

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**H**

**1**

**HOUSE BILL 1685**

Short Title: Tobacco Tax Changes.

(Public)

---

Sponsors: Representative Howard.

---

Referred to: Rules, Calendar, and Operations of the House.

---

May 12, 2005

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW NONPARTICIPATING MANUFACTURERS UNDER THE  
3 MASTER SETTLEMENT AGREEMENT TO ASSIGN RIGHTS TO ESCROW  
4 FUNDS TO THE STATE; TO PROVIDE FOR AN INCOME TAX CREDIT FOR  
5 THOSE ASSIGNMENTS; AND TO PROVIDE FOR AN EXCISE TAX ON  
6 TOBACCO PRODUCT MANUFACTURERS.

7 The General Assembly of North Carolina enacts:

8           **SECTION 1.** The General Assembly finds that:

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

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

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

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

12                   **"§ 66-294.2. Assignment of the State of rights to tobacco manufacturer escrow**  
13                   **funds; contribution to the State.**

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

23                   **"§ 66-294.3. Withdrawal of escrow funds assigned and contributed to the State.**

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

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

32                   **"§ 105-130.47. Tax credit for assignment of escrow payments.**

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

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

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

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

2    "**§ 105-113.4. Definitions.**

3       The following definitions apply in this Article:

4       ...

5       (1b) Cigarettes sold. – The number of individual cigarettes sold in this State  
6       during a calendar year by a tobacco product manufacturer, whether  
7       directly or through a distributor, retailer, or similar intermediary, as  
8       measured by excise taxes collected by the State under G.S. 105-113.5.

9       ...

10      (6a) Master Settlement Agreement. – Defined in G.S. 66-290.

11      (6b) Nonparticipating manufacturer. – Defined in G.S. 66-292.

12      (6c) Non-tax-paid cigarette. – A cigarette on which the tax imposed under  
13      G.S. 105-113.5 or G.S. 113.6 has not been paid.

14      ...

15      (7a) Participating manufacturer. – Defined in G.S. 66-292.

16      ...

17      (11b) Tobacco product manufacturer. – Defined in G.S. 66-290.

18      ...."

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

21    "**§ 105-113.6A. Tax on tobacco product manufacturers.**

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

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

30      (c) Return and Payment. – The taxes levied in this section are due when a report  
31      is required to be filed. The report is due on or before the 25<sup>th</sup> day of June and covers the  
32      preceding calendar year.

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

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

42    "**§ 105-113.10. Manufacturers shipping to distributors exempt.**

43       Any manufacturer shipping cigarettes to other distributors who are licensed under  
44       G.S. 105-113.12 may, upon application to the Secretary and upon compliance with

1 requirements prescribed by the Secretary, be relieved of paying the taxes levied in ~~this~~  
2 ~~Part~~ G.S. 105-113.5 and G.S. 105-113.6. No manufacturer may be relieved of the  
3 requirement to pay taxes levied under G.S. 105-113.6A or to be licensed as a distributor  
4 in order to make shipments, including drop shipments, to a retail dealer or ultimate  
5 user."

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

7 **"§ 105-113.18. Payment of tax; reports.**

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

11 (1) Distributor's Report. – A distributor shall file a monthly report in the  
12 form prescribed by the Secretary. The report covers sales and other  
13 activities occurring in a calendar month and is due within 20 days after  
14 the end of the month covered by the report. The report shall state the  
15 amount of tax ~~due and shall due, identify any transactions to which the~~  
16 ~~tax does not apply.~~ apply, and identify the amount of each tobacco  
17 product manufacturer's cigarettes included on the report.

18 (1a) Report of Free Cigarettes. – A manufacturer who distributes cigarettes  
19 without charge shall file a monthly report in the form prescribed by the  
20 Secretary. The report covers cigarettes distributed without charge in a  
21 calendar month and is due within 20 days after the end of the month  
22 covered by the report. The report shall state the number of cigarettes  
23 distributed without charge and the amount of tax due.

24 (2) Use Tax Report. – Every other person who has acquired non-tax-paid  
25 cigarettes for sale, use, or consumption subject to the tax imposed by  
26 this Part shall, within 96 hours after receipt of the cigarettes, file a  
27 report in the form prescribed by the Secretary showing the amount of  
28 cigarettes so received and any other information required by the  
29 Secretary. The report shall be accompanied by payment of the full  
30 amount of the tax.

31 (3) Shipping Report. – Any person, except a licensed distributor, who  
32 transports cigarettes upon the public highways, roads, or streets of this  
33 State, upon notice from the Secretary, shall file a report in the form  
34 prescribed by the Secretary and containing the information required by  
35 the Secretary.

36 (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s.  
37 1."

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

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