

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH50409-LYx-128 (2/27)

Short Title: Tobacco Tax Changes.

(Public)

Sponsors: Representative Howard.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW NONPARTICIPATING MANUFACTURERS UNDER THE MASTER SETTLEMENT AGREEMENT TO ASSIGN RIGHTS TO ESCROW FUNDS TO THE STATE; TO PROVIDE FOR AN INCOME TAX CREDIT FOR THOSE ASSIGNMENTS; AND TO PROVIDE FOR AN EXCISE TAX ON TOBACCO PRODUCT MANUFACTURERS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that:

- (1) Cigarette manufacturers that are parties to the Master Settlement Agreement (MSA) dated as of November 23, 1998, are contractually obligated to pay the State sums of money in perpetuity that vary by the volume of sales each year pursuant to the MSA.
- (2) Continuing litigation is challenging the MSA as unconstitutional and in violation of federal antitrust laws.
- (3) Successful smoker liability litigation against cigarette manufacturers has raised the possibility of bankruptcy of one or more of those manufacturers, which may result in a substantial reduction in the payments received by the State pursuant to the MSA.
- (4) Cigarette manufacturers not parties to the MSA are not contractually bound to make payment under the agreement but are required to contribute to an escrow fund of which the State is not necessarily entitled to any portion.
- (5) It is the policy of the State that all cigarette manufacturers should be burdened equally for the privilege of distributing their products in this State and that this burden should be borne by manufacturers and not consumers.
- (6) The purposes of the excise tax levied under this section are:

- 1 a. To raise revenue.
- 2 b. To ensure that revenues due the State do not decrease in the
- 3 event participating manufacturers cease making payments under
- 4 the MSA.
- 5 c. To burden equally all cigarette manufacturers for the privilege
- 6 of selling or distributing their products in this State.
- 7 d. To protect the health and welfare of the citizens of the State by
- 8 ensuring the collection of tobacco revenues for medical care of
- 9 those harmed by cigarettes.

10 **SECTION 2.** Article 37 of Chapter 66 of the General Statutes is amended by
11 adding a new Part to read:

12 "Part 3. Escrow Funds Contributed to the State.

13 "§ 66-294.2. Assignment of the State of rights to tobacco manufacturer escrow
14 funds; contribution to the State.

15 Notwithstanding the provisions of G.S. 66-291, a tobacco product manufacturer who
16 elects to place funds into escrow pursuant to G.S. 66-291 may make an irrevocable
17 assignment of its interest in the funds to the benefit of the State. The assignment is
18 permanent and applies to all funds in the escrow account at the time of the assignment
19 or that may subsequently come into the account. An assignment of rights executed
20 pursuant to this section shall be in writing, shall be signed by a duly authorized
21 representative of the tobacco product manufacturer making the assignment, and shall
22 become effective upon delivery of the assignment to the Attorney General and the
23 financial institution where the escrow account is maintained.

24 "§ 66-294.3. Withdrawal of escrow funds assigned and contributed to the State.

25 Notwithstanding the provisions of G.S. 66-291, any escrow funds assigned and
26 contributed to the State pursuant to G.S. 66-294.2 shall be withdrawn by the State by
27 request of the State Controller to the Attorney General and upon approval of the
28 Attorney General. The State Controller shall make the request as soon as practicable.
29 Escrow funds withdrawn pursuant to this section shall be contributed to the General
30 Fund."

31 **SECTION 3.** Part 1 of Article 4 of Chapter 105 of the General Statutes is
32 amended by adding a new section to read:

33 "§ 105-130.47. Tax credit for assignment of escrow payments.

34 (a) Credit. – A taxpayer that makes an assignment of escrow funds pursuant to
35 G.S. 66-294.2 is allowed a credit against the tax imposed by this Part. The amount of
36 the credit is equal to twenty-five percent (25%) of the amount of escrow funds that are
37 assigned.

38 (b) Limitation. – The credit allowed under this section may not exceed the
39 amount of tax imposed by this Part for the taxable year. This limitation applies to the
40 cumulative amount of the credit allowed in any tax year, including carryforwards
41 claimed by the taxpayer under this section for previous tax years. Any unused portion of
42 a credit allowed in this section may be carried forward for the next succeeding 10 years.

1 (c) No Double Benefit. – A taxpayer may not claim a deduction under
2 G.S. 105-130.9 with respect to contribution for which the taxpayer claims a credit under
3 this section."

4 **SECTION 4.** G.S. 105-113.4 reads as rewritten:

5 **"§ 105-113.4. Definitions.**

6 The following definitions apply in this Article:

7 ...

8 (1b) Cigarettes sold. – The number of individual cigarettes sold in this State
9 during a calendar year by a tobacco product manufacturer, whether
10 directly or through a distributor, retailer, or similar intermediary, as
11 measured by excise taxes collected by the State under G.S. 105-113.5.

12 ...

