Article 2A.

Tobacco Products Tax.

Part 1. General Provisions.

§ 105-113.2. Short title.

This Article may be cited as the "Tobacco Products Tax Act" or "Tobacco Products Tax Article." (1969, c. 1075, s. 2; 1991, c. 689, s. 266; 1998-98, s. 56.)

§ 105-113.3. Scope of tax; administration.

(a) Scope. – The taxes imposed by this Article shall be collected only once on the same tobacco product. Except as permitted by Article 2 of this Chapter, a city or county may not levy a privilege license tax on the sale of tobacco products.

(b) Administration. – Article 9 of this Chapter applies to this Article. (1969, c. 1075, s. 2; 1991, c. 689, s. 268; 1998-212, s. 29A.14(d).)

§ 105-113.4. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

(1b) Alternative nicotine product. – A noncombustible product that contains nicotine, whether natural or synthetic, but does not contain tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, ingested, or by other means. This term does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(1c) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(1d) 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.

(1k) Consumable product. – Any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

(1n) Consumer. – An individual who purchases, receives, or possesses tobacco products for personal consumption and not for resale.

(2) Cost price. – The actual price paid by the person liable for the tax, before any discount, rebate, or allowance, for an item identified as a stock keeping unit by a unique code or identifier representing the item that is subject to the tax imposed by Part 3 of this Article.

(2d) Delivery sale. – A sale of cigarettes, smokeless tobacco, or vapor products to a consumer in this State in which either of the following apply:

a. The consumer submits the order for the sale by telephone, mail, the internet or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order.
b. The cigarettes, smokeless tobacco, or vapor products are delivered via mail or a delivery service.

(2e) Delivery seller. – A person located within or outside this State who makes a delivery sale.

(2f) Delivery service. – A person engaged in the commercial delivery of letters, packages, or other containers.

(3) Distributor. – Any of the following:
a. A person, wherever resident or located, who purchases nontax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.
b. A manufacturer of cigarettes.
c. A delivery seller 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, and is not a retail dealer.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who produces tobacco 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.

(8a) Remote sale. – A sale of tobacco products other than cigarettes, smokeless tobacco, or vapor products to a consumer in this State in which either of the following applies:
a. The consumer submits the order for the sale by telephone, mail, the internet, or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order.
b. The tobacco products other than cigarettes, smokeless tobacco, or vapor products are delivered via mail or a delivery service.

(8b) Remote seller. – A person located within or outside this State who makes a remote sale.

(9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product, including a remote seller or a delivery seller.

(10) Sale. – A transfer of possession, transfer of ownership, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(10a) Secretary. – The Secretary of Revenue.

(10b) Smokeless tobacco. – Any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or

nasal cavity or otherwise consumed without being combusted. The term includes snuff.

(10d) Snuff. – A tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked.

(11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(11a) Tobacco product. – A cigarette, a cigar, a vapor product, an alternative nicotine product, 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.

(13a) Vapor product. – Any nonlighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine, however derived, in a solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(14) Wholesale dealer. – Either of the following:

a. A person 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. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 267; 1993, c. 354, s. 7; c. 442, s. 1; 2007-435, s. 2; 2009-559, s. 1; 2011-330, s. 2(a); 2014-3, s. 15.1(a); 2019-169, s. 4.7(a); 2020-58, s. 2.1; 2021-180, s. 42.9(a); 2023-12, ss. 3.1, 3.2(a); 2023-134, s. 42.18(a); 2025-25, s. 29(3); 2026-31, s. 4.11(a).)

§ 105-113.4A. Licenses.

(a) General. – To obtain or renew a license required by this Article, an applicant must file an application with the Secretary on a form provided by the Secretary and pay the tax due for the license. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. A license is not transferable or assignable and must be displayed in a conspicuous place at each place of business for which it is issued.

(b) Requirements. – An applicant for a license must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant for a license is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant for a license is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.
(4) If the applicant for a license is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Denial. – The Secretary may investigate an applicant for a license required under this Article to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed under this Article. The Secretary may refuse to issue or renew a license to an applicant that has done any of the following:
(1) Submitted false or misleading information on its application.
(2) Had a license issued under this Article revoked by the Secretary.
(3) Had a tobacco products license or registration issued by another state revoked.
(4) Been convicted of fraud or misrepresentation.
(5) Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.
(6) Failed to remit payment for a tax debt under this Chapter. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
(7) Failed to file a return due under this Chapter.
(8) Failed to meet the requirements set out in subsection (b) of this section.

(d) Refund. – A refund of a license tax is allowed only when the tax was collected or paid in error. No refund is allowed when a licensee cancels a license or the Secretary revokes a license.

(e) Duplicate or Amended License. – Upon application to the Secretary, a licensee may obtain without charge a duplicate or amended license as follows:
(1) A duplicate license, if the licensee establishes that the original license has been lost, destroyed, or defaced.
(2) An amended license, if the licensee establishes that the location of the place of business for which the license was issued has changed.

