

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1025

Finance Committee Substitute Adopted 5/20/93

House Committee Substitute Favorable 7/14/93

Short Title: Cigarette Tax - No Stamps.

(Public)

Sponsors:

Referred to:

May 4, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PAYMENT OF THE CIGARETTE TAX BY
3 REPORTING RATHER THAN BY TAX STAMPS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 105-113.4. Definitions.

7 The following definitions apply in this Article:

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

10 (1a) Cigarette. – Any of the following:

11 a. A roll of tobacco wrapped in paper or in a substance that does
12 not contain tobacco.

13 b. A roll of tobacco wrapped in a substance that contains tobacco
14 and that, because of its appearance, the type of tobacco used in
15 the filler, or its packaging and labeling, is likely to be offered to
16 or purchased by a consumer as a cigarette described in subpart
17 a. of this subdivision.

18 (2) Cost price. – The price a person liable for the tax on tobacco
19 products imposed by Part 3 of this Article paid for the products,
20 before any discount, rebate, or allowance or the tax imposed by that
21 Part.

22 (3) Distributor. – ~~Any~~ Either of the following:

1 a. A person, wherever resident or located, who purchases ~~unstamped~~
 2 ~~non-tax-paid~~ cigarettes directly from the manufacturer ~~thereof of the~~
 3 ~~cigarettes and stores, sells-sells,~~ or otherwise disposes of the same; ~~and~~
 4 ~~also any cigarettes.~~

5 b. A person who manufactures or produces cigarettes or causes
 6 them to be manufactured or produced.

7 (4) Repealed by Session Laws 1991, c. 689, s. 267.

8 (5) Licensed distributor. – A distributor licensed under Part 2 of
 9 this Article.

10 (6) Manufacturer. – A person who manufactures or produces tobacco
 11 products.

12 (7) Package. – The individual packet, can, box, or other container used to
 13 contain and to convey tobacco products to the consumer.

14 (8) Person. – An individual, a firm, a partnership, an
 15 association, a corporation, or any other organization or group acting
 16 as a unit.

17 (9) Retail dealer. – A person who sells a tobacco product to the
 18 ultimate consumer of the product.

19 (10) Sale. – A transfer, a trade, an exchange, or a barter, in any
 20 manner or by any means, with or without consideration.

21 (10a) Secretary. – The Secretary of Revenue.

22 ~~(11) Stamp. – Any impression, device, stamp, label, or print manufactured,~~
 23 ~~printed, or made as prescribed by the Secretary under Part 2 of this~~
 24 ~~Article.~~

25 (11a) Tobacco product. – A cigarette, a cigar, or any
 26 other product that contains tobacco and is
 27 intended for inhalation or oral use.

28 ~~(12) Unstamped. – Not bearing a North Carolina cigarette tax stamp.~~

29 (13) Use. – The exercise of any right or power over cigarettes, incident to
 30 the ownership or possession thereof, other than the making of a sale
 31 thereof in the course of engaging in a business of selling cigarettes.
 32 The term includes the keeping or retention of cigarettes for use.

33 (14) Wholesale dealer. – A person who makes tobacco products other than
 34 cigarettes or who acquires tobacco products other than cigarettes for
 35 sale to another wholesale dealer or to a retail dealer."

36 Sec. 2. G.S. 105-113.6 reads as rewritten:

37 "**§ 105-113.6. Use tax levied.**

38 ~~In addition to all other taxes and fees, a~~ A tax is hereby levied upon the sale or
 39 possession for sale by ~~all persons other than distributors,~~ a person other than a distributor,
 40 and upon the use, consumption, and possession for use or consumption of cigarettes
 41 within this State at the rate set forth in G.S. 105-113.5; ~~provided, that the 105-113.5. This~~
 42 ~~tax levied by this section shall not be applicable to the sale or possession for sale by persons~~
 43 ~~other than distributors, or to the use, consumption or possession for use or consumption of~~ does

1 ~~not apply, however, to cigarettes with respect to upon which the tax levied by the~~
2 ~~provisions of in G.S. 105-113.5 has been computed and paid."~~

3 Sec. 3. G.S. 105-113.9 reads as rewritten:

4 **"§ 105-113.9. Out-of-state shipments.**

5 Any distributor engaged in interstate business shall be permitted to set aside ~~such~~
6 ~~part of his the stock as may be necessary for the to conduct of such interstate business~~
7 ~~without paying the tax or affixing the stamps otherwise required by this Article, otherwise~~
8 ~~required by this Part, but only if such the distributor complies with the regulations and~~
9 ~~administrative rules requirements prescribed by the Secretary concerning keeping of~~
10 ~~records, making of reports, posting of bond and such other rules and regulations as may be~~
11 ~~promulgated by the Secretary for the administration of this Article. bond, and other matters~~
12 for administration of this Part.

