

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 249

Short Title: Restore Cigarette Tax Stamps. (Public)

Sponsors: Senator Hartsell.

Referred to: Finance.

March 8, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

(a) Requirement. – A package of cigarettes subject to tax in this State must be marked by a heat transfer stamp indicating that the package of cigarettes is taxable under this Article.

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

(c) Responsibility of Secretary. – The Secretary must prescribe the design, denominations, and other details of a cigarette stamp and must provide for the production of the stamp. A stamp must display a unique serial number that is visible at the point of sale or use. The Secretary must collect the amount due for a stamp when the Secretary transfers, or authorizes the transfer of, the stamp to a licensed distributor. The charge for a tax-paid stamp is the amount of tax payable under this Article on the package of cigarettes on which the stamp will be placed. The Secretary must keep a record of the stamps transferred to a licensed distributor."

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

"§ 105-113.9. Out-of-state shipments.

~~Any~~ A licensed distributor engaged in interstate business shall be permitted to may, with the approval of the Secretary, set aside part of the stock as necessary packages of cigarettes needed to conduct interstate business without paying the tax stamping the packages as otherwise required by this Part, but only if the 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:~~ means any of the following:



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

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

13 "**§ 105-113.10. ~~Manufacturers shipping to distributors exempt.~~In-State shipments of**
14 **manufacturers and other distributors.**

15 ~~Any manufacturer shipping cigarettes to other distributors who are licensed under~~
16 ~~G.S. 105-113.12 may, upon application to the Secretary and upon compliance with~~
17 ~~requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No~~
18 ~~manufacturer may be relieved of the requirement to be licensed as a distributor in order to make~~
19 ~~shipments, including drop shipments, to a retail dealer or ultimate user.~~

20 (a) It is unlawful for a person that is not a licensed distributor to ship an unstamped
21 package of cigarettes into this State or between locations in this State.

22 (b) A licensed distributor may ship a package of unstamped cigarettes in the following
23 circumstances:

24 (1) To a facility the distributor owns.

25 (2) To another licensed distributor.

26 (3) To a person in a transaction that is not subject to the federal excise tax on
27 cigarettes.

28 (4) To an agency or an instrumentality of the United States.

29 (c) A manufacturer delivering cigarettes to another licensed distributor may, upon
30 application to the Secretary and upon compliance with requirements prescribed by the
31 Secretary, be relieved of paying the taxes levied in this Part. In addition to shipments
32 authorized by subsection (b) of this section, a manufacturer may (i) ship unstamped packages
33 of cigarettes directly to a licensed distributor or (ii) deliver unstamped cigarettes to a licensed
34 distributor at the manufacturer's place of business if the manner of delivery or receipt is
35 approved by and reported to the Secretary."

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

37 "**§ 105-113.18. ~~Payment of tax; reports.~~**

38 ~~The taxes levied in this Part are payable when a report is required to be filed. The~~
39 ~~The tax levied in this Part on the sale or possession of a package of cigarettes by a distributor is payable~~
40 ~~by means of the stamp the distributor is required to obtain and place on the package of~~
41 ~~cigarettes. The tax levied in this Part on the sale or possession of a package of cigarettes by a~~
42 ~~person that is not a distributor is payable when the person is required to file a report.~~

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

- 45 (1) Distributor's Report. – ~~A distributor shall~~ must file a monthly report in the
46 ~~form prescribed by the Secretary. The report that covers sales and other~~
47 ~~activities occurring in a calendar month and month. The report is due within~~
48 ~~20 days after the end of the month covered by the report. The report shall~~
49 ~~state the amount of tax due and shall identify any transactions to which the~~
50 ~~tax does not apply.~~ must include the following information:

