

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 1025

Short Title: Cigarette Tax - No Stamps.

(Public)

Sponsors: Senators Kerr; and Cooper.

Referred to: Finance.

May 4, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PAYMENT OF THE CIGARETTE TAX BY
3 REPORTING RATHER THAN BY TAX STAMPS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Part 2 of Article 2A of Chapter 105 of the General Statutes, with
6 the exception of G.S. 105-113.7, is repealed.

7 Sec. 2. Parts 1 and 3 of Article 2A of Chapter 105 of the General Statutes are
8 consolidated with one another and with G.S. 105-113.7 into a single Article without
9 separate Parts.

10 Sec. 3. Article 2A of Chapter 105 of the General Statutes, as amended by
11 Sections 1 and 2 of this act, reads as rewritten:

12 "ARTICLE 2A.

13 "SCHEDULE B-A. TOBACCO PRODUCTS TAX.

14 "§ 105-113.2. Short title.

15 This Article may be cited as the 'Tobacco Products Tax Act' or 'Tobacco Products
16 Tax Article.'

17 "§ 105-113.3. Scope of tax; administration.

18 (a) Scope. – The taxes imposed by this Article shall be collected only once on the
19 same tobacco product. Except as permitted by Article 2 of this Chapter, a city or county
20 may not levy a privilege license tax on the sale of tobacco products.

21 (b) Administration. – Except as provided in this ~~section, Article, Article~~ 9 of this
22 Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this~~
23 ~~Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%)~~
24 ~~of the tax due.~~

1 **"§ 105-113.4. Definitions.**

2 The following definitions apply in this Article:

- 3 (1) Cigar. – A roll of tobacco wrapped in a substance that contains
4 tobacco, other than a cigarette.
- 5 (1a) Cigarette. – Any of the following:
6 a. A roll of tobacco wrapped in paper or in a substance that does
7 not contain tobacco.
8 b. A roll of tobacco wrapped in a substance that contains tobacco
9 and that, because of its appearance, the type of tobacco used in
10 the filler, or its packaging and labeling, is likely to be offered to
11 or purchased by a consumer as a cigarette described in subpart
12 a. of this subdivision.
- 13 (2) Cost price. – The price a person liable for the tax on tobacco
14 products other than cigarettes imposed by ~~Part 3 of this Article~~ paid
15 for the products, before any discount, rebate, or allowance or the
16 tax imposed by ~~that Part.~~ this Article.
- 17 (3) ~~Distributor. — Any person, wherever resident or located, who~~
18 ~~purchases unstamped cigarettes directly from the manufacturer~~
19 ~~thereof and stores, sells or otherwise disposes of the same; and also~~
20 ~~any person who manufactures or produces cigarettes or causes~~
21 ~~them to be manufactured or produced.~~
- 22 (4) Repealed by Session Laws 1991, c. 689, s. 267.
- 23 (5) ~~Licensed distributor. — A distributor licensed under Part 2 of~~
24 ~~this Article.~~
- 25 (6) Manufacturer. – A person who manufactures or produces
26 tobacco products.
- 27 (7) Package. – The individual packet, can, box, or other container used
28 to contain and to convey tobacco products to the consumer.
- 29 (8) Person. – An individual, a firm, a partnership, an
30 association, a corporation, or any other organization or group
31 acting as a unit.
- 32 (9) Retail dealer. – A person who sells a tobacco product to the
33 ultimate consumer of the product.
- 34 (10) Sale. – A transfer, a trade, an exchange, or a barter, in any
35 manner or by any means, with or without consideration.
- 36 (10a) Secretary. – The Secretary of Revenue.
- 37 (11) ~~Stamp. — Any impression, device, stamp, label, or print~~
38 ~~manufactured, printed, or made as prescribed by the Secretary~~
39 ~~under Part 2 of this Article.~~
- 40 (11a) Tobacco product. – A cigarette, a cigar, or any other product that
41 contains tobacco and is intended for inhalation or oral use.
- 42 (12) ~~Unstamped. Not bearing a North Carolina cigarette tax stamp.~~
- 43 (13) ~~Use. — The exercise of any right or power over cigarettes, incident~~
44 ~~to the ownership or possession thereof, other than the making of a~~

1 sale thereof in the course of engaging in a business of selling
2 cigarettes. The term includes the keeping or retention of cigarettes
3 for use.

