

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 895

Short Title: Restore Cigarette Tax Stamps. (Public)

Sponsors: Senator Hartsell.

Referred to: Finance.

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PAYMENT OF CIGARETTE TAXES BY STAMP AND TO
3 LIMIT THE RECEIPT AND SALE OF NON-TAX-PAID CIGARETTES.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 105-113.4. Definitions.**

7 The following definitions apply in this Article:

8 (1) Affiliated sales entity. – An entity that sells cigarettes or other tobacco
9 products that it acquired from a manufacturer where one of the following is
10 true:

11 a. The entity controls, directly or indirectly, through one or more
12 intermediaries, the manufacturer.

13 b. The entity is controlled, directly or indirectly, through one or more
14 intermediaries, by the manufacturer.

15 c. The entity and manufacturer are commonly controlled, directly or
16 indirectly, through one or more intermediaries, by another entity.

17 (1a) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco,
18 other than a cigarette.

19 ~~(1a)~~(1b) Cigarette. – Any of the following:

20 a. A roll of tobacco wrapped in paper or in a substance that does not
21 contain tobacco.

22 b. A roll of tobacco wrapped in a substance that contains tobacco and
23 that, because of its appearance, the type of tobacco used in the filler,
24 or its packaging and labeling, is likely to be offered to or purchased
25 by a consumer as a cigarette described in subpart a. of this
26 subdivision.

27 ...
28 (3) Distributor. – Either of the following:

29 a. A person, wherever resident or located, who purchases non-tax-paid
30 cigarettes directly from the manufacturer or importer of the cigarettes
31 and stores, sells, or otherwise disposes of the cigarettes.

32 b. A person who ~~manufactures or produces~~manufactures, produces, or
33 imports cigarettes or causes them to be ~~manufactured or~~
34 ~~produced~~manufactured, produced, or imported.

35 (3a) Duty-free transaction. – A sale or distribution of cigarettes exempt from
36 federal excise tax pursuant to 26 U.S.C. § 5704(b) or any successor



1 provision, or pursuant to a diplomatic or consular treaty between the United
 2 States and one or more foreign governments.

3 ...

4 (4a) Importer. – A person who imports into the United States, either directly or
 5 indirectly, a finished cigarette sold or distributed within this State.

6 (4b) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a
 7 manufacturer of tobacco products, other than cigarettes, is the only person to
 8 whom the manufacturer sells its products, and is not a retail dealer. An
 9 "affiliate" is a person who directly or indirectly controls, is controlled by, or
 10 is under common control with another person.

11 ...

12 (6) Manufacturer. – A person who ~~manufactures~~ manufactures, fabricates,
 13 assembles, processes, labels, or produces tobacco products sold or
 14 distributed within this State. For purposes of this section and G.S. 105-113.5,
 15 105-113.10, 105-113.18, 105-113.20A, 105-113.27, and 105-113.28, the
 16 term "manufacturer" shall also include an "affiliated sales entity."

17 (6a) Non-tax-paid cigarettes. – A package of cigarettes that does not bear a stamp
 18 as required by G.S. 105-113.19.

19 ...

20 (10b) Stamp. – The indicia required to be placed on a package of cigarettes that
 21 evidence payment of the tax on cigarettes under G.S. 105-113.5, or the
 22 indicia used to indicate that the cigarettes are intended for a sale or
 23 distribution within this State that is exempt from State tax under any
 24 applicable provision of law.

25 ...

26 (12a) U.S. government transaction. – A sale or distribution of cigarettes to an
 27 agency or instrumentality of the United States, including exchange and
 28 commissary services serving the armed forces of the United States.

29"

30 **SECTION 2.** G.S. 105-113.18(1) reads as rewritten:

31 "(1) Distributor's Report. – A distributor shall file a monthly report in the form
 32 prescribed by the Secretary. The report covers sales and other activities
 33 occurring in a calendar month and is due within 20 days after the end of the
 34 month covered by the report. The report shall state the amount of tax due
 35 and shall identify any transactions to which the tax does not apply. Every
 36 distributor required to affix stamps as prescribed herein shall file a report on
 37 or before the twentieth day of each month, in such a form as the Secretary
 38 shall prescribe, which report shall disclose the quantity of cigarettes on hand
 39 on the first and last days of the calendar month immediately preceding the
 40 month in which such report is required, the amount of stamps purchased,
 41 used, and on hand during the report period, and such other information as the
 42 Secretary shall prescribe."

43 **SECTION 3.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
 44 amended by adding a new section to read:

45 **"§ 105-113.19A. Secretary to provide stamps.**

46 (a) The taxes levied by G.S. 105-113.5 shall be paid or payment shall be evidenced by
 47 the use of tax stamps.

48 (b) Tax-exempt stamps shall be used to evidence exemption from the taxes levied by
 49 G.S. 105-113.5.

