

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 1075
HOUSE BILL 296

1 AN ACT TO AMEND CHAPTERS 18 AND 105 OF THE GENERAL STATUTES TO
2 PROVIDE ADDITIONAL REVENUE AND REVENUE SOURCES FOR THE
3 GENERAL FUND OF THE STATE AND TO REDEFINE THE DEFINITION OF "HEAD
4 OF HOUSEHOLD" FOR INCOME TAX PURPOSES.

5
6 The General Assembly of North Carolina do enact:

7
8 **Section 1.** The Beverage Control Act of 1939, being Article 4 of Chapter 18 of the
9 General Statutes, is hereby amended as follows:

10 (a) Subsection (a1) of G.S. 18-81, as the same appears in the 1967 Supplement to
11 Volume 1C of the General Statutes, is hereby amended by:

- 12 (1) Striking out in line three (3) the words and figures "three dollars (\$3.00)"
13 immediately following the word "of and inserting in lieu thereof the words
14 and figures "seven dollars and fifty cents (\$7.50)";
- 15 (2) Striking out in lines five (5) and six (6) the words and figures "one half of
16 one cent (1/2¢)" immediately following the word "of and inserting in lieu
17 thereof the words and figures "one and one-fourth cents (1 1/4¢)";
- 18 (3) Striking out in line seven (7) the words and figures "one cent (1¢)"
19 immediately following the word "of and inserting in lieu thereof the words
20 and figures "two and one-half cents (2 1/2¢)";
- 21 (4) Striking out in line nine (9) the words and figures two and two-thirds cents(2
22 2/30)" immediately following the word "of and inserting in lieu thereof the
23 words and figures "six and two-thirds cents (6 2/3¢)";
- 24 (5) Striking out in line twenty-four (24) the words and figures "nine one
25 hundredths of a cent (.09¢)" immediately following the word "of and
26 inserting in lieu thereof the words and figures "twenty-one one hundredths of
27 a cent (.21¢)".

28 (b) Subsection (a2) of G.S. 18-81, as the same appears in the 1967 Supplement to
29 Volume 1C of the General Statutes, is hereby amended by striking out in line eleven (11) the
30 words and figures "six tenths of one cent (.6¢)" immediately following the word "be" and
31 inserting in lieu thereof the words and figures "one and one-half cents (1 1/2¢)".

32 (c) By adding a new Section 18-85.2, immediately following G.S. 18-85.1, to read as
33 follows:

34 **"G.S. 18-85.2. Additional Tax on Spirituous Liquors.** In addition to the taxes provided for in
35 subsections (a) and (b) of G.S. 18-85, there is hereby levied an additional tax or surtax upon the
36 retail sale of spirituous distilled liquors of every kind that is sold in this State, including liquors
37 sold in county or municipal liquor stores, at the rate of five cents (5¢) for each five ounces or
38 fractional part thereof until July 1, 1970, and on and after July 1, 1970, at the rate of five cents
39 (5¢) for each three and one-third ounces or fractional part thereof. The proviso contained in
40 subsection (a) of G.S. 18-85 shall not apply to the taxes levied under this Section.

41 The aforesaid additional tax or surtax shall be in addition to the 'total prices' of alcoholic
42 beverages established by the State Board of Alcoholic Control pursuant to G.S. 18-39(3). The
43 entire proceeds of the additional tax levied in this Section shall be payable monthly at the same

time, in the same manner and subject to the same rules, regulations and penalties as apply to the taxes imposed under G.S. 18-85."

Sec. 2. Subchapter 1 of Chapter 105 of the General Statutes is hereby amended by adding a new Article thereto immediately following Article 2, to be designated as Article 2A and to read as follows:

"Article 2A.

Schedule B-A. Cigarette Tax.

G.S. 105-113.2. Short title. This Article may be cited as the Cigarette Tax Act' or 'Cigarette Tax Article'.

G.S. 105-113.3. Purpose. It is hereby declared to be the intent and purpose of this Article that the incidence of the tax herein provided for shall rest upon the ultimate consumer and not upon the grower or processor of leaf tobacco or upon the manufacturer of cigarettes. This tax shall be paid to the State only once, regardless of the number of times the cigarettes may be sold in this State, but it is the intent of this Article that such tax shall be added to the sales price and passed on from successive sellers to successive purchasers so that it may be included in the ultimate purchase price of the final or last purchaser. The amount of the tax may be stated separately from the price of the cigarettes on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price, but it is not required that it be stated in such manner or in any other manner. The provisions of this Section shall in no way affect the assessment, levy or collection of the taxes provided for by this Article, as the same may be more specifically provided herein with respect to activities hereinafter described, but merely states the general intent with respect to this Article.

G.S. 105-113.4. Definitions. The following words, terms, and phrases when used in this Article have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) 'Cigarette' means - (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (a)(1) above;

(b) 'Commissioner' means Commissioner of Revenue of the State of North Carolina;

(c) 'Distributor' means any person, wherever resident or located, who purchases unstamped cigarettes directly from the manufacturer thereof and stores, sells or otherwise disposes of the same; and also any person who manufactures or produces cigarettes or causes them to be manufactured or produced;

(d) 'In this State' or 'within this State' means within the exterior limits of the State of North Carolina, and includes all territory within such limits owned by, leased by or ceded to the United States of America;

(e) 'Manufacturer' means any person engaged in the manufacture or production of cigarettes.

(f) 'Package' means the individual packet, can, box or other container used to contain and to convey cigarettes to the consumer.

(g) 'Person' means and includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, the State or any of its political subdivisions, and the plural as well as the singular number.

(h) 'Selling' or 'sale' means any sale, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.

(i) 'Stamp' means any impression, device, stamp, label or print manufactured, printed or made as prescribed by the Commissioner under this Article.

(j) 'Unstamped' means not bearing a North Carolina cigarette tax stamp prescribed by the Commissioner under this Article.

(k) 'Use' means the exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes and shall include the keeping or retention of cigarettes for use.

(l) 'Licensed distributor' means any distributor, as defined in this Article, licensed under the provisions of this Article.

(m) 'Retail dealer' means any person other than a distributor engaged in this State in the business of selling cigarettes at retail.

G.S. 105-113.5. Privilege tax levied. In addition to all other taxes and fees, a tax is hereby levied upon the sale or possession for sale within this State, by distributors, of all cigarettes at the rate of one mill per individual cigarette.

G.S. 105-113.6. Use Tax levied. In addition to all other taxes and fees, a tax is hereby levied upon the sale or possession for sale by all persons other than distributors, and upon the use, consumption, and possession for use or consumption of cigarettes within this State at the rate set forth in G.S. 105-113.5; Provided, that the tax levied by this Section shall not be applicable to the sale or possession for sale by persons other than distributors, or to the use, consumption or possession for use or consumption of cigarettes with respect to which the tax levied by the provisions of G.S. 105-113.5 has been computed and paid.

G.S. 105-113.7. Tax with respect to inventory on effective date of Act. Every person subject to the taxes levied in G.S. 105-113.5 and G.S. 105-113.6 who, on the effective date of this Act, has on hand any cigarettes shall file a complete inventory thereof within twenty (20) days thereafter, and shall pay to the Commissioner at the time of filing such inventory a tax with respect thereto computed at the rate set forth in G.S. 105-113.5 and G.S. 105-113.6. All provisions of this Article relative to the collection, verification and administration of the tax herein imposed shall, insofar as pertinent, be applicable to the tax imposed by this Section, but the affixing of stamps as evidence of the payment of such tax by persons subject to the taxes levied in G.S. 105-113.6 shall not be necessary except as the Commissioner by regulation or administrative rule may require.

