

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1288

Short Title: Income Tax/Tobacco Tax Fairness.

(Public)

Sponsors: Representatives Withrow; and Easterling.

Referred to: Finance.

May 10, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX FAIRNESS BY INCREASING INCOME TAXES ON HIGH-INCOME PERSONS, ELIMINATING THE INDIVIDUAL INCOME TAX CREDIT FOR NORTH CAROLINA DIVIDENDS, INCREASING THE CIGARETTE TAX, AND EXTENDING THE CIGARETTE TAX TO CIGARS AND SMOKELESS TOBACCO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.2(a) reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152.1 and for surviving spouses, as defined in section 2(a) of the Code:

On the North Carolina taxable income up to twenty-one thousand two hundred fifty dollars (\$21,250), six percent ~~(6%)~~; and ~~(6%)~~.

On the ~~excess amount~~ over twenty-one thousand two hundred fifty dollars ~~(\$21,250)~~, ~~(\$21,250)~~ and up to one hundred thousand dollars (\$100,000), seven percent (7%).

On the amount over one hundred thousand dollars (\$100,000) and up to one hundred fifty thousand dollars (\$150,000), eight percent (8%).

On the amount over one hundred fifty thousand dollars (\$150,000), nine percent (9%).

(2) For heads of households, as defined in section 2(b) of the Code:

1 On the North Carolina taxable income up to seventeen thousand
2 dollars (\$17,000), six percent ~~(6%); and (6%)~~.

3 On the ~~excess-amount~~ over seventeen thousand dollars ~~(\$17,000)~~,
4 (\$17,000) and up to eighty thousand dollars (\$80,000), seven percent
5 (7%).

6 On the amount over eighty thousand dollars (\$80,000) and up to
7 one hundred twenty thousand dollars (\$120,000), eight percent (8%).

8 On the amount over one hundred twenty thousand dollars
9 (\$120,000), nine percent (9%).

- 10 (3) For unmarried individuals other than surviving spouses and heads of
11 households:

12 On the North Carolina taxable income up to twelve thousand seven
13 hundred fifty dollars (\$12,750), six percent ~~(6%); and (6%)~~.

14 On the ~~excess-amount~~ over twelve thousand seven hundred fifty
15 dollars ~~(\$12,750)~~, (\$12,750) and up to sixty thousand dollars (\$60,000),
16 seven percent (7%).

17 On the amount over sixty thousand dollars (\$60,000) and up to
18 ninety thousand dollars (\$90,000), eight percent (8%).

19 On the amount over ninety thousand dollars (\$90,000), nine percent
20 (9%).

- 21 (4) For married individuals who do not file a joint return under G.S. 105-
22 152.1:

23 On the North Carolina taxable income up to ten thousand six
24 hundred twenty-five dollars (\$10,625), six percent ~~(6%); and (6%)~~.

25 On the ~~excess-amount~~ over ten thousand six hundred twenty-five
26 dollars ~~(\$10,625)~~, (\$10,625) and up to fifty thousand dollars (\$50,000),
27 seven percent (7%).

28 On the amount over fifty thousand dollars (\$50,000) and up to
29 seventy-five thousand dollars (\$75,000), eight percent (8%).

30 On the amount over seventy-five thousand dollars (\$75,000), nine
31 percent (9%)."

32 Sec. 2. G.S. 105-151.19 is repealed.

33 Sec. 3. Notwithstanding G.S. 105-163.15, no addition to tax may be made
34 under that statute for a taxable year beginning on or after January 1, 1991, and before
35 January 1, 1992, with respect to an underpayment of individual income tax to the extent
36 the underpayment was created or increased by this act.

37 Sec. 4. Article 2A of Chapter 105 of the General Statutes reads as rewritten:

38 **"ARTICLE 2A.**

39 **"SCHEDULE B-A. CIGARETTE-TOBACCO PRODUCTS TAX.**

40 **"§ 105-113.2. Short title.**

41 This Article may be cited as the 'Cigarette-Tobacco Products Tax Act' or 'Cigarette
42 Tobacco Products Tax Article.'"

43 **"§ 105-113.3. Purpose.**

1 It is hereby declared to be the intent and purpose of this Article that the incidence of
2 the tax herein provided for tobacco products tax shall rest upon the ultimate consumer and
3 not upon the grower or processor of leaf tobacco or upon the manufacturer of cigarettes-
4 tobacco products. This tax shall be paid to the State only once, regardless of the number
5 of times the cigarettes-tobacco products may be sold in this State, but it is the intent of
6 this Article that ~~such~~ the tax shall be added to the sales price and passed on from
7 successive sellers to successive purchasers so that it may be included in the ultimate
8 purchase price of the final or last purchaser. The amount of the tax may be stated
9 separately from the price of cigarettes-tobacco products on all price display signs, sales
10 or delivery slips, ~~bills-bills,~~ and statements which advertise or indicate the price. price,
11 ~~but it is not required that it be stated in such manner or in any other manner.~~ The provisions of
12 this section shall in no way affect the assessment, levy or collection of the taxes provided for by
13 this Article, as the same may be more specifically provided herein with respect to activities
14 hereinafter described, but merely states the general intent with respect to this Article.