(f) Information on License. – The Secretary must include the following information on each license required by this Article:
(1) The legal name of the licensee.
(2) The name under which the licensee conducts business.
(3) The physical address of the place of business of the licensee.
(4) The account number assigned to the license by the Department.

(g) Records. – The Secretary must keep a record of the following:
(1) Applicants for a license under this Article.
(2) Persons to whom a license has been issued under this Article.
(3) Persons that hold a current license issued under this Article, by license category.

(h) Lists. – The Secretary must make available the list required under subdivision (3) of subsection (g) of this section upon request of a manufacturer that is a licensee under this Article. The list must state the name, account number, and business address of each licensee on the list. (1991 (Reg. Sess., 1992), c. 955, s. 3; 2013-414, s. 22(a); 2017-204, s. 4.3(a); 2019-169, ss. 4.1(a), 4.2(a); 2020-58, s. 2.2(a); 2023-12, s. 3.3.)

§ 105-113.4B. Cancellation or revocation of license.

(a) Cancellation. – The Secretary may cancel a license issued under this Article upon the written request of the licensee. The licensee's request must include a proposed effective date of

cancellation. The licensee must return the license to the Secretary on or before the proposed effective date. If the licensee's request does not include a proposed effective date of cancellation, the license is cancelled 15 days after the Department receives the written request. If the license is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned. The Secretary shall notify the licensee when the license is cancelled.

(a1) Summary Revocation and Procedure. – The Secretary may summarily revoke a license issued under this Article when the Secretary determines that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. The Secretary must send a revoked licensee a notice of the revocation and a notice of hearing. The hearing must be held within 10 days after the date of the notice of revocation unless the revoked licensee requests, before the day of the hearing, that the hearing be rescheduled. Upon receipt of a timely request, the Secretary must reschedule the hearing and provide at least 10 days' notice of the rescheduled hearing. The revocation is not stayed pending the hearing decision. A notice of hearing under this subsection must be in writing and indicate the date, time, and place of the hearing. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the revoked licensee in writing within 10 days of the hearing. The final decision must state the basis for the decision. The statement of the basis of a revocation does not limit the Department from changing the basis.

(a2) Non-Summary Revocation. – The Secretary may revoke the license of a licensee that commits one or more of the following acts after affording the licensee an opportunity to have a hearing as provided in subsections (a3) through (b2) of this section:

(1) Fails to obtain a license in a timely manner or for all places of business as required by this Article.
(2) Willfully fails to file a return required by this Article.
(3) Willfully fails to pay a tax when due under this Article.
(4) Makes a false statement in an application or return required under this Article.
(5) Fails to keep records as required by this Article.
(6) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.
(7) Fails to disclose the correct amount of tobacco product taxable in this State.
(8) Fails to file a replacement bond or an additional bond if required by the Secretary under this Article.
(9) Violates G.S. 14-401.18.
(10) Fails to meet or maintain the requirements set out in G.S. 105-113.4A(b).

(a3) Notice of Proposed Revocation. – The Secretary must provide a licensee with a notice of proposed revocation that includes all of the following information:

(1) The basis for the proposed revocation. The statement of the basis for the proposed revocation does not limit the Department from changing the basis.
(2) The effective date of the revocation, which must be one of the following:
    a. Forty-five days from the date of the notice of proposed revocation if the licensee does not file a timely request for hearing.
    b. The tenth day after the date an adverse final decision is issued if the adverse final decision is mailed.
    c. The date an adverse final decision is delivered if the adverse final decision is delivered in person.

(3) The circumstances, if any, under which the Secretary will not revoke the license.

(4) An explanation of how the licensee may contest the proposed revocation.

(a4) Request for Hearing and Decision. – A licensee may contest a proposed revocation by filing a written hearing request within 45 days of the date the notice of proposed revocation was mailed, if the notice was delivered by mail, or delivered to the licensee, if the notice was delivered in person. A hearing request is considered filed as provided under G.S. 105-241.11(b). If the licensee does not file a timely hearing request, the license is revoked as provided in the notice of proposed revocation and the revocation is final and not subject to further administrative or judicial review.

(b) Hearing Procedure. – The Secretary must give a licensee who filed a timely hearing request in accordance with subsection (a4) of this section at least 20 days' written notice of the date, time, and place of the hearing, unless the Department and the licensee agree to a shorter period. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the licensee in writing within 60 days of the hearing. The Department and the licensee may extend this time by mutual agreement. Failure to issue a final decision within the required time does not affect the validity of the decision. The final decision must state the basis for the decision and, if the final decision includes revocation of the license, the effective date of the revocation in accordance with subdivision (2) of subsection (a3) of this section. The statement of the basis of a revocation does not limit the Department from changing the basis.

(b1) Delivery of Notice. – The Secretary must deliver a notice in accordance with G.S. 105-241.20(b). In lieu of providing notice by United States mail, the Secretary may give notice by email or other electronic means if the licensee has consented to receiving notices via electronic means.

(b2) Return of Credentials. – If a license is revoked, the revoked licensee must return to the Secretary, within 10 days of the issuance of the final decision, all licenses previously issued. If a license is unable to be returned, the revoked licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned.

