

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1999**

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HOUSE BILL 74  
Committee Substitute Favorable 6/22/99  
Committee Substitute #2 Favorable 6/24/99  
Senate Finance Committee Substitute Adopted 7/5/99

Short Title: Phase II Funds/Immunity/Tax-Exempt.

(Public)

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Sponsors:

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Referred to:

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February 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE APPOINTMENT BY THE SPEAKER OF THE  
2 HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF  
3 THE SENATE OF MEMBERS OF THE BOARD OF DIRECTORS OF THE  
4 CERTIFICATION ENTITY FOR THE PHASE II SETTLEMENT FUNDS, TO  
5 PROVIDE THE MEMBERS OF THE BOARD OF DIRECTORS LIMITED  
6 IMMUNITY FROM CIVIL LIABILITY, TO PROVIDE AN EXEMPTION FROM  
7 STATE INCOME TAX FOR INTEREST, INVESTMENT EARNINGS, AND  
8 GAINS OF CERTAIN TRUST FUNDS, TO PROVIDE A CORPORATE INCOME  
9 TAX CREDIT FOR MANUFACTURERS PRODUCING CIGARETTES FOR  
10 EXPORTATION TO A FOREIGN COUNTRY, AND TO PROHIBIT THE SALE  
11 OF CERTAIN PACKAGES OF CIGARETTES.  
12

13 The General Assembly of North Carolina enacts:

14 Section 1.(a) The General Assembly finds that:

- 15 (1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation,  
16 Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company  
17 (hereinafter, the "tobacco companies") have proposed to create a

1 National Tobacco Grower Settlement Trust under which the tobacco  
2 companies will pay, during a 12-year period, a base amount of  
3 approximately five billion one hundred fifty million dollars  
4 (\$5,150,000,000) into a trust to provide payments to tobacco growers  
5 and allotment holders in 14 grower states, including North Carolina, for  
6 the purposes of ameliorating potential adverse economic consequences  
7 of likely changes in the tobacco market on grower states.

8 (2) The tobacco companies desire that the money paid into the trust be  
9 divided among tobacco producers and allotment holders in accordance  
10 with a plan designed and approved by a certification entity in each state.

11 (3) The tobacco companies desire that in larger grower states, including  
12 North Carolina, the certification entity be a nonprofit corporation  
13 governed by a board of directors consisting of the following public  
14 officials and persons appointed by public officials: the Governor, who  
15 shall serve as chair of the board of directors; the Commissioner of  
16 Agriculture, who shall serve as vice-chair; the Attorney General, who  
17 shall serve as secretary; a State Senator appointed by the President Pro  
18 Tempore of the Senate; a State Representative appointed by the Speaker  
19 of the House of Representatives; two members of the North Carolina  
20 congressional delegation selected by the delegation; and four to seven  
21 citizens appointed by the Governor.

22 (4) It is in the public interest that these officials and citizens serve on the  
23 board of directors and determine the distribution of these private trust  
24 funds to tobacco producers and allotment holders in North Carolina.

25 Section 1.(b) The Governor, the Speaker of the House of Representatives, and the  
26 President Pro Tempore of the Senate are authorized to appoint members of the board of  
27 directors of the certification entity as provided in Section 1.(a)(3), and the public officials  
28 referred to in Section 1.(a)(3) are authorized to serve on that board.

29 Section 1.(c) No member of the certification entity for the National Tobacco  
30 Grower Trust Fund is subject to civil liability for any act or omission arising out of the  
31 performance of the member's duties as a member or officer of the certification entity.  
32 This section does not apply to liability arising from willful or wanton misconduct,  
33 intentional wrongdoing, or the operation of a motor vehicle.

34 Section 2. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

35 "(b) The following deductions from federal taxable income shall be made in  
36 determining State net income:

37 ...

38 (18) Interest, investment earnings, and gains of a trust, the settlors of which  
39 are two or more manufacturers that signed a settlement agreement with  
40 this State to settle existing and potential claims of the State against the  
41 manufacturers for damages attributable to a product of the  
42 manufacturers, if the trust meets all of the following conditions:

- 1 a. The purpose of the trust is to address adverse economic  
2 consequences resulting from a decline in demand of the  
3 manufactured product potentially expected to occur because of  
4 market restrictions and other provisions in the settlement  
5 agreement.  
6 b. A court of this State approves and retains jurisdiction over the  
7 trust.  
8 c. Certain portions of the distributions from the trust are made in  
9 accordance with certifications that meet the criteria in the  
10 agreement creating the trust and are provided by a nonprofit  
11 entity, the governing board of which includes State officials."

12 Section 3. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

13 "(b) Deductions. – The following deductions from taxable income shall be made in  
14 calculating North Carolina taxable income, to the extent each item is included in taxable  
15 income:

16 ...

17 (15) Interest, investment earnings, and gains of a trust, the settlors of which  
18 are two or more manufacturers that signed a settlement agreement with  
19 this State to settle existing and potential claims of the State against the  
20 manufacturers for damages attributable to a product of the  
21 manufacturers, if the trust meets all of the following conditions:

- 22 a. The purpose of the trust is to address adverse economic  
23 consequences resulting from a decline in demand of the  
24 manufactured product potentially expected to occur because of  
25 market restrictions and other provisions in the settlement  
26 agreement.  
27 b. A court of this State approves and retains jurisdiction over the  
28 trust.  
29 c. Certain portions of the distributions from the trust are made in  
30 accordance with certifications that meet the criteria in the  
31 agreement creating the trust and are provided by a nonprofit  
32 entity, the governing board of which includes State officials."

