

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 79

Short Title: Simplify Soft Drink Tax.

(Public)

Sponsors: Representatives Lilley, Abernethy, and Hasty.

Referred to: Finance.

February 18, 1991

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE ADMINISTRATION OF THE EXCISE TAX ON SOFT DRINKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.44 reads as rewritten:

**"§ 105-113.44. Definitions.**

As used in this Article, unless the context otherwise requires: The following definitions apply in this Article:

- (1) Base products' means hot chocolate flavored drink mix, flavored milk shake bases, concentrate products to which milk or other liquid is added to complete a soft drink, and all like items or products as herein defined which will be taxed as syrups. product. The compound mixture or basic ingredients to which liquid milk or another liquid is added to complete a soft drink. The term includes a powder, a simple syrup, a chocolate syrup, other syrups, and a concentrate.
- (2) 'Bottled' means enclosed in any closed or sealed glass, metal, paper or other type of bottle, can, carton or container, regardless of the size of such container. Bottled. In a closed container of any kind.
- (3) 'Soft drink' means any complete, finished, ready to use, nonalcoholic drink, whether carbonated or not, such as soda water, ginger ale, Nu-Grape, Coca-Cola, lime cola, Pepsi-Cola, bud wine, near beer, fruit juice, vegetable juice, milk drinks when any flavoring or syrup is added, cider, carbonated water and all preparations commonly referred to as soft drinks of whatever kind or description.

- 1           (4) ~~'Secretary' means the North Carolina Secretary of Revenue.~~
- 2           (5) ~~'Crowns' means crowns, caps and lids bearing any tax indicia other~~  
3 ~~than stamps evidencing the payment of the excise tax levied under this~~  
4 ~~Article. 'Crowns' shall also include waxed paper or plastic containers~~  
5 ~~used by dairies upon which the tax indicia has been imprinted by the~~  
6 ~~manufacturer thereof.~~
- 7           (6) ~~'Distributor' includes any person who manufactures, bottles,~~  
8 ~~compounds, mixes or purchases for sale to retail dealers or wholesale~~  
9 ~~dealers any bottled soft drink, soft drink syrup or powder, or base~~  
10 ~~product for mixing, making or compounding soft drinks. Distributor.~~  
11 ~~A person who makes bottled soft drinks or base products or who~~  
12 ~~acquires bottled soft drinks or base products for sale to a wholesale~~  
13 ~~dealer or a retail dealer.~~
- 14           (7) ~~'Excise tax' means the soft drink tax levied under G.S. 105-113.45.~~  
15 ~~Juice. Any of the following:~~
- 16           a. ~~The liquid that results from pressing fresh fruit or fresh~~  
17 ~~vegetables.~~
- 18           b. ~~The concentrate produced by dehydrating a liquid described in~~  
19 ~~subpart a.~~
- 20           c. ~~The liquid that results from adding water to a concentrate~~  
21 ~~described in subpart b.~~
- 22           (8) ~~'In this State' or 'within this State' means within the exterior limits of~~  
23 ~~the State of North Carolina and includes all territory within such limits~~  
24 ~~owned by, leased by or ceded to the United States of America. Milk.~~  
25 ~~Any of the following:~~
- 26           a. ~~Liquid milk, regardless of butterfat content.~~
- 27           b. ~~The powder produced by dehydrating liquid milk.~~
- 28           c. ~~The liquid that results from adding water to dehydrated liquid~~  
29 ~~milk.~~
- 30           (9) ~~'Natural fruit juice' means the natural liquid which results from the~~  
31 ~~pressing of sound ripe fruit, and the liquid which results from the~~  
32 ~~reconstitution of natural fruit juice concentrate by the restoration of~~  
33 ~~water to dehydrated natural fruit juice. Natural. Without added~~  
34 ~~ingredients of any kind other than vitamins. Added ingredients include~~  
35 ~~sugar, salt, preservatives, artificial flavoring, coloring, and~~  
36 ~~carbonation.~~
- 37           (10) ~~'Natural liquid milk' means natural liquid milk regardless of butterfat~~  
38 ~~content, and the liquid milk product which results from the~~  
39 ~~reconstitution of natural milk concentrate, regardless of butterfat~~  
40 ~~content, by the restoration of water to dehydrated or evaporated natural~~  
41 ~~milk.~~
- 42           (11) ~~'Natural vegetable juice' means the natural liquid which results from~~  
43 ~~the pressing of sound ripe vegetables or the liquid which results from~~