4 (14) Wholesale dealer. – A person who makes tobacco products ~~other~~
5 ~~than cigarettes~~ or who acquires tobacco products ~~other than cigarettes~~
6 for sale to another wholesale dealer or to a retail dealer.

7 **"§ 105-113.4A. Licenses.**

8 (a) General. – To obtain a license required by this Article, an applicant must
9 apply to the Secretary and pay the tax due for the license. A license is not transferable or
10 assignable and must be displayed at the place of business for which it is issued.

11 (b) Refund. – A refund of a license tax is allowed only when the tax was
12 collected or paid in error. No refund is allowed when a license holder surrenders a
13 license or the Secretary revokes a license.

14 (c) Duplicate or Amended License. – Upon application to the Secretary, a license
15 holder may obtain without charge one of the following:

16 (1) A duplicate license, if the license holder establishes that the
17 original license has been lost, destroyed, or defaced.

18 (2) An amended license, if the license holder establishes that the
19 location of the place of business for which the license was issued
20 has changed.

21 A duplicate or amended license shall state that it is a duplicate or amended license, as
22 appropriate.

23 (d) Surrender of License. – If a wholesale dealer voluntarily surrenders its
24 license, the Secretary shall revoke the license without notice or hearing.

25 **"§ 105-113.5 through 105-113.6. Repealed.**

26 **"§ 105-113.7. Tax with respect to inventory on effective date of tax increase.**

27 Every ~~distributor~~ wholesale dealer subject to the taxes levied in this Article who, on
28 the effective date of a tax increase under this Article, has on hand any ~~cigarettes-tobacco~~
29 products shall file a complete inventory of the ~~cigarettes-tobacco products~~ within 20 days
30 after the effective date of the increase, and shall pay an additional tax to the Secretary
31 when filing the inventory. The amount of tax due is the amount due based on the
32 difference between the former tax rate and the increased tax rate.

33 **"§ 105-113.8 through 105-113.34. Repealed.**

34 **"§ 105-113.35. Tax on tobacco ~~products other than cigarettes.~~ products.**

35 (a) Tax. – An excise tax is levied on cigarettes at the rate of two and one-half
36 mills per individual cigarette. An excise tax is levied on tobacco products other than
37 cigarettes at the rate of two percent (2%) of the cost price of the products. ~~This tax.~~ The
38 tax levied in this section does not apply to the following:

39 (1) A tobacco product sold outside the State.

40 (2) A tobacco product sold to the federal government.

41 (3) A sample tobacco product other than cigarettes distributed without
42 charge.

43 (4) Sample cigarettes distributed without charge in packages
44 containing five or fewer cigarettes.

1 (5) Cigarettes in a package of cigarettes given without charge by the
2 manufacturer of the cigarettes to an employee of the manufacturer
3 who works in a factory where cigarettes are made, if the cigarettes
4 are not taxed by the federal government.

5 (b) Primary Liability. – The wholesale dealer or retail dealer who first acquires or
6 otherwise handles tobacco products subject to the tax imposed by this section is liable
7 for the tax imposed by this section. A wholesale dealer or retail dealer who brings into
8 this State a tobacco product made outside the State is the first person to handle the
9 tobacco product in this State. A wholesale dealer or retail dealer who is the original
10 consignee of a tobacco product that is made outside the State and is shipped into the
11 State is the first person to handle the tobacco product in this State.

12 (c) Secondary Liability. – A retail dealer who acquires non-tax-paid tobacco
13 products subject to the tax imposed by this section from a wholesale dealer is liable for
14 any tax due on the tobacco products. A retail dealer who is liable for tax under this
15 subsection may not deduct a discount from the amount of tax due when reporting the
16 tax.

