

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1411

Short Title: Restore Cigarette Tax Stamps.

(Public)

Sponsors: Senator Hartsell.

Referred to: Finance.

March 26, 2007

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

5 The General Assembly of North Carolina enacts:

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

7 "**§ 105-113.4. Definitions.**

8 The following definitions apply in this Article:

9 ...

10 (6a) Non-tax-paid cigarettes. – A package of cigarettes that does not bear a
11 stamp as required by G.S. 105-113.19.

12 ...

13 (10b) Stamp. – The indicia required to be placed on a package of cigarettes
14 that evidence payment of the tax on cigarettes under G.S. 105-113.5,
15 or the indicia used to indicate that the cigarettes are intended for a sale
16 or distribution within this State that is exempt from State tax under any
17 applicable provision of law.

18 ..."

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

20 "(1) Distributor's Report. – A distributor shall file a monthly report in the
21 form prescribed by the Secretary. The report covers sales and other
22 activities occurring in a calendar month and is due within 20 days after
23 the end of the month covered by the report. The report shall state the
24 amount of tax due and shall identify any transactions to which the tax
25 does not apply. Every distributor required to affix stamps as prescribed
26 herein shall file a report on or before the twentieth day of each month,
27 in such a form as the Secretary shall prescribe, which report shall
28 disclose the quantity of cigarettes on hand on the first and last days of
29 the calendar month immediately preceding the month in which such

1 report is required, the amount of stamps purchased, used, and on hand
2 during the report period, and such other information as the Secretary
3 shall prescribe."

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

6 **"§ 105-113.19A. Secretary to provide stamps.**

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

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

11 (c) The Secretary shall make arrangements with a manufacturer to manufacture
12 cigarette stamps provided for in this Article. The Secretary shall prescribe the form,
13 design, denominations, and such other matters as may be necessary with respect to the
14 stamps. Only the Secretary may sell stamps. The Secretary shall sell and distribute
15 stamps exclusively to licensed distributors.

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

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

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

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

42 **"§ 105-113.20A. Distributors to affix stamps.**

43 Only licensed distributors shall affix stamps. A licensed distributor may only affix
44 stamps to packages of cigarettes manufactured, imported, purchased, or obtained

1 directly from a licensed distributor who manufactures cigarettes. A licensed distributor
2 shall not sell, borrow, loan, buy, or exchange stamps to, from, or with any other person.

3 Only licensed distributors may possess or receive non-tax-paid cigarettes. A licensed
4 distributor who possesses or receives non-tax-paid cigarettes shall affix stamps to the
5 packages of cigarettes prior to selling, distributing, or shipping the cigarettes to any
6 other person, provided that a licensed distributor who manufactures cigarettes may sell,
7 distribute, or ship non-tax-paid cigarettes to another licensed distributor, and further
8 provided that a licensed distributor may ship or cause to be delivered non-tax-paid
9 cigarettes to a facility, wherever located, owned by such distributor.

10 Stamps shall be affixed by licensed distributors:

- 11 (1) In a denomination that at least equals the tax due on cigarettes in the
12 package, if the cigarettes are subject to tax under G.S. 105-113.5.
13 (2) On the smallest package of cigarettes that will be handled, sold, used,
14 consumed, or distributed in this State.
15 (3) To the bottom of each individual package of cigarettes in a manner so
16 that the stamp cannot be removed from the package without being
17 mutilated or destroyed."

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

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

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

29 **"§ 105-113.23A. Stamp metering machines.**

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

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

39 **"§ 105-113.25A. Redemption and refund.**

40 The Secretary shall redeem any unused or mutilated, but identifiable, stamp that any
41 distributor presents for redemption, and refund therefor the face value of the stamp, less
42 the discount allowed at the time of the purchase of the stamp by the distributor. In the
43 event any stamped cigarettes are shipped out of this State, or are sold to those agencies
44 or instrumentalities which this State is prohibited from taxing under the Constitution or

1 statutes of the United States, by any distributor, a refund of the face value of the stamp
2 less the discount allowed by the Secretary at the time of the purchase of the stamp by
3 said distributor shall be made upon the application of the distributor on forms prescribed
4 by the Secretary together with such evidence and proof of sale as the Secretary shall
5 require."

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

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

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

17 "(4) Unless the claimant can show that the non-tax-paid cigarettes seized
18 were not transported in violation of this Part and that the property
19 seized belongs to the claimant or that in the case of property other than
20 cigarettes, the property was used in transporting non-tax-paid
21 cigarettes in violation of this Part without the claimant's knowledge or
22 consent, with the right on the part of the claimant to have a jury pass
23 upon this claim, the court shall order a sale by public auction of the
24 property ~~seized, and the seized~~ with the exception of the ~~contraband~~
25 cigarettes. The officer making the sale, after deducting the cost of the
26 tax due, which the officer shall pay upon sale, expenses of keeping the
27 property, the fee for the seizure, and the costs of the sale, shall pay all
28 liens according to their priorities, which are established, by
29 intervention or otherwise, at the hearing or in another proceeding
30 brought for the purpose as being bona fide and as having been created
31 without the lien or having any notice that the vehicle or vessel was
32 being used for the unlawful transportation of non-tax-paid cigarettes,
33 and shall pay the balance of the proceeds to the State Treasurer for the
34 General Fund. All contraband cigarettes seized by this State must be
35 destroyed. The Secretary may, prior to any destruction of cigarettes,
36 permit the true holder of the trademark rights in the cigarette brand to
37 inspect the contraband cigarettes, in order to assist the Secretary in any
38 investigation regarding the cigarettes."

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

40 "(5) All liens against property sold under the provisions of this section shall
41 be transferred from the property to the proceeds of the sale of the
42 property. If, however, no one is found claiming the ~~eigarettes, or the~~
43 ~~vehicle or vessel, then the taking of the cigarettes, vehicle, vehicle~~ or
44 vessel, along with a description, shall be advertised in a newspaper

1 having circulation in the county where the items were taken, once a
2 week for two weeks and by notices posted in three public places near
3 the place of seizure, and if no claimant appears within ten days after
4 the last publication of the advertisement, the property shall be sold,
5 and the proceeds, after deducting the expenses and costs, shall be paid
6 to the State Treasurer for the General Fund. All cigarettes seized by
7 this State must be destroyed. The Secretary may, prior to any
8 destruction of cigarettes, permit the true holder of the trademark rights
9 in the cigarette brand to inspect such contraband cigarettes, in order to
10 assist the Secretary in any investigation regarding such cigarettes."

11 **SECTION 11.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
12 amended by adding a new section to read:

13 **"§ 105-113.33A. Limitation on retail sales.**

14 A retail dealer shall not knowingly sell or distribute more than ten cartons of
15 cigarettes to any person in a single transaction or in a series of transactions within a 24-
16 hour period; provided, however, that a retail dealer which is licensed as a distributor
17 may make any sales permitted to be made by a distributor under this Article when
18 acting in that capacity."

19 **SECTION 12.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
20 amended by adding a new section to read:

21 **"§ 105-113.33B. Retail dealer penalty.**

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

25 **SECTION 13.** Part 2 of Article 2A of Chapter 105 of the General Statutes is
26 amended by adding a new section to read:

27 **"§ 105-113.34A. Forging or counterfeiting stamps.**

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

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

42 **SECTION 14.** This act becomes effective July 1, 2007.