- 1 the reconstitution of natural vegetable juice concentrate by the  
2 restoration of water to dehydrated natural vegetable juice.
- 3 (12) ~~'Person' includes any Person. An individual, a firm, a partnership, joint~~  
4 ~~venture, an association, a corporation, estate, trust, receiver, syndicate or~~  
5 ~~any other organization or group or combination acting as a unit, the State~~  
6 ~~or any of its political subdivisions, and the plural as well as the singular~~  
7 ~~number. unit.~~
- 8 (13) ~~'Powders' means compressed powders, crystals, granules or tablets~~  
9 ~~from which soft drinks can be made. Powder. Crystals, granules,~~  
10 ~~tablets, and other dry products.~~
- 11 (14) ~~'Retail dealer' includes every person, other than a distributor or~~  
12 ~~wholesale dealer, who makes, mixes, compounds or manufactures any~~  
13 ~~drink from a soft drink syrup or powder or base product, and sells or~~  
14 ~~otherwise dispenses the same to the ultimate consumer, and every~~  
15 ~~person, other than a distributor or wholesale dealer, who sells or~~  
16 ~~otherwise dispenses any bottled soft drink to the ultimate consumer.~~  
17 ~~dealer'. A person who sells bottled soft drinks or base products to the~~  
18 ~~ultimate consumer or who makes soft drinks from base products and~~  
19 ~~sells the soft drinks to the ultimate consumer.~~
- 20 (15) ~~'Selling' or 'sale' means any sale, transfer, exchange, barter, gift or~~  
21 ~~offer for sale and distribution, in any manner or by any means~~  
22 ~~whatsoever. Sale. A transfer, a trade, an exchange, or a barter, in any~~  
23 ~~manner or by any means, with or without consideration.~~
- 24 (16) ~~'Simple syrup' means the product resulting from the making, mixing,~~  
25 ~~compounding or manufacturing by dissolving sugar and water or any~~  
26 ~~other mixture that will create syrup to which may be added~~  
27 ~~concentrates or extracts. Secretary. The Secretary of Revenue.~~
- 28 (17) ~~'Soda fountain' includes all places where soft drinks are compounded~~  
29 ~~for sale, including automatic vending machines. Soft drink. A~~  
30 ~~beverage that is not an alcoholic beverage, as defined in G.S. 105-~~  
31 ~~113.68.~~
- 32 (18) ~~'Soft drink syrups and powders' includes the compound mixture or the~~  
33 ~~basic ingredients, whether dry or liquid, practically and commercially~~  
34 ~~usable in making, mixing or compounding soft drinks by the mixing~~  
35 ~~thereof with carbonated or plain water, ice, fruit juice, milk or any~~  
36 ~~other product suitable to make soft drinks, among such syrups being~~  
37 ~~such products as Coca Cola syrup, Chero Cola syrup, Pepsi Cola~~  
38 ~~syrup, Dr. Pepper syrup, root beer syrup, Nu Grape syrup, lemon~~  
39 ~~syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy~~  
40 ~~syrup, simple syrup, chocolate drink powder, malt drink powder, or~~  
41 ~~any other prepared syrups or powders sold or used for the purpose of~~  
42 ~~mixing soft drinks commercially at soda fountains, restaurants or~~  
43 ~~similar places as well as those powder bases prepared for the purpose~~  
44 ~~of domestically mixing soft drinks such as kool-aid, oh boy drink, tip-~~

1 top, miracle aid and all other similar products. Concentrated natural  
2 frozen or unfrozen fruit juices or vegetable juices when used  
3 domestically are specifically excluded from this definition.

4 (19) 'Stamp' means the North Carolina taxpaid stamp evidencing the  
5 payment of the excise tax levied by this Article, and which may be  
6 used as permitted by the Secretary in lieu of taxpaid crowns.

7 (20) 'Wholesale dealer' includes any person who sells bottled soft drinks,  
8 soft drink syrups or powders, or base products for mixing, compounding or making soft  
9 drinks to retail dealers or other wholesale dealers for resale purposes. dealer. A person  
10 who sells bottled soft drinks or base products to another for resale."

11 Sec. 2. G.S. 105-113.45 reads as rewritten:

12 "**§ 105-113.45. Taxation rate. Excise taxes on soft drinks and base products.**

13 (a) Bottled Soft Drinks. – A soft drink excise tax is hereby levied and imposed  
14 on and after midnight, September 30, 1969, upon the sale, use, handling and distribution  
15 of all soft drinks, soft drink syrups and powders, base products and other items referred  
16 to in this section. An excise tax of one cent (1¢) is levied on each bottled soft drink.