13 'Interstate business' as used in this section ~~shall mean:~~ means:

- 14 (1) The sale of cigarettes to a nonresident where the cigarettes are
15 delivered by the distributor to the business location of the nonresident
16 purchaser in another state; and
- 17 (2) The sale of cigarettes to a nonresident wholesaler or retailer registered
18 through the Secretary who has no place of business in North Carolina
19 and who purchases the cigarettes for the purposes of resale not within
20 this State and where the cigarettes are delivered to the purchaser at the
21 business location in North Carolina of the distributor who is also
22 licensed as a distributor under the laws of the state of the nonresident
23 purchaser."

24 Sec. 4. G.S. 105-113.10 reads as rewritten:

25 **"§ 105-113.10. Manufacturers shipping to distributors exempt.**

26 Any manufacturer shipping cigarettes to other distributors who are licensed ~~to affix~~
27 ~~stamps as provided in this Article under G.S. 105-113.12 may, upon application to the~~
28 ~~Secretary and upon compliance with such regulations and administrative rules in regard~~
29 ~~thereto as may be promulgated requirements prescribed by the Secretary, be relieved of the~~
30 ~~requirement of paying the taxes and affixing the stamps required by this Article, but no paying~~
31 the taxes levied in this Part. No manufacturer may be relieved of the requirement to be
32 licensed as a distributor in order to make shipments, including drop shipments, to a
33 retail dealer or ultimate user. However, the Secretary may permit monthly reports from the
34 manufacturer instead of requiring stamps to be affixed to packages of free cigarettes given as
35 complimentary samples by the manufacturer, but only if the package has been imprinted with
36 the word 'State tax paid.'"

37 Sec. 5. G.S. 105-113.12 reads as rewritten:

38 **"§ 105-113.12. Distributor must obtain license.**

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

41 (b) For the purposes of this section, a 'place of business' means any is a place
42 where unstamped packages of cigarettes are received or stored by a distributor receives or
43 stores non-tax-paid cigarettes. for the purposes of affixing stamps thereto, and any place
44 where a distributor actually affixes stamps to unstamped packages of cigarettes.

1 (c) An out-of-state distributor may obtain a distributor's license upon compliance
2 with the provisions of G.S. 105-113.24 and payment of a tax of twenty-five dollars
3 (\$25.00)."

4 Sec. 6. G.S. 105-113.13(b) reads as rewritten:

5 "(b) Bond. – The Secretary may require a distributor to furnish a bond in an
6 amount that adequately protects the State from loss if the distributor fails to pay taxes
7 due under this Part. A bond shall be conditioned on compliance with this Part, shall be
8 payable to the State, and shall be in the form required by the Secretary. ~~A bond shall be
9 executed by the distributor as principal and by an indemnity company licensed to do business
10 under the insurance laws of this State as surety.~~ The Secretary shall set the bond amount
11 based on the anticipated tax liability of the distributor. The Secretary shall periodically
12 review the sufficiency of bonds required of the distributor and shall increase the amount
13 of a required bond if the bond amount no longer covers the anticipated tax liability of
14 the distributor. The Secretary shall decrease the amount of a required bond if the
15 Secretary finds that a lower bond amount will protect the State adequately from loss."

16 Sec. 7. G.S. 105-113.18 reads as rewritten:

17 **"§ 105-113.18. Reports. Payment of tax; reports.**

18 The taxes levied in this Part are payable when a report is required to be filed. The
19 following reports are required to be filed with the Secretary:

20 ~~(1) Every distributor required to affix stamps as prescribed herein shall
21 file a report on or before the twentieth day of each month, in such
22 form as the Secretary shall prescribe, which report shall disclose the
23 quantity of cigarettes on hand on the first and last days of the calendar
24 month immediately preceding the month in which such report is
25 required, the amount of stamps purchased, used and on hand during the
26 report period, and such other information as the Secretary shall
27 prescribe.~~

28 (1) Distributor's Report. – A distributor shall file a monthly report in the
29 form prescribed by the Secretary. The report covers sales and other
30 activities occurring in a calendar month and is due within 20 days after
31 the end of the month covered by the report. The report shall state the
32 amount of tax due and shall identify any transactions to which the tax
33 does not apply.

