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# The Norfolk Retail Sales and Use Tax

W. R. MOORE

*Commissioner of the Revenue, City of Norfolk*

At the request of Professor Atkeson, I will attempt today to give you the reason for the city's adoption of the sales tax and to acquaint you with steps taken by the governing body of the city before adopting the sales tax as they, like all others, were conscious of the many reasons why a local sales tax would not meet with enthusiastic approval among many of its citizens, especially those in the mercantile field.

I am certain that all within my voice are acquainted with the fact that the City of Norfolk is completely surrounded by five cities, none of which, at the time of the adoption of the Norfolk sales tax, had indicated that they would adopt a similar tax. When we consider further that the highways have done nothing more than to lengthen Main Street, you can appreciate how skeptical the merchants organizations in the city were, *that the trade pattern would be changed*. Our newspapers were not opposed to a sales tax, but to a local sales tax and questioned seriously the wisdom of the city imposing one. This was the subject of many editorials and news articles.

The various departments of the city government, in making their budget requests for 1964, recognized the additional costs in operation because of economic conditions and made their requests, which were scanned very carefully by the City Manager, who also is our Director of Finance, with the result that as many changes as thought possible, without seriously impairing the service were made. The one moving request, however, was the one from the School Board, in which they presented a program, termed QUALITY EDUCATION, which would, by 1966, add to the city budget \$5,940,000.00 plus dollars. This request was firmly supported by the taxpayers of the city. As a matter of fact, it was as near unanimous as any program of any consequence that the writer can recall within his long years of service with the City and State. That service having been with every City Manager that the City of Norfolk has had since the City Manager form of government was established and with every Councilman since that date.

The City Manager was very wise in his letter to the Council when he said to them and I quote: "That before going into the details of the proposed budget, it appears that a general consideration of the city's finances is in order. The most critical aspect of the city's financial condition is the QUALITY EDUCATION PROGRAM. It should be kept in mind that the total financial impact of this program will not completely affect the city's finances until 1966. However, this proposed 1964 budget provides for an increase of \$2,472,395.00 for the QUALITY EDUCATION PROGRAM."

The city governing body, in a consideration of the budget proposals, held several public meetings. One of these was attended by more than 500 people, representing groups whose total would be 100,000 or more citizens. It was my privilege to attend this meeting, doing so at the request of the Council and I was called upon on several occasions to agree or disagree with several financial estimates and suggestions from the then existing sources of revenue. This I did not hesitate doing, as it was the purpose of my attendance.

I think, however, I would make a mistake if I did not mention the fact that all the requests for budget expenditures for the various departments were considered with the department heads by the City Manager. The necessary minimum sum for the proper operation of each department had to be determined (without the QUALITY EDUCATION PROGRAM). Increases were necessary because of salary adjustments and increased costs generally of materials and supplies and other factors that enter into the expense of operation. All of this considered, however, it was thought we could have met within the income of the city from taxes, etc., without disturbing the rates or seeking of any new tax.

In the year of 1962, at least 1,961 municipalities in the United States and Canada benefited either from the local sales tax or shared in a state sales tax. It was estimated that the average yield per 1c sales tax was about \$10.00 and, therefore, with a 2% sales tax, Norfolk's sales tax cannot yield more than \$20.00 per capita. To repeat, our merchants were violently opposed to the sales tax. Yet, they were in agreement that the QUALITY EDUCATION PROGRAM should be accepted and I wish to witness here to the fact I have never known a more sincere group of people than the members of the Retail Merchant's Association of the City of Norfolk. They even went so far as to suggest that their city licenses be doubled in order to avoid this tax. They offered several other avenues by which they thought the revenue could be increased. I must also say that in my long service with the city, I have never known a governing body that more earnestly and sincerely sought and considered all suggestions made. Before arriving at the conclusion that the sales tax was the proper and right means of raising the necessary funds to inaugurate QUALITY EDUCATION, beginning in 1964, with full appreciation that the cost . . . would be \$5,940,000.00 in 1966, among the subjects of taxation the Council reviewed and gave serious consideration to were property taxes, payroll earning tax, sales tax, gross receipts business licenses, cigarette taxes, public utility, trash collection fees and water rates.