17 (b) The rate of tax on each bottled soft drink shall be one cent (1¢).

18 (c) Liquid Base Products. – The rate of tax on each gallon of soft drink syrup or  
19 simple syrup shall be one dollar (\$1.00), and on a fraction of a gallon the rate shall be an  
20 amount which represents one dollar (\$1.00) multiplied by the same fraction of a gallon.  
21 The rate of a tax on each ounce or fraction of an ounce of soft drink syrup or simple  
22 syrup shall be four fifths of a cent (4/5¢), and no exemption or refund shall be allowed  
23 on such syrup even though it may subsequently be diverted to some purpose other than  
24 the making of soft drinks. An excise tax of one dollar (\$1.00) a gallon, or four-fifths of  
25 a cent (4/5¢) an ounce or fraction of an ounce, is levied on a liquid base product. The  
26 tax applies regardless whether the liquid base product is diverted to and used for a  
27 purpose other than making a soft drink.

28 (d) Dry Base Products. – The rate of tax on dry soft drink powders and base  
29 products which are used to make soft drinks without being converted into syrup shall be  
30 one cent (1¢) per ounce or fraction thereof of the dry powder or base product weight.  
31 However, the tax on dry soft drink powder or base product which is to be converted into  
32 syrup shall be the same as that which would be due upon the syrup produced, if the  
33 syrup were being taxed according to the rates set out in subsection (c) above. An excise  
34 tax is levied on a dry base product at the rate:

35 (1) Of one cent (1¢) an ounce or fraction of an ounce if the dry base  
36 product is not converted into a syrup or other liquid base product  
37 before it is used to make a soft drink.

38 (2) That would apply under subsection (c) to the resulting liquid base  
39 product if the dry base product is converted into a liquid base product  
40 before it is used to make a soft drink.

41 (e) The excise tax herein levied on syrups, powders and base products shall not  
42 apply to syrups, powders and base products used by persons in the manufacture of  
43 bottled soft drinks which are otherwise subject to tax under this Article. The Secretary  
44 may by administrative rules or regulation, provide for the storage of such syrups,

1 powders and base products when they are not for use in the manufacture of bottled soft  
2 drinks."

3 Sec. 3. G.S. 105-113.46 reads as rewritten:

4 **"§ 105-113.46. ~~Exemption of certain milk drinks.~~ Exemptions.**

5 The taxes imposed by this Article do not apply to an item that is listed in this section  
6 and, if the item is a bottled soft drink or a juice concentrate included in subdivisions (2)  
7 or (3), is registered with the Secretary in accordance with G.S. 105-113.47:

8 (1) A natural liquid milk drink produced by a farmer or a dairy.

9 (2) A bottled soft drink that contains at least thirty-five percent (35%)  
10 milk measured by volume and is not exempt under subdivision (1).

11 (3) Natural juice.

12 (4) Natural water.

13 (5) A base product used to make a bottled soft drink subject to tax under  
14 this Article.

15 (6) Coffee or tea in any form.

16 (7) A bottled soft drink or base product sold outside the State.

17 (8) A bottled soft drink or base product sold to the federal government.

18 ~~All natural liquid milk drinks produced by farmers or dairies shall be exempt from~~  
19 ~~the payment of the soft drink excise tax. Where a product other than the above is~~  
20 ~~produced, such product is subject to the tax unless otherwise exempt under this Article."~~

21 Sec. 4. G.S. 105-113.47 reads as rewritten:

22 **"§ 105-113.47. ~~Natural fruit or vegetable juice or natural liquid milk drinks exempted~~**  
23 **~~from tax.~~ Registration of certain exempt bottled soft drinks and juice**  
24 **concentrates.**

25 (a) Requirement. ~~All bottled soft drinks containing thirty five percent (35%) or~~  
26 ~~more of natural fruit or vegetable juice and all bottled natural liquid milk drinks~~  
27 ~~containing thirty five percent (35%) or more of natural liquid milk, are exempt from the~~  
28 ~~excise tax imposed by this Article, except that this exemption shall not apply to any fruit~~  
29 ~~or vegetable juice drink to which has been added any coloring, artificial flavoring or~~  
30 ~~preservative. Sugar, salt or vitamins shall not be construed to be an artificial flavor or~~  
31 ~~preservative. To be exempt from the tax imposed by this Article, a natural milk bottled~~  
32 ~~soft drink that is not produced by a farmer or a dairy, a natural juice bottled soft drink,~~  
33 ~~and a natural juice concentrate must be registered with the Secretary as an exempt item.~~  
34 To register an item as exempt, the person who controls the brand name or formula of the  
35 item must file an application for registration with the Secretary on a form provided by  
36 the Secretary. An application must include an affidavit stating the complete and  
37 itemized formula by volume of the bottled soft drink or juice concentrate that is the  
38 subject of the application.