G.S. 105-113.8. Federal Constitution and statutes. Any activities which this Article may purport to tax in violation of the Constitution of the United States or any Federal statute are hereby expressly exempted from taxation under this Article.

G.S. 105-113.9. Out-of-State shipments. Any distributor engaged in interstate business shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without paying the tax or affixing the stamps otherwise required by this Article, but only if such distributor complies with the regulations and administrative rules concerning keeping of records, making of reports, posting of bond and such other rules and regulations as may be promulgated by the Commissioner for the administration of this Article.

G.S. 105-113.10. Manufacturers shipping to distributors exempt. Any manufacturer shipping cigarettes to other distributors who are licensed to affix stamps as provided in this Article may, upon application to the Commissioner and upon compliance with such regulations and administrative rules in regard thereto as may be promulgated by the Commissioner, be relieved of the requirement of paying the taxes and affixing the stamps required by this Article, but no manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user. However, the Commissioner may permit monthly reports from the manufacturer instead of requiring stamps to be affixed on free cigarettes given complimentary by the manufacturer when the package contains only five (5) or less cigarettes and has imprinted on said package the wording 'State tax paid'.

1 **G.S. 105-113.11. Licenses required.** After the effective date of this Article, no person shall
2 engage in business as a distributor in this State, without having first obtained from the
3 Commissioner the appropriate license for that purpose as pre- scribed herein. Any license
4 required by this Article shall be in addition to any and all other licenses which may be required
5 by law.

6 **G.S. 105-113.12. Distributors' License.** (a) Distributors shall obtain, for each place of
7 business, a continuing license, for which a fee of twenty-five dollars (\$25.00) shall be paid.

8 (b) For the purposes of this Section, 'place of business' means any place where unstamped
9 packages of cigarettes are received or stored by a distributor for the purposes of affixing stamps
10 thereto, and any place where a distributor actually affixes stamps to unstamped packages of
11 cigarettes.

12 (c) Out-of-State distributors may obtain appropriate distributors' licenses upon compliance
13 with the provisions of G.S. 105-113.24, for which a fee of twenty-five dollars (\$25.00) shall be
14 paid for each such license.

15 **G.S. 105-113.13. Issuance of licenses.** (a) All licenses shall be issued by the Commissioner.

16 (b) No license shall be issued to a distributor except upon payment of the full fee
17 therefor.

18 (c) Prior to the issuance of any license under this Article, the Commissioner may cause to
19 be made such investigation as he deems necessary respecting the eligibility of the applicant to
20 receive such license and the accuracy of the information contained in the application therefor.
21 The Commissioner may refrain from the issuance of a license where he has reasonable cause to
22 believe that the applicant has wilfully withheld information requested by him for the purpose of
23 determining the eligibility of the applicant to receive a license or where he has reasonable cause
24 to believe that the information submitted in the application is false or misleading and is not
25 made in good faith.

26 (d) When the Commissioner deems it necessary to the proper administration of this
27 Article, he may require any distributor upon application for a license to file with him a bond
28 payable to the State of North Carolina in such amount and upon such conditions as in the
29 opinion of the Commissioner will guarantee the performance of the duties and the discharge of
30 the liabilities of said distributor under this Article. Such bond shall be executed by the
31 distributor as principal and by an indemnity company licensed to do business under the
32 Insurance Laws of this State as surety.

33 (e) No license shall be assignable or transferable.

34 **G.S. 105-113.14. Refund of license fee.** No refund of a license fee shall be paid to any person
35 upon the surrender, suspension or revocation of any license except a license fee paid or
36 collected in error.

37 **G.S. 105-113.15. Duplicate or amended license.** Upon application to the Commissioner, a
38 distributor may obtain without charge:

39 (a) A duplicate license, upon a satisfactory showing that the original has been lost,
40 destroyed or defaced;

41 (b) An amended license, upon a satisfactory showing that the location of the place of
42 business represented by the license has been changed.

43 Each duplicate or amended license shall bear the words 'duplicate license' or 'amended
44 license' on its face, as appropriate.

45 **G.S. 105-113.16. Revocation of license.** (a) The Commissioner shall, without notice or
46 hearing, revoke the license of every distributor who voluntarily surrenders the same.

47 (b) Whenever any distributor violates any provision of this Article or any regulation or
48 administrative rule of the Commissioner made pursuant to the provisions of this Article, or has
49 ceased to act in the capacity for which the license was issued, the Commissioner, upon hearing,
50 after giving the licensed distributor ten days notice in writing, specifying the time and place of
51 hearing and requiring him to show cause why his license should not be revoked, may revoke or

1 suspend the license held by such distributor. The notice may be served personally or by
2 registered mail directed to the last known address of such person. All provisions with respect to
3 review and appeals of the Commissioner's decisions as provided by G.S. 105-241.2, G.S. 105-
4 241.3 and G.S. 105-241.4 shall be applicable to this subsection (b).

5 (c) No distributor whose license has been suspended or revoked shall sell cigarettes or
6 permit the same to be sold during the period of such suspension or revocation on premises
7 occupied by him or upon other premises controlled by him or others in any other manner or
8 form whatever.

9 (d) No disciplinary, penal or regulatory proceeding or action shall be barred or abated
10 by the expiration, transfer, surrender, continuance, renewal or extension of any license issued
11 under the provisions of this Article. le) If any person licensed under the provisions of G.S. 105-
12 65.1, G.S. 105-84, G.S. 105-164.4, G.S. 105-164.5, G.S. 105-164.6 and G.S. 105-164.29 shall
13 be convicted by any court of competent jurisdiction in this State of any offense under this
14 Article, the Commissioner is authorized to revoke any or all licenses issued to such person
15 under the provisions of the aforesaid sections of Chapter 105 of the General Statutes. The
16 provisions of subsection (b) above relative to notice, hearing, review and appeal shall apply to
17 this subsection (e).

18 **G.S. 105-113.17. Exhibit of license; identification of dispensers.** (a) Each license, or
19 certificate thereof, or such other evidence of license as the Commissioner may authorize, shall
20 be exhibited in the place of business for which it is issued and in such manner as may be
21 prescribed by the Commissioner.

22 (b) Every vending machine which dispenses cigarettes shall be identified as to
23 ownership in such manner as the Commissioner may prescribe.

24 **G.S. 105-113.18. Reports.** The following reports are required to be filed with the
25 Commissioner:

26 (a) Every distributor required to affix stamps as prescribed herein shall file a report on
27 or before the twentieth day of each month, in such form as the Commissioner shall prescribe,
28 which report shall disclose the quantity of cigarettes on hand on the first and last days of the
29 calendar month immediately preceding the month in which such report is required, the amount
30 of stamps purchased, used and on hand during the report period, and such other information as
31 the Commissioner shall prescribe.

32 (b) Every other person who has acquired unstamped cigarettes for sale, use or
33 consumption subject to the tax imposed by this Article shall, within ninety-six hours after
34 receipt of same, complete and file, in such form as the Commissioner shall prescribe, a report
35 showing the amount of cigarettes so received and such other information as the Commissioner
36 shall prescribe. Said report shall be accompanied by a remittance of the full amount of the tax.

37 (c) Any person, except a licensed distributor, who transports cigarettes upon the public
38 highways, roads or streets of this State, upon notice from the Commissioner, shall file a report
39 in such form, on such dates, and containing such information as the Commissioner shall
40 prescribe.

41 (d) Every distributor, as that term is defined in G.S. 105-250.1, shall include in the
42 report required by G.S. 105-250.1 to be filed as of January first of each year, the location and
43 serial number of each vending machine dispensing cigarettes owned and placed on location by
44 said distributor.

45 **G.S. 105-113.19. Commissioner to provide stamps.** (a) The taxes levied by this Article shall
46 be paid or payment shall be evidenced by the use of stamps, except as provided in G. S. 105-
47 113.6. The Commissioner shall make arrangements with some manufacturer to manufacture
48 taxpaid cigarette tax stamps provided for in this Article. The Commissioner shall prescribe the
49 form, design, denominations and such other matters as may be necessary with respect to said
50 stamps. The Commissioner may sell such stamps directly to taxpayers and he may also make
51 arrangements for release of taxpaid stamps to taxpayers by the manufacturer of said stamps.

1 Said manufacturer shall furnish such bond as the Commissioner may deem advisable, in such
2 amount and upon such conditions as in the opinion of the Commissioner will adequately protect
3 the State in the collection of the taxes levied by this Article.

4 (b) Payment in full shall accompany application for purchase of stamps; provided,
5 however, a licensed distributor may purchase stamps on credit if such distributor has filed with
6 the Commissioner a bond satisfactory to the Commissioner in an amount not less than the
7 amount to be paid for said stamps and prior to the date any such credit purchases are made.
8 Such licensed distributor shall pay for said credit purchases of stamps on or before the tenth
9 day of the month next following the date of purchase, and the bond herein required shall be
10 conditioned upon such payment. The bond shall be executed by the distributor as principal and
11 by an indemnity company licensed to do business under the insurance laws of this State, as
12 surety.

13 (c) A licensed distributor using a stamp metering machine as provided for in G. S. 105-
14 113.23 may make payment upon the same terms and conditions as in the case of the purchase
15 of stamps as set forth in subsection (b) of this Section.

16 **G.S. 105-113.20. Distributors to affix stamps.** Only licensed distributors shall affix stamps.
17 A licensed distributor shall not sell, borrow, loan, buy or exchange stamps to, from or with any
18 other person, except as provided in G.S. 105-113.19.

19 Unless stamps have been previously affixed, the stamps required by this Article shall be
20 affixed to packages by the licensed distributor within forty-eight (48) hours of the receipt of all
21 unstamped cigarettes, exclusive of Saturdays, Sundays and legal holidays of this State, and
22 prior to any and all deliveries to other persons except deliveries to points outside the State,
23 deliveries by manufacturers to licensed distributors and those deliveries which this State is
24 prohibited from taxing under the Constitution or the statutes of the United States.

25 **G.S. 105-113.21. Discount on sales of stamps.** On sales of stamps, the Commissioner shall
26 allow a discount of seven per cent (7%) of the entire amount of any sale of one hundred dollars
27 (\$100.00) or more of said stamps as compensation for the services and expenses of the licensed
28 distributor in handling and affixing such stamps to packages. No discount shall be allowed or
29 given on any sales of stamps in amounts less than one hundred dollars (\$100.00).

30 **G.S. 105-113.22. Manner of affixing and cancelling stamps.** The Commissioner shall
31 regulate and prescribe the manner of affixing and cancelling stamps, but no more than one
32 stamp shall be affixed to any package and that stamp shall represent the proper tax paid.

33 **G.S. 105-113.23. Stamp metering machines.** The Commissioner, if he shall deter- mine that
34 it is practicable in any case to permit licensed distributors to impress on or attach to each
35 package of cigarettes evidence of tax payment by means of a metering machine, in lieu of
36 stamps, may authorize any licensed distributor to use any metering machine approved by the
37 Commissioner, such machine to be sealed by the Commissioner before being used and used in
38 accordance with rules and regulations prescribed by the Commissioner. All costs and expenses
39 of procuring and using any metering machine shall be borne by the user.

40 **G.S. 105-113.24. Sale of stamps to out-of-State Distributors.** (a) In case the Commissioner
41 shall find that the collection of any tax imposed by this Article would be facilitated thereby, he
42 may authorize, under reasonable conditions, any distributor outside this State engaged in the
43 business of selling and shipping cigarettes into the State, upon complying with the rules and
44 regulations of the Commissioner, to purchase and affix or cause to be affixed on behalf of any
45 purchaser of cigarettes, who would otherwise be taxable therefor, the stamps required by this
46 Article, or may authorize the use of a machine by such person in the same manner and under
47 the same conditions as set forth in G.S. 105-1 13.23.

48 (b) Any such nonresident distributor shall be required to agree to submit his books,
49 accounts, and records to reasonable examination by the Commissioner or his duly authorized
50 agents. Each such nonresident distributor shall file with the Commissioner a performance bond

fulfilling the terms and conditions set forth with respect to bonds in subsection (d) of G.S. 105-113.13.

(c) Each such nonresident distributor, other than a foreign corporation which has qualified with the Secretary of State as doing business in this State shall, by a duly executed instrument filed in the office of the Secretary of State, constitute and appoint the Secretary of State his lawful attorney in fact upon whom any original process in any action or legal proceeding against such nonresident distributor arising out of any matter relating to this Article may be served, and therein agree that any original process against him so served shall be of the same force and effect as if served on him within this State, and that the authority thereof shall continue in force irrevocably so long as any such nonresident distributor shall remain liable for any taxes, interest and penalties under this Article.

(d) Any nonresident distributor who shall comply with the provisions of this Section may be licensed as a distributor.

G.S. 105-113.25. Redemption and refund. The Commissioner shall redeem any unused or mutilated, but identifiable, stamps that any distributor may present for redemption, and refund therefor the face value of said stamps, less the discount allowed at the time of the purchase of the stamps by said distributor. In the event any stamped cigarettes are shipped out of this State, or are sold to those agencies or instrumentalities which this State is prohibited from taxing under the Constitution or statutes of the United States, by any distributor, a refund of the face value of the said stamps less the discount allowed by the Commissioner at the time of the purchase of the stamps by said distributor, shall be made upon the application of the distributor on forms prescribed by the Commissioner together with such evidence and proof of sale as the Commissioner shall require.

G.S. 105-113.26. Records to be kept. Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all sales and such other information as is required under this Article. The kind and form of such records may be prescribed by the Commissioner and all records shall be so kept as to be adequate to enable him to determine any tax liability.

All such records shall be safely preserved for a period of three (3) years in such a manner to insure their security and accessibility for inspection by the Commissioner or his duly authorized agents. The Commissioner may, in his discretion, consent to the destruction of any such records at any time within said period.

G.S. 105-113.27. Unstamped cigarettes. (a) Except as otherwise provided in this Article, licensed distributors shall not sell, borrow, loan or exchange unstamped cigarettes to, from or with other licensed distributors.

(b) No person shall sell or offer for sale unstamped cigarettes.

(c) The possession of more than six hundred (600) unstamped cigarettes by any person other than a licensed distributor, shall be prima facie evidence that such cigarettes are possessed in violation of the provisions of this Article.

G.S. 105-113.28. Displaying unstamped cigarettes for sale. It shall be unlawful for any person to display for sale or offer for sale unstamped cigarettes within this State.

G.S. 105-113.29. Unlicensed place of business. It shall be unlawful for any person to maintain a place of business within this State required by this Article to be licensed to engage in the business of selling or offering for sale cigarettes without first obtaining such licenses.

G.S. 105-113.30 Records and reports. It shall be unlawful for any person who is required under the provisions of this Article to keep records or make reports, to fail to keep such records, refuse to keep such reports, make false entries in such records, fail to produce such records for inspection by the Commissioner or his duly authorized agents, fail to file a report, or make a false or fraudulent report or statement.

G.S. 105-113.31. Possession and Transportation of unstamped cigarettes; seizure and confiscation of vehicle or vessel. (a) It shall be unlawful for any person to transport unstamped

1 cigarettes in violation of the provisions of this Article, or to fail or refuse to comply with
2 regulations and administrative rules promulgated by the Commissioner in regard thereto. The
3 Commissioner may make reasonable rules and regulations governing quantities of untaxed
4 cigarettes, not exceeding six hundred (600), which may be brought into this State by any
5 transient, tourist, or person returning to this State after traveling outside this State, for the use
6 of such transient, tourist or person; and the possession or transportation of such quantities shall
7 not be subject to the penalties imposed by this Section.

8 (b)(1) Every person who shall transport cigarettes not stamped as required by this Article
9 upon the public highways, roads, streets or waterways of this State shall have in his actual
10 possession invoices or delivery tickets for such cigarettes which shall show the true name and
11 complete and exact address of the consignee or purchaser, the quantity and brands of the
12 cigarettes transported and the true name and complete and exact address of the person who has
13 paid or who shall assume the payment of the tax imposed by this Article or the tax, if any, of
14 the State or foreign country at the point of ultimate destination.

15 (2) Any common carrier which has issued a bill of lading for a shipment of cigarettes
16 and is without notice to itself or to any of its agents or employees that said cigarettes are not
17 stamped as required by this Article shall be deemed to have complied with this Article and the
18 vehicle or vessel in which said cigarettes are being transported shall not be subject to
19 confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as
20 the case may be, the cigarettes so transported, the vehicle or vessel in which the cigarettes are
21 being transported and any paraphernalia or devices used in connection with the unstamped
22 cigarettes are declared to be contraband goods and may be seized by any officer of the law,
23 who shall take possession of the vehicle or vessel and unstamped cigarettes therein, and shall
24 arrest any person in charge thereof.

25 (3) Such officer shall at once proceed against the person arrested, under the provisions
26 of this Article, in any court having competent jurisdiction; but the said vehicle or vessel shall
27 be returned to the owner upon execution by him of a good and valid bond, with sufficient
28 sureties, in a sum double the value of the property, which said bond shall be approved by said
29 officer and shall be conditioned to return said property to the custody of said officer on the day
30 of trial to abide the judgment of the court. All unstamped cigarettes seized under this Section
31 shall be held and shall, upon the acquittal of the person so charged, be returned to the
32 established owner.

33 (4) Unless the claimant can show that the unstamped cigarettes seized were not
34 transported in violation of this Article and that the property seized is his property, or that in the
35 case of property other than cigarettes, such property was used in transporting unstamped
36 cigarettes in violation of this Article without his knowledge or consent, with the right on the
37 part of the claimant to have a jury pass upon his claim, the court shall order a sale by public
38 auction of the property seized, and the officer making the sale, after deducting the cost of
39 stamps which he shall affix to said cigarettes upon sale, expenses of keeping the property, the
40 fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities,
41 which are established, by intervention or otherwise, at said hearing or in other proceeding
42 brought for said purpose as being bona fide and as having been created without the lienor
43 having any notice that the vehicle or vessel was being used for the unlawful transportation of
44 unstamped cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the
45 General Fund.

46 (5) All liens against property sold under the provisions of this Section shall be
47 transferred from the property to the proceeds of the sale of the property. If, however, no one
48 shall be found claiming the cigarettes, or the vehicle or vessel, the taking of the same, with a
49 description thereof, shall be advertised in some newspaper published in the city or county
50 where taken, or, if there be no newspaper published in such city or county, in a newspaper
51 having circulation in the county, once a week for two weeks and by notices posted in three

public places near the place of seizure, and if no claimant shall appear within ten (10) days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the State Treasurer for the General Fund.

(6) Nothing in this Section shall be construed to authorize any officer to search any vehicle or vessel or baggage of any person without a search warrant duly issued, except where the officer sees or has knowledge that there are unstamped cigarettes in such vehicle or vessel.

G.S. 105-113.32. Unstamped cigarettes subject to confiscation. All cigarettes subject to the tax imposed by this Act, to which stamps have not been affixed as required by this Act, together with any container in which they are stored, or displayed for sale (including but not limited to vending machines) are declared to be contraband goods and may be seized by any officer of the law, who shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested, under the provisions of this Article, in any court having competent jurisdiction and the disposition of said unstamped cigarettes and container shall be governed and controlled by the provisions of G.S. 105-113.31.

G.S. 105-113.33. Criminal penalties. Any person who violates any of the provisions of this Article for which no other punishment is specifically prescribed shall be guilty of a misdemeanor punishable by a fine or imprisonment or both in discretion of the Court.

G.S. 105-113.34. Forging or counterfeiting revenue stamps. Any person who falsely or fraudulently makes, forges, alters or counterfeits, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any stamps prepared or prescribed by the Commissioner under the authority of this Article, or who knowingly and wilfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited stamps for the purpose of evading the tax levied by this Article, shall be guilty of a felony, and upon conviction thereof shall be fined not more than two thousand dollars (\$2,000.00) or imprisoned in the State Prison for a term of not more than five (5) years, or both, in the discretion of the Court.

If any person secures, manufactures or causes to be secured or manufactured, or has in his possession any stamp or any counterfeit impression device not prescribed or authorized by the Commissioner, such person shall be guilty of a felony and subject to the punishment above provided for in the first paragraph of this Section.

G.S. 105-113.35. Interest and Penalty. If any person shall neglect, fail or refuse to pay any tax due under this Article, interest shall be added thereto at the rate of one-half of one per cent (1/2%) per month from the date due until paid and there shall also be added to said tax an amount equal to fifty per cent (50%) thereof.

G.S. 105-113.36. General administrative provisions of Revenue Act applicable. All provisions not inconsistent with this Article contained in Article 9 entitled 'General administration-penalties and remedies' of subchapter 1 of Chapter 105 of the General Statutes, including but not limited to administration, auditing, making returns, promulgation of administrative rules and regulations by the Commissioner, additional taxes, assessment procedure, imposition and collection of taxes of the lien thereof, assessments, refunds and penalties are hereby made a part of this Article and shall be applicable thereto.

G.S. 105-113.37. Commissioner to make rules and regulations. Subject to the provisions of G.S. 105-262, the Commissioner is hereby authorized and empowered to make all reasonable regulations and administrative rules necessary for the efficient administration and enforcement of this Article not inconsistent with the provisions of this Article. Upon request, he shall furnish any taxpayer with a copy of such rules and regulations. All provisions with respect to reviews and appeals from the Commissioner's decisions as provided by G.S. 105-241.2, G.S. 105-241.3 and G.S. 105-241.4 of the General Statutes shall be applicable to this Article.

G.S. 105-113.38. Tax to be paid only once. Whenever the tax levied by this Article has been computed and paid to the State with respect to any cigarettes as provided by this Article, and appropriate stamps affixed, the same shall not be required to be paid again to the State

1 regardless of how many times such cigarettes may thereafter be sold or resold, but the seller
2 may add to his sales price thereafter the amount of such tax.

3 **G.S. 105-113.39. Local units prohibited to tax.** No city, town or county shall levy any
4 privilege license tax with respect to the sale of cigarettes other than as permitted by Article 2 of
5 subchapter 1 of Chapter 105 of the General Statutes.

6 **G.S. 105-113.40. Effective date of this Article.** This Article shall be in full force and effect
7 on and after July 1, 1969, or on the first day of the month next after the ninetieth day from its
8 ratification, whichever is the later date. However, the Commissioner is authorized, prior to that
9 time, to do all things necessary to the implementation of the provisions of this Article,
10 including making regulations and administrative rules, procuring the manufacture of stamps,
11 and providing for sale of the same, in order to secure effective administration of this Article on
12 and after its effective date."

13 **Section 3.** Chapter 105 of the General Statutes is hereby amended by adding
14 immediately after the present Article 2, a new Article to be designated as Article 2B, and
15 reading as follows:

16 "Article 2B

17 Schedule B-B.

18 **G.S. 105-113.41. Short title.** This Article shall be known and cited as the 'Soft Drink Tax Act'.

19 **G.S. 105-113.42. Purpose of Article.** It is the purpose of this Article to provide a source of
20 additional revenue which shall be applied to the General Fund of the State.

21 **G.S. 105-113.43. Liability for tax.** Every person doing domestic or intrastate business within
22 this State and engaging in the business of selling, manufacturing, purchasing, consigning,
23 using, shipping or distributing, for the purpose of sale with- in this State, soft drinks of every
24 kind whatsoever, including but not limited to the following articles or things, viz: soda water,
25 ginger ale, coca-cola, lime-cola, pepsi-cola, near beer, fruit juices, vegetable juices, and all
26 fountain drinks and other beverages and things commonly designated as 'soft drinks' shall, for
27 the privilege of carrying on such business, be subject to the payment of a license tax which
28 shall be measured by and graduated in accordance with the sales of such person within the
29 State, except as may be otherwise provided in this Article.

30 Every person within the State of North Carolina, importing, receiving or acquiring from
31 without the State, or from any other source, beverages commonly designated as soft drinks as
32 contemplated by this Article, for use or consumption within North Carolina, shall be subject to
33 payment of the soft drink tax at the rates provided for the sale, offer for sale, or distribution of
34 such soft drinks.

35 **G.S. 105-113.44. Definitions.** As used in this Article, unless the context otherwise requires:

36 (a) 'Base products' means hot chocolate flavored drink mix, flavored milkshake bases,
37 concentrate products to which milk or other liquid is added to complete a soft drink, and all like
38 items or products as herein defined which will be taxed as syrups.

39 (b) 'Bottled' means enclosed in any closed or sealed glass, metal, paper or other type of
40 bottle, can, carton or container, regardless of the size of such container.

41 (c) 'Bottled soft drink' means any complete, finished, ready-to-use, non-alcoholic drink,
42 whether carbonated or not, such as soda water, ginger ale, nu-grape, coca- cola, lime-cola,
43 pepsi-cola, bud-wine, near-beer, fruit juice, vegetable juice, milk drinks when any flavoring or
44 syrup is added, cider, bottled carbonated water and all bottled preparations commonly referred
45 to as soft drinks of whatever kind or description.

46 (d) 'Commisisoner' means the North Carolina Commissioner of Revenue.

47 (e) 'Crowns' means crowns, caps and lids bearing any tax indicia other than stamps
48 evidencing the payment of the excise tax levied under this Article. 'Crowns' shall also include
49 waxed paper or plastic containers used by dairies upon which the tax indicia has been imprinted
50 by the manufacturer thereof.

(f) 'Distributor' includes any person who manufactures, bottles, compounds, mixes or purchases for sale to retail dealers or wholesale dealers any bottled soft drink, soft drink syrup or powder, or base product for mixing, making or compounding soft drinks.

(g) 'Excise tax' means the soft drink tax levied under G.S. 105-113.5.

(h) 'In this State' or 'Within this State' means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by, leased by or ceded to the United States of America.

(i) 'Natural fruit juice' means the natural liquid which results from the pressing of sound ripe fruit, and the liquid which results from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice.

(j) 'Natural liquid milk' means natural liquid milk regardless of butterfat content, and the liquid milk product which results from the reconstitution of natural milk concentrate, regardless of butterfat content, by the restoration of water to dehydrated or evaporated natural milk.

(k) 'Natural vegetable juice' means the natural liquid which results from the pressing of sound ripe vegetables or the liquid which results from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice.

(l) 'Person' includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate or any other group or combination acting as a unit, the State or any of its political subdivisions, and the plural as well as the singular number.

(m) 'Powders' means compressed powders, crystals, granules or tablets from which soft drinks can be made.

(n) 'Retail dealer' includes every person, other than a distributor or wholesale dealer, who makes, mixes, compounds or manufactures any drink from a soft drink syrup or powder or base product, and sells or otherwise dispenses the same to the ultimate consumer, and every person, other than a distributor or wholesale dealer, who sells or otherwise dispenses any bottled soft drink to the ultimate consumer.

(o) 'Selling' or 'sale' means any sale, transfer, exchange, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever.

(p) 'Simple syrup' means the product resulting from the making, mixing, compounding or manufacturing by dissolving sugar and water or any other mixture that will create syrup to which may be added concentrates or extracts.

(q) 'Soda fountain' includes all places where soft drinks are compounded for sale, including automatic vending machines.

(r) 'Soft drink syrups and powders' includes the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit juice, milk or any other product suitable to make soft drinks, among such syrups being such products as coca-cola syrup, chero-cola syrup, pepsy-cola syrup, Dr. Pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as kool-aid, oh boy drink, tip-top, miracle aid and all other similar products. Concentrated natural frozen or unfrozen fruit juices or vegetable juices when used domestically are specifically excluded from this definition.

(s) 'Stamp' means the North Carolina tax paid stamp evidencing the payment of the excise tax levied by this Article, and which may be used as permitted by the Commissioner in lieu of tax paid crowns.

(t) 'Wholesale dealer' includes any person who sells bottled soft drinks, soft drink syrups or powders, or base products for mixing, compounding or making soft drinks to retail dealers or other wholesale dealers for resale purposes.

G.S. 105-113.45. Taxation Rate. (a) A soft drink excise tax is hereby levied and imposed on and after midnight, September 30, 1969, upon the sale, use, handling and distribution of all soft drinks, soft drink syrups and powders, base products and other items referred to in this Section.

(b) The rate of tax on each bottled soft drink shall be one cent (1%).

(c) The rate of tax on each gallon of soft drink syrup or simple syrup shall be one dollar (\$1.00), and on a fraction of a gallon the rate shall be an amount which represents one dollar (\$1.00) multiplied by the same fraction of a gallon. The rate of tax on each ounce or fraction of an ounce of soft drink syrup or simple syrup shall be four-fifths of a cent ($4/5\text{¢}$), and no exemption or refund shall be allowed on such syrup even though it may subsequently be diverted to some purpose other than the making of soft drinks.

(d) The rate of tax on dry soft drink powders and base products which are used to make soft drinks without being converted into syrup shall be one cent (1¢) per ounce or fraction thereof of the dry powder or base product weight. However, the tax on dry soft drink powder or base product which is to be converted into syrup shall be the same as that which would be due upon the syrup produced, if the syrup were being taxed according to the rates set out in subsection (c) above.

(e) The excise tax herein levied on syrups, powders and base products shall not apply to syrups, powders and base products used by persons in the manufacture of bottled soft drinks which are otherwise subject to tax under this Article. The Commissioner may by administrative rules or regulation, provide for the storage of such syrups, powders and base products when they are not for use in the manufacture of bottled soft drinks.

G.S. 105-113.46. Exemption of certain milk drinks. All natural liquid milk drinks produced by farmers or dairies shall be exempt from the payment of the soft drink excise tax. Where a product other than the above is produced, such product is subject to the tax unless otherwise exempt under this Article.

G.S. 105-113.47. Natural fruit or vegetable juice or natural liquid milk drinks exempted from tax. (a) All bottled soft drinks containing thirty-five per cent (35%) or more of natural fruit or vegetable juice and all bottled natural liquid milk drinks containing thirty-five per cent (35%) or more of natural liquid milk, are exempt from the excise tax imposed by this Article, except that this exemption shall not apply to any fruit or vegetable juice drink to which has been added any coloring, artificial flavoring or preservative. Sugar, salt or vitamins shall not be construed to be an artificial flavor or preservative.

(b) Any bottled soft drink for which exemption is claimed under this Section must be registered with the Commissioner. No bottled soft drink shall be entitled to the exemption until registration has been accomplished by the filing of an application for exemption on such form as may be prescribed by the Commissioner, which form shall include an affidavit setting forth the complete and itemized formula by volume of the drink therein referred to, and the failure to submit such affidavit shall be prima facie evidence that such bottled soft drink is not exempt. All bottled soft drinks which are not so registered and do not have affixed thereto the proper stamps or crowns shall be subject to confiscation. The Commissioner or his duly authorized representative may at any time check the formulas or the manufacturing of such bottled soft drinks for which exemption is claimed under this Section and in addition thereto, the Commissioner or his duly authorized representative may at any time take samples of any product for which exemption has been claimed, from any and all persons offering such product for sale for the purpose of ascertaining by analysis the contents thereof. The sample shall be clearly marked for identification and such sample may be turned over to any registered chemist designated by the Commissioner for the purpose of analysis. If such investigation establishes that such bottled soft drink contains less than thirty-five per cent (35%) by volume of natural

1 fruit juice, natural vegetable juice or natural liquid milk, or if any person engaged in selling,
2 manufacturing, purchasing, consigning, using, shipping or distributing for the purpose of sale
3 within this State who has applied for an exemption hereunder fails or refuses to allow the
4 Commissioner or his duly authorized representative to check the formulas or inspect the
5 manufacturing of such bottled soft drinks, the excise tax imposed by this Article shall apply to
6 all sales of such products and all such products offered for sale and not properly stamped shall
7 be subject to confiscation until such person permits the Commissioner to examine the formulas
8 or inspect the manufacturing of such bottled soft drinks.

9 (c) Except in accordance with proper judicial order or as otherwise provided by law, it
10 shall be unlawful for the Commissioner or any deputy, agent, clerk or other officer or employee
11 or any other person acting in a confidential relationship with the Commissioner to divulge or
12 make known in any manner any formula or any particulars of any formula pertaining to any
13 drink hereinabove referred to. However, such prohibition shall not be construed to prohibit the
14 publication of whether or not such bottled soft drinks contain thirty-five per cent (35%) or more
15 of natural fruit or vegetable juice or thirty-five per cent (35%) or more of natural liquid milk,
16 nor shall it be construed to prohibit the inspection by the Attorney General or other legal
17 representative of the State of the formula of any taxpayer who shall bring action to set aside or
18 review the tax base thereon or against whom an action or proceeding has been instituted to
19 recover any tax imposed by this Article.

20 (d) Where any product for which exemption is claimed under this Section is found to
21 contain less than thirty-five percent (35%) by volume of natural fruit juice, natural vegetable
22 juice, or natural liquid milk, the excise tax imposed by this Article shall apply to all sales of
23 such product, and all such products offered for sale and not properly stamped shall be subject to
24 confiscation.

25 **G.S. 105-113.48. Exemption of goods intended for out-of-state sale.** It shall not be
26 necessary to pay any tax levied by this Article with respect to any bottled soft drinks, soft drink
27 syrups and powders, base products and other items taxed under this Article manufactured or
28 acquired for sale or distribution outside this State, or to affix taxpaid stamps or crowns thereto,
29 provided the same are manufactured, acquired, stored, and distributed, and records are
30 maintained, in accordance with the rules and regulations of the Commissioner. The
31 Commissioner is hereby authorized to promulgate such rules and regulations with respect
32 thereto as will exclude from the measure of excise tax levied pursuant to this Article the sales
33 of such goods or articles of merchandise outside this State and at the same time protect the
34 interests of this State in collecting all taxes lawfully due to the State.

35 **G.S. 105-113.49. Exemption of coffee and tea.** All coffee and tea, whether in liquid, powder
36 or natural form shall be exempt from the tax imposed by this Article.

37 **G.S. 105-113.50. Soft drink licenses required.** (a) Distributors and wholesale dealers shall
38 obtain for each place of business a continuing soft drink license for which a fee of twenty-five
39 dollars (\$25.00) shall be paid. For the purpose of this Section, 'place of business' means any
40 place where soft drinks are manufactured by a distributor, or any place where unstamped
41 bottled soft drinks, soft drink syrups and powders, base products and other items taxed under
42 this Article are received or stored by a distributor or wholesale dealer.

43 (b) Out-of-state distributors and wholesale dealers may obtain appropriate distributors'
44 or wholesale dealers' licenses upon compliance with the provisions of this Article and such
45 regulations and administrative rules as may be issued by the Commissioner hereunder, for
46 which a fee of twenty-five dollars (\$25.00) shall be paid for each such soft drink license.

47 (c) Each retail dealer manufacturing or purchasing not previously taxed syrups,
48 powders or base products shall secure a continuing soft drink license for which a fee of five
49 dollars (\$5.00) shall be paid for each place of business at which such unstamped syrups,
50 powders or base products are received or at which place such retail dealer manufactures them.

(d) Distributors, wholesale dealers and retail dealers licensed under this Section shall file such reports with the Commissioner as he may require not later than the 15th day of each month showing transactions for the preceeding month.

G.S. 105-113.51. Affixing of crowns and stamps to containers: crowns and stamps not transferable. (a) Any bottled soft drink offered for sale shall within twenty- four hours of its manufacture or receipt in this State have affixed to it a North Carolina taxpaid stamp or a North Carolina taxpaid crown at the rate provided for in this Article.

(b) The distributor or dealer who first distributes, sells, uses, consumes or handles bottled soft drinks, syrups, powders, base products and other items subject to the soft drink excise tax is subject to the tax unless taxpaid stamps or crowns have previously been affixed. The distributor, wholesale dealer or retail dealer, or any person who is the original consignee of any bottled soft drink, soft drink syrup, powder, base product or other item subject to the soft drink excise tax manufactured or produced outside this State, or who brings such into this State, shall pay the excise tax.

(c) Taxpaid stamps shall be affixed to each individual container of soft drink syrups, powders, and base products by wholesale dealers or distributors within forty- eight hours after such syrups, powders, or base products are received or made by them and by retail dealers within twenty-four hours after such syrups, powders or base products are received by them, and in any event the containers must be stamped before such products are used in the preparation of soft drinks.

(d) The payment of the excise tax provided for in this Article shall be evidenced by the affixing of taxpaid stamps or crowns to the original containers and the stamps and crowns provided for in this Act shall not be transferable to any person other than their original purchaser.

G.S. 105-113.52. Taxpaid stamps; rules and regulations; cancellation; discount. (a) The Commissioner shall make arrangements with some manufacturer to manufacture the taxpaid stamps provided for in this Article. The Commissioner shall prescribe the form, design, denominations and such other matters as may be necessary with respect to said stamps. The Commissioner may sell such stamps directly to taxpayers and may also make arrangements for release of taxpaid stamps to taxpayers by the manufacturer. Said manufacturer shall furnish such bond as the Commissioner may deem advisable, in such penalty and upon such conditions as in the opinion of the Commissioner will adequately protect the State in the collection of the excise tax imposed by this Article. Such bond shall be executed by the manufacturer as principal and by an indemnity company licensed to do business under the insurance laws of this State, as surety. The costs of manufacture, transportation and distribution of said stamps shall be computed in accordance with administrative rules or regulations of the Commissioner and payment thereof pursuant to such rules and regulations of the Commissioner may be required in addition to the amount of taxes which said stamps evidence regardless of whether said stamps are released or distributed by the Commissioner or by the manufacturer pursuant to authorization from the Commissioner.

(b) Upon the sale of taxpaid stamps, the Commissioner shall allow a discount of five per cent (5%) of the entire amount of any sale of fifty dollars (\$50.00) or more of said stamps. On sales of stamps of less than fifty dollars (\$50.00), no discount shall be allowed. Such discount shall apply only to the tax and not the manufacturer's price or transportation or distribution costs.

(c) When stamps are attached to bottled soft drinks, or to containers of soft drink powders or base products, no cancellation or obliteration of them shall be required, but stamps affixed to containers of syrup to be used at soda fountains shall be canceled by the person affixing them by writing or stamping with ink or indelible pencil across the stamps his initials or name and the date on which the stamps were affixed. When the container to which the stamp

has been affixed has been emptied, the stamp must be obliterated by making at least three incisions crisscross through the stamp with a knife or other sharp instrument.

(d) Any person who makes use of any stamp to denote the payment of the tax imposed by this Article without canceling or obliterating such stamps if required to do so by this Section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars (\$100.00) or be imprisoned for not more than thirty days for each offense.

G.S. 105-113.53. Stamps not required when crowns used. If a distributor of bottled soft drinks either within or without the State shall use taxpaid crowns as hereinafter provided, such distributor shall be relieved of the duty of affixing taxpaid stamps to each individual bottle. Whenever the Commissioner deems it to be advantageous for the effective and efficient enforcement of this Article, he may require that such crowns be used in lieu of stamps.

G.S. 105-113.54. Taxpaid crowns; rules and regulations; discount on sale of crowns. (a) The Commissioner shall prescribe the form, design, denominations and such other matters as may be necessary with respect to taxpaid crowns. The Commissioner shall make arrangements with one or more manufacturers to manufacture, sell and distribute such crowns and shall require of such persons manufacturing, selling and distributing such crowns a bond payable to the State of North Carolina in such penalty and upon such conditions as in the opinion of the Commissioner will adequately protect the State in the collection of the taxes levied by this Article. The bond shall be executed by the manufacturer as principal and by an indemnity company licensed to do business under the insurance laws of this State, as surety. The Commissioner shall promulgate administrative rules and regulations governing the purchase, sale and distribution of crowns and all purchasers of crowns shall be required to purchase crowns in accordance with administrative rules and regulations promulgated by the Commissioner.

(b) The price to be paid by purchasers of crowns shall be the manufacturer's price plus all transportation charges to the consignee at destination in addition to the tax represented by the crowns.

(c) The Commissioner shall allow to each purchaser of taxpaid crowns, whether for cash or credit, a discount of eight per cent (8%) of the excise tax represented by such crowns. No compensation or refund shall be made for taxpaid soft drinks given as free goods or as advertising, or for losses sustained by spoilage or breakage incident to the production, sale and distribution of such drinks, or to the loss or destruction of any taxpaid stamps or crowns.

G.S. 105-113.55. Payment for stamps and crowns. (a) Payment in full shall accompany application for purchase of stamps. However, a licensed distributor may purchase crowns on credit if such distributor has filed with the Commissioner a bond satisfactory to the Commissioner in an amount not less than one hundred twenty-five per cent (125%) of the amount of credit authorized and prior to the date any such credit purchases are made. Such licensed distributor shall pay for such credit purchases of crowns on or before the tenth day of the month next following the date of purchase, and the bond herein required shall be conditioned upon such payment. The bond shall be executed by the distributor as principal and by an indemnity company licensed to do business under the insurance laws of this State, as surety.

(b) Except where credit purchases of crowns are made, payment for stamps and crowns must be made by cash, cashier's check, certified check or money order. Personal checks may be accepted in payment of monthly amount due on credit sales, pursuant to such regulations or administrative rules as the Commissioner may adopt.

G.S. 105-113.56. Provisions for refund; discount. Whenever any person shall receive permission from the Commissioner to return any unused taxpaid crowns or stamps which have not been canceled and when such unused taxpaid crowns and stamps have been returned as the Commissioner shall direct, the Commissioner is authorized to make a refund for such crowns or stamps, less any discount which may have been allowed to the purchaser.

G.S. 105-113.57. Records required of ingredients received. Every person engaged in the business of making, mixing or compounding bottled soft drinks, soft drink syrups and powders, base products and other items taxed under this Article shall keep a distinct, legible and permanent record of all extracts, flavoring, sugar, syrup or other ingredients except water received by him that may be useful in making, mixing or compounding soft drinks, and he shall retain invoices on all such purchases for a period of not less than three years from the date thereof. Such records shall show the quantity of such commodities received, the date of receipt thereof and the name of the person from whom they were secured or received and shall be open at all times for inspection by the Commissioner or his duly authorized representative.

G.S. 105-113.58. Records of sale to be kept. Every distributor, wholesale dealer and retail dealer shall keep an accurate account of all daily sales, sales slips, bills, invoices, delivery slips, statements, bills of lading, freight bills, credit memoranda and similar documents for a period of not less than three years from the date shown thereon. All such records shall be open at all times for inspection by the Commissioner or his duly authorized representative.

G.S. 105-113.59. Theoretical calculation of tax. Upon the records required to be kept pursuant to this Article and upon such other information as may be obtained, the Commissioner shall calculate the number or amount of soft drinks that are ordinarily manufactured, mixed or compounded from such ingredients in accordance with the standard or average formula used therefor by bottlers, mixers and compounders of soft drinks and the result thus obtained shall be prima facie evidence of the sale thereof. However, nothing contained in this Section shall be construed to prevent any bottler, mixer or compounder of soft drinks from showing that he has actually not sold the whole or any part of the amount of soft drinks as determined by the above method of calculation. The Commissioner shall, in making the above provided calculation, allow as a deduction the reasonable average loss for waste and breakage, but not exceeding discount allowed on sale of stamps.

G.S. 105-113.60. Manufacturer as well as dealer subject to penalties. When any item, taxable under the provisions of this Article and to which a stamp or crown is required to be affixed, is found in the possession of any retail dealer without having the stamps or crowns affixed, the distributor or wholesale dealer selling such articles within this State shall be subject to the penalties provided in this Article, as well as the retail dealer in whose possession the goods are located.

G.S. 105-113.61. Criminal acts. (a) It shall be unlawful for any person willfully to:

- (1) Remove, wash, restore, alter or otherwise prepare any adhesive stamp or crown with intent to use it or cause it to be used after it has already been used;
- (2) Knowingly or willfully buy, sell, offer for sale or give away any such washed, restored or altered stamp or crown to any person;
- (3) Knowingly use or have in his possession any washed, restored or altered stamps or crowns which have been removed from the articles to which they have been previously affixed;
- (4) For the purpose of indicating the payment of any tax under this Article, re-use any stamp or crown that has theretofore been used for the purpose of denoting payment of the tax provided in this Article.

(b) It shall be unlawful for any person to prepare, buy, sell, offer for sale or have in his possession any counterfeit, or false stamps or crowns, or any stamps or crowns printed, fabricated or manufactured contrary to the provisions of this Article. Violation of subsection (b) of this Section is hereby made a felony punishable by a fine of not more than five thousand dollars (\$5,000.00) or imprisonment in the State prison for not more than five (5) years, or both, in the discretion of the court.

1 **G.S. 105-113.62. Criminal law penalties.** Violation of any provision of this Article, except as
2 otherwise specifically provided in this Article, is hereby made a misdemeanor, punishable by
3 fine or imprisonment, or both, in the discretion of the court.

4 **G.S. 105-113.63. Rules and regulations.** The Commissioner is hereby authorized and directed
5 to make all reasonable rules and regulations necessary for the efficient administration and
6 enforcement of this Article, not inconsistent with the provisions of this Article.

7 **G.S. 105-113.64. General administrative provisions of Revenue Act applicable.** All
8 provisions of Article 9 of subchapter I of Chapter 105 of the General Statutes, not inconsistent
9 herewith, are hereby made applicable to this Article.

10 **G.S. 105-113.65. Tax with respect to October 1, 1969 inventory.** (a) Every person subject to
11 the taxes levied by this Article who, on October 1, 1969, has bottled soft drinks on hand in this
12 State shall file a complete inventory thereof as of the opening of business on October 1, 1969,
13 within seventy-two hours thereafter. The Commissioner shall arrange with some manufacturer
14 to manufacture "inventory stamps" in such appropriate form and design as he shall determine,
15 which shall, upon application, be furnished to distributors and wholesale dealers at cost,
16 including transportation, between September 20, 1969 and October 3, 1969. No order or
17 application received after October 3, 1969, shall be filled by the Commissioner, and no
18 distributor or wholesale dealer shall, after September 30, 1969, sell any bottled soft drink which
19 does not bear either an "inventory stamp" as herein provided for or a stamp or crown
20 evidencing payment of the excise tax levied in this Article. No distributor or wholesale dealer
21 shall borrow, exchange, sell or give away any "inventory stamp". Every distributor and
22 wholesale dealer shall affix one "inventory stamp" to each bottled soft drink which he has on
23 hand in this State on October 1, 1969 within 48 hours after the effective date of this Act. Every
24 "inventory stamp" not so affixed shall be returned to the Commissioner, without any refund
25 being made therefor, at the time of filing the inventory herein required. No retail dealer shall be
26 required to affix "inventory stamps" to bottled soft drinks on hand on October 1, 1969;
27 provided, however, that no person shall sell any bottled soft drink after November 30, 1969
28 unless either a crown or a stamp evidencing payment of the excise tax levied in this Article, has
29 been affixed thereto.

30 (b) Every person subject to the taxes levied by this Article who, on October 1, 1969, has
31 on hand any article, goods or merchandise taxed by this Article or with respect to which a tax is
32 computed under this Article, other than bottled soft drinks, shall file a complete inventory
33 thereof as of the opening of business on October 1, 1969, within twenty (20) days thereafter,
34 and shall pay to the Commissioner at the time of filing such inventory a tax with respect thereto
35 computed at the rates set forth in this Article. All the provisions of this Article relative to the
36 collection, verification and administration of the taxes imposed by this Article shall, insofar as
37 pertinent, be applicable to the tax imposed by this subsection, but the affixing of taxpaid stamps
38 or taxpaid crowns as evidence of the payment of such tax by retail dealers shall not be
39 necessary except as the Commissioner by regulation may require. However, the sale of any
40 articles for resale shall not be permitted under this subsection until the appropriate taxes have
41 been paid and the appropriate taxpaid stamps or crowns affixed unless the Commissioner
42 permits otherwise.

43 **G.S. 105-113.66. Federal Constitution and statutes.** Any activities which this Article may
44 purport to tax in violation of the Constitution of the United States or any Federal statute are
45 hereby expressly exempted from taxation under this Article.

46 **G.S. 105-113.67. Effective date of this Article.** This Article shall be in full force and effect
47 on and after October 1, 1969. However, the Commissioner is authorized to do all things needful
48 before October 1, 1969, including making rules and regulations, procuring the manufacture of
49 stamps and crowns, and providing for sale of the same, in order to secure effective
50 administration of this Article on and after October 1, 1969."

Sec. 4. The Individual Income Tax Act, being Article 4, Schedule D, Division II of Chapter 105 of the General Statutes, is hereby amended as follows:

(a) Subsection (8) of G.S. 105-135, as the same appears in the 1967 Cumulative Supplement to Volume 2D of the General Statutes, is hereby amended by striking out the entire Section and inserting in lieu thereof the following:

"(8) A 'head of household' is a single individual, a widow, a widower, or a divorced individual who maintains a household, as hereinafter defined, which constitutes the principal place of abode during the major portion (183 days or more) of the taxable year of himself, herself, or his or her closely related dependent. An individual shall be considered as maintaining a household for the purposes of this subsection only if over half the cost of maintaining the household during the taxable year is furnished by such individual. A 'closely related dependent' for purposes of this subsection shall be an individual for whom a six hundred dollar (\$600.00) exemption is allowable under G. S. 105-149 (a) (5)a. A 'household' for purposes of this subsection shall be a place of abode which shall include those accommodations normally required for both eating and sleeping."

(b) Subdivision (2) of subsection (a) of G. S. 105-149, as the same appears in the 1967 Cumulative Supplement to Volume 2D of the General Statutes, is hereby amended by striking out the entire second sentence beginning with "In the case of an individual" and ending with "of G.S. 105-149", and by adding a new subdivision to be designated as subdivision (2a) as follows:

"(2a) In the case of an individual who qualifies as 'head of household' as defined in subsection (8) of G.S. 105-135, two thousand dollars (\$2,000.00), but the 'head of household' exemption shall not be allowable to a married woman living with her husband except as provided in subsection (c)(2) of this Section. The 'head of household' exemption shall be in lieu of and not in addition to the exemptions established in subdivisions (1), (2), (4), (6) and (7) of subsection (a). Only one 'head of household' exemption shall be allowable with respect to any one household, as the term 'household' is defined in subsection (8) of G. S. 105-135, and no individual shall be entitled to more than one 'head of household' exemption."

Sec. 5. The North Carolina Sales and Use Tax Act, being Article 5 of Chapter 105 of the General Statutes, is hereby amended as follows: (a) Subsection (1) of G.S. 105-164.4, as the same appears in the 1967 Cumulative Supplement to Volume 2D of the General Statutes, is hereby amended by striking out in line eleven (11) and in lines thirty-one (31) and thirty-two (32) the words and figures "one and one-half per cent (1 1/2%)" and inserting in lieu thereof the words and figures "two per cent (2%)".

Sec. 6. Section 228.12 of Article 8C of Chapter 105 of the General Statutes (Section 105-228.12) is hereby amended by striking out on line 7 the words and figures "four and one-half per cent (4 1/2%)" and substituting in lieu thereof the words and figures "six per cent (6%)".

Sec. 7. Article 8D of Chapter 105 of the General Statutes is hereby amended by: (1) Striking on line 3 of Section 105-228.23 the words and figures "six cents (6^)" and by substituting in lieu thereof the words and figures "seven and one-half cents (7 1/20)"; (2) Striking on line 3 of Section 105-228.24 the words and figures "six per cent (6%)" and by substituting in lieu thereof the words and figures "seven and one-half per cent (7 1/2%)".

Sec. 8. This Act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable Section hereof.

Sec. 9. All laws and clauses of laws in conflict with this Act are hereby repealed.

1 **Sec. 10.** Sections 1, 5, 6 and 7 of this Act shall be effective on and after July 1,
2 1969. Section 2 shall be effective on and after July 1, 1969, or on the first day of the month
3 next after the ninetieth day from ratification of this Act. Section 3 shall be effective on and after
4 October 1, 1969. Section 4 shall be effective and shall apply to all taxable years beginning on
5 or after January 1, 1969.

6 In the General Assembly read three times and ratified, this the 27th day of June,
7 1969.