34 (1a) Report of Free Cigarettes. – A manufacturer who distributes cigarettes
35 without charge shall file a monthly report in the form prescribed by the
36 Secretary. The report covers cigarettes distributed without charge in a
37 calendar month and is due within 20 days after the end of the month
38 covered by the report. The report shall state the number of cigarettes
39 distributed without charge and the amount of tax due.

40 (2) Use Tax Report. – Every other person who has acquired unstamped
41 non-tax-paid cigarettes for sale, use, or consumption subject to the
42 tax imposed by this Article Part shall, within 96 hours after receipt of
43 same, complete and file, in such form as the Secretary shall prescribe, the
44 cigarettes, file a report in the form prescribed by the Secretary showing

1 the amount of cigarettes so received and such ~~any other~~ information as
 2 the Secretary shall prescribe. ~~Said required by the Secretary.~~ The report
 3 shall be accompanied by a ~~remittance payment of~~ the full amount of the
 4 tax.

5 (3) Any person, except a licensed distributor, who transports cigarettes
 6 upon the public highways, ~~roads~~ roads, or streets of this State, upon
 7 notice from the Secretary, shall file a report in ~~such form, on such dates,~~
 8 ~~and containing such information as the Secretary shall prescribe.~~ the form
 9 prescribed by the Secretary and containing the information required by
 10 the Secretary.

11 (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s.
 12 1."

13 Sec. 8. G.S. 105-113.19, 105-113.20, 105-113.22 through 105-113.23, 105-
 14 113.25, 105-113.28, and 105-113.34 are repealed.

15 Sec. 9. G.S. 105-113.21 reads as rewritten:

16 "**§ 105-113.21. ~~Discount on sales of stamps.~~ Discount; refund.**

17 ~~On sales of stamps, the Secretary shall allow a discount of seven twenty-fourths cent~~
 18 ~~(7/24¢) per stamp as compensation for the services and expenses of the licensed~~
 19 ~~distributor in handling and affixing such stamps to packages. No discount shall be~~
 20 ~~allowed or given on any sales of stamps in amounts less than one hundred dollars~~
 21 ~~(\$100.00).~~

22 (a) Discount. – A distributor who files a timely report under G.S. 105-113.18
 23 may deduct from the amount due with the report a discount of four percent (4%). This
 24 discount covers expenses incurred in preparing the records and reports required by this
 25 Part, and the expense of furnishing a bond.

26 (b) Refund. – A distributor in possession of packages of stale or otherwise
 27 unsalable cigarettes upon which the tax has been paid may return the cigarettes to the
 28 manufacturer and apply to the Secretary for refund of the tax. The application shall be
 29 in the form prescribed by the Secretary and shall be accompanied by an affidavit from
 30 the manufacturer stating the number of cigarettes returned to the manufacturer by the
 31 applicant. The Secretary shall refund the tax paid on the unsalable cigarettes, less the
 32 discount allowed, to the applicant."

33 Sec. 9.1. (a) The catchline to G.S. 105-113.24 reads as rewritten:

34 "**§ 105-113.24. ~~Sale of stamps to out-of-state distributors.~~ Out-of-State distributors to**
 35 **register and remit tax.**"

36 (b) G.S. 105-113.24 reads as rewritten:

37 "(a) ~~In case the Secretary shall find that the collection of any tax imposed by this~~
 38 ~~Article would be facilitated thereby, he may authorize, under reasonable conditions, The~~
 39 ~~Secretary may authorize any distributor outside this State engaged in the business of~~
 40 ~~selling and shipping cigarettes into the State, upon complying with the rules and~~
 41 ~~regulations of the Secretary, to purchase and affix or cause to be affixed on behalf of~~
 42 ~~any purchaser of cigarettes, who would otherwise be taxable therefor, the stamps~~
 43 ~~required by this Article, or may authorize the use of a machine by such person in the~~

1 ~~same manner and under the same conditions as set forth in G.S. 105-113.23. State to~~
2 obtain a license and report and pay taxes required by this Part."

3 Sec. 10. G.S. 105-113.26 reads as rewritten:

4 **"§ 105-113.26. Records to be kept.**

5 Every person required to be licensed under this Article and every person required to
6 make reports under this Article shall keep complete and accurate records of all sales and
7 ~~such other information as is required under this Article. The kind and form of such~~
8 records may be shall be in the form prescribed by the Secretary and all records shall be so
9 kept as to be adequate to enable him to determine any tax liability. Secretary.

