

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 442
SENATE BILL 1025

AN ACT TO PROVIDE FOR PAYMENT OF THE CIGARETTE TAX BY
REPORTING RATHER THAN BY TAX STAMPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

- (1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.
- (1a) Cigarette. – Any of the following:
 - a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.
 - b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.
- (2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.
- (3) Distributor. – ~~Any~~ Either of the following:
 - a. A person, wherever resident or located, who purchases unstamped—non-tax-paid cigarettes directly from the manufacturer thereof of the cigarettes and stores, sells—sells, or otherwise disposes of the same; and also any cigarettes.
 - b. A person who manufactures or produces cigarettes or causes them to be manufactured or produced.
- (4) Repealed by Session Laws 1991, c. 689, s. 267.
- (5) Licensed distributor. – A distributor licensed under Part 2 of this Article.
- (6) Manufacturer. – A person who manufactures or produces tobacco products.
- (7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.
- (8) Person. – An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.

- (9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.
- (10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
- (10a) Secretary. – The Secretary of Revenue.
- (11) ~~Stamp. — Any impression, device, stamp, label, or print manufactured, printed, or made as prescribed by the Secretary under Part 2 of this Article.~~
- (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.
- (12) ~~Unstamped. Not bearing a North Carolina cigarette tax stamp.~~
- (13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.
- (14) Wholesale dealer. – A person who makes tobacco products other than cigarettes or who acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer."

Sec. 2. G.S. 105-113.6 reads as rewritten:

"§ 105-113.6. Use tax levied.

~~In addition to all other taxes and fees, a~~ A tax is hereby levied upon the sale or possession for sale by ~~all persons other than distributors, a person other than a distributor,~~ and upon the use, consumption, and possession for use or consumption of cigarettes within this State at the rate set forth in G.S. 105-113.5; ~~provided, that the 105-113.5. This tax levied by this section shall not be applicable to the sale or possession for sale by persons other than distributors, or to the use, consumption or possession for use or consumption of~~ does not apply, however, to cigarettes with respect to upon which the tax levied by the provisions of in G.S. 105-113.5 has been computed and paid."

Sec. 3. G.S. 105-113.9 reads as rewritten:

"§ 105-113.9. Out-of-state shipments.

Any distributor engaged in interstate business shall be permitted to set aside ~~such~~ part of ~~his~~ the stock as ~~may be necessary for the to~~ conduct of such interstate business without paying the tax ~~or affixing the stamps otherwise required by this Article, otherwise required by this Part,~~ but only if ~~such the~~ distributor complies with the ~~regulations and administrative rules requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond and such other rules and regulations as may be promulgated by the Secretary for the administration of this Article. bond, and other matters for administration of this Part.~~

'Interstate business' as used in this section ~~shall mean:~~ means:

- (1) The sale of cigarettes to a nonresident where the cigarettes are delivered by the distributor to the business location of the nonresident purchaser in another state; and
- (2) The sale of cigarettes to a nonresident wholesaler or retailer registered through the Secretary who has no place of business in North Carolina

and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser."

Sec. 4. G.S. 105-113.10 reads as rewritten:

"§ 105-113.10. Manufacturers shipping to distributors exempt.

Any manufacturer shipping cigarettes to other distributors who are licensed ~~to affix stamps as provided in this Article under G.S. 105-113.12~~ may, upon application to the Secretary and upon compliance with ~~such regulations and administrative rules in regard thereto as may be promulgated~~ requirements prescribed by the Secretary, be relieved of the requirement of paying the taxes and affixing the stamps required by this Article, but ~~no paying the taxes levied in this Part.~~ No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user. ~~However, the Secretary may permit monthly reports from the manufacturer instead of requiring stamps to be affixed to packages of free cigarettes given as complimentary samples by the manufacturer, but only if the package has been imprinted with the word 'State tax paid.'~~

Sec. 5. G.S. 105-113.12 reads as rewritten:

"§ 105-113.12. Distributor must obtain license.

(a) A distributor shall obtain for each place of business a continuing distributor's license and shall pay a tax of twenty-five dollars (\$25.00) for the license.

(b) For the purposes of this section, a 'place of business' means any is a place where unstamped packages of cigarettes are received or stored by a distributor receives or stores non-tax-paid cigarettes. for the purposes of affixing stamps thereto, and any place where a distributor actually affixes stamps to unstamped packages of cigarettes.

(c) An out-of-state distributor may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.24 and payment of a tax of twenty-five dollars (\$25.00)."

Sec. 6. G.S. 105-113.13(b) reads as rewritten:

"(b) Bond. – The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. ~~A bond shall be executed by the distributor as principal and by an indemnity company licensed to do business under the insurance laws of this State as surety.~~ The Secretary shall set the bond amount based on the anticipated tax liability of the distributor. The Secretary shall periodically review the sufficiency of bonds required of the distributor and shall increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor. The Secretary shall decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss."

Sec. 7. G.S. 105-113.18 reads as rewritten:

"§ 105-113.18. ~~Reports.~~ Payment of tax; reports.