Let us consider first the property taxes or real estate taxes. In order to raise the necessary funds from this source for QUALITY EDUCATION, the real estate tax rate itself would have to be increased about 15% per year or have a total increase for the three years that would

see the completion of the QUALITY EDUCATION PROGRAM of 45%. Norfolk has some 80,000 plus pieces of property subject to taxation. This property, being like all other cities, is owned by a comparative few of its people. In Norfolk, all of the taxable real estate is owned by 28,000 plus individuals. As pointed out, an increase in property taxes is always regressive and tends to activate the removal of commercial and business firms to surrounding areas which enjoy lower tax rates and further it would discourage the creation of additional real estate values within the city by new construction. The City Manager was strongly in favor of a payroll tax on the premise that Norfolk is the central city. He tried to persuade the League of Municipalities to join with him in an effort to have legislation passed to permit the cities to impose this tax. I am informed, however, he only had one other to support this position and, therefore, this avenue was abandoned.

It seems that some cities in Pennsylvania and many cities in the mid-west, are using this system of raising money. As mentioned to you before, the merchants in their objection offered to have their licenses doubled, but it was found that this would not meet the bill and would be an undue hardship to be placed upon the merchants. The cigarette tax—the city did raise the rate from 2¢ to 3¢ per package in 1964. Public utility taxes—it was the governing body's opinion that this source should not be tapped further. Trash collection fees were abandoned because of difficulty of equitable distribution and it was further thought this was not the best form of taxation. Before leaving this phase of my talk, let me say to you that two members of the Council were up for re-election in June of 1964 and the sales tax was to become operative July 1st. The third member of the ticket joined the two older members and this ticket made it a campaign issue. All three of these gentlemen advocating the local sales tax were elected to office. Therefore, it would seem that this tax was preferred to a general property tax increase when that increase would have to be as much as 45% total.

In looking at the QUALITY EDUCATION PROGRAM, I have taken the liberty to bring with me a breakdown of its basic needs and have done so on the basis of costs for the year of 1964, 1965 and 1966. Time does not permit me to detail this program, but I will be glad to answer any question asked, after I have finished this presentation.

When the sales tax was adopted, the administration of it was directed to the Commissioner of the Revenue's office. The effective date of this law was changed by Council from December 27, 1963 to July 1, 1964. In the meantime, there was a Council election on June 8th, to which I have previously referred. The final conclusion was not made until June 10th. We found ourselves, therefore, with twenty days in which to prepare for the administration of the tax. It is true that we

had the ordinance and rules as adopted by Council in November, 1963 and we had made some attempt to acquaint ourselves with its provisions, but we were without the necessary forms and other materials for proper enforcement. The speaker went to several cities and looked over the operation of the sales tax as administered. I soon recognized I would be troubled more by the accounting than any other feature. I recognized that auditing is the basis of its enforcement. Norfolk has the unique distinction of having a \$200.00 single purchase maximum or a maximum tax of \$4.00. In other words, if you were to enter into one of the larger stores in Norfolk having many cash registers or charging points, you could buy as much as \$10,000.00 worth of goods in any one department, without leaving the store and if same were checked at the central cash register for that department, you would only be liable for \$4.00 tax. The primary purpose of this limitation was the reduction of the exodus of business, if any, to a very minimum, by making it economically unwise for the citizens of Norfolk to purchase their needs by leaving Norfolk to do so. Further, the city recognized that on the automobile and larger items of equipment that in themselves cost more than \$200.00 and run up in some instances to \$10,000.00, a straight 2% sales tax would probably do the merchants handling these articles, a serious damage. I say here for emphasis, that Norfolk is the only city we have any record of that imposes this maximum tax limit. However, I am pleased to note that Newport News has adopted the sales tax, effective July of next year, with the same maximum feature that the City of Norfolk has. Therefore, at this time there are two cities in Virginia that will have this maximum tax provision. I am thinking, however, that before long or in the near future, we will witness many other Virginia cities adopting this form of taxation. I have, up to this moment, spent the major portion of my force and time in creating the proper climate for the reception of this tax. We have had our auditors, with the exception of an occasional one or two for specific jobs, since this tax became operative, aiding the merchants and others who collect this tax, by showing them how to fill in the forms, how to apply the tax and by explaining any other feature of the ordinance itself that they do not understand. This office nor any other office could not have had more cooperation than we have had from our merchants. They have extended themselves and I often say that they have gone the second mile for which I shall always be grateful.

I would not stand here before you and attempt to say that all are enthusiastic about the sales tax because that would not be true, but I will say there are few who still oppose this tax and their number is getting smaller. I don't know that I could possibly close my few remarks other than by saying to you that thus far, experience with the sales tax in Norfolk has been one of cooperation on the part of the collectors of the tax and this office in its effort of administration. We have

broadcast that we are willing to come to anyone and assist them when called upon. I would not dare say to you we have not done some auditing, as that would not be true, because we have. I would say, however, the mistakes have been minor.