17 (d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who
18 ships tobacco products ~~other than cigarettes~~ to either a wholesale dealer or retail dealer
19 licensed under this ~~Part~~ Article may apply to the Secretary to be relieved of paying the
20 tax imposed by this section on the tobacco products. Once granted permission, a
21 manufacturer may choose not to pay the tax until otherwise notified by the Secretary.
22 To be relieved of payment of the tax imposed by this section, a manufacturer must
23 comply with the requirements set by the Secretary.

24 (e) Non-Tax-Paid Cigarettes for Personal Use. – The Secretary may provide by
25 rule that an individual may bring into this State from another state for that individual's
26 personal use a maximum number of non-tax-paid cigarettes, not to exceed 600.

27 (f) A wholesale dealer in possession of packages of 'stale' or otherwise unsalable
28 cigarettes upon which the tax has been paid may return the packages to the
29 manufacturer and apply to the Secretary for refund of the tax. The application shall be
30 on a form prescribed by the Secretary and shall be accompanied by an affidavit from the
31 manufacturer stating the number of cigarettes returned to the manufacturer by the
32 applicant. The Secretary shall refund the tax paid on the unsalable cigarettes, less the
33 discount allowed, to the applicant.

34 **"§ 105-113.36. Wholesale dealer and retail dealer must obtain ~~license.~~ license;**
35 **investigation of certain applicants.**

36 (a) A wholesale dealer shall obtain for each place of business a continuing
37 tobacco products license and shall pay a tax of twenty-five dollars (\$25.00) for the
38 license. A retail dealer shall obtain for each place of business a continuing tobacco
39 products license and shall pay a tax of ten dollars (\$10.00) for the license. A 'place of
40 business' is a place where a wholesale dealer or ~~where~~ a retail dealer makes tobacco
41 products ~~other than cigarettes or or where~~ a wholesale dealer or a retail dealer receives or
42 stores non-tax-paid tobacco ~~products other than cigarettes.~~ products.

43 (b) When a person applies for a wholesale dealer's license to deal in cigarettes,
44 the Secretary may investigate the applicant to determine if the information the applicant

1 submits with the application is accurate and if the applicant is eligible to be licensed as a
2 wholesale dealer. The Secretary may decline to issue a wholesale dealer's license to an
3 applicant when the Secretary has reasonable cause to believe any of the following:

4 (1) That the applicant has willfully withheld information requested by
5 the Secretary for the purpose of determining the applicant's
6 eligibility for the license.

7 (2) That information submitted with the application is false or
8 misleading.

9 (3) That the application is not made in good faith.

10 **"§ 105-113.37. Payment of tax.**

11 (a) Monthly Report. – Except for tax on a designated sale under subsection (b),
12 the taxes levied by this Article are payable when a report is required to be filed. A report
13 is due on a monthly basis. A monthly report covers sales and other activities occurring
14 in a calendar month and is due within 20 days after the end of the month covered by the
15 report. A report shall be filed on a form provided by the Secretary and shall contain the
16 information required by the Secretary.

17 (b) Designation of Exempt Sale. – A wholesale dealer who sells a tobacco
18 product to a person who has notified the wholesale dealer in writing that the person
19 intends to resell the item in a transaction that is exempt from tax under G.S. 105-
20 113.35(a)(1) or (2) may, when filing a monthly report under subsection (a), designate
21 the quantity of tobacco products sold to the person for resale. A wholesale dealer shall
22 report a designated sale on a form provided by the Secretary.

23 A wholesale dealer is not required to pay tax on a designated sale when filing a
24 monthly report. The wholesale dealer shall pay the tax due on all other sales in
25 accordance with this section. A wholesale dealer or a customer of a wholesale dealer
26 may not delay payment of the tax due on a tobacco product by failing to pay tax on a
27 sale that is not a designated sale or by overstating the quantity of tobacco products that
28 will be resold in a transaction exempt under G.S. 105-113.35(a)(1) or (2).

