

Article 2D.

Unauthorized Substances Taxes.

§ 105-113.105. Purpose.

The purpose of this Article is to levy an excise tax to generate revenue for State and local law enforcement agencies and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 1998-98, s. 59.)

§ 105-113.106. Definitions.

The following definitions apply in this Article:

- (1) Controlled Substance. – Defined in G.S. 90-87.
- (2) Repealed by Session Laws 1995, c. 340, s. 1.
- (3) Dealer. – Any of the following:
 - a. A person who actually or constructively possesses more than 42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight.
 - b. A person who in violation of Chapter 18B of the General Statutes possesses illicit spirituous liquor for sale.
 - c. A person who in violation of Chapter 18B of the General Statutes possesses mash.
 - d. A person who in violation of Chapter 18B of the General Statutes possesses an illicit mixed beverage for sale.
- (4) Repealed by Session Laws 1995, c. 340, s. 1.
- (4a) Illicit mixed beverage. – A mixed beverage, as defined in G.S. 18B-101, composed in whole or in part from spirituous liquor on which the charge imposed by G.S. 18B-804(b)(8) has not been paid, but not including a premixed cocktail served from a closed package containing only one serving.
- (4b) Illicit spirituous liquor. – Spirituous liquor, as defined in G.S. 105-113.68, not authorized by the North Carolina Alcoholic Beverage Control Commission. Some examples of illicit spirituous liquor are the products known as "bootleg liquor", "moonshine", "non-tax-paid liquor", and "white liquor".
- (4c) Local law enforcement agency. – A municipal police department, a county police department, or a sheriff's office.
- (4d) Low-street-value drug. – Any of the following controlled substances:
 - a. An anabolic steroid as defined in G.S. 90-91(k).
 - b. A depressant described in G.S. 90-89(4), 90-90(4), 90-91(b), or 90-92(a).
 - c. A hallucinogenic substance described in G.S. 90-89(3) or G.S. 90-90(5).
 - d. A stimulant described in G.S. 90-89(5), 90-90(3), 90-91(j), 90-92(a)(3), or 90-93(a)(3).
 - e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-92(a)(3), or (a)(5), or 90-93(a)1.
- (5) Repealed by Session Laws 1995, c. 340, s. 1.

- (6) Marijuana. – All parts of the plant of the genus Cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.
- (6a) Mash. – The fermentable starchy mixture from which spirituous liquor can be distilled.
- (7) Person. – Defined in G.S. 105-228.90.
- (8) Secretary. – Defined in G.S. 105-228.90.
- (8a) State law enforcement agency. – Any State agency, force, department, or unit responsible for enforcing criminal laws.
- (9) Unauthorized substance. – A controlled substance, an illicit mixed beverage, illicit spirituous liquor, or mash. (1989, c. 772, s. 1; 1993, c. 354, s. 10; 1995, c. 340, s. 1; 1997-292, s. 1; 1999-337, s. 19; 2000-119, ss. 3, 4.)

§ 105-113.107. Excise tax on unauthorized substances.

(a) Controlled Substances. – An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

- (1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.
- (1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this [sub]section, or synthetic cannabinoids.
- (1b) At the rate of fifty dollars (\$50.00) for each gram, or fraction thereof, of cocaine.
- (1c) At the rate of fifty dollars (\$50.00) for each gram, or fraction thereof, of any low-street-value drug that is sold by weight.
- (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.
- (2a) At the rate of fifty dollars (\$50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.
- (3) At the rate of two hundred dollars (\$200.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(a1) Weight. – A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(b) Illicit Spirituous Liquor. – An excise tax is levied on illicit spirituous liquor possessed by a dealer at the following rates:

- (1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each gallon, or fraction thereof, of illicit spirituous liquor sold by the drink.
- (2) At the rate of twelve dollars and eighty cents (\$12.80) for each gallon, or fraction thereof, of illicit spirituous liquor not sold by the drink.

(c) Mash. – An excise tax is levied on mash possessed by a dealer at the rate of one dollar and twenty-eight cents (\$1.28) for each gallon or fraction thereof.

