

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) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.
- (1c) 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.
- (2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.
- (3) Distributor. – Either of the following:
 - a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.
 - b. A manufacturer of cigarettes.
- (4) Repealed by Session Laws 1991, c. 689, s. 267.
- (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, 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.
- (9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.
- (10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
- (10a) Secretary. – The Secretary of Revenue.
- (11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.
- (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use. The term includes a vapor product.
- (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 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).)

§ 105-113.4A. Licenses.

(a) General. – To obtain 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 at the 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 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.

(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 surrenders 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 provided in this subsection. A duplicate or amended license must state that it is a duplicate or amended license, as appropriate:

- (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 provide the list required under 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).)

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

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the licensee. The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the following acts after holding a hearing on whether the license should be revoked:

- (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.

(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by registered mail to the last known address of the licensee.

(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).)

§ 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 S.L. 1999-2, 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.)

§ 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. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 263; 2009-451, s. 27A.5(b).)

§ 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 taxpayer 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 taxpayer 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 taxpayer 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 order renewing the product must be provided to the Department within 14 days of receipt.

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 taxpayer 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).)

Part 2. Cigarette Tax.

§ 105-113.5. Tax on cigarettes.

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

§ 105-113.6. Use tax levied.

A tax is levied upon the sale or possession for sale by a person other than a 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.)

§ 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. 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.)

§ 105-113.9. Out-of-state shipments.

Any 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 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 distributor to the business location of the nonresident purchaser in another state; and
- (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 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).)

§ 105-113.10. Manufacturers exempt from paying tax.

(a) Shipping to Other Distributors. – Any 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. 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. (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).)

§ 105-113.11. Licenses required.

After the effective date of this Article, no person shall engage in business as a distributor in this State, without having first obtained from the Secretary the appropriate license for that purpose as prescribed herein. Any license required by this Article shall be in addition to any and all other licenses which may be required by law. (1969, c. 1075, s. 2; 1973, c. 476, s. 193.)

§ 105-113.12. Distributor must obtain license.

(a) A distributor shall obtain for each place of business a continuing distributor's license and shall pay a tax of twenty-five dollars (\$25.00) for the license.

(b) For the purposes of this section, a "place of business" is a place where a distributor receives or stores non-tax-paid cigarettes.

(c) An out-of-state distributor may obtain a distributor's license upon compliance with the provisions of 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.)

§ 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 distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails 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 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 distributor and increase the required bond amount if the amount no longer covers the anticipated tax liability of the 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 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).)

§§ 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 distributor shall file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the

month covered by the report. The report shall state the amount of tax due and shall identify any transactions to which the tax does not apply.

- (1a) Report of Free Cigarettes. – A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.
- (2) Use Tax Report. – Every other person who has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed by this Part shall, 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 shall be accompanied by payment of the full amount of the tax.
- (3) Shipping Report. – Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall 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.)

§§ 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 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 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 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).)

§§ 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. Records to be kept.

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 sales and other information as required under this Article. The records shall be in the form prescribed by the Secretary.

These records shall be safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department. The Secretary may consent to the destruction of any records at any time within this three-year period. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1993, c. 442, s. 10.)

§ 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) 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.)

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

§ 105-113.29. Unlicensed place of business.

It shall be unlawful for any person to maintain a place of business within this State required by this Article to be licensed to engage in the business of selling or offering for sale cigarettes or other tobacco products without first obtaining such licenses. (1969, c. 1075, s. 2; 2017-39, s. 10.)

§ 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. 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).)

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

Part 3. Tax on Other Tobacco Products.

§ 105-113.35. Tax on tobacco products other than cigarettes.

(a) Tax on Tobacco Products. – An excise tax is levied on tobacco products at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. The tax rate does not apply to the following:

- (1) Cigarettes subject to the tax in G.S. 105-113.5.
- (2) Vapor products subject to the tax in subsection (a1) of this section.

(a1) Tax on Vapor Products. – An excise tax is levied on vapor products at 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.

(a2) Limitation. – 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.