29 A person who does not sell a tobacco product in a transaction exempt under G.S.
30 105-113.35(a)(1) or (2) after a wholesale dealer has failed to pay the tax due on the sale
31 of the item to the person in reliance on the person's written notification of intent is liable
32 for the tax and any penalties and interest due on the designated sale. If the Secretary
33 determines that a tobacco product reported as a designated sale is not sold as reported,
34 the Secretary shall assess the person who notified the wholesale dealer of an intention to
35 resell the item in an exempt transaction for the tax due on the sale and any applicable
36 penalties and interest. A wholesale dealer who does not pay tax on a tobacco product in
37 reliance on a person's written notification of intent to resell the item in an exempt
38 transaction is not liable for any tax assessed on the item.

39 (c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12,
40 effective July 15, 1992.

41 **"§ 105-113.38. Bond.**

42 The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in
43 an amount that adequately protects the State from loss if the dealer fails to pay taxes due
44 under this ~~Part~~ Article. ~~A bond shall be conditioned on compliance with this Part,~~

1 Article, shall be payable to the State, and shall be in the form required by the Secretary.
2 The Secretary shall proportion a bond amount to the anticipated tax liability of the
3 wholesale dealer or retail dealer. The Secretary shall periodically review the sufficiency
4 of bonds required of dealers, and shall increase the amount of a required bond when the
5 amount of the bond furnished no longer covers the anticipated tax liability of the
6 wholesale dealer or retail dealer. The Secretary shall decrease the amount of a required
7 bond when the Secretary determines that a smaller bond amount will adequately protect
8 the State from loss.

9 **"§ 105-113.39. Discount.**

10 A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-
11 113.35(b) for the excise taxes imposed by this ~~Part~~ Article and who files a timely report
12 under G.S. 105-113.37 may deduct from the amount due with the report a discount of
13 four percent (4%). This discount covers losses due to damage to tobacco products,
14 expenses incurred in preparing the records and reports required by this ~~Part~~, Article, and
15 the expense of furnishing a bond.

16 **"§ 105-113.40. ~~Records of sales, inventories, and purchases to be kept.~~ to be kept;**
17 **identification of vending machines.**

18 Every wholesale dealer and retail dealer shall keep accurate records of the dealer's
19 purchases, inventories, and sales of tobacco products. These records shall be open at all
20 times for inspection by the Secretary or an authorized representative of the Secretary.
21 Each vending machine that dispenses tobacco products must be marked to identify its
22 owner in the manner required by the Secretary.

23 **"§ 105-113.40A Penalties.**

24 (a) Civil Penalty. – If a person fails or refuses to pay a tax due under this Article,
25 in lieu of the applicable civil penalty provided in Article 9 of this Chapter, a penalty
26 shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.

27 (b) Criminal Penalty. – The criminal penalties provided in Article 9 of this
28 Chapter apply to this Article; in addition, violation of any provision of this Article is a
29 misdemeanor punishable by a fine, imprisonment, or both in the discretion of the court.

30 (c) Revocation or Suspension of License. – If a wholesale dealer violates this
31 Article or ceases to act in the capacity for which the license was issued, the Secretary
32 shall give the wholesale dealer 10 days' notice of a hearing in writing, specifying the
33 time and place of the hearing and requiring the wholesale dealer to show cause why its
34 license should not be revoked. The notice may be served personally or by registered
35 mail directed to the last known address of the wholesale dealer. After holding the
36 hearing the Secretary may revoke or suspend the wholesale dealer's license. After
37 holding the hearing, if the Secretary finds that the wholesale dealer has been convicted
38 of an offense under this Article, the Secretary may also revoke or suspend any license
39 the wholesale dealer holds under G.S. 105-65.1, 105-102.5(b)(7), 105-164.4, 105-164.5,
40 105-164.6, or 105-164.29. The wholesale dealer may appeal the Secretary's decision as
41 provided in Article 9 of this Chapter.

42 (d) Effect of Revocation or Suspension of License. – A wholesale dealer whose
43 license is suspended or revoked may not sell tobacco products or permit tobacco
44 products to be sold. The expiration, transfer, surrender, continuance, renewal, or

1 extension of a license issued under this Article does not bar or abate any disciplinary,
2 penal, or regulatory proceeding or action."

3 Sec. 4. This act becomes effective January 1, 1994.