39 (b) Determination. ~~Any bottled soft drink for which exemption is claimed under~~  
40 ~~this section must be registered with the Secretary. No bottled soft drink shall be entitled~~  
41 ~~to the exemption until registration has been accomplished by the filing of an application~~  
42 ~~for exemption on such form as may be prescribed by the Secretary, which form shall~~  
43 ~~include an affidavit setting forth the complete and itemized formula by volume of the~~  
44 ~~drink therein referred to, and the failure to submit such affidavit shall be prima facie~~

1 evidence that such bottled soft drink is not exempt. All bottled soft drinks which are not  
2 so registered and do not have affixed thereto the proper stamps or crowns shall be  
3 subject to confiscation. The Secretary or his duly authorized representative may at any  
4 time check the formulas or the manufacturing of such bottled soft drinks for which  
5 exemption is claimed under this section and in addition thereto, the Secretary or his duly  
6 authorized representative may at any time take samples of any product for which  
7 exemption has been claimed, from any and all persons offering such product for sale for  
8 the purpose of ascertaining by analysis the contents thereof. The sample shall be clearly  
9 marked for identification and such sample may be turned over to any registered chemist  
10 designated by the Secretary for the purpose of analysis. If such investigation establishes  
11 that such bottled soft drink contains less than thirty-five percent (35%) by volume of  
12 natural fruit juice, natural vegetable juice or natural liquid milk, or if any person  
13 engaged in selling, manufacturing, purchasing, consigning, using, shipping or  
14 distributing for the purpose of sale within this State who has applied for an exemption  
15 hereunder fails or refuses to allow the Secretary or his duly authorized representative to  
16 check the formulas or inspect the manufacturing of such bottled soft drinks, the excise  
17 tax imposed by this Article shall apply to all sales of such products and all such  
18 products offered for sale and not properly stamped shall be subject to confiscation until  
19 such person permits the Secretary to examine the formulas or inspect the manufacturing  
20 of such bottled soft drinks. The Secretary shall determine whether a bottled soft drink or  
21 a juice concentrate for which an application for registration is filed meets the criteria for  
22 exemption. To make the determination, the Secretary or a representative of the  
23 Secretary may require the person who filed the registration application for the item or  
24 anyone who sells the item in this State to provide a sample of the item and may have the  
25 sample analyzed by a chemist to verify the accuracy of the submitted formula.

26 (c) No Disclosure. — Except as required by law or allowed under this subsection,  
27 in accordance with proper judicial order or as otherwise provided by law, it shall be  
28 unlawful for the Secretary or any deputy, agent, clerk or other officer or employee or  
29 any other person acting in a confidential relationship with an agent or employee of the  
30 Secretary to divulge or make known in any manner any formula or any particulars of  
31 any may not disclose part or all of the formula of an item pertaining to any drink  
32 hereinabove referred to, for which an application for registration is filed. However, such  
33 prohibition shall not be construed to prohibit the publication of whether or not such  
34 bottled soft drinks contain thirty-five percent (35%) or more of natural fruit or vegetable  
35 juice or thirty-five percent (35%) or more of natural liquid milk, nor shall it be  
36 construed to prohibit the inspection by the Attorney General or other legal  
37 representative of the State of the formula of any taxpayer who shall bring action to set  
38 aside or review the tax base thereon or against whom an action or proceeding has been  
39 instituted to recover any tax imposed by this Article. — The Secretary may disclose  
40 whether an item meets the exemption criteria and the Attorney General or other legal  
41 representative of the State may examine the formula for an item if the grant or denial of  
42 an exemption for the item is challenged.