10 ~~All such These~~ records shall be safely preserved for a period of three years in ~~such a~~
11 manner to ~~insure ensure~~ their security and accessibility for inspection by the ~~Secretary or~~
12 ~~his duly authorized agents. Department.~~ The Secretary ~~may, in his discretion, may~~ consent
13 to the destruction of any ~~such~~ records at any time within ~~said this three-year period."~~

14 Sec. 11. G.S. 105-113.27 reads as rewritten:

15 **"§ 105-113.27. Unstamped Non-tax-paid cigarettes.**

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

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

20 (c) The possession of more than six hundred ~~unstamped~~ cigarettes bearing the tax
21 stamp of another state or country, by any person other than a licensed distributor, shall
22 be **prima facie** evidence that ~~such the~~ cigarettes are possessed in violation of the
23 ~~provisions of this Article. this Part."~~

24 Sec. 12. G.S. 105-113.31 reads as rewritten:

25 **"§ 105-113.31. Possession and transportation of ~~unstamped non-tax-paid~~ cigarettes;
26 seizure and confiscation of vehicle or vessel.**

27 (a) It shall be unlawful for any person to transport ~~unstamped non-tax-paid~~
28 cigarettes in violation of the ~~provisions of this Article~~, or to fail or refuse to comply
29 ~~with regulations and administrative rules promulgated by the Secretary in regard~~
30 ~~thereto. this Part.~~ The Secretary may ~~make reasonable adopt~~ rules and regulations
31 governing allowing quantities of ~~untaxed non-tax-paid~~ cigarettes, not exceeding six
32 hundred, which may to be brought into this State by any a transient, a tourist, or a
33 person returning to this State after traveling outside this State, for the use of such
34 transient, tourist or person; and the their own use. The possession or transportation of
35 ~~such quantities shall not be these~~ cigarettes is not subject to the penalties imposed by
36 this section.

37 (b) (1) Every person who ~~shall transport cigarettes not stamped as~~
38 ~~required by this Article upon transports non-tax-paid cigarettes on the~~
39 ~~public highways, roads, streets streets,~~ or waterways of this State
40 ~~shall have in his actual possession must transport with the cigarettes~~
41 ~~invoices or delivery tickets for such the cigarettes which shall show~~
42 showing the true name and complete and exact address of the
43 consignee or purchaser, the quantity and brands of the cigarettes
44 transported transported, and the true name and complete and exact

- 1 address of the person who has paid or who shall ~~assume the payment~~
2 ~~of~~ will pay the tax imposed by this ~~Article-Part~~ or the tax, if any, of
3 the state or foreign country at the point of ultimate destination.
- 4 (2) ~~Any~~ A common carrier ~~which~~ that has issued a bill of lading for a
5 shipment of cigarettes and is without notice to itself or to any of its
6 agents or employees that ~~said~~ the cigarettes are ~~not stamped as required~~
7 ~~by~~ non-tax-paid in violation of this Article ~~shall be deemed~~ Part is
8 considered to have complied with this ~~Article-Part~~ and the vehicle or
9 vessel in which ~~said~~ the cigarettes are being transported ~~shall not be~~
10 ~~subject to confiscation hereunder.~~ is not subject to confiscation under this
11 section. In the absence of ~~such~~ the required invoices, delivery ~~tickets~~
12 tickets, or bills of lading, as ~~the case may be,~~ the cigarettes so
13 transported, the vehicle or vessel in which the cigarettes are being
14 ~~transported~~ transported, and any paraphernalia or devices used in
15 connection with the ~~unstamped~~ non-tax-paid cigarettes are declared to
16 be contraband goods and may be seized by any officer of the law, who
17 shall take possession of the vehicle or vessel and ~~unstamped~~ cigarettes
18 ~~therein,~~ and shall arrest any person in charge ~~thereof.~~ of the vehicle or
19 vessel and cigarettes.
- 20 (3) ~~Such~~ The officer shall at once proceed against the person arrested,
21 under the provisions of this ~~Article,~~ Part, in any court having competent
22 jurisdiction; but the ~~said~~ vehicle or vessel shall be returned to the
23 owner upon execution by ~~him~~ the owner of a good and valid bond,
24 with sufficient sureties, in a sum double the value of the property,
25 which ~~said~~ bond shall be approved by ~~said~~ the officer and shall be
26 conditioned to return ~~said~~ the property to the custody of ~~said~~ the officer
27 on the day of trial to abide the judgment of the court. All ~~unstamped~~
28 non-tax-paid cigarettes seized under this section shall be held and
29 shall, upon the acquittal of the person so charged, be returned to the
30 established owner.
- 31 (4) Unless the claimant can show that the ~~unstamped~~ non-tax-paid
32 cigarettes seized were not transported in violation of this ~~Article-Part~~
33 and that the property seized ~~is his property,~~ belongs to the claimant or
34 that in the case of property other than cigarettes, ~~such~~ the property was
35 used in transporting ~~unstamped~~ non-tax-paid cigarettes in violation of
36 this ~~Article-Part~~ without ~~his~~ the claimant's knowledge or consent, with
37 the right on the part of the claimant to have a jury pass upon ~~his~~ this
38 claim, the court shall order a sale by public auction of the property
39 seized, and the officer making the sale, after deducting the cost of
40 ~~stamps~~ the tax due, which ~~he~~ the officer shall ~~affix to said cigarettes~~ pay
41 upon sale, expenses of keeping the property, the fee for the seizure,
42 and the costs of the sale, shall pay all liens according to their priorities,
43 which are established, by intervention or otherwise, at ~~said~~ the hearing
44 or in ~~other~~ another proceeding brought for ~~said~~ the purpose as being