(c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the licensee:

(1) Return an irrevocable letter of credit to the licensee.

(2) Return a bond to the licensee or notify the person liable on the bond and the licensee that the person is released from liability on the bond. (1999-333, s. 6; 2013-414, s. 22(b); 2017-204, s. 4.3(b); 2019-169, ss. 4.1(b), 4.2(b); 2020-58, s. 2.3(a); 2021-180, s. 42.13D(a).)

§ 105-113.4C. Enforcement of Master Settlement Agreement Provisions.

The Master Settlement Agreement between the states and the tobacco product manufacturers, incorporated by reference into the consent decree referred to in G.S. 143-710, requires each state to diligently enforce Article 37 of Chapter 66 of the General Statutes. The Office of the Attorney General and the Secretary of Revenue shall perform the following responsibilities in enforcing Article 37:

(1) The Office of the Attorney General must give to the Secretary of Revenue a list of the nonparticipating manufacturers under the Master Settlement Agreement and the brand names of the products of the nonparticipating manufacturers.

(2) The Office of the Attorney General must update the list provided under subdivision (1) of this section when a nonparticipating manufacturer becomes a participating manufacturer, another nonparticipating manufacturer is identified, or more brands or products of nonparticipating manufacturers are identified.

(3) The Secretary of Revenue must require the taxpayers of the tobacco excise tax to identify the amount of tobacco products of nonparticipating manufacturers sold by the taxpayers, and may impose this requirement as provided in G.S. 66-290(10).

(4) The Secretary of Revenue must determine the amount of State tobacco excise taxes attributable to the products of nonparticipating manufacturers, based on the information provided by the taxpayers, and must report this information to the Office of the Attorney General. (1999-311, s. 2; 2020-78, s. 6.2(c).)

§ 105-113.4D. Tax with respect to inventory on effective date of tax increase.

Every person subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any tobacco products must file a complete inventory of the tobacco products within 20 days after the effective date of the increase, and must pay an additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate. For purposes of this section, a "tax increase" includes a new tax or a change to the methodology for calculating a tax that results in additional tax being due. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 263; 2009-451, s. 27A.5(b); 2023-134, s. 42.18(d).)

§ 105-113.4E. Modified risk tobacco products.

(a) Definition. – The term "modified risk tobacco product" means a tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

(b) Tax Rate Reduction. – The tax imposed under this Article is reduced by the following:

(1) Fifty percent (50%) for a modified risk tobacco product issued a risk modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(1).

(2) Twenty-five percent (25%) for a modified risk tobacco product issued an exposure modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(2).

(c) Substantiation. – Generally, tobacco products are subject to the tax imposed under this Article, unless a manufacturer substantiates that a product qualifies as a modified risk tobacco product and is subject to a reduced rate of tax in accordance with subsection (b) of this section. A manufacturer may substantiate that a product qualifies as a modified risk tobacco product by providing the Department a copy of the order issued by the United States Food and Drug Administration verifying the product as a modified risk tobacco product. Once the manufacturer provides the order to the Department, the Department must reduce the tax due as required under subsection (b) of this section effective on the first day of the next calendar month. If the order indicating a product qualifies as a modified risk tobacco product is renewed, the manufacturer must provide the order renewing the product to the Department within 14 days of receipt.

(d) Forfeiture. – If the product no longer qualifies as a modified risk tobacco product, the rate reduction under subsection (b) of this section is forfeited. A product no longer qualifies when

the order qualifying the product as a modified risk tobacco product expires and is not renewed or the order is withdrawn by the United States Food and Drug Administration. The manufacturer must provide notice of such expiration or withdrawal to the Department within 14 days of receipt. Upon determination by the Department that the product no longer qualifies as a modified risk tobacco product, the Department must determine if the taxpayer paid a reduced rate after the order expired or was withdrawn. If the taxpayer did avoid taxes, the taxpayer is liable for all past taxes avoided as a result of the product no longer qualifying plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the rate reduction had not been allowed. The past taxes and interest are due 30 days after the date the rate reduction is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (2018-5, s. 38.7(a); 2020-58, s. 2.4.)

§ 105-113.4F. Delivery sales of certain tobacco products; age verification.

(a) Scope. – This section applies to delivery sales. For purposes of this section, the term "tobacco product" means cigarettes, smokeless tobacco, or vapor products.

(b) Delivery Seller Requirements. – A delivery seller must do all of the following with respect to a delivery sale:

(1) Obtain a license from the Secretary as required by this Article before accepting an order.

(2) Comply with the age verification requirements in G.S. 14-313(b2).

(3) Report, collect, and remit to the Secretary all applicable taxes as set out in this Article and Article 5 of this Chapter.

(c) Filing Requirement. – A delivery seller who has made a delivery sale, or shipped or delivered tobacco products in connection with a delivery sale, for which tax is due under this Article, during the previous month must, not later than the tenth day of each month, file with the Secretary a memorandum or a copy of the invoice for every delivery sale made during the previous month. A delivery seller who complies with 15 U.S.C. § 376 with respect to tobacco products covered by that section is considered to have complied with this subsection. The memorandum or invoice must contain the following information:

(1) The name, address, telephone number, and email address of the consumer.