43 (d) Effect. — Where any product for which exemption is claimed under this  
44 section is found to contain less than thirty-five percent (35%) by volume of natural fruit

1 juice, natural vegetable juice, or natural liquid milk, the excise tax imposed by this  
2 Article shall apply to all sales of such product, and all such products offered for sale and  
3 not properly stamped shall be subject to confiscation. Registration as an exempt item  
4 applies prospectively to sales of the registered bottled soft drink or registered juice  
5 concentrate made on or after the date of registration. Registration does not relieve a  
6 person of liability for taxes due on sales made before the date an item is registered."

7 Sec. 5. G.S. 105-113.50 reads as rewritten:

8 **"§ 105-113.50. Soft drink licenses required.**

9 (a) Distributors And Wholesale Dealers. – Distributors and wholesale dealers  
10 shall obtain for each place of business a continuing soft drink license for which a fee of  
11 twenty-five dollars (\$25.00) shall be paid. For the purpose of this section, subsection,  
12 'place of business' means any place where a distributor makes bottled soft drinks or base  
13 products are manufactured by a distributor, or any place where unstamped bottled soft  
14 drinks, soft drink syrups and powders, base products and other items taxed under this Article  
15 are received or stored by a distributor or wholesale dealer. a distributor or a wholesale dealer  
16 receives or stores non-tax-paid bottled soft drinks or non-tax-paid base products.

17 (b) ~~Out of state distributors and wholesale dealers may obtain appropriate~~  
18 ~~distributors' or wholesale dealers' licenses upon compliance with the provisions of this~~  
19 ~~Article and such regulations and administrative rules as may be issued by the Secretary~~  
20 ~~hereunder, for which a fee of twenty five dollars (\$25.00) shall be paid for each such~~  
21 ~~soft drink license.~~

22 (c) Retail Dealers. ~~Each retail dealer manufacturing or purchasing not previously~~  
23 ~~taxed syrups, powders or base products shall secure~~ Retail dealers shall obtain for each  
24 place of business a continuing soft drink license for which a fee of five dollars (\$5.00)  
25 shall be paid for each place of business at which such unstamped syrups, powders or base  
26 products are received or at which place such retail dealer manufactures them. paid. For the  
27 purpose of this subsection, 'place of business' means any place where a retail dealer  
28 receives non-tax-paid bottled soft drinks or non-tax-paid base products.

29 (d) ~~Distributors, wholesale dealers and retail dealers licensed under this section~~  
30 ~~shall file such reports with the Secretary as he may require not later than the fifteenth~~  
31 ~~day of each month showing transactions for the preceding month."~~

32 Sec. 6. G.S. 105-113.50A reads as rewritten:

33 **"§ 105-113.50A. Local taxation.**

34 Except as authorized by G.S. 105-79, ~~no county, city or town shall levy any 105-~~  
35 ~~102.5(e), a county or city may not levy a privilege license tax upon the business of~~  
36 ~~bottling, manufacturing, producing, purchasing, selling at wholesale or retail, jobbing,~~  
37 ~~consigning, using, shipping-shipping, or distributing for the purpose of sale within this~~  
38 ~~State bottled soft drinks in bottles or other closed containers. drinks or base products."~~

39 Sec. 7. G.S. 105-113.51 reads as rewritten:

40 **"§ 105-113.51. ~~Affixing of crowns and stamps to containers; crowns and stamps not~~**  
41 **transferable. Liability for and payment of excise taxes.**

42 (a) ~~Any bottled soft drink offered for sale shall within 24 hours of its~~  
43 ~~manufacture or receipt in this State have affixed to it a North Carolina taxpaid stamp or~~  
44 ~~a North Carolina taxpaid crown at the rate provided for in this Article, unless the tax has~~

1 ~~been or will be paid according to some other method available under the provisions of~~  
2 ~~this Article.~~

3 ~~(b) The distributor or dealer who first distributes, sells, uses, consumes or~~  
4 ~~handles bottled soft drinks, syrups, powders, base products and other items subject to~~  
5 ~~the soft drink excise tax is subject to the tax unless taxpaid stamps or crowns have~~  
6 ~~previously been affixed. The distributor, wholesale dealer or retail dealer, or any person~~  
7 ~~who is the original consignee of any bottled soft drink, soft drink syrup, powder, base~~  
8 ~~product or other item subject to the soft drink excise tax manufactured or produced~~  
9 ~~outside this State, or who brings such into this State, shall pay the excise tax.~~