50 (c) The Secretary shall make arrangements for the manufacture of cigarette stamps
 51 provided for in this Article. The Secretary shall prescribe the form, design, denominations, and

1 such other matters as may be necessary with respect to the stamps. Only the Secretary may sell
2 stamps. The Secretary shall sell and distribute stamps exclusively to licensed distributors.

3 (d) Any stamp required by this Article shall note whether the State tax under
4 G.S. 105-113.5 was paid or whether the package of cigarettes was not subject to the tax. Each
5 roll or sheet of stamps shall have a separate and unique serial number that shall be clearly
6 visible at the point of sale. The Secretary shall keep records of which licensed distributor
7 purchases each roll or sheet of stamps identified by serial number. If the Secretary permits
8 distributors to purchase partial rolls or sheets, in no case may stamps bearing the same serial
9 number be sold to more than one distributor.

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

18 (f) A licensed distributor using a stamp metering machine as provided for in
19 G.S. 105-113.23 may make payment upon the same terms and conditions as in the case of the
20 purchase of stamps as set forth in subsection (e) of this section. Each licensed distributor
21 authorized by the Secretary to use a stamp metering machine in lieu of using stamps shall be
22 assigned a unique meter impression number, which shall not be used by any other distributor
23 and shall be visible and easily identifiable at the point of sale. The Secretary shall keep records
24 of which licensed distributor is assigned each meter impression number."

25 **SECTION 4.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
26 amended by adding a new section to read:

27 **"§ 105-113.20A. Distributors to affix stamps.**

28 Only licensed distributors shall affix stamps. A licensed distributor may only affix stamps
29 to packages of cigarettes manufactured, imported, purchased, or obtained directly from a
30 licensed distributor who is a manufacturer or importer of cigarettes. A licensed distributor shall
31 not sell, borrow, loan, buy, or exchange stamps to, from, or with any other person.

32 Only licensed distributors may possess or receive non-tax-paid cigarettes. A licensed
33 distributor who possesses or receives non-tax-paid cigarettes shall affix stamps to the packages
34 of cigarettes prior to selling, distributing, or shipping the cigarettes to any other person,
35 provided that a licensed distributor who is a manufacturer or importer of cigarettes may sell,
36 distribute, or ship non-tax-paid cigarettes to another licensed distributor, and further provided
37 that a licensed distributor may ship or cause to be delivered non-tax-paid cigarettes to a facility,
38 wherever located, owned by such distributor.

39 Stamps shall be affixed by licensed distributors:

- 40 (1) In a denomination that at least equals the tax due on cigarettes in the
41 package, if the cigarettes are subject to tax under G.S. 105-113.5.
- 42 (2) On the smallest package of cigarettes that will be handled, sold, used,
43 consumed, or distributed in this State.
- 44 (3) To the bottom of each individual package of cigarettes in a manner so that
45 the stamp cannot be removed from the package without being mutilated or
46 destroyed.

47 Notwithstanding anything in this Article to the contrary, the receipt, shipment, or delivery
48 of non-tax-paid cigarettes in a duty-free transaction or a U.S. government transaction shall not
49 constitute a violation of this section."

50 **SECTION 5.** G.S. 105-113.21(a1) reads as rewritten:

1 "(a1) ~~Discount. – A distributor who files a timely report under G.S. 105-113.18 and who~~
2 ~~sends a timely payment may deduct from the amount due with the report a discount of two~~
3 ~~percent (2%). This discount covers expenses incurred in preparing the records and reports~~
4 ~~required by this Part, and the expense of furnishing a bond.~~On sales of stamps, the Secretary
5 shall allow a discount per stamp as compensation for the services and expenses of the licensed
6 distributor in handling and affixing such stamps to packages of cigarettes. The discount per
7 stamp shall be two percent (2%) of the total tax due on each pack of cigarettes."

8 **SECTION 6.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 105-113.23A. Stamp metering machines.**

11 The Secretary, if he shall determine that it is practicable in any case to permit licensed
12 distributors to impress on or attach to each package of cigarettes evidence of tax payment by
13 means of a metering machine, in lieu of stamps, may authorize any licensed distributor to use
14 any metering machine approved by the Secretary, such machine to be sealed by the Secretary
15 before being used and used in accordance with rules and regulations prescribed by the
16 Secretary. All costs and expenses of procuring and using any metering machine shall be borne
17 by the user."

18 **SECTION 7.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
19 amended by adding a new section to read:

20 **"§ 105-113.25A. Redemption and refund.**

21 The Secretary shall redeem any unused or mutilated, but identifiable, stamp that any
22 distributor presents for redemption, and refund therefor the face value of the stamp, less the
23 discount allowed at the time of the purchase of the stamp by the distributor. In the event any
24 stamped cigarettes are shipped out of this State, or are sold to those agencies or
25 instrumentalities that this State is prohibited from taxing under the Constitution or statutes of
26 the United States, by any distributor, a refund of the face value of the stamp less the discount
27 allowed by the Secretary at the time of the purchase of the stamp by said distributor shall be
28 made upon the application of the distributor on forms prescribed by the Secretary together with
29 such evidence and proof of sale as the Secretary shall require."