1 bona fide and as having been created without the lien or having any
2 notice that the vehicle or vessel was being used for the unlawful
3 transportation of ~~unstamped non-tax-paid~~ cigarettes, and shall pay the
4 balance of the proceeds to the State Treasurer for the ~~general fund~~.
5 General Fund.

6 (5) All liens against property sold under the provisions of this section shall
7 be transferred from the property to the proceeds of the sale of the
8 property. If, however, no one ~~shall be~~ is found claiming the cigarettes,
9 or the vehicle or vessel, ~~then the taking of the same, with a description~~
10 ~~thereof, cigarettes, vehicle, or vessel, along with a description,~~ shall be
11 advertised in ~~some newspaper published in the city or county where taken,~~
12 or, ~~if there be no newspaper published in such city or county, in a~~
13 newspaper having circulation in the ~~county,~~ county where the items
14 were taken, once a week for two weeks and by notices posted in three
15 public places near the place of seizure, and if no claimant ~~shall appear~~
16 appears within ten days after the last publication of the advertisement,
17 the property shall be sold, and the proceeds, after deducting the
18 expenses and costs, shall be paid to the State Treasurer for the ~~general~~
19 ~~fund.~~ General Fund.

20 (6) ~~Nothing in this section shall be construed to~~ This section does not
21 authorize ~~any~~ an officer to search any vehicle or vessel or baggage of
22 any person without a search warrant duly issued, except where the
23 officer ~~sees or~~ has knowledge that there are ~~unstamped non-tax-paid~~
24 cigarettes in ~~such~~ the vehicle or vessel."

25 Sec. 13. G.S. 105-113.32 reads as rewritten:

26 "**§ 105-113.32. Unstamped Non-tax-paid cigarettes subject to confiscation.**

27 All non-tax-paid cigarettes subject to the tax imposed by this ~~Article, to which stamps~~
28 ~~have not been affixed as required by this Article, Part,~~ together with any container in which
29 they are ~~stored,~~ stored or displayed for sale (including but not limited to vending
30 ~~machines)~~ machines), are declared to be contraband goods and may be seized by any
31 officer of the ~~law, who~~ law. The officer shall arrest any person in charge ~~thereof.~~ Such
32 ~~officer of the contraband goods and shall at once~~ proceed against the person arrested,
33 under the provisions of this ~~Article, Part,~~ in any court having competent ~~jurisdiction and~~
34 ~~the jurisdiction.~~ The disposition of said ~~unstamped~~ the seized cigarettes and container
35 shall be governed ~~and controlled~~ by the provisions of G.S. 105-113.31."

36 Sec. 14. The Secretary of Revenue shall redeem any unused or mutilated but
37 identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General
38 Statutes that a taxpayer presents for redemption and shall refund the face value of the
39 stamps less the discount allowed at the time of the purchase of the stamps by the
40 taxpayer.

41 Sec. 15. This act does not affect the rights or liabilities of the State, a
42 taxpayer, or another person arising under a statute amended or repealed by this act
43 before its amendment or repeal; nor does it affect the right to any refund or credit of a

- 1 tax that would otherwise have been available under the amended or repealed statute
- 2 before its amendment or repeal.
- 3 Sec. 16. This act becomes effective January 1, 1994.