13 (6a) Master Settlement Agreement. – Defined in G.S. 66-290.

14 (6b) Nonparticipating manufacturer. – Defined in G.S. 66-292.

15 (6c) Non-tax-paid cigarette. – A cigarette on which the tax imposed under
16 G.S. 105-113.5 or G.S. 113.6 has not been paid.

17 ...

18 (7a) Participating manufacturer. – Defined in G.S. 66-292.

19 ...

20 (11b) Tobacco product manufacturer. – Defined in G.S. 66-290.

21 "

22 **SECTION 5.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
23 amended by adding a new section to read:

24 **"§ 105-113.6A. Tax on tobacco product manufacturers.**

25 (a) Levy. – A tax is levied upon cigarettes sold in this State at the rate of one and
26 one-tenth cents (1.1¢) per individual cigarette. The tax levied under this section is
27 imposed on the tobacco product manufacturer. This tax is in addition to any other tax or
28 fee.

29 (b) Cigarettes Sold. – By May 31 of each year, the Secretary must give a written
30 certification to each tobacco product manufacturer of the number of the manufacturer's
31 cigarettes sold in the preceding calendar year. The tax applies to the number of
32 cigarettes sold as stated in the certification.

33 (c) Return and Payment. – The taxes levied in this section are due when a report
34 is required to be filed. The report is due on or before the 25th day of June and covers the
35 preceding calendar year.

36 (d) Credit. – A tobacco product manufacturer may claim a credit against the tax
37 imposed by this section. For a participating manufacturer, the amount of the credit is the
38 amount the manufacturer paid to the North Carolina State Specific Account specified in
39 subparagraph VI.A.1 of the Consent Decree and Judgment entered in that action of 98
40 CVS 14377 on December 21, 1998. For a nonparticipating manufacturer, the amount of
41 the credit is the amount the manufacturer paid to a qualified escrow account under
42 G.S. 66-291 during the calendar year, less any amount released from escrow pursuant to
43 G.S. 66-291(b)(2)."

44 **SECTION 6.** G.S. 105-113.10 reads as rewritten:

1 **"§ 105-113.10. Manufacturers shipping to distributors exempt.**

2 Any manufacturer shipping cigarettes to other distributors who are licensed under
3 G.S. 105-113.12 may, upon application to the Secretary and upon compliance with
4 requirements prescribed by the Secretary, be relieved of paying the taxes levied in ~~this~~
5 ~~Part~~G.S. 105-113.5 and G.S. 105-113.6. No manufacturer may be relieved of the
6 requirement to pay taxes levied under G.S. 105-113.6A or to be licensed as a distributor
7 in order to make shipments, including drop shipments, to a retail dealer or ultimate
8 user."

9 **SECTION 7.** G.S. 105-113.18 reads as rewritten:

10 **"§ 105-113.18. Payment of tax; reports.**

11 The taxes levied in ~~this Part~~G.S. 105-113.5 and G.S. 105-113.6 are payable when a
12 report is required to be filed. The following reports are required to be filed with the
13 Secretary:

- 14 (1) Distributor's Report. – A distributor shall file a monthly report in the
15 form prescribed by the Secretary. The report covers sales and other
16 activities occurring in a calendar month and is due within 20 days after
17 the end of the month covered by the report. The report shall state the
18 amount of tax ~~due and shall due~~, identify any transactions to which the
19 tax does not ~~apply-apply, and identify the amount of each tobacco~~
20 product manufacturer's cigarettes included on the report.
- 21 (1a) Report of Free Cigarettes. – A manufacturer who distributes cigarettes
22 without charge shall file a monthly report in the form prescribed by the
23 Secretary. The report covers cigarettes distributed without charge in a
24 calendar month and is due within 20 days after the end of the month
25 covered by the report. The report shall state the number of cigarettes
26 distributed without charge and the amount of tax due.
- 27 (2) Use Tax Report. – Every other person who has acquired non-tax-paid
28 cigarettes for sale, use, or consumption subject to the tax imposed by
29 this Part shall, within 96 hours after receipt of the cigarettes, file a
30 report in the form prescribed by the Secretary showing the amount of
31 cigarettes so received and any other information required by the
32 Secretary. The report shall be accompanied by payment of the full
33 amount of the tax.
- 34 (3) Shipping Report. – Any person, except a licensed distributor, who
35 transports cigarettes upon the public highways, roads, or streets of this
36 State, upon notice from the Secretary, shall file a report in the form
37 prescribed by the Secretary and containing the information required by
38 the Secretary.
- 39 (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s.
40 1."

41 **SECTION 8.** If any clause or other portion of this section is held invalid,
42 that decision shall not affect the validity of the remaining portions of this section, which
43 are severable.

1 **SECTION 9.** Section 3 of this act is effective for taxable years beginning on
2 or after January 1, 2006. The remainder of this act becomes effective July 1, 2005.