

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS75336-RB-59 (05/05)

Short Title: Reinstatement Cigarette Tax Stamps.

(Public)

Sponsors: Senators Hartsell, and Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF THE CIGARETTE EXCISE TAX AND TO DETER THE UNLAWFUL SALE OF NON-TAX-PAID CIGARETTES BY REINSTATING THE REQUIREMENT THAT CIGARETTES BEAR A STAMP INDICATING PAYMENT OF THE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-113.8A. Stamps required on packages of cigarettes.

(a) Requirement. – A package of cigarettes for sale or use in this State must be marked by a heat transfer stamp that indicates whether the package of cigarettes is taxable or nontaxable under this Article. A package of cigarettes that is subject to tax must be marked by a tax-paid stamp and a package of cigarettes that is not subject to tax must be marked by a tax-exempt stamp.

(b) Responsibility of Distributor. – It is unlawful for a person who is not a licensed distributor to receive or possess a package of unstamped cigarettes or to place a stamp on a package of cigarettes. A licensed distributor that receives a package of unstamped cigarettes must place a stamp on the package within 48 hours of its receipt, exclusive of Saturdays, Sundays, and legal holidays. A licensed distributor may obtain a cigarette stamp from the Secretary or, with the approval of the Secretary, from the producer of the stamps. A licensed distributor must place a stamp on a package of cigarettes in a manner that ensures the stamp will be torn or mutilated if a person tries to remove the stamp from the package.

(c) Responsibility of Secretary. – The Secretary must prescribe the design, denominations, and other details of a cigarette stamp and must provide for the production of the stamp. A stamp must display a unique serial number that is visible at the point of sale or use. The Secretary must collect the amount due for a tax-paid stamp when the Secretary transfers, or authorizes the transfer of, the stamp to a licensed distributor. The charge for a tax-paid stamp is the amount of tax payable under this Article on the package of cigarettes on which the stamp will be placed. No charge applies to a tax-exempt stamp. The Secretary must keep a record of the tax-paid and tax-exempt stamps transferred to a licensed distributor."

SECTION 2. G.S. 105-113.9 reads as rewritten:

"§ 105-113.9. Out-of-state shipments.

~~Any~~ A licensed distributor engaged in interstate business ~~shall be permitted to~~ may, with the approval of the Secretary, set aside part of the stock as necessary packages of cigarettes needed to conduct interstate business without ~~paying the tax~~ stamping the packages as



1 otherwise required by this Part, but only if the distributor complies with the requirements
2 prescribed by the Secretary concerning keeping of records, making of reports, posting of bond,
3 and other matters for administration of this Part.

4 "Interstate business" as used in this section ~~means;~~ means any of the following:

- 5 (1) The sale ~~to a nonresident of packages of cigarettes to a nonresident where~~
6 ~~the cigarettes are delivered by the distributor~~ delivers to the business
7 location of the nonresident purchaser in another ~~state;~~ and state.
- 8 (2) The sale ~~to a nonresident of packages of cigarettes to a nonresident~~
9 ~~wholesaler or retailer registered through the Secretary who has no place of~~
10 ~~business in North Carolina and who purchases the cigarettes for the purposes~~
11 ~~of resale not within this State and where the cigarettes are delivered to the~~
12 ~~purchaser at the business location in North Carolina of the distributor who is~~
13 ~~also licensed as a distributor under the laws of the state of the nonresident~~
14 ~~purchaser;~~ the distributor delivers to another licensed distributor for
15 subsequent sale outside the State."

16 **SECTION 3.** G.S. 105-113.10 reads as rewritten:

17 "**§ 105-113.10. ~~Manufacturers shipping to distributors exempt.~~In-state shipments of**
18 **manufacturers and other distributors.**

19 Any manufacturer shipping cigarettes to other distributors who are licensed under
20 G.S. 105-113.12 may, upon application to the Secretary and upon compliance with
21 requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No
22 manufacturer may be relieved of the requirement to be licensed as a distributor in order to make
23 shipments, including drop shipments, to a retail dealer or ultimate user. It is unlawful for a
24 person that is not a licensed distributor to ship an unstamped package of cigarettes into this
25 State or between locations in this State. A licensed distributor may ship a package of
26 unstamped cigarettes in the following circumstances but may not otherwise ship a package of
27 unstamped cigarettes:

- 28 (1) To a facility the distributor owns.
- 29 (2) To another licensed distributor.
- 30 (3) To a person in a transaction that is not subject to the federal excise tax on
31 cigarettes.
- 32 (4) To an agency or an instrumentality of the United States."

33 **SECTION 4.** G.S. 105-113.18 reads as rewritten:

34 "**§ 105-113.18. Payment of tax; reports.**

35 ~~The taxes levied in this Part are payable when a report is required to be filed. The~~ The tax
36 levied in this Part on the sale or possession of a package of cigarettes by a distributor is payable
37 by means of the tax-paid stamp the distributor is required to obtain and place on the package of
38 cigarettes. The tax levied in this Part on the sale or possession of a package of cigarettes by a
39 person who is not a distributor is payable when the person is required to file a report.

40 The following reports are required to be filed with the ~~Secretary;~~ Secretary. A report must
41 be in the form required by the Secretary and contain the information required by the Secretary.

