

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 123
Committee Substitute Favorable 5/25/95

Short Title: Revise Drug Tax.

(Public)

Sponsors:

Referred to:

February 7, 1995

A BILL TO BE ENTITLED
AN ACT TO REVISE THE CONTROLLED SUBSTANCE EXCISE TAX.

The General Assembly of North Carolina enacts:

Section 1. Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

"SCHEDULE B-D. CONTROLLED SUBSTANCE TAX.

"§ 105-113.105. Purpose.

The purpose of this Article is to levy an excise tax ~~on persons who possess controlled substances and counterfeit controlled substances in violation of North Carolina law and to provide that a person who possesses such substances in violation of this Article is guilty of a felony.~~ 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.

"§ 105-113.106. Definitions.

The following definitions apply in this Article:

- (1) Controlled Substance. – Defined in G.S. 90-87.
- (2) Counterfeit Controlled Substance. ~~Defined in G.S. 90-87.~~

- 1 (3) Dealer. — A person who ~~in violation of G.S. 90-95 possesses, delivers, sells,~~
2 ~~or manufactures~~ actually or constructively possesses more than 42.5
3 grams of marijuana, ~~or seven or more grams of any other controlled~~
4 ~~substance or counterfeit controlled substance~~ that is sold by weight, or 10
5 or more dosage units of any other controlled substance ~~or counterfeit~~
6 ~~controlled substance~~ that is not sold by weight.
- 7 (4) Deliver. — ~~Defined in G.S. 90-87.~~
- 8 (4a) Reserved.
- 9 (4b) Reserved.
- 10 (4c) Low-street-value drug. — Any of the following controlled substances:
- 11 a. An anabolic steroid as defined in G.S. 90-91(k).
- 12 b. A depressant described in G.S. 90-89(d), 90-90(d), 90-91(b), or
13 90-92(a).
- 14 c. A hallucinogenic substance described in G.S. 90-89(c) or G.S.
15 90-90(e).
- 16 d. A stimulant described in G.S. 90-89(e), 90-90(c), 90-91(j), 90-
17 92(d), or 90-93(a)3.
- 18 e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-
19 92(c), (e), or (f), or 90-93(a)1.
- 20 (5) Manufacture. — ~~Defined in G.S. 90-87.~~
- 21 (6) Marijuana. — ~~Defined in G.S. 90-87.~~ All parts of the plant of the genus
22 Cannabis, whether growing or not; the seeds of this plant; the resin
23 extracted from any part of this plant; and every compound, salt,
24 derivative, mixture, or preparation of this plant, its seeds, or its resin.
- 25 (7) Person. — Defined in G.S. 105-228.90.
- 26 (8) Secretary. — ~~The Secretary of the Department of Revenue.~~ Defined in G.S.
27 105-228.90.

28 **"§ 105-113.107. Excise tax on controlled substances.**

29 An excise tax is levied on controlled substances ~~and counterfeit controlled substances~~
30 ~~possessed~~ possessed, either actually or constructively, by dealers at the following rates:

- 31 (1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of
32 harvested marijuana stems and stalks that have been separated from and
33 are not mixed with any other parts of the marijuana plant.
- 34 (1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
35 fraction thereof, of ~~marijuana or counterfeit marijuana.~~ marijuana, other
36 than separated stems and stalks taxed under subdivision (1) of this
37 section.
- 38 (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction
39 thereof, of any other controlled substance ~~or counterfeit controlled~~
40 substance that is sold by weight.
- 41 (2a) At the rate of fifty dollars (\$50.00) for each 10 dosage units, or fraction
42 thereof, of any low-street-value drug that is not sold by weight.

- 1 (3) At the rate of four hundred dollars (\$400.00) for each 10 dosage units,
2 or fraction thereof, of any other controlled substance ~~or counterfeit~~
3 ~~controlled substance~~ that is not sold by weight.

4 A quantity of marijuana or other controlled substance is measured by the weight of
5 the substance whether pure or impure or dilute, or by dosage units when the substance is
6 not sold by weight, in the dealer's possession. A quantity of a controlled substance is
7 dilute if it consists of a detectable quantity of pure controlled substance and any
8 excipients or fillers.

9 **"§ 105-113.107A. Exemptions.**

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

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

16 (1) Harvested mature marijuana stalks when separated from and not mixed
17 with any other parts of the marijuana plant.

18 (2) Fiber or any other product of marijuana stalks described in subdivision
19 (1) of this subsection, except resin extracted from the stalks.

20 (3) Marijuana seeds that have been sterilized and are incapable of
21 germination.

22 (4) Roots of the marijuana plant.

23 **"§ 105-113.108. Reports; revenue stamps.**

24 The Secretary shall issue stamps to affix to controlled substances ~~and counterfeit~~
25 ~~controlled substances~~ to indicate payment of the tax required by this Article. Dealers shall
26 report the taxes payable under this Article at the time and on the form prescribed by the
27 Secretary. Dealers are not required to give their name, address, social security number,
28 or other identifying information on the form. Upon payment of the tax, the Secretary
29 shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid
30 and stamps may be issued either by mail or in person.