15 **"§ 105-113.4. Definitions.**

16 The following words, terms, and phrases when used in this Article have the meanings
17 ascribed to them in this section, ~~definitions apply in this Article,~~ except where the context
18 clearly indicates a different meaning:

19 (1) 'Cigar' means a roll of tobacco wrapped in a substance that contains
20 tobacco, other than a cigarette as defined in subdivision (1a)b.

21 (4) (1a)'Cigarette' means –

- 22 a. Any roll of tobacco wrapped in paper or in any substance not
23 containing tobacco, and
24 b. Any roll of tobacco wrapped in any substance containing
25 tobacco which, because of its appearance, the type of tobacco
26 used in the filler, or its packaging and labeling, is likely to be
27 offered to, or purchased by, consumers as a cigarette described
28 in subparagraph (1) a above.

29 (2) 'Secretary' means Secretary of Revenue of the State of North
30 Carolina-the Secretary of Revenue.

31 (3) 'Distributor' means any person, wherever resident or located,
32 who manufactures or produces tobacco products or who purchases
33 unstamped cigarettes-tobacco products directly from the
34 manufacturer thereof and stores, sells-sells, or otherwise disposes of
35 them. the same; and also any person who manufactures or produces
36 cigarettes or causes them to be manufactured or produced.

37 (4) 'In this State' or 'within this State' means within the exterior limits
38 of the State of North Carolina, and includes all territory within such
39 those limits owned by, leased by-by, or ceded to the United States of
40 America.

41 (5) 'Licensed distributor' means any distributor, as defined in this
42 Article, a distributor licensed under the provisions of this Article.

- 1 (6) 'Manufacturer' means any person ~~engaged in the manufacture~~
2 ~~or production of cigarettes.~~ who manufactures or produces tobacco
3 products.
- 4 (7) 'Package' means the individual packet, can, ~~box~~ box, or other container
5 used to contain and to convey ~~cigarettes~~ tobacco products to the
6 consumer.
- 7 (8) 'Person' means ~~and includes~~ any individual, firm,
8 copartnership, joint venture, association, corporation, estate, trust,
9 business trust, receiver, syndicate, or ~~any other~~ group or combination
10 acting as a unit, or the State or any of its political subdivisions. ~~State~~
11 ~~or any of its political subdivisions, and the plural as well as the singular~~
12 ~~number.~~
- 13 (9) 'Retail dealer' means any person other than a distributor
14 engaged in this State in the business of selling ~~cigarettes~~ tobacco
15 products at retail.
- 16 (10) 'Selling' or 'sale' means any sale, transfer, exchange, barter,
17 gift, or offer for sale and distribution. ~~distribution, in any manner or by~~
18 ~~any means whatsoever.~~
- 19 (10a) 'Smokeless tobacco product' means any tobacco product other than
20 a cigar or cigarette.
- 21 (11) 'Stamp' means any impression, device, stamp, ~~label~~ label, or
22 print manufactured, ~~printed~~ printed, or made as prescribed by the
23 Secretary under this Article.
- 24 (11a) 'Tobacco product' means a product containing tobacco and intended
25 for inhalation or oral use.
- 26 (12) 'Unstamped' means not bearing a North Carolina ~~cigarette~~
27 tobacco products tax stamp prescribed by the Secretary under this
28 Article.
- 29 (13) 'Use' means the exercise of any right or power over ~~cigarettes,~~
30 tobacco products incident to ~~the ownership or possession thereof,~~
31 other than the making of a sale ~~thereof~~ in the course of engaging in
32 a business of selling ~~cigarettes~~ tobacco products. ~~and shall include the~~
33 ~~keeping or retention of cigarettes for use.~~

34 **"§ 105-113.5. Privilege tax levied.**

35 (a) In addition to all other taxes and fees, a tax is hereby levied upon the sale or
36 possession for sale within this State, by distributors, of all cigarettes at the rate of ~~one~~
37 mill six mills per individual cigarette.

38 (b) In addition to all other taxes and fees, a tax is hereby levied upon the sale or
39 possession for sale within this State by distributors of all cigars at the rate of six mills
40 per individual cigar.