(b) Primary Liability. – The wholesale dealer or retail dealer who first acquires or otherwise handles tobacco products subject to the tax imposed by this section is liable for the tax imposed by this section. A wholesale dealer or retail dealer who brings into this State a tobacco product made outside the State is the first person to handle the tobacco product in this State. A wholesale dealer or retail dealer who is the original consignee of a tobacco product that is made outside the State and is shipped into the State is the first person to handle the tobacco product in this State.

(c) Secondary Liability. – A retail dealer who acquires non-tax-paid tobacco products subject to the tax imposed by this section from a wholesale dealer is liable for any tax due on the tobacco products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax.

(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco products. A manufacturer who ships vapor products to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the vapor products shipped to either a wholesale dealer or retail dealer. Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section 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.

If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products other than cigarettes 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 section on tobacco products other than cigarettes. 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.

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

(e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009. (1969, c. 1075, s. 2; 1977, c. 1114, s. 4; 1991, c. 689, s. 269; 1991 (Reg. Sess., 1992), c. 955, s. 10; 2003-284, s. 45A.1(b); 2004-84, s. 2(b); 2005-276, s. 34.1(c); 2007-323, s. 6.23(a); 2007-435, s. 3; 2009-451, s. 27A.5(c); 2009-559, s. 2; 2014-3, s. 15.1(b); 2015-6, s. 2.5(a); 2016-5, s. 4.2.)

§ 105-113.36. Wholesale dealer and retail dealer must obtain license.

A wholesale dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of twenty-five dollars (\$25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of ten dollars (\$10.00) for the license. A "place of business" is a place where a wholesale dealer makes tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than cigarettes. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 270; 1991 (Reg. Sess., 1992), c. 955, s. 11; 2018-5, s. 38.6(b).)

§ 105-113.37. Payment of tax.

(a) Monthly Report. – Except for tax on a designated sale under subsection (b), the taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(b) Designation of Exempt Sale. – A wholesale dealer who sells a tobacco product to a person who has notified the wholesale dealer in writing that the person intends to resell

the item in a transaction that is exempt from tax under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) may, when filing a monthly report under subsection (a), designate the quantity of tobacco products sold to the person for resale. A wholesale dealer shall report a designated sale on a form provided by the Secretary.

A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The wholesale dealer shall pay the tax due on all other sales in accordance with this section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the tax due on a tobacco product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of tobacco products that will be resold in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2).

A person who does not sell a tobacco product in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) after a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a tobacco product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A wholesale dealer who does not pay tax on a tobacco product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12.

(d) Shipping Report. – Any person who transports other tobacco products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 271; 1991 (Reg. Sess., 1992), c. 955, s. 12; 2009-559, s. 3; 2014-3, s. 15.1(c).)

§ 105-113.38. 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 loss if the dealer fails 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 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 dealers, and 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 Article, and in the amounts stipulated in this section. (1969, c. 1075, s. 2; 1991, c. 689, s. 272; 2012-79, s. 2.1; 2014-3, s. 9.1(b); 2016-5, s. 4.1(b).)

§ 105-113.39. Discount; refund.

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part on tobacco products but not including vapor products, who files a timely report under G.S. 105-113.37, 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 wholesale dealer or retail dealer who is primarily liable under G.S. 105-113.35(b) 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 shall be in the form prescribed by the Secretary and shall be 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 shall refund the tax paid, less the discount allowed, on the listed products. (1969, c. 1075, s. 2; 1991, c. 689, s. 273; 2001-414, s. 4; 2003-284, s. 45A.1(c); 2004-84, s. 2(c); 2005-406, s. 2; 2008-207, s. 4; 2014-3, ss. 9.2, 15.1(d).)

§ 105-113.40. Records of sales, inventories, and purchases to be kept.

Every wholesale dealer and retail dealer shall keep accurate records of the dealer's purchases, inventories, and sales of tobacco products. These records shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 274.)

§ 105-113.40A. Use of tax proceeds.

The Secretary must credit the net proceeds of the tax collected under this Part as follows:

- (1) An amount equal to three percent (3%) of the cost price of the products to the General Fund.
- (1a) An amount equal to the revenue generated by the tax on vapor products under G.S. 105-113.35(a1) to the General Fund.
- (2) The remainder to the University Cancer Research Fund established under G.S. 116-29.1. (2009-451, s. 27A.5(d); 2010-95, s. 1; 2014-3, s. 15.1(e).)