10 ~~(c) Taxpaid stamps shall be affixed to each individual container of soft drink~~  
11 ~~syrups, powders, and base products by wholesale dealers or distributors within 48 hours~~  
12 ~~after such syrups, powders, or base products are received or made by them and by retail~~  
13 ~~dealers within 24 hours after such syrups, powders or base products are received by~~  
14 ~~them, and in any event the containers must be stamped before such products are used in~~  
15 ~~the preparation of soft drinks.~~

16 ~~(d) The payment of the excise tax provided for in this Article shall be evidenced~~  
17 ~~by the affixing of taxpaid stamps or crowns to the original containers and the stamps~~  
18 ~~and crowns provided for in this Article shall not be transferable to any person other than~~  
19 ~~their original purchaser.~~

20 ~~(e) Notwithstanding any other provision of this Article, the excise tax levied~~  
21 ~~upon powders, as herein defined, may be made and evidenced in accordance with rules~~  
22 ~~and regulations of the Secretary.~~

23 (a) Primary Liability. – The distributor, wholesale dealer, or retail dealer who  
24 first distributes, sells, consumes, or otherwise handles bottled soft drinks or base  
25 products in this State is liable for the tax imposed by this Article. A distributor,  
26 wholesale dealer, or retail dealer who brings into this State a bottled soft drink or base  
27 product made outside the State is the first person to handle the bottled soft drink or base  
28 product in this State. A distributor, wholesale dealer, or retail dealer who is the original  
29 consignee of a bottled soft drink or base product that is made outside the State and is  
30 shipped into the State is the first person to handle the bottled soft drink or base product  
31 in this State.

32 (b) Secondary Liability. – A retail dealer who acquires non-tax-paid bottled soft  
33 drinks or non-tax-paid base products from a distributor or a wholesale dealer is liable  
34 for any tax due on the bottled soft drinks or base products. A retail dealer who is liable  
35 for tax under this subsection may not deduct a discount from the amount of tax due  
36 when reporting the tax.

37 (c) Monthly Report. – Except for tax on a designated sale under subsection (d),  
38 the taxes levied by this Article are payable when a report is required to be filed. A  
39 report is due on a monthly basis. A monthly report covers sales and other activities  
40 occurring in a calendar month and is due within 15 days after the end of the month  
41 covered by the report. A report shall be filed on a form provided by the Secretary and  
42 shall contain the information required by the Secretary.

43 (d) Designation of Exempt Sale. – A distributor or a wholesale dealer who sells  
44 a bottled soft drink or a base product to a person who has notified the distributor or

1 wholesale dealer in writing that the person intends to resell the item in a transaction that  
2 is exempt from tax under G.S. 105-113.46(7) or (8) may, when filing a monthly report  
3 under subsection (c), designate the quantity of bottled soft drinks or base products sold  
4 to the person for resale. A distributor or wholesale dealer shall report a designated sale  
5 on a form provided by the Secretary.

6 A distributor or a wholesale dealer is not required to pay tax on a designated sale  
7 when filing a monthly report. The distributor or wholesale dealer shall pay the tax due  
8 on all other sales in accordance with this section. A distributor, a wholesale dealer, or a  
9 customer of a distributor or wholesale dealer may not delay payment of the tax due on a  
10 bottled soft drink or base product by failing to pay tax on a sale that is not a designated  
11 sale or by overstating the quantity of bottled soft drinks or base products that will be  
12 resold in a transaction exempt under G.S. 105-113.46(7) or (8).

13 A person who does not sell a bottled soft drink or base product in a transaction  
14 exempt under G.S. 105-113.46(7) or (8) after a distributor or a wholesale dealer has  
15 failed to pay the tax due on the sale of the item to the person in reliance on the person's  
16 written notification of intent is liable for the tax and any penalties and interest due on  
17 the designated sale. If the Secretary determines that a bottled soft drink or a base  
18 product reported as a designated sale is not sold as reported, the Secretary shall assess  
19 the person who notified the distributor or wholesale dealer of an intention to resell the  
20 item in an exempt transaction for the tax due on the sale and any applicable penalties  
21 and interest. A distributor or a wholesale dealer who does not pay tax on a bottled soft  
22 drink or base product in reliance on a person's written notification of intent to resell the  
23 item in an exempt transaction is not liable for any tax assessed on the item.

24 (e) Refund. – A distributor, a wholesale dealer, or a retail dealer who pays tax on  
25 a bottled soft drink or a base product that is exempt from the tax may obtain a refund for  
26 the amount of tax paid by filing an application for refund with the Secretary on a form  
27 provided by the Secretary. A refund for tax paid in the first six months of a calendar  
28 year must be submitted by July 15, and a refund for tax paid in the second six months of  
29 a calendar year must be submitted by January 15."