41 (c) In addition to all other taxes and fees, a tax is hereby levied upon the sale or
42 possession for sale within this State by distributors of all smokeless tobacco products at
43 the rate of six mills per ounce.

1 (d) The tax hereby levied by this Article does shall not apply to free distribution
2 of sample cigarettes in packages containing five or fewer cigarettes nor to any package
3 of cigarettes customarily donated free of charge by manufacturers of cigarettes to
4 employees in factories where cigarettes are manufactured in this State where such
5 packages of cigarettes are not taxed by the federal government. The tax levied by this
6 Article does not apply to free distribution of sample cigars or smokeless tobacco
7 products.

8 **"§ 105-113.6. Use tax levied.**

9 In addition to all other taxes and fees, a tax is hereby levied upon the sale or
10 possession for sale by all persons other than distributors, and upon the use,
11 consumption, and possession for use or consumption of cigarettes within this State at
12 the rate set forth in G.S. ~~105-113.5;~~ 105-113.5(a) provided, that the tax levied by this
13 section shall not be applicable to the sale or possession for sale by persons other than
14 distributors, or to the use, ~~consumption—~~ consumption, or possession for use or
15 consumption of cigarettes with respect to which the tax levied by the provisions of G.S.
16 105-113.5 has been computed and paid.

17 In addition to all other taxes and fees, a tax is hereby levied upon the sale or
18 possession for sale by all other persons other than distributors, and upon the use,
19 consumption, and possession for use or consumption of cigars within this State at the
20 rate set out in G.S. 105-113.5(b); provided, that the tax levied by this section does not
21 apply to the sale or possession for sale by persons other than distributors, or to the use,
22 consumption, or possession for use or consumption of cigars with respect to which the
23 tax levied by the provisions of G.S. 105-113.5 has been computed and paid.

24 In addition to all other taxes and fees, a tax is hereby levied upon the sale or
25 possession for sale by all persons other than distributors, and upon the use,
26 consumption, and possession for use or consumption of smokeless tobacco products
27 within this State at the rate set forth in G.S. 105-113.5(c); provided, that the tax levied
28 by this section does not apply to the sale or possession for sale by persons other than
29 distributors, or to the use, consumption, or possession for use or consumption of
30 smokeless tobacco products with respect to which the tax levied by the provisions of
31 G.S. 105-113.5 has been computed and paid.

32 **"§ 105oArticle.**

33 ~~Every person subject to the taxes levied in G.S. 105-113.5 and G.S. 105-113.6 who,~~
34 ~~on the effective date of this Article, has on hand any cigarettes shall file a complete~~
35 ~~inventory thereof within 20 days thereafter, and shall pay to the Secretary at the time of~~
36 ~~filing such inventory a tax with respect thereto computed at the rate set forth in G.S.~~
37 ~~105-113.5 and G.S. 105-113.6. All provisions of this Article relative to the collection,~~
38 ~~verification and administration of the tax herein imposed shall, insofar as pertinent, be~~
39 ~~applicable to the tax imposed by this section, but the affixing of stamps as evidence of~~
40 ~~the payment of such tax by persons subject to the taxes levied in G.S. 105-113.6 shall~~
41 ~~not be necessary except as the Secretary by regulation or administrative rule may~~
42 ~~require.~~

43 **"§ 105-113.8. Federal Constitution and statutes.**

1 Any activities which this Article may purport to tax in violation of the Constitution
2 of the United States or any federal statute are hereby expressly exempted from taxation
3 under this Article.

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

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

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

12 As used in this section, the term 'interstate business' means:

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

24 **"§ 105-113.10. Manufacturers shipping to distributors exempt.**

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

36 **"§ 105-113.11. Licenses required.**

37 ~~After the effective date of this Article, no person shall engage in business as a~~
38 ~~distributor in this State, without having first obtained from the Secretary the appropriate~~
39 ~~license for that purpose as prescribed herein. It is unlawful for a person to engage in~~
40 business as a distributor in this State without first obtaining from the Secretary the
41 appropriate license as provided in this Article. Any license required by this Article shall
42 be in addition to any ~~and all~~ other licenses which may be required by law.

43 **"§ 105-113.12. Distributors' license.**

1 (a) Distributors shall obtain, for each place of business, a continuing license, for
2 which a fee of twenty-five dollars (\$25.00) shall be paid.

3 (b) For the purposes of this section, 'place of business' means any place where
4 unstamped packages of ~~cigarettes-tobacco products~~ are received or stored by a distributor
5 for the purposes of affixing stamps thereto, and any place where a distributor actually
6 affixes stamps to unstamped packages of ~~cigarettes-tobacco products~~.

