion also noted that whether the private company has assumed responsibility for the operation of the University's dining system was a question of fact.<sup>7</sup>

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<sup>1</sup> See 2001 Op. Va. Att'y Gen. 184.

<sup>2</sup> *Id.* at 185 (citing 1983-1984 Op. Va. Att'y Gen. 381, 383).

<sup>3</sup> See 1983 Op. Va. Att'y Gen., *supra* note 2, at 381.

<sup>4</sup> *Id.* at 383.

<sup>5</sup> See 1997 Op. Va. Att'y Gen. 184.

<sup>6</sup> *Id.* at 185.

<sup>7</sup> *Id.*



The Honorable David L. Bulova  
October 2, 2009  
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In the situation you present, you advise that the Center also is used for a number of popular non-university functions, such as musical concerts and various other entertainment shows. Whether the private corporation that manages the Center has assumed responsibility for such non-university functions also is a question of fact. For purposes of this opinion, I assume that the private management corporation does, in fact, have contractual responsibility for the complete management of the Center for all non-university functions. Based upon that assumption, Fairfax County would be authorized to adopt an ordinance to levy a tax on the admissions charged by the private corporation for attendance at non-university functions.

#### Conclusion

Accordingly, it is my opinion, based upon the facts you provide, that Fairfax County may adopt an ordinance requiring the private corporation that manages the George Mason University Patriot Center to collect admissions tax on persons who pay to attend non-university events.

Thank you for letting me be of service to you.

Sincerely,



William C. Mims