30 Sec. 8. G.S. 105-113.52 reads as rewritten:

31 **"§ 105-113.52. Taxpaid stamps; rules and regulations; cancellation; discount. Tax**  
32 **reduction and discount.**

33 ~~(a) The Secretary shall make arrangements with some manufacturer to~~  
34 ~~manufacture the taxpaid stamps provided for in this Article. The Secretary shall~~  
35 ~~prescribe the form, design, denominations and such other matters as may be necessary~~  
36 ~~with respect to said stamps. The Secretary may sell such stamps directly to taxpayers~~  
37 ~~and may also make arrangements for release of taxpaid stamps to taxpayers by the~~  
38 ~~manufacturer. Said manufacturer shall furnish such bond as the Secretary may deem~~  
39 ~~advisable, in such penalty and upon such conditions as in the opinion of the Secretary~~  
40 ~~will adequately protect the State in the collection of the excise tax imposed by this~~  
41 ~~Article. Such bond shall be executed by the manufacturer as principal and by an~~  
42 ~~indemnity company licensed to do business under the insurance laws of this State, as~~  
43 ~~surety. The costs of manufacture, transportation and distribution of said stamps shall be~~  
44 ~~computed in accordance with administrative rules or regulations of the Secretary and~~

1 payment thereof pursuant to such rules and regulations of the Secretary may be required  
2 in addition to the amount of taxes which said stamps evidence regardless of whether  
3 said stamps are released or distributed by the Secretary or by the manufacturer pursuant  
4 to authorization from the Secretary.

5 (b) Upon the sale of taxpaid stamps, the Secretary shall allow a discount of five  
6 percent (5%) of the entire amount of any sale of fifty dollars (\$50.00) or more of said  
7 stamps. On sales of stamps of less than fifty dollars (\$50.00), no discount shall be  
8 allowed. Such discount shall apply only to the tax and not the manufacturer's price or  
9 transportation or distribution costs.

10 (c) When stamps are attached to bottled soft drinks, or to containers of soft drink  
11 powders or base products, no cancellation or obliteration of them shall be required, but  
12 stamps affixed to containers of syrup to be used at soda fountains shall be canceled by  
13 the person affixing them by writing or stamping with ink or indelible pencil across the  
14 stamps his initials or name and the date on which the stamps were affixed. When the  
15 container to which the stamp has been affixed has been emptied, the stamp must be  
16 obliterated by making at least three incisions crisscross through the stamp with a knife  
17 or other sharp instrument.

18 (d) Any person who makes use of any stamp to denote the payment of the tax  
19 imposed by this Article without canceling or obliterating such stamps if required to do  
20 so by this section shall be guilty of a misdemeanor and, upon conviction, shall be fined  
21 not more than one hundred dollars (\$100.00) or be imprisoned for not more than 30  
22 days for each offense.

23 (a) Tax Reduction. – The tax on the first 15,000 gross of bottled soft drinks sold  
24 on or after October 1 of each year by a distributor or wholesale dealer is seventy-two  
25 cents (72¢) a gross rather than the amount stated in G.S. 105-113.45. When reporting  
26 tax due on bottled soft drinks to which this reduced rate applies, a distributor or  
27 wholesale dealer shall pay the reduced amount.

28 (b) Discount. – A distributor, a wholesale dealer, or a retail dealer who is liable  
29 for the excise taxes on bottled soft drinks or base products and who files a timely report  
30 under G.S. 105-113.51 may deduct from the amount due with the report a discount of  
31 four percent (4%). This discount covers losses due to spoilage and breakage, expenses  
32 incurred in preparing the records and reports required by this Article, and the expense of  
33 furnishing a bond. The discount does not apply to taxes paid at the rate set in subsection  
34 (a)."