- 1 a. The number of unstamped cigarette packages on hand on the first and
 2 last days of the month.
 3 b. The number of unstamped cigarette packages received during the
 4 month.
 5 c. The number of unstamped cigarette packages sold during the month.
 6 d. The number of unstamped cigarettes returned to the manufacturer
 7 during the month.
 8 e. The number of stamps on hand on the first and last days of the
 9 month.
 10 f. The number of cigarette stamps obtained during the month.
 11 g. All authorized stamp adjustments to be made during the month.
 12 h. The number of cigarette stamps placed on packages of cigarettes
 13 during the month.
 14 (1a) Report of Free Cigarettes. – A manufacturer ~~who~~ that distributes cigarettes
 15 without charge shall file a monthly report in the form prescribed by the
 16 Secretary. The report covers cigarettes distributed without charge in a
 17 calendar month and is due within 20 days after the end of the month covered
 18 by the report. The report shall state the number of cigarettes distributed
 19 without charge and the amount of tax due.
 20 (2) Use Tax Report. – ~~Every other person who has acquired non-tax-paid~~ A
 21 ~~person that is not a distributor and that acquires a package of unstamped~~
 22 ~~cigarettes for sale, use, or consumption subject to the tax imposed by this~~
 23 ~~Part shall, must file a report within 96 hours after receipt of the cigarettes,~~
 24 ~~file a report in the form prescribed by the Secretary showing the amount of~~
 25 ~~cigarettes so received and any other information required by the Secretary.~~
 26 ~~The report shall be accompanied by payment of the full amount of the~~
 27 ~~tax receiving the package of cigarettes. The report must state the number of~~
 28 ~~cigarettes acquired and the amount of tax due.~~
 29 (3) Shipping Report. – ~~Any person, except a licensed distributor, who~~ A person
 30 ~~that is not a licensed distributor and that transports cigarettes upon the public~~
 31 ~~highways, roads, or streets of this State, State must, upon notice from the~~
 32 ~~Secretary, shall file a report in the form prescribed by the Secretary and~~
 33 ~~containing the information required by the Secretary.~~
 34 (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1."

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

36 "**§ 105-113.21. Discount; refund.**

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

39 (a1) Discount. – A distributor is eligible for ~~who files a timely report under~~
 40 ~~G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the~~
 41 ~~report~~ a discount of two percent (2%) nine-tenths of a cent (0.9¢) for every stamp the
 42 distributor purchases. This discount covers the distributor's expenses incurred in placing stamps
 43 on packages of cigarettes, preparing the records and reports required by this Part, maintaining
 44 the records required by this Part, and the expense of furnishing a bond.

45 (b) ~~Refund.~~ Refund for Stale Product. – A distributor in possession of packages of stale
 46 or otherwise unsalable cigarettes upon which ~~the tax has been paid~~ a stamp has been placed
 47 may return the cigarettes to the manufacturer or its designated agent contracted to dispose of
 48 the unsalable cigarettes and apply to the Secretary for a refund of the tax. The application shall
 49 must be in the form prescribed by the Secretary and shall be accompanied by an affidavit from
 50 the manufacturer stating the number of cigarettes returned to the manufacturer or its designated

1 agent by the applicant. The Secretary ~~shall~~must refund the tax paid, less the discount allowed,
2 on the unsalable cigarettes.

3 (c) Refund for Stamps. – A distributor that purchases a stamp is allowed a refund of the
4 amount paid for the stamp, less the discount allowed, in the circumstances listed in this
5 subsection. To obtain a refund, a distributor must apply to the Secretary for the refund. The
6 circumstances are:

7 (1) When the distributor purchases a stamp that it does not place on a package of
8 cigarettes.

9 (2) When the distributor purchases a stamp that is torn or otherwise unusable
10 and cannot be placed on a package of cigarettes."

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

12 "**§ 105-113.27. ~~Non-tax-paid~~ Restrictions and presumption concerning cigarettes.**

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

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

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

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

21 "**§ 105-113.33. Criminal penalties.**

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

26 **SECTION 8.** A distributor that has unstamped cigarettes on hand on the effective
27 date of this act must stamp the cigarettes as required by this act within 48 hours of the effective
28 date.

29 **SECTION 9.** This act becomes effective July 1, 2011.