(d) Illicit Mixed Beverages. – A tax is levied on illicit mixed beverages sold by a dealer at the rate of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 1998-218, s. 1; 2012-79, s. 2.2(a); 2014-3, s. 14.25.)

§ 105-113.107A. Exemptions.

(a) Authorized Possession. – The tax levied in this Article does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) Certain Marijuana Parts. – The tax levied in this Article does not apply to the following marijuana:

- (1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.
- (2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.
- (3) Marijuana seeds that have been sterilized and are incapable of germination.
- (4) Roots of the marijuana plant. (1995, c. 340, s. 1; 1997-292, s. 1.)

§ 105-113.108. Reports; revenue stamps.

(a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the return prescribed by the Secretary. Notwithstanding any other provision of law, dealers are not required to give their name, address, social security number, or other identifying information on the return, and the return is not required to be verified by oath or affirmation. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. – Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this Article:

- (1) More than 42.5 grams of marijuana.
- (2) Seven or more grams of any other controlled substance that is sold by weight.
- (3) Ten or more dosage units of any other controlled substance that is not sold by weight.
- (4) Any illicit mixed beverage.
- (5) Any illicit spirituous liquor.
- (6) Mash. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1; 2000-119, s. 5; 2004-170, s. 8.)

§ 105-113.109. When tax payable.

The tax imposed by this Article is payable by any dealer who actually or constructively possesses an unauthorized substance in this State upon which the tax has not been paid, as

evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the tax due on an unauthorized substance has been paid, no additional tax is due under this Article even though the unauthorized substance may be handled by other dealers. (1989, c. 772, s. 1; 1995, c. 340, s. 1; 1997-292, s. 1.)

§ 105-113.110: Repealed by Session Laws 1995, c. 340, s. 1.

§ 105-113.110A. Administration.

Article 9 of this Chapter applies to this Article. (1989 (Reg. Sess., 1990), c. 814, s. 7; 1995, c. 340, s. 1; 1997, c. 292, s. 1; 1998-218, s. 2.)

§ 105-113.111. Assessments.

Notwithstanding any other provision of law, an assessment against a dealer who possesses an unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the jeopardy collection procedures in G.S. 105-241.23 or the general collection procedures in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter. (1989, c. 772, s. 1; 1989 (Reg. Sess., 1990), c. 1039, s. 2; 1991 (Reg. Sess., 1992), c. 900, s. 20(d); 1995, c. 340, s. 1; 1997-292, s. 1; 2007-491, s. 8.)

§ 105-113.112. Confidentiality of information.

(a) Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the provisions of G.S. 105-259.

(b) Information obtained by the Department from the taxpayer in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, may not be used as evidence, as defined in G.S. 15A-971, by a prosecutor in a criminal prosecution of the taxpayer for an offense related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance. Under this prohibition, no officer, employee, or agent of the Department may testify about this information in a criminal prosecution of the taxpayer for an offense related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance. This subsection implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether

information may be disclosed under G.S. 105-259. An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor. (1989, c. 772, s. 1; 1993, c. 539, s. 702; 1994, Ex. Sess., c. 24, s. 14(c); 1997, c. 292, s. 1; 2005-435, s. 27; 2008-134, s. 68(a); 2013-414, s. 21.)

§ 105-113.113. Use of tax proceeds.

(a) Special Account. – The Unauthorized Substances Tax Account is established as a special nonreverting account. The Secretary shall credit the proceeds of the tax levied by this Article to the Account.

(b) Distribution. – The Secretary shall distribute unencumbered tax proceeds in the Unauthorized Substances Tax Account on a quarterly or more frequent basis. Tax proceeds in the Account are unencumbered when they are collectible under G.S. 105-241.22. The Secretary shall distribute seventy-five percent (75%) of the unencumbered tax proceeds in the Account that were collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds in the Account to the General Fund.

(c) Refunds. – The refund of a tax that has already been distributed shall be drawn initially from the Unauthorized Substances Tax Account. The amount of refunded taxes that were distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that were credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account. (1991 (Reg. Sess., 1992), c. 900, s. 20(c); 1995, c. 340, s. 1; 1997-292, s. 1; 2007-491, s. 9.)