31 **"§ 105-113.109. When tax payable.**

32 The tax imposed by this Article is payable by any dealer who actually or
33 constructively possesses a controlled substance ~~or counterfeit controlled substance~~ in this
34 State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable
35 within 48 hours after the dealer acquires actual or constructive possession of a non-tax-
36 paid controlled substance or counterfeit controlled substance, exclusive of Saturdays,
37 Sundays, and legal holidays of this State, in which case the tax is payable on the next
38 working day. Upon payment of the tax, the dealer shall permanently affix the appropriate
39 stamps to the controlled substance. Once the tax due on a controlled substance ~~or~~
40 ~~counterfeit controlled substance~~ has been paid, no additional tax is due under this Article
41 even though the controlled substance ~~or counterfeit controlled substance~~ may be handled by
42 other dealers.

43 **"§ 105-113.110. Violations of Article a felony.**

1 (a) ~~A dealer who possesses marijuana or any other controlled substance or~~
2 ~~counterfeit controlled substance upon which the tax due under this Article has not been~~
3 ~~paid, as evidenced by a stamp, is guilty of a Class I felony.~~

4 (b) ~~Notwithstanding any other provision of law, no prosecution for a violation of~~
5 ~~this Article shall be barred before the expiration of six years after the date of the~~
6 ~~violation.~~

7 **"§ 105-113.110A. Interest and penalty.**

8 The tax due under this Article shall bear interest at the rate established pursuant to
9 G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects,
10 fails, or refuses to pay the tax due under this Article is liable for a penalty equal to ~~one~~
11 ~~hundred percent (100%)~~ fifty percent (50%) of the tax.

12 **"§ 105-113.111. Assessments.**

13 (a) Notwithstanding any other provision of law, an assessment against a dealer
14 who possesses a controlled substance to which a stamp has not been affixed as required
15 by this Article shall be made as provided in this section. The Secretary shall assess a tax,
16 applicable penalties, and interest based on personal knowledge or information available
17 to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax,
18 penalty, and interest due, and demand its immediate payment. The notice and demand
19 shall be either mailed to the dealer at the dealer's last known address or served on the
20 dealer in person. If the dealer does not pay the tax, penalty, and interest immediately
21 upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and
22 interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments
23 or the procedure set forth in G.S. 105-242, including causing execution to be issued
24 immediately against the personal property of the ~~dealer~~ dealer, unless the dealer files with
25 the Secretary a bond in the amount of the asserted liability for the tax, penalty, and
26 interest. The Secretary shall use all means available to collect the tax, penalty, and
27 interest from any property in which the dealer has a legal, equitable, or beneficial interest.
28 The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

29 (b) ~~Reserved.~~

30 **"§ 105-113.112. Confidentiality of information.**

31 Notwithstanding any other provision of law, information obtained pursuant to this
32 Article is confidential and may not be disclosed or, unless independently obtained, used
33 in a criminal prosecution other than a prosecution for a violation of this Article. Stamps
34 issued pursuant to this Article may not be used in a criminal prosecution other than a
35 prosecution for a violation of this Article. A person who discloses information obtained
36 pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit
37 the Secretary from publishing statistics that do not disclose the identity of dealers or the
38 contents of particular returns or reports.

39 **"§ 105-113.113. Use of tax proceeds.**

40 (a) Special Account. – The Secretary shall credit the proceeds of the tax levied by
41 this Article to a special nonreverting account, to be called the State Controlled Substances
42 Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the

1 unencumbered tax proceeds as provided in this section on a quarterly or more frequent
2 basis. Tax proceeds are unencumbered when either of the following occurs:

3 (1) The tax has been fully paid and the taxpayer has no current right under
4 G.S. 105-267 to seek a refund.

5 (2) The taxpayer has been notified of the final assessment of the tax under
6 G.S. 105-241.1 and has neither fully paid nor timely contested the tax
7 under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

8 ~~the taxpayer no longer has a current right to challenge the assessment of the tax.~~

9 (b) Distribution. – The Secretary shall, on a quarterly basis, remit the unencumbered
10 tax proceeds as follows: shall remit seventy-five percent (75%) of the amount part of the
11 unencumbered tax proceeds that was collected by assessment shall be remitted to the State
12 or local law enforcement agency that conducted the investigation of a dealer that led to
13 the assessment; and the remainder of the unencumbered tax proceeds shall be credited to the
14 General Fund. assessment. If more than one State or local law enforcement agency
15 conducted the investigation, the Secretary shall determine the equitable pro rata share for
16 each agency based on the contribution each agency made to the investigation. The
17 Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

18 (c) Refunds. – The refund of a tax that has already been distributed shall be drawn
19 initially from the State Controlled Substances Tax Account. The amount of refunded
20 taxes that had been distributed to a law enforcement agency under this section and any
21 interest shall be subtracted from succeeding distributions from the Account to that law
22 enforcement agency. The amount of refunded taxes that had been credited to the General
23 Fund under this section and any interest shall be subtracted from succeeding credits to the
24 General Fund from the Account."

25 Sec. 2. Prosecutions for offenses committed before the effective date of this
26 act are not abated or affected by this act, and the statutes that would be applicable but for
27 this act remain applicable to those prosecutions.

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

33 Sec. 3. The amendments to G.S. 105-113.113 made in this act become
34 effective July 1, 1995, and apply to taxes collected on or after that date. The remainder
35 of this act becomes effective October 1, 1995, and applies to substances acquired on or
36 after that date.