35 Sec. 9. G.S. 105-113.53 reads as rewritten:

36 "**§ 105-113.53. Stamps not required when crowns used. Bonds.**

37 If a distributor of bottled soft drinks either within or without the State shall use  
38 taxpaid crowns as hereinafter provided, such distributor shall be relieved of the duty of  
39 affixing taxpaid stamps to each individual bottle. Whenever the Secretary deems it to be  
40 advantageous for the effective and efficient enforcement of this Article, he may require  
41 that such crowns be used in lieu of stamps. The Secretary may require a distributor, a  
42 wholesale dealer, or a retail dealer to furnish a bond in an amount that adequately  
43 protects the State from loss if the distributor or dealer fails to pay taxes due under this  
44 Article. A bond shall be conditioned on compliance with this Article, shall be payable

1 to the State, and shall be in the form required by the Secretary. The Secretary shall  
2 proportion a bond amount to the anticipated tax liability of the distributor, wholesale  
3 dealer, or retail dealer. The Secretary shall periodically review the sufficiency of bonds  
4 required of distributors, wholesale dealers, and retail dealers and shall increase the  
5 amount of a required bond when the amount of the bond furnished no longer covers the  
6 anticipated tax liability of the distributor or dealer."

7 Sec. 10. G.S. 105-113.57 reads as rewritten:

8 **"§ 105-113.57. Records required of ingredients received.**

9 Every person engaged in the business of ~~making, mixing or compounding bottled~~  
10 ~~soft drinks, soft drink syrups and powders, base products and other items taxed under~~  
11 ~~this Article shall keep a distinct, legible and permanent record of all extracts, flavoring,~~  
12 ~~sugar, syrup or other ingredients except water received by him that may be useful in~~  
13 ~~making, mixing or compounding soft drinks, and he making bottled soft drinks or base~~  
14 ~~products shall keep a record of the ingredients purchased to make the bottled soft drinks~~  
15 ~~or base products and shall retain invoices on all such the purchases for a period of not~~  
16 ~~less than three years from the date thereof. Such records shall show the quantity of such~~  
17 ~~commodities received, the date of receipt thereof at least three years. The records shall~~  
18 ~~show the quantity of ingredients purchased, the date received, and the name of the~~  
19 ~~person from whom they were secured or received and shall be open at all times for~~  
20 ~~inspection by the Secretary or his duly authorized representative. received. The records~~  
21 ~~shall be open at all times for inspection by the Secretary or a representative of the~~  
22 ~~Secretary."~~

23 Sec. 11. G.S. 105-113.58 reads as rewritten:

24 **"§ 105-113.58. Records of ~~sale~~ sales, inventories, and purchases to be kept.**

25 Every distributor, wholesale ~~dealer~~ dealer, and retail dealer shall keep ~~an accurate~~  
26 ~~account of all daily sales, sales slips, bills, invoices, delivery slips, statements, bills of~~  
27 ~~lading, freight bills, credit memoranda and similar documents for a period of not less~~  
28 ~~than three years from the date shown thereon. All such records of the distributor's or~~  
29 ~~dealer's purchases, inventories, and sales of bottled soft drinks and base products.~~  
30 ~~These records shall be open at all times for inspection by the Secretary or his duly an~~  
31 ~~authorized representative. representative of the Secretary."~~

32 Sec. 12. G.S. 105-113.43, 105-113.48, 105-113.49, 105-113.54 through 105-  
33 113.56C, 105-113.59 through 105-113.62, 105-113.66, and 105-113.67 are repealed.

34 Sec. 13. The Secretary of Revenue shall redeem any unused or mutilated but  
35 identifiable tax stamps or crowns purchased pursuant to Article 2B of Chapter 105 of  
36 the General Statutes that a taxpayer presents for redemption and shall refund the face  
37 value of the stamps or crowns, less the discount allowed at the time of the purchase of  
38 the stamps or crowns by the taxpayer.

39 Sec. 14. The Secretary of Revenue shall review the registrations of bottled  
40 soft drinks and juice concentrates made under G.S. 105-113.47 before the effective date  
41 of this act. The Secretary shall notify those registrants who no longer appear to meet  
42 the exemption criteria that, for the bottled soft drink or juice concentrate to continue to  
43 be exempt from the excise tax imposed by Article 2B of Chapter 105 of the General  
44 Statutes, a new registration application must be submitted. The excise tax imposed by

1 Article 2B of Chapter 105 of the General Statutes applies to a previously registered  
2 bottled soft drink or juice concentrate unless the Secretary determines from the new  
3 application that the bottled soft drink or juice concentrate continues to meet the  
4 exemption criteria.

5           Sec. 15. This act does not affect the rights or liabilities of the State, a  
6 taxpayer, or another person arising under a statute amended or repealed by this act  
7 before its amendment or repeal; nor does it affect the right to any refund or credit of a  
8 tax that would otherwise have been available under the amended or repealed statute  
9 before its amendment or repeal.

10           Sec. 16. This act becomes effective October 1, 1991.