30 **SECTION 8.** G.S. 105-113.27 is amended by adding a new subsection to read:

31 "(d) Only a licensed distributor may ship or otherwise cause to be delivered non-tax-paid
32 cigarettes in, into, or from this State. Any person that ships or otherwise causes to be delivered
33 non-tax-paid cigarettes into, within, or from this State shall ensure that the invoice or
34 equivalent documentation and the bill of lading or freight bill for the shipment identifies the
35 true name and address of the cosignor or seller, the true name and address of the consignee or
36 purchaser, and the quantity by brand style of the cigarettes transported, provided that this
37 section shall not be construed as to impose any requirement or liability upon any common or
38 contract carrier."

39 **SECTION 9.** G.S. 105-113.31(b)(4) reads as rewritten:

40 "(4) Unless the claimant can show that the non-tax-paid cigarettes seized were
41 not transported in violation of this Part and that the property seized belongs
42 to the claimant or that in the case of property other than cigarettes, the
43 property was used in transporting non-tax-paid cigarettes in violation of this
44 Part without the claimant's knowledge or consent, with the right on the part
45 of the claimant to have a jury pass upon this claim, the court shall order a
46 sale by public auction of the property ~~seized, and the seized with the~~
47 exception of the contraband cigarettes. The officer making the sale, after
48 deducting the cost of the tax due, which the officer shall pay upon sale,
49 expenses of keeping the property, the fee for the seizure, and the costs of the
50 sale, shall pay all liens according to their priorities, which are established, by
51 intervention or otherwise, at the hearing or in another proceeding brought for

1 the purpose as being bona fide and as having been created without the lien or
2 having any notice that the vehicle or vessel was being used for the unlawful
3 transportation of non-tax-paid cigarettes, and shall pay the balance of the
4 proceeds to the State Treasurer for the General Fund. All contraband
5 cigarettes seized by this State must be destroyed. The Secretary may, prior to
6 any destruction of cigarettes, permit the true holder of the trademark rights
7 in the cigarette brand to inspect the contraband cigarettes, in order to assist
8 the Secretary in any investigation regarding the cigarettes."

9 **SECTION 10.** G.S. 105-113.31(b)(5) reads as rewritten:

10 "(5) All liens against property sold under the provisions of this section shall be
11 transferred from the property to the proceeds of the sale of the property. If,
12 however, no one is found claiming the ~~cigarettes, or the vehicle or vessel,~~
13 then the ~~taking of the cigarettes, vehicle, vehicle~~ or vessel, along with a
14 description, shall be advertised in a newspaper having circulation in the
15 county where the items were taken, once a week for two weeks and by
16 notices posted in three public places near the place of seizure, and if no
17 claimant appears within ten days after the last publication of the
18 advertisement, the property shall be sold, and the proceeds, after deducting
19 the expenses and costs, shall be paid to the State Treasurer for the General
20 Fund. All cigarettes seized by this State must be destroyed. The Secretary
21 may, prior to any destruction of cigarettes, permit the true holder of the
22 trademark rights in the cigarette brand to inspect such contraband cigarettes,
23 in order to assist the Secretary in any investigation regarding such
24 cigarettes."

25 **SECTION 11.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
26 amended by adding three new sections to read:

27 **§ 105-113.33A. Limitation on retail sales.**

28 A retail dealer shall not knowingly sell or distribute more than 10 cartons of cigarettes to
29 any person in a single transaction or in a series of transactions within a 24-hour period;
30 provided, however, that a retail dealer that is licensed as a distributor may make any sales
31 permitted to be made by a distributor under this Article when acting in that capacity.

32 **§ 105-113.33B. Penalty.**

33 In addition to any other penalty provided by law, upon determination that a retail dealer has
34 unlawfully sold or possessed non-tax-paid cigarettes, the Secretary shall impose a fine on the
35 retail dealer as appropriate.

36 **§ 105-113.34A. Forging or counterfeiting stamps.**

37 Any person who falsely or fraudulently makes, forges, alters, or counterfeits, or causes or
38 procures to be falsely or fraudulently made, forged, altered, or counterfeited, any stamp
39 prepared or prescribed by the Secretary under the authority of this Article, or who knowingly
40 and willfully utters, publishes, passes, or tenders as true, any false, altered, forged, or
41 counterfeited stamps for the purpose of evading the tax levied by this Article, is guilty of a
42 felony, and upon conviction thereof shall be fined not more than two thousand dollars (\$2,000)
43 or imprisoned in the State prison for a term of not more than five years, or both, in the
44 discretion of the court.

45 If any person secures, manufactures, or causes to be secured, or manufactured, or has in his
46 possession a stamp or any counterfeit impression device not prescribed or authorized by the
47 Secretary, such person shall be guilty of a felony, and upon conviction thereof shall be fined
48 not more than two thousand dollars (\$2,000) or imprisoned in the State prison for a term of not
49 more than five years, or both, in the discretion of the court."

50 **SECTION 12.** This act becomes effective July 1, 2009.