(2) The type and the brand, or brands, of tobacco products that were sold.

(3) The quantity of tobacco products that were sold.

(d) Penalties. – A person who violates this section is subject to the following penalties:

(1) For the first violation, a penalty of one thousand dollars ($1,000).

(2) For a subsequent violation, a penalty not to exceed five thousand dollars ($5,000), as determined by the Secretary.

(e) Repealed by Session Laws 2021-180, s. 42.9(b), effective July 1, 2022, and applicable to sales or purchases occurring on or after that date.

(f) Delivery Sellers as Retailers. – A delivery seller that meets the definition of a "retailer" as defined in Article 5 of this Chapter is subject to all State laws that apply to a retailer in this State. (2019-169, s. 4.7(b); 2021-180, s. 42.9(b); 2023-12, s. 3.4(a); 2025-25, s. 29(1).)

§ 105-113.4G. Records to be kept.

(a) Requirement. – 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 purchases, inventories, sales, shipments, and deliveries of tobacco products, and other information

as required by the Secretary. The records shall be in the form prescribed by the Secretary and shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary.

(b) Time Period. – These records shall be safely preserved for the applicable period of statute of limitations as set forth in Article 9 of this Chapter in a manner to ensure their security and accessibility for inspection by the Department. If the records apply to a transaction not required to be reported in a return, the records shall be kept for three years from the date of the transaction. (2020-58, s. 2.5(a); 2023-12, s. 3.5(a).)

§ 105-113.4H. 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. (1969, c. 1075, s. 2; recodified from N.C. Gen. Stat. § 105-113.8 by 2021-180, s. 42.13E(a).)

§ 105-113.4I. Licenses required.

A person may not engage in business as a distributor, wholesale dealer, or retail dealer in this State, without having first obtained from the Secretary the appropriate license for that purpose as prescribed in this Article. A license required by this Article is in addition to any other licenses that may be required by law. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; recodified from N.C. Gen. Stat. § 105-113.11 by 2021-180, s. 42.13E(b), (c).)

§ 105-113.4J. Unlicensed place of business.

It is unlawful for a person to maintain a place of business within this State required by this Article to be licensed to engage in the business of selling, offering for sale, or possessing with the intent to sell tobacco products without first obtaining all licenses required by this Article. (1969, c. 1075, s. 2; 2017-39, s. 10; 2019-169, s. 4.14(a); recodified from N.C. Gen. Stat. § 105-113.29 by 2021-180, s. 42.13E(d), (e).)

§ 105-113.4K. 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 Class 1 misdemeanor. (1969, c. 1075, s. 2; 1993, c. 539, s. 700; 1994, Ex. Sess., c. 24, s. 14(c); recodified from N.C. Gen. Stat. § 105-113.33 by 2021-180, s. 42.13E(f).)

§ 105-113.4L. Federal tobacco tax reporting.

A person required to be licensed under this Article and who files a report with the Department in accordance with 15 U.S.C. § 376 must file in the form required by the Secretary. (2022-13, s. 4.1.)

Part 2. Cigarette Tax.

§ 105-113.5. Tax on cigarettes.

(a) Rate. – A tax is levied on the sale or possession for sale in this State, by a licensed distributor, of all cigarettes at the rate of two and one-fourth cents (2.25¢) per individual cigarette.

(b) Primary Liability. – A licensed distributor who meets any of the following conditions is liable for the tax imposed by this section:

(1) Is the first person to possess or acquire cigarettes in this State.

(2) Is the first person to bring into this State cigarettes made outside the State.

(3) Is the original consignee of cigarettes made outside the State that are shipped into the State.

(4) Makes a delivery sale of cigarettes for which the delivery seller is required to collect sales and use tax under Article 5 of this Chapter. (1969, c. 1075, s. 2; c. 1246, s. 1; 1991, c. 689, s. 262; 2004-170, s. 5; 2005-276, s. 34.1(a), (b); 2009-451, s. 27A.5(a); 2019-169, s. 4.1(e); 2021-180, s. 42.9(c).)

§ 105-113.6. Use tax levied.

A tax is levied upon the sale or possession for sale by a person other than a licensed distributor, and upon the use, consumption, and possession for use or consumption of cigarettes within this State at the rate set in G.S. 105-113.5. This tax does not apply, however, to cigarettes upon which the tax levied in G.S. 105-113.5 has been paid. (1969, c. 1075, s. 2; 1993, c. 442, s. 2; 2019-6, s. 4.1.)

§ 105-113.7: Recodified as G.S. 105-113.4D by Session Laws 2009-451, s. 27A.5(b), effective September 1, 2009.

§ 105-113.8. Recodified as G.S. 105-113.4H, effective November 18, 2021. (1969, c. 1075, s. 2; recodified as N.C. Gen. Stat. 105-113.4H by 2021-180, s. 42.13E(a).)

§ 105-113.9. Out-of-state shipments.