Norfolk's sales tax follows much the line of Tennessee. Yet, there are certain additional provisions in Norfolk's law that had to be made because of the nature of Norfolk's trade pattern, being a seaport town. For instance, we have in our city many ship chandlers, whose entire business is with the ships and agents for shipping lines, nearly all of which are either engaged in interstate commerce or in foreign commerce. The Council, of course, had to consider that it would be very easy for any of these ships to transfer their business to any other port of call. Therefore, an amendment was made, eliminating all supplies and repair timbers used in feeding the crew and in operating the boat and necessary repairs made by local shipyards. Of course, whenever an amendment eliminating a section of business is made, then other businesses are concerned. As for foreign commerce, only last Wednesday, we received a letter from a local contractor in which he stated that he was being called upon to pay a sales tax on purchases made in the city, which he in turn shipped to Bermuda. They have several large contracts on that island and he was asking relief from the sales tax itself. We ruled that if the Norfolk suppliers were to deliver the goods to the shipping point of export, then we would consider this as being delivered outside of the city and for foreign commerce and they would not be taxed by the city suppliers. However, if he mingled these supplies with other supplies in his warehouse in Norfolk, then later on took them from that warehouse to the shipping point, the Norfolk suppliers would have to charge him a tax. The basis of this decision being, in the first instance, the actual delivery was made in Bermuda and in the second instance, locally and that creates considerable concern in interpretation. In the construction business and other large concerns, who buy large quantities of goods or supplies and because of the size of the order, several deliveries are made, here the contract itself controls. For instance, if a contract is firm, we would consider it one contract, though several deliveries are made over a period of time, as an example: A contractor would go to his various suppliers and inform them he is bidding on a contract and inquired whether or not they would supply the materials needed by him for this contract and at what price. This system is carried to all suppliers necessary for the completion of the contract. We do not consider this a firm order, but if this contractor, after the awarding of the contract, would go back to the suppliers and enter into a firm order for these supplies, though many deliveries would be necessary to fulfill the contract, it would be considered one and subject to the maximum tax. If this same contractor were building outside the city limits and he had the supplier to ship

his goods to the point of construction outside of the city, then there would not be any tax, but if the contractor would use his own equipment and come into the city to make a purchase and take delivery here, the sales tax would be applied.

Mr. Chairman, I believe I could spend much time with various examples, such as I have just mentioned. However, I believe we could more profitably use the remainder of this period by entertaining questions and attempting to answer same. This I will do if it be your will.

DR. ATKESON: I am sure you have some questions for Commissioner Moore, so who is first?

*Question:* If a person buys an automobile outside of Norfolk, is he subject to the sales tax?

MR. MOORE: If a person buys an automobile outside of the city of Norfolk and he is a Norfolk resident and brings the car into the City, he would be subject to the use tax and would pay at the rate of 2% or a maximum of \$4.00.

*Question:* Are materials used by a contractor in the performance of a contract for a governmental agency subject to the tax?

MR. MOORE: I will have to explain this section of the Ordinance for you to fully understand my answer. The Ordinance exempts any property or work for the United States government, the State of Virginia or any municipality of the State when bought by a governmental agency and the goods are paid for with a check of that agency. But, if the contractor has a contract with the Federal, State or local government and orders from his suppliers in his name and pays for same with his check, then the sales tax must be applied. The contractor himself would be liable as he is considered a consumer under the terms of the sales tax.

*Question:* I understood you to say that multiple purchases made in the same department and paid for at the same time, would be termed a single purchase for the application of the tax.

MR. MOORE: You are correct in your understanding. This amendment to the Ordinance was made upon the request of the merchants themselves. The original Ordinance contained the clause that permitted the grouping of purchases on a storewide basis and paid at a single cash register. This provision, however, is very difficult to administer and oftentimes became embarrassing to the merchant. If the purchaser went outside the store and then returned to the store and bought some goods and then checked out at the checking point, it would be termed a new sale and so taxed. If he leaves a department and goes over to another department, he cannot bring the sales from the second

department into the first department at the conclusion of the sale for the purpose of only paying on one sale.

*Question:* Why is it that a charitable organization that holds an exemption certificate from your office made one purchase for \$400.00 worth of lunches for all its guests and yet your office taxed them on the individual lunches?