The taxes levied in this Part are payable when a report is required to be filed. The following reports are required to be filed with the Secretary:

- ~~(1) Every distributor required to affix stamps as prescribed herein shall file a report on or before the twentieth day of each month, in such form as the Secretary shall prescribe, which report shall disclose the quantity of cigarettes on hand on the first and last days of the calendar month immediately preceding the month in which such report is required, the amount of stamps purchased, used and on hand during the report period, and such other information as the Secretary shall prescribe.~~
- (1) Distributor's Report. – A distributor shall file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the amount of tax due and shall identify any transactions to which the tax does not apply.
- (1a) Report of Free Cigarettes. – A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.
- (2) Use Tax Report. – Every other person who has acquired ~~unstamped non-tax-paid~~ cigarettes for sale, ~~use-use,~~ or consumption subject to the tax imposed by this ~~Article-Part~~ shall, within 96 hours after receipt of same, ~~complete and file, in such form as the Secretary shall prescribe, the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and such any other information as the Secretary shall prescribe. Said required by the Secretary. The report shall be accompanied by a remittance payment of the full amount of the tax.~~
- (3) Any person, except a licensed distributor, who transports cigarettes upon the public highways, ~~roads-roads,~~ or streets of this State, upon notice from the Secretary, shall file a report in such form, on such dates, and containing such information as the Secretary shall prescribe. the form prescribed by the Secretary and containing the information required by the Secretary.
- (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1."

Sec. 8. G.S. 105-113.19, 105-113.20, 105-113.22 through 105-113.23, 105-113.25, 105-113.28, and 105-113.34 are repealed.

Sec. 9. G.S. 105-113.21 reads as rewritten:

"§ 105-113.21. ~~Discount on sales of stamps.~~ **Discount; refund.**

~~On sales of stamps, the Secretary shall allow a discount of seven twenty fourths cent (7/24¢) per stamp as compensation for the services and expenses of the licensed distributor in handling and affixing such stamps to packages. No discount shall be allowed or given on any sales of stamps in amounts less than one hundred dollars (\$100.00).~~

(a) Discount. – A distributor who files a timely report under G.S. 105-113.18 may deduct from the amount due with the report a discount of four percent (4%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid on the unsalable cigarettes, less the discount allowed, to the applicant."

Sec. 9.1. (a) The catchline to G.S. 105-113.24 reads as rewritten:

"§ 105-113.24. ~~Sale of stamps to out-of-state distributors.~~ Out-of-State distributors to register and remit tax."

(b) G.S. 105-113.24 reads as rewritten:

~~"(a) In case the Secretary shall find that the collection of any tax imposed by this Article would be facilitated thereby, he may authorize, under reasonable conditions, The Secretary may authorize any distributor outside this State engaged in the business of selling and shipping cigarettes into the State, upon complying with the rules and regulations of the Secretary, to purchase and affix or cause to be affixed on behalf of any purchaser of cigarettes, who would otherwise be taxable therefor, the stamps required by this Article, or may authorize the use of a machine by such person in the same manner and under the same conditions as set forth in G.S. 105-113.23. State to obtain a license and report and pay taxes required by this Part."~~

Sec. 10. G.S. 105-113.26 reads as rewritten:

"§ 105-113.26. Records to be kept."

Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all sales and ~~such~~ other information as is required under this Article. ~~The kind and form of such records may be~~ shall be in the form prescribed by the Secretary and all records shall be so kept as to be adequate to enable him to determine any tax liability. ~~Secretary.~~

~~All such~~ These records shall be safely preserved for a period of three years in ~~such~~ a manner to ~~insure~~ ensure their security and accessibility for inspection by the Secretary ~~or his duly authorized agents. Department.~~ The Secretary ~~may, in his discretion, may~~ consent to the destruction of any ~~such~~ records at any time within ~~said~~ this three-year period."

Sec. 11. G.S. 105-113.27 reads as rewritten:

"§ 105-113.27. ~~Unstamped Non-tax-paid~~ Non-tax-paid cigarettes."

(a) Except as otherwise provided in this Article, licensed distributors shall not sell, borrow, ~~loan~~ loan, or exchange ~~unstamped non-tax-paid~~ cigarettes to, ~~from~~ from, or with other licensed distributors.

(b) No person shall sell or offer for sale ~~unstamped non-tax-paid~~ cigarettes.

(c) The possession of more than six hundred ~~unstamped~~ cigarettes bearing the tax stamp of another state or country, by any person other than a licensed distributor, shall be **prima facie** evidence that ~~such~~ the cigarettes are possessed in violation of ~~the provisions of this Article. this Part.~~ this Part."

Sec. 12. G.S. 105-113.31 reads as rewritten:

"§ 105-113.31. Possession and transportation of ~~unstamped non-tax-paid~~ cigarettes; seizure and confiscation of vehicle or vessel.