Any licensed distributor engaged in interstate business shall be permitted to set aside part of the stock as necessary to conduct interstate business without paying the tax otherwise required by this Part, but only if the licensed distributor complies with the requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration of this Part.

"Interstate business" as used in this section means:

(1) The sale of cigarettes to a nonresident where the cigarettes are delivered by the licensed distributor to the business location of the nonresident purchaser in another state.

(2) The sale of cigarettes to a nonresident purchaser who has no place of business in North Carolina and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the licensed distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1977, c. 874; 1993, c. 442, s. 3; 2018-5, s. 38.6(a); 2019-6, s. 4.2.)

§ 105-113.10. Manufacturers exempt from paying tax.

(a) Shipping to Other Licensed Distributors. – A licensed manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part, but is not relieved from filing a report as required by this Part.

(a1) Shipping to Retailers. – 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.

(b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its facilities, but is not relieved from filing a report as required by this Part. (1969, c. 1075, s. 2; c. 1246, s. 2; 1973, c. 476, s. 193; 1975, c. 275, s. 2; 1993, c. 442, s. 4; 2011-330, s. 2(b); 2019-169, s. 4.1(d).)

§ 105-113.11. Recodified as G.S. 105-113.4I, effective November 18, 2021. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; recodified as N.C. Gen. Stat. 105-113.4I by 2021-180, s. 42.13E(b).)

§ 105-113.12. License required.

(a) A distributor must obtain a license for each of the locations listed in this subsection, as applicable, and must pay a tax of twenty-five dollars ($25.00) for each license. A license is in effect until June 30 of the year following the second calendar year after the date of issuance or renewal. A license is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date. The locations are:

(1) Each location where a distributor receives or stores non-tax-paid cigarettes in this State.

(2) For a distributor that is a delivery seller, each location from which the distributor receives or stores non-tax-paid cigarettes for delivery sales of cigarettes if the location is a location other than the location described in subdivision (1) of this subsection.

(b) Repealed by Session Laws 2021-180, s. 42.9(d), effective July 1, 2022, and applicable to sales or purchases occurring on or after that date.

(c) An out-of-state distributor that is not a delivery seller may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.4A and G.S. 105-113.24 and payment of a tax of twenty-five dollars ($25.00). (1969, c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 955, s. 4; 1993, c. 442, s. 5; 2019-169, s. 4.2(c); 2021-180, s. 42.9(d); 2023-12, s. 3.6.)

§ 105-113.13. Secretary may require a bond or irrevocable letter of credit.

(a) Repealed by Session Laws 2013-414, s. 22(c), effective September 1, 2013.

(b) The Secretary may require a licensed distributor to furnish a bond in an amount that adequately protects the State from a licensed distributor's failure to pay taxes due under this Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the licensed distributor's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of the licensed distributor and increase the required bond amount if the amount no longer covers the anticipated tax liability of the licensed distributor and decrease the amount if the Secretary finds that a lower bond amount will protect the State adequately from loss.

For purposes of this section, a licensed distributor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the

amounts stipulated in this section. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 5; 1993, c. 442, s. 6; 2013-414, s. 22(c); 2014-3, s. 9.1(a); 2016-5, s. 4.1(a); 2019-6, s. 4.3; 2020-58, s. 2.6(a).)

§§ 105-113.14 through 105-113.15: Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 6, effective July 15, 1992.

§ 105-113.16. Repealed by Session Laws 1999-333, s. 7.

§ 105-113.17. Identification of dispensers.

Each vending machine that dispenses cigarettes must be marked to identify its owner in the manner required by the Secretary. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 8.)

§ 105-113.18. Payment of tax; reports.

The taxes levied in this Part are payable when a report is required to be filed. The following reports are required to be filed with the Secretary:

(1) Distributor's Report. – A licensed distributor must file a monthly report in the form prescribed by the Secretary. The report covers cigarettes sold, shipped, delivered, or otherwise disposed of in this State in a calendar month and is due within 20 days after the end of the month covered by the report. The report must show the quantity of all cigarettes transported or caused to be transported into the State by the licensed distributor or licensed manufacturer in the State for sales in this State and state the amount of tax due and must identify any transactions to which the tax does not apply. A licensed distributor that is a delivery seller must also comply with the filing requirement under G.S. 105-113.4F.

(1a) Repealed by Session Laws 2019-169, s. 4.3(a), effective July 26, 2019.

(2) Use Tax Report. – A person who is not a licensed distributor and has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed by this Part must, within 96 hours after receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report must be accompanied by payment of the full amount of the tax.

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

(4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1981 (Reg. Sess., 1982), c. 1209, s. 1; 1993, c. 442, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 2; 2019-169, s. 4.3(a); 2021-180, s. 42.9(e).)

§§ 105-113.19 through 105-113.20: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.21. Discount; refund.

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

(a1) Discount. – A licensed distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A licensed distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes. The licensed distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes. (1969, c. 1075, s. 2; cc. 1222, 1238; 1973, c. 476, s. 193; 1993, c. 442, s. 9; 2001-414, s. 3; 2003-284, s. 45A.1(a); 2004-84, s. 2(a); 2011-330, s. 2(c); 2019-169, s. 4.1(c).)