7 ~~Out-of-state~~ Out-of-State distributors may obtain appropriate distributors'
8 licenses upon compliance with the provisions of G.S. 105-113.24, for which a fee of
9 twenty-five dollars (\$25.00) shall be ~~paid for each such license.~~ paid.

10 **"§ 105-113.13. Issuance of licenses.**

11 (a) All licenses shall be issued by the Secretary.

12 (b) No license shall be issued to a distributor except upon payment of the full fee
13 ~~therefor.~~ fee.

14 (c) Prior to the issuance of any license under this Article, the Secretary may ~~cause~~
15 ~~to be made such~~ make any investigation as he deems necessary respecting the eligibility
16 of the applicant to receive ~~such~~ the license and the accuracy of the information
17 contained in the application ~~therefor.~~ for the license. The Secretary may ~~refrain from the~~
18 ~~issuance of~~ refuse to issue a license where he has reasonable cause to believe that the
19 applicant has willfully withheld information requested by him for the purpose of
20 determining the eligibility of the applicant to receive a license or where he has
21 reasonable cause to believe that the information submitted in the application is false or
22 misleading and is not made in good faith.

23 (d) When the Secretary deems it necessary to the proper administration of this
24 Article, he may require any distributor upon application for a license to file with him a
25 bond payable to the State of North Carolina in such amount and upon such conditions as
26 in the opinion of the Secretary will guarantee the performance of the duties and the
27 discharge of the liabilities of ~~said~~ the distributor under this Article. ~~Such~~ The bond shall
28 be executed by the distributor as principal and by an indemnity company licensed to do
29 business under the insurance laws of this State as surety.

30 (e) No license shall be assignable or transferable.

31 **"§ 105-113.14. Refund of license fee.**

32 No refund of a license fee shall be paid to any person upon the surrender, ~~suspension~~
33 suspension, or revocation of any license except a license fee paid or collected in error.

34 **"§ 105-113.15. Duplicate or amended license.**

35 Upon application to the Secretary, a distributor may obtain without charge:

- 36 (1) A duplicate license, upon a satisfactory showing that the
37 original has been lost, ~~destroyed~~ destroyed or defaced;
- 38 (2) An amended license, upon a satisfactory showing that the location of
39 the place of business represented by the license has been changed.

40 Each duplicate or amended license shall bear the words 'duplicate license' or
41 'amended license' on its face, as appropriate.

42 **"§ 105-113.16. Revocation of license.**

43 (a) The Secretary shall, without notice or hearing, revoke the license of every
44 distributor who voluntarily surrenders the ~~same~~ license.

1 (b) Whenever any distributor violates any provision of this Article or any
2 ~~regulation or administrative rule~~ of the Secretary made pursuant to the provisions of this
3 Article, or has ceased to act in the capacity for which the license was issued, the
4 Secretary, upon hearing, after giving the licensed distributor 10 days' notice in ~~writing,~~
5 writing specifying the time and place of hearing and requiring him to show cause why
6 his license should not be revoked, may revoke or suspend the license held by ~~such the~~
7 distributor. The notice may be served personally or by registered mail directed to the
8 last known address of ~~such the~~ person. All provisions with respect to review and appeals
9 of the Secretary's decisions as provided by G.S. 105-241.2, ~~105-241.3~~ 105-241.3, and
10 105-241.4 ~~shall be applicable apply to this subsection (b).~~ subsection.

11 (c) No distributor whose license has been suspended or revoked ~~shall may~~ sell
12 ~~cigarettes or permit the same to be sold~~ sale of tobacco products. ~~during the period of~~
13 ~~such suspension or revocation on premises occupied by him or upon other premises~~
14 ~~controlled by him or others in any other manner or form whatever.~~

15 (d) No disciplinary, ~~penal~~ penal, or regulatory proceeding or action shall be
16 barred or abated by the expiration, transfer, surrender, continuance, ~~renewal~~ renewal, or
17 extension of any license issued under ~~the provisions of this Article.~~

18 (e) If any person licensed under the provisions of G.S. 105-65.1, ~~105-84,~~ 105-
19 164.4, 105-164.5, ~~105-164.6 and 105-164.6,~~ or 105-164.29 ~~shall be is~~ convicted by any
20 court of competent jurisdiction in this State of any offense under this Article, the
21 Secretary ~~is authorized to may~~ revoke any or all of these licenses issued to ~~such person~~
22 that person. ~~under the provisions of the aforesaid sections of Chapter 105 of the General~~
23 ~~Statutes.~~ The provisions of subsection (b) ~~above~~ relative to notice, hearing, ~~review~~
24 review, and appeal shall apply to this ~~subsection (e).~~ subsection.

25 **"§ 105-113.17. Exhibit of license; identification of dispensers.**

26 (a) ~~Each license, or certificate thereof, or such other evidence of license as the