33 Section 4. Part 1 of Article 4 of Chapter 105 of the General Statutes is  
34 amended by adding a new section to read as follows:

35 "**§ 105-130.45. Credit for manufacturing cigarettes for exportation.**

36 (a) Definitions. – The following definitions apply in this section:

- 37 (1) Base year exportation volume. – The number of cigarettes manufactured  
38 and exported by a corporation during the calendar year 1998.  
39 (2) Exportation. – The shipment of cigarettes manufactured in the United  
40 States to a foreign country sufficient to relieve the cigarettes in the  
41 shipment of the federal excise tax on cigarettes.

42 (b) Credit. – A corporation engaged in the business of manufacturing cigarettes for  
43 exportation to a foreign country is allowed a credit against the taxes levied by this Part.

The amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage.

The amount of credit allowed is as follows:

<u>Current Year's Exportation Volume Compared to its Base Year's Exportation Volume</u>	<u>Amount of Credit per Thousand Cigarettes Exported</u>
<u>120% or more</u>	<u>40¢</u>
<u>119% - 100%</u>	<u>35¢</u>
<u>99% - 80%</u>	<u>30¢</u>
<u>79% - 60%</u>	<u>25¢</u>
<u>59% - 50%</u>	<u>20¢</u>
<u>Less than 50%</u>	<u>None</u>

(c) Cap. – The credit allowed under this section may not exceed the lesser of six million dollars (\$6,000,000) or fifty percent (50%) of the amount of tax imposed by this Part for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section for previous tax years. Any unused portion of a credit allowed in this section may be carried forward for the next succeeding five years.

(d) Documentation of Credit. – A corporation that claims the credit under this section must include the following with its tax return:

- (1) A statement of the base year exportation volume.
- (2) A statement of the exportation volume on which the credit is based.
- (3) A list of the corporation's export volumes shown on its monthly reports to the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury for the months in the tax year for which the credit is claimed."

Section 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-400.18. Sale of certain packages of cigarettes prohibited.**

(a) Definitions. – The following definitions apply in this section:

- (1) Cigarette. – Defined in G.S. 105-113.4.
- (2) Package. – Defined in G.S. 105-113.4.

(b) Offenses. – A person who sells or holds for sale (other than for export to a foreign country) a package of cigarettes that meets one or more of the following descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by G.S. 75-1.1:

- (1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

1           (2)    The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use  
2                   Outside U.S.,' or has similar wording indicating that the manufacturer  
3                   did not intend that the product be sold in the United States.

4           (3)    The package was altered by adding or deleting the wording, labels, or  
5                   warnings described in subdivision (1) or (2) of this subsection.

6           (4)    The package was imported into the United States after January 1, 2000,  
7                   in violation of 26 U.S.C. § 5754.

8           (5)    The package violates federal trademark or copyright laws.

9           (c)    Contraband. – A package of cigarettes described in subsection (b) of this  
10               section is contraband and may be seized by a law enforcement officer. The procedure for  
11               seizure and disposition of this contraband is the same as the procedure under G.S. 105-  
12               113.31 and G.S. 105-113.32 for non-tax-paid cigarettes."

13               Section 6. Part 1 of Article 2A of Chapter 105 of the General Statutes is  
14               amended by adding a new section to read:

15               "**§ 105-113.4B. Reasons why the Secretary can cancel a license.**

16               (a)    Reasons. – The Secretary may cancel a license issued under this Article upon  
17               the written request of the license holder. The Secretary may summarily cancel the license  
18               of a license holder when the Secretary finds that the license holder is incurring liability  
19               for the tax imposed under this Article after failing to pay a tax when due under this  
20               Article. In addition, the Secretary may cancel the license of a license holder that commits  
21               one or more of the following acts after holding a hearing on whether the license should be  
22               cancelled:

23                   (1)    A violation of this Article.

24                   (2)    A violation of G.S. 14-400.18.

25               (b)    Procedure. – The Secretary must send a person whose license is summarily  
26               cancelled a notice of the cancellation and must give the person an opportunity to have a  
27               hearing on the cancellation within 10 days after the cancellation. The Secretary must  
28               give a person whose license may be cancelled after a hearing at least 10 days' written  
29               notice of the date, time, and place of the hearing. A notice of a summary license  
30               cancellation and a notice of hearing must be sent by registered mail to the last known  
31               address of the license holder."

32               Section 7. G.S. 105-113.16 is repealed.

33               Section 8. G.S. 105-164.29(d) reads as rewritten:

34               "(d)    Revocation. – Whenever a license holder fails to comply with this Article,  
35               Article or violates G.S. 14-400.18, the Secretary, upon hearing, after giving the license  
36               holder 10 days' notice in writing, specifying the time and place of hearing and requiring  
37               the license holder to show cause why the license should not be revoked, may revoke or  
38               suspend the license. The notice may be served personally or by registered mail directed to  
39               the last known address of the license holder. All provisions with respect to review and  
40               appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-  
41               241.4 apply to this section.

42               Any wholesale merchant or retailer who engages in business as a seller in this State  
43               without a license or after the license has been suspended or revoked, and each officer of

1 any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and  
2 only subject to a fine of up to five hundred dollars (\$500.00) for each offense."

3           Section 9. If any provision of this act or its application to any person or  
4 circumstance is held invalid, the remainder of the act or the application of the provision  
5 to other persons or circumstances is not affected.

6           Section 10. Sections 2, 3, and 4 of this act are effective for taxable years  
7 beginning on or after January 1, 1999. Sections 5 through 8 of this act become effective  
8 December 1, 1999, and apply to offenses committed on or after that date. The remainder  
9 of this act is effective when it becomes law. Section 4 of this act is repealed effective for  
10 cigarettes exported on or after January 1, 2005.