- 42 (1) Distributor's Report. – A distributor ~~shall~~ must file a monthly report ~~in the~~
43 ~~form prescribed by the Secretary. The report that covers sales and other~~
44 ~~activities occurring in a calendar month and month. The report is due within~~
45 ~~20 days after the end of the month covered by the report. The report shall~~
46 ~~state the amount of tax due and shall identify any transactions to which the~~
47 ~~tax does not apply.~~ must include the following information:
 - 48 a. The number of cigarettes on hand on the first and last days of the
49 month.
 - 50 b. The number of tax-paid and tax-exempt cigarette stamps obtained
51 during the month.

1 c. The number of tax-paid and tax-exempt cigarette stamps placed on
2 packages of cigarettes during the month.

3 d. The number of packages of cigarettes the distributor transferred
4 without charge after placing a tax-paid stamp on the packages.

5 (1a) ~~Report of Free Cigarettes. — A manufacturer who distributes cigarettes~~
6 ~~without charge shall file a monthly report in the form prescribed by the~~
7 ~~Secretary. The report covers cigarettes distributed without charge in a~~
8 ~~calendar month and is due within 20 days after the end of the month covered~~
9 ~~by the report. The report shall state the number of cigarettes distributed~~
10 ~~without charge and the amount of tax due.~~

11 (2) ~~Use Tax Report. — Every other person who has acquired non-tax-paid~~
12 ~~A person that is not a distributor and that acquires a package of unstamped~~
13 ~~cigarettes for sale, use, or consumption subject to the tax imposed by this~~
14 ~~Part shall, must file a report within 96 hours after receipt of the cigarettes,~~
15 ~~file a report in the form prescribed by the Secretary showing the amount of~~
16 ~~cigarettes so received and any other information required by the Secretary.~~
17 ~~The report shall be accompanied by payment of the full amount of the~~
18 ~~tax receiving the package of cigarettes. The report must state the number of~~
19 ~~cigarettes acquired and the amount of tax due.~~

20 (3) ~~Shipping Report. — Any person, except a licensed distributor, who~~
21 ~~A person that is not a licensed distributor and that transports cigarettes upon the public~~
22 ~~highways, roads, or streets of this State, State must, upon notice from the~~
23 ~~Secretary, shall file a report in the form prescribed by the Secretary and~~
24 ~~containing the information required by the Secretary.~~

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

26 **SECTION 5.** G.S. 105-113.21 reads as rewritten:

27 **"§ 105-113.21. Discount; refund.**

28 (a) Repealed by Session Laws 2003-284, s. 45A.1(a), effective for reporting periods
29 beginning on or after August 1, 2003.

30 (a1) ~~Discount. — A distributor is allowed who files a timely report under G.S. 105-113.18~~
31 ~~and who sends a timely payment may deduct from the amount due with the report a discount of~~
32 ~~two percent (2%).(2%) of the charge for a tax-paid stamp when the distributor purchases the~~
33 ~~stamp. This discount covers the distributor's expenses incurred in placing stamps on packages~~
34 ~~of cigarettes, preparing the records and reports required by this Part, maintaining the records~~
35 ~~required by this Part, and the expense of furnishing a bond.~~

36 (b) ~~Refund. Refund for Stale Product. — A distributor in possession of packages of stale~~
37 ~~or otherwise unsalable cigarettes upon which the tax has been paid a tax-paid stamp has been~~
38 ~~placed may return the cigarettes to the manufacturer and apply to the Secretary for a refund of~~
39 ~~the tax. The application shall must be in the form prescribed by the Secretary and shall be~~
40 ~~accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to~~
41 ~~the manufacturer by the applicant. The Secretary shall must refund the tax paid, less the~~
42 ~~discount allowed, on the unsalable cigarettes.~~

43 (c) Refund for Stamps. — A distributor that purchases a tax-paid stamp is allowed a
44 refund of the amount paid for the stamp, less the discount allowed, in the circumstances listed
45 in this subsection. To obtain a refund, a distributor must apply to the Secretary for the refund.
46 The circumstances are:

47 (1) When the distributor purchases a tax-paid stamp that it does not place on a
48 package of cigarettes.

49 (2) When the distributor purchases a tax-paid stamp that is torn or otherwise
50 unusable and cannot be placed on a package of cigarettes."

51 **SECTION 6.** G.S. 105-113.27 reads as rewritten:

1 "**§ 105-113.27. ~~Non-tax-paid~~ Restrictions and presumption concerning cigarettes.**

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

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

6 (c) Presumption. – The possession of more than six hundred cigarettes on which tax has
7 been paid to another state or country, by any person other than a licensed distributor, is prima
8 facie evidence that the cigarettes are possessed in violation of this Part."

9 **SECTION 7.** G.S. 105-113.33 reads as rewritten:

10 "**§ 105-113.33. Criminal penalties.**

11 Any person who violates ~~any of the provisions~~ a provision of this Article for which no other
12 punishment is specifically prescribed ~~shall be~~ is guilty of a Class 1 misdemeanor. A person who
13 forges a stamp required under this Article or who knowingly places a forged stamp on a
14 package of cigarettes is guilty of a Class H felony."

15 **SECTION 8.** A distributor who has unstamped cigarettes on hand on the effective
16 date of this act must stamp the cigarettes as required by this act within 48 hours of the effective
17 date.

18 **SECTION 9.** This act becomes effective January 1, 2011.