(a) It shall be unlawful for any person to transport ~~unstamped non-tax-paid~~ cigarettes in violation of ~~the provisions of this Article, or to fail or refuse to comply with regulations and administrative rules promulgated by the Secretary in regard thereto. this Part.~~ The Secretary may make reasonable adopt rules and regulations governing allowing quantities of untaxed non-tax-paid cigarettes, not exceeding six hundred, which may to be brought into this State by any a transient, a tourist, or a person returning to this State after traveling outside this State, for the use of such transient, tourist or person; and the their own use. The possession or transportation of ~~such quantities shall not be these cigarettes~~ is not subject to the penalties imposed by this section.

(b) (1) Every person who shall ~~transport cigarettes not stamped as required by this Article upon~~ transports non-tax-paid cigarettes on the public highways, roads, ~~streets~~ streets, or waterways of this State shall ~~have in his actual possession~~ must transport with the cigarettes invoices or delivery tickets for such the cigarettes which shall show showing the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported transported, and the true name and complete and exact address of the person who has paid or who shall assume the payment of will pay the tax imposed by this Article Part or the tax, if any, of the state or foreign country at the point of ultimate destination.

(2) ~~Any A~~ A common carrier ~~which that~~ has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that ~~said the~~ cigarettes are not stamped as required by non-tax-paid in violation of this Article shall be deemed Part is considered to have complied with this Article Part and the vehicle or vessel in which said the cigarettes are being transported shall not be subject to confiscation hereunder. is not subject to confiscation under this section. In the absence of ~~such the~~ required invoices, delivery tickets tickets, or bills of lading, as the case may be, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being ~~transported~~ transported, and any paraphernalia or devices used in connection with the ~~unstamped non-tax-paid~~ cigarettes

are declared to be contraband goods and may be seized by any officer of the law, who shall take possession of the vehicle or vessel and ~~unstamped~~ cigarettes therein, and shall arrest any person in charge thereof. ~~of the vehicle or vessel and cigarettes.~~

- (3) ~~Such~~ The officer shall at once proceed against the person arrested, under the provisions of this ~~Article, Part,~~ in any court having competent jurisdiction; but the ~~said~~ vehicle or vessel shall be returned to the owner upon execution by ~~him~~ the owner of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which ~~said~~ bond shall be approved by ~~said~~ the officer and shall be conditioned to return ~~said~~ the property to the custody of ~~said~~ the officer on the day of trial to abide the judgment of the court. All ~~unstamped non-tax-paid~~ cigarettes seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner.
- (4) Unless the claimant can show that the ~~unstamped non-tax-paid~~ cigarettes seized were not transported in violation of this ~~Article Part~~ and that the property seized is ~~his property,~~ belongs to the claimant or that in the case of property other than cigarettes, ~~such~~ the property was used in transporting ~~unstamped non-tax-paid~~ cigarettes in violation of this ~~Article Part~~ without ~~his~~ the claimant's knowledge or consent, with the right on the part of the claimant to have a jury pass upon ~~his~~ this claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the cost of ~~stamps~~ the tax due, which ~~he~~ the officer shall affix to ~~said~~ cigarettes pay upon sale, expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, at ~~said~~ the hearing or in ~~other~~ another proceeding brought for ~~said~~ the purpose as being bona fide and as having been created without the lien or having any notice that the vehicle or vessel was being used for the unlawful transportation of ~~unstamped non-tax-paid~~ cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the ~~general fund.~~ General Fund.
- (5) All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one ~~shall be~~ is found claiming the cigarettes, or the vehicle or vessel, ~~then~~ the taking of the ~~same,~~ with a description thereof, cigarettes, vehicle, or vessel, along with a description, shall be advertised in ~~some newspaper published in the city or county where taken,~~ or, if there be no newspaper published in such city or county, in a newspaper having circulation in the ~~county,~~ county where the items were taken, once a week for two weeks and by notices posted in three public places near the place of seizure, and if no claimant ~~shall appear~~

appears within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the State Treasurer for the ~~general fund.~~ General Fund.

- (6) ~~Nothing in this section shall be construed to~~ This section does not authorize any an officer to search any vehicle or vessel or baggage of any person without a search warrant duly issued, except where the officer sees or has knowledge that there are unstamped non-tax-paid cigarettes in such the vehicle or vessel."

Sec. 13. G.S. 105-113.32 reads as rewritten:

"§ 105-113.32. Unstamped Non-tax-paid cigarettes subject to confiscation.

All non-tax-paid cigarettes subject to the tax imposed by this ~~Article, to which stamps have not been affixed as required by this Article, Part,~~ together with any container in which they are ~~stored,~~ stored or displayed for sale (including but not limited to vending ~~machines~~) machines), are declared to be contraband goods and may be seized by any officer of the ~~law, who law.~~ The officer shall arrest any person in charge thereof. Such officer of the contraband goods and shall at once proceed against the person arrested, under the provisions of this Article, Part, in any court having competent ~~jurisdiction and the jurisdiction.~~ The disposition of said unstamped the seized cigarettes and container shall be governed and controlled by the provisions of G.S. 105-113.31."

Sec. 14. The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps less the discount allowed at the time of the purchase of the stamps by the taxpayer.

Sec. 15. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 16. This act becomes effective January 1, 1994.

In the General Assembly read three times and ratified this the 22nd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives