

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2009-559  
SENATE BILL 777**

AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS, TO PROHIBIT INTEGRATED WHOLESALE DEALERS FROM SELLING, BORROWING, LOANING, OR EXCHANGING NON-TAX-PAID TOBACCO PRODUCTS OTHER THAN CIGARETTES TO, FROM, OR WITH OTHER INTEGRATED WHOLESALE DEALERS, AND TO REQUIRE PERSONS TRANSPORTING OTHER TOBACCO PRODUCTS TO FILE A SHIPPING REPORT WITH THE SECRETARY OF REVENUE.

The General Assembly of North Carolina enacts:

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

**"§ 105-113.4. Definitions.**

The following definitions apply in this Article:

- (1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.
- (1a) Cigarette. – Any of the following:
  - a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.
  - b. A roll of tobacco wrapped in a substance that contains tobacco and that, 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 a consumer as a cigarette described in subpart a. of this subdivision.
- (2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.
- (3) Distributor. – Either of the following:
  - a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.
  - b. ~~A person who manufactures or produces cigarettes or causes them to be manufactured or produced.~~ manufacturer of cigarettes.
- (4) Repealed by Session Laws 1991, c. 689, s. 267.
- (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, ~~is the only person to whom the manufacturer sells its products,~~ and is not a retail dealer. An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.
- (5) Licensed distributor. – A distributor licensed under Part 2 of this Article.
- (6) Manufacturer. – A person who ~~manufactures or produces tobacco products~~ products or a person who contracts with another person to produce



tobacco products and is the exclusive purchaser of the products under the contract.

- (7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.
- (8) Person. – Defined in G.S. 105-228.90.
- (9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.
- (10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
- (10a) Secretary. – The Secretary of Revenue.
- (11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.
- (12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- (13) Use. – 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. The term includes the keeping or retention of cigarettes for use.
- (14) Wholesale dealer. – ~~A~~ Either of the following:
  - a. A person who ~~makes tobacco products other than cigarettes or who~~ acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.
  - b. A manufacturer of tobacco products other than cigarettes."

**SECTION 2.** G.S. 105-113.35 is amended by adding a new subsection to read:

"(d1) Limitation. – Except as otherwise provided in this Article, integrated wholesale dealers may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with other integrated wholesale dealers."

**SECTION 3.** G.S. 105-113.37 is amended by adding a new subsection to read:

"(d) Shipping Report. – Any person who transports other tobacco products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary."

**SECTION 4.** This act becomes effective September 1, 2009.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of August, 2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 10:53 a.m. this 28<sup>th</sup> day of August, 2009