MR. MOORE: Our office was confronted with an example covered by your question. If the organization itself had placed an order for X number of dollars worth of food and in turn served or had served this food to its members on its own account, then it would have been considered one sale. Our position here is thoroughly covered by the Ordinance and Rules. However, the question that confronted us was \$400.00 worth of food to be served to individuals and individually paid for. Then, each lunch was considered as separate purchases and the tax so charged. I think here, I would do well to pause to point out when a question in licenses is raised, then we should look to the license tax ordinance itself for its interpretation. So also when a question arises under the sales tax and use tax, we should go to the ordinances covering the sales and use taxes for our interpretation. The question asked here was presented to our office by a fund raising organization for a worldwide charitable institution and used by that institution in carrying out its charitable work. Fund raising organizations, by my interpretation, do not fall under the provision allowing exemptions in the sales or use tax. Yet, the charitable organization for which they are raising the funds, would themselves be covered. In the instant case, which prompted the question, 400 or 500 people bought lunches as individuals and the organization itself sold tickets to those who were to attend the luncheon. Therefore, the ruling that they were liable for the tax.

*Question:* How can you enforce the use tax on small purchases?

MR. MOORE: Our office does not, under any circumstances, consider it necessary to become a Gestapo in enforcing the sales tax law. Therefore, we are probably neglecting our full duty in trying to enforce the small purchases on wearing apparel, etc. that some Norfolk residents may buy outside of the city. I confess to you that we are not interested in a dress or a hat or a shirt, but, we are deeply interested in an automobile or a carrying machine or any other large piece of equipment or machinery. We do try to cover all office equipment and household furniture. I will say further to you that whenever an outside firm comes into the city and rents for a short period of time, a room, a small space in the lobby of a hotel or motel or a place in an established store and takes orders by means of samples or by modeling or any other sources, we do try to make these people pay a tax. We take

the position the goods were sold in Norfolk and acceptance of these goods by a Norfolk resident completes the sale and, therefore, fully liable under the Ordinance itself. An out-of-city firm would not accept this interpretation and we wrote them for a date that two of our auditors could appear at their place of business in New York and have full access to their books. We were immediately contacted by phone and asked that we do not send our representatives, but to afford them time to consult their attorneys, which they did promptly and advised us. It was not long before they called and asked for the forms to report to the City, the sales tax. Since that time, we have had their full cooperation and are receiving monthly reports from them. This also is true of some 300 other firms.

*Question:* Are sales made to a contractor doing work on a military base within the corporate limits of the City of Norfolk, subject to the tax?

MR. MOORE: This question affords some difficulty in that the License Ordinance and statutes, both State and City, relieves a contractor of the necessity of paying the license tax when the contract is fulfilled within a governmental reservation. Now the problem you have here goes back to a previous question. Here the question is whether or not a sales tax would be applicable. Therefore, we must go to the sales tax and rules to find our answer. You will note the ordinance terms a contractor as a consumer. Therefore, when a contractor in his own name, makes purchases within the City and pays for the supplies with his check, the ordinance holds him liable for the consumer's tax or that he has to pay a sales tax to his supplier. This also will hold in the use tax when purchases are actually made without the City and delivered to the contractor within a military reservation within the City. Again, I would have to call your attention to the rule that in this instance, the contractor is the purchaser and not the government. Had the government purchased the goods and paid same with a government check, then neither the sales or use tax would have to be charged.

*Question:* Are you going to attempt to enforce the tax through audits?

MR. MOORE: Yes.

*Question:* Is the Prentice-Hall Tax Service that I use in my office, subject to the tax?

MR. MOORE: If I understood you correctly, Prentice-Hall should charge you a use tax and if they do not, I think you should file and pay the tax yourself under the law. The Norfolk sales tax holds a Norfolk resident primarily liable.

*Question:* Are law books bought outside of the State, which I use in my profession, subject to the tax?

MR. MOORE: Yes. The 2% use tax up to \$200.00 would be applicable.

*Question:* Are the exemption certificates and other forms available?

MR. MOORE: Yes. We, in our office in an effort to assist the taxpayers, are called upon often to fill in the applications. This duty we gladly perform as it not only affords an opportunity to personally ask questions concerning their charitable or religious activities, but other pertinent questions necessary.

*Question:* How productive has this tax been so far?

MR. MOORE: I presume you want to know by this question, how much money we collect per month. You appreciate the fact I know, we have only had two months' actual reporting since the beginning of the tax. Hence, I hesitate to even attempt to answer this question as I consider our experience thus far too limited.

