

Subpart 2. Tax Rates and Liability.

§ 105-113.36A. (Effective until July 1, 2025) Tax rates; liability for tax.

(a) Tax Imposed. – An excise tax is levied on the sale, use, consumption, handling, or distribution of tobacco products at the following rates:

- (1) On vapor products, the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.
- (2) On cigars, the rate of twelve and eight-tenths percent (12.8%) of the cost price, subject to a cap of thirty cents (30¢) per cigar.
- (3) On all other tobacco products, the rate of twelve and eight-tenths percent (12.8%) of the cost price.

(b) Primary Liability for Tax. – A wholesale dealer that has not been relieved of paying tax under G.S. 105-113.37A or a retail dealer is primarily liable for the tax imposed by this section if the dealer meets any of the following conditions:

- (1) Is the first person to possess or acquire the tobacco product in this State.
- (2) Is the first person to bring a tobacco product made outside the State into this State.
- (3) Is the original consignee of a tobacco product made outside the State that is shipped into the State.
- (4) Makes a remote sale or a delivery sale for which the dealer is required to collect sales and use tax under Article 5 of this Chapter.

(c) Secondary Liability. – A retail dealer located in this State who acquires from a wholesale dealer non-tax-paid tobacco products subject to the tax imposed by this section is liable for any tax due on the tobacco products.

(d) Exemptions. – The taxes imposed under this section do not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product distributed without charge. A sample tobacco product may only be distributed in a "qualified adult-only facility" as that term is defined in 21 C.F.R. § 1140.16(d)(2).

(e) Use Tax. – A tax is levied upon the sale or possession for sale by a person other than a licensed wholesale dealer or a licensed retail dealer and upon the use, consumption, or possession for use or consumption of tobacco products within this State at the rate set in this section. This tax does not apply to tobacco products for which the tax levied in this section has been paid.

(f) Documentation. – If a person liable for the tax imposed by this Part cannot produce to the Secretary's satisfaction documentation of the cost price of the items subject to tax, the Secretary may determine a value based on either of the following:

- (1) The cost price of comparable items.
- (2) The average of the actual price paid by the person liable for the tax for the item over the 12 calendar months before January 1 of the year in which the sale occurs. (2021-180, s. 42.9(g); 2023-12, s. 3.2(b).)

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- (2a) On snuff, the rate of forty cents (40¢) per ounce and a proportionate rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.
- (2b) On alternative nicotine products, the rate of ten cents (10¢) per container containing up to 20 units, and at the rate of one-half cent (1/2¢) per unit for any amount in a container containing over 20 units.
- (3) On all other tobacco products, the rate of twelve and eight-tenths percent (12.8%) of the cost price.

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- (2) Is the first person to bring a tobacco product made outside the State into this State.
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- (4) Makes a remote sale or a delivery sale for which the dealer is required to collect sales and use tax under Article 5 of this Chapter.

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(f) Documentation. – If a person liable for the tax imposed by this Part cannot produce to the Secretary's satisfaction documentation of the cost price, weight, count, or volume of the items subject to tax, based on the applicable tax imposed, the Secretary may determine a value based on either of the following:

- (1) The cost price, weight, count, or volume of comparable items.
- (2) The average of the actual price paid by the person liable for the tax for the item over the 12 calendar months before January 1 of the year in which the sale occurs. (2021-180, s. 42.9(g); 2023-12, s. 3.2(b); 2023-134, s. 42.18(b); 2024-1, s. 11.4(a).)