§§ 105-113.22 through 105-113.23: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.24. Out-of-State distributors to register and remit tax.

(a) The Secretary may authorize any distributor outside this State engaged in the business of selling and shipping cigarettes into the State to obtain a license and report and pay taxes required by this Part.

(b) A nonresident distributor must agree to submit the distributor's books, accounts, and records to reasonable examination by the Secretary or the Secretary's duly authorized agents. The Secretary may require a nonresident distributor to file a bond in accordance with 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. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 9; 1993, c. 442, ss. 9.1(a), 9.1(b).)

§ 105-113.25: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.26: Repealed by Session Laws 2020-58, s. 2.5(b), effective June 30, 2020.

§ 105-113.27. Non-tax-paid cigarettes.

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

(b) Except as otherwise provided in this Article, no person shall sell or offer for sale non-tax-paid cigarettes.

(c) The possession of more than six hundred cigarettes on which tax has been paid to another state or country, by any person other than a licensed distributor, is prima facie evidence that the cigarettes are possessed in violation of this Part. (1969, c. 1075, s. 2; 1993, c. 442, s. 11; 1999-337, s. 18; 2020-58, s. 2.7.)

§ 105-113.28: Repealed by Session Laws 1993, c. 442, s. 8.

§ 105-113.29. Recodified as G.S. 105-113.4J, effective November 18, 2021. (1969, c. 1075, s. 2; 2017-39, s. 10; 2019-169, s. 4.14(a); recodified as N.C. Gen. Stat. 105-113.4J by 2021-180, s. 42.13E(d).)

§ 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 Secretary or his duly authorized agents, fail to file a report, or make a false or fraudulent report or statement. (1969, c. 1075, s. 2; 1973, c. 476, s. 193.)

§ 105-113.31. Possession and transportation of non-tax-paid cigarettes; seizure and confiscation of vehicle or vessel.

(a) It shall be unlawful for any person to transport non-tax-paid cigarettes in violation of this Part. The Secretary may adopt rules allowing quantities of non-tax-paid cigarettes, not exceeding six hundred, to be brought into this State by a transient, a tourist, or a person returning to this State after traveling outside this State, for their own use. The possession or transportation of these cigarettes is not subject to the penalties imposed by this section.

(b) (1) Every person who transports non-tax-paid cigarettes on the public highways, roads, streets, or waterways of this State must transport with the cigarettes invoices or delivery tickets for the cigarettes showing the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported, and the true name and complete and exact address of the person who has paid or who will pay the tax imposed by this Part or the tax, if any, of the state or foreign country at the point of ultimate destination.

(2) A common carrier that has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that the cigarettes are non-tax-paid in violation of this Part is considered to have complied with this Part and the vehicle or vessel in which the cigarettes are being transported is not subject to confiscation under this section. In the absence of the required invoices, delivery tickets, or bills of lading, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being transported, and any paraphernalia or devices used in connection with the non-tax-paid cigarettes are declared to be contraband goods and may be seized

by any officer of the law, who shall take possession of the vehicle or vessel and cigarettes and shall arrest any person in charge of the vehicle or vessel and cigarettes.

(3) The officer shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction; but the vehicle or vessel shall be returned to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which bond shall be approved by the officer and shall be conditioned to return the property to the custody of the officer on the day of trial to abide the judgment of the court. All non-tax-paid cigarettes seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner.

(4) Unless the claimant can show that the non-tax-paid cigarettes seized were not transported in violation of this Part and that the property seized belongs to the claimant or that in the case of property other than cigarettes, the property was used in transporting non-tax-paid cigarettes in violation of this Part without the claimant's knowledge or consent, with the right on the part of the claimant to have a jury pass upon this claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the cost of the tax due, which the officer shall pay upon sale, expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, at the hearing or in another proceeding brought for the purpose as being bona fide and as having been created without the lien or having any notice that the vehicle or vessel was being used for the unlawful transportation of non-tax-paid cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the General Fund.

(5) All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one is found claiming the cigarettes, or the vehicle or vessel, then the taking of the cigarettes, vehicle, or vessel, along with a description, shall be advertised in a newspaper having circulation in the county where the items were taken, once a week for two weeks and by notices posted in three public places near the place of seizure, and if no claimant appears within ten 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) This section does not authorize an officer to search any vehicle or vessel or baggage of any person without a search warrant duly issued, except where the officer has knowledge that there are non-tax-paid cigarettes in the vehicle or vessel. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1993, c. 442, s. 12.)

§ 105-113.32. Non-tax-paid cigarettes subject to confiscation.

All non-tax-paid cigarettes subject to the tax imposed by this Part, 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. The officer shall

arrest any person in charge of the contraband goods and shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction. The disposition of the seized cigarettes and container shall be governed by the provisions of G.S. 105-113.31. (1969, c. 1075, s. 2; 1993, c. 442, s. 13.)

§ 105-113.33. Recodified as G.S. 105-113.4K, effective November 18, 2021. (1969, c. 1075, s. 2; 1993, c. 539, s. 700; 1994, Ex. Sess., c. 24, s. 14(c); recodified as N.C. Gen. Stat. 105-113.4K by 2021-180, s. 42.13E(f).)

§ 105-113.34: Repealed by Session Laws 1993, c. 442, s. 8.

Part 3. Tax on Other Tobacco Products.

§ 105-113.35. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.

§ 105-113.35A. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.

Subpart 1. General Provisions.

§ 105-113.35B. Applicability.

As used in this Part, the term "tobacco product" means a tobacco product other than cigarettes. (2021-180, s. 42.9(g).)

§ 105-113.36. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.

Subpart 2. Tax Rates and Liability.

§ 105-113.36A. Tax rates; liability for tax.

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

(1) On vapor products, the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.

(2) On cigars, the rate of twelve and eight-tenths percent (12.8%) of the cost price, subject to a cap of thirty cents (30¢) per cigar.

(2a) On snuff, excluding other smokeless tobacco, the rate of forty cents (40¢) per ounce and a proportionate rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.

(2b) On alternative nicotine products, the rate of ten cents (10¢) per container containing up to 20 units, and at the rate of one-half cent (1/2¢) per unit for any amount in a container containing over 20 units.

(3) On all other tobacco products, the rate of twelve and eight-tenths percent (12.8%) of the cost price.

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

(1) Is the first person to possess or acquire the tobacco product in this State.

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

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

(d) Exemptions. – The taxes imposed under this section do not apply to the following:
(1) A tobacco product sold outside the State.
(2) A tobacco product sold to the federal government.
(3) A sample tobacco product distributed without charge. A sample tobacco product may only be distributed in a "qualified adult-only facility" as that term is defined in 21 C.F.R. § 1140.16(d)(2).

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

(f) Documentation. – If a person liable for the tax imposed by this Part cannot produce to the Secretary's satisfaction documentation of the cost price, weight, count, or volume of the items subject to tax, based on the applicable tax imposed, the Secretary may determine a value based on either of the following:
(1) The cost price, weight, count, or volume of comparable items.
(2) The average of the actual price paid by the person liable for the tax for the item over the 12 calendar months before January 1 of the year in which the sale occurs. (2021-180, s. 42.9(g); 2023-12, s. 3.2(b); 2023-134, s. 42.18(b); 2024-1, s. 11.4(a); 2026-31, s. 4.11(b).)

§ 105-113.37. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.

Subpart 3. Wholesale and Retail Dealers.

§ 105-113.37A. Manufacturer's option.

(a) Shipping to Other Licensed Dealers. – A manufacturer who is not a retail dealer and who ships tobacco products to either a wholesale dealer or a retail dealer licensed under this Part may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the tax on tobacco products imposed by this Part but is not relieved from filing a report as required by this Part.

(b) Integrated Wholesale Dealers. – If a manufacturer has been relieved of paying tax under this section, the permission granted to be relieved of paying the tax also applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given the manufacturer permission to be relieved of paying the tax.

(c) Dual Exemption. – If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products, and the person is granted permission under G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission applies to the tax imposed by this Part on tobacco products. A cigarette manufacturer who becomes a wholesale dealer after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer. (2021-180, s. 42.9(g).)

§ 105-113.37B. Non-tax-paid products.

Except as otherwise provided in this Part, a licensed wholesale dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products to, from, or with another licensed wholesale dealer, and an integrated wholesale dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products to, from, or with another integrated wholesale dealer. (2021-180, s. 42.9(g).)

§ 105-113.37C. Discount; refund.

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable for the excise taxes imposed by this Part, who files a timely report under this Part, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part and the expense of furnishing a bond. This subsection does not apply with respect to the excise tax levied on vapor products.

(b) Refund. – A wholesale dealer or retail dealer who is primarily liable for the excise taxes imposed by this Part and is in possession of stale or otherwise unsalable tobacco products upon which the tax has been paid may return the tobacco products to the manufacturer and apply to the Secretary for refund of the tax. The application must be in the form prescribed by the Secretary and accompanied by a written certificate signed under penalty of perjury or an affidavit from the manufacturer listing the tobacco products returned to the manufacturer by the applicant. The Secretary must refund the tax paid, less the discount allowed, on the listed products. (2021-180, s. 42.9(g).)

§ 105-113.38. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.

Subpart 4. Remote Sellers.

§ 105-113.38A. Remote seller requirements.

A remote seller must do all of the following with respect to a remote sale:

(1) Obtain a license from the Secretary as required by this Part before accepting an order.

(2) Report, collect, and remit to the Secretary all applicable taxes as set out in this Part and Article 5 of this Chapter. A remote seller that meets the definition of a "retailer" as defined in Article 5 of this Chapter is subject to all State laws that apply to a retailer in this State. (2021-180, s. 42.9(g).)

§ 105-113.38B. (Effective until July 1, 2025) Records.

In addition to the records required to be kept under G.S. 105-113.4G, a remote seller required to be licensed must maintain the following:

(1) A list, updated annually, showing the cost price paid by the remote seller for each stock keeping unit of tobacco products.
(2) Invoices documenting remote or delivery sales to consumers in this State.
(3) Records necessary to document the cost price of purchases of all tobacco products sold to consumers in this State. (2021-180, s. 42.9(g); 2023-12, s. 3.7.)

§ 105-113.38B. (Effective July 1, 2025) Records.

In addition to the records required to be kept under G.S. 105-113.4G, a remote seller required to be licensed must maintain the following:

(1) A list, updated annually, showing the cost price paid by the remote seller for each stock keeping unit of cigars.
(2) Invoices documenting remote or delivery sales to consumers in this State.
(3) Records necessary to document the cost price, weight, or count based on the applicable tax imposed, of purchases of all tobacco products sold to consumers in this State. (2021-180, s. 42.9(g); 2023-12, s. 3.7; 2023-134, s. 42.18(c).)

§ 105-113.38C. Penalties.

A remote seller who violates G.S. 105-113.38A is subject to the following penalties:

(1) For the first violation, a penalty of one thousand dollars ($1,000).
(2) For a subsequent violation, a penalty not to exceed five thousand dollars ($5,000), as determined by the Secretary. (2021-180, s. 42.9(g).)

§ 105-113.39. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.

Subpart 5. Administrative Provisions.

§ 105-113.39A. License required.

(a) Requirement. – A wholesale dealer or a retail dealer must obtain from the Secretary a license in accordance with subsections (a1) and (a2) of this section and must pay the required license tax for each license. A license is in effect until June 30 of the year following the second calendar year after the date of issuance or renewal, unless cancelled or revoked prior to expiration. A license is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

(a1) Other Tobacco Products License. – A wholesale dealer or a retail dealer must obtain an other tobacco products license for all of the following locations:

(1) Each location where a wholesale dealer makes tobacco products other than vapor products and alternative nicotine products.
(2) Each location where a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than vapor products and alternative nicotine products.
(3) Each location from where a retail dealer that is a delivery seller or remote seller receives or stores non-tax-paid tobacco products for delivery sales or remote sales of tobacco products other than vapor products and alternative nicotine products if the location is a location other than the location described in subdivision (2) of this subsection.

(a2) Vapor and Alternative Nicotine Products License. – A wholesale dealer or a retail dealer must obtain a vapor and alternative nicotine products license for all of the following locations:

(1) Each location where a wholesale dealer makes vapor products or alternative nicotine products.

(2) Each location where a wholesale dealer or a retail dealer receives or stores non-tax-paid vapor products or alternative nicotine products.

(3) Each location from where a retail dealer that is a delivery seller receives or stores non-tax-paid vapor products for delivery sales if the location is a location other than the location described in subdivision (2) of this subsection.

(b) License Tax Amount. – The license tax amounts are as follows:

(1)	Wholesale dealer	$25.00
(2)	Retail dealer	$10.00

(c) Out-of-State Wholesale Dealers. – An out-of-state wholesale dealer of tobacco products that is not a delivery seller or a remote seller may obtain a wholesale dealer's license upon compliance with the provisions of G.S. 105-113.4A and payment of a tax of twenty-five dollars ($25.00). (2021-180, s. 42.9(g); 2023-12, s. 3.8(a); 2026-31, ss. 4.1, 4.12.)

§ 105-113.39B. Payment of tax.

(a) Monthly Report. – Taxes levied by this Part are payable by the entity that is primarily liable for the tax when a report is required to be filed. A report is due on a monthly basis. A monthly report covers tobacco products sold, shipped, delivered, or otherwise disposed of in this State occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report must be filed on a form provided by the Secretary and must contain the information required by the Secretary.

(b) Use Tax Report. – A person who is not a licensee under this Part and has acquired non-tax-paid tobacco products for sale, use, or consumption subject to the tax imposed by this Part must, within 96 hours after receipt of the tobacco products, file a report in the form prescribed by the Secretary showing the amount of tobacco products received and any other information required by the Secretary. The report must be accompanied by payment of the full amount of the tax.

(c) Shipping Report. – A person who transports, or causes to transport, 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. (2021-180, s. 42.9(g).)

§ 105-113.39C. Bond or irrevocable letter of credit.

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from a wholesale dealer’s or a retail dealer’s failure to pay taxes due under this Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the wholesale or retail dealer’s average expected monthly tax liability under this Part, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of dealers, increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer

or retail dealer, and decrease the amount when the Secretary determines that a smaller bond amount will adequately protect the State from loss.

For purposes of this section, a wholesale dealer or a retail dealer may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Part, and in the amounts stipulated in this section. (2021-180, s. 42.9(g).)

§ 105-113.39D. Repealed by Session Laws 2023-11, s. 1.1(a), effective July 1, 2022.

§ 105-113.40: Repealed by Session Laws 2020-58, s. 2.5(b), effective June 30, 2020.

§ 105-113.40A. Repealed by Session Laws 2021-180, s. 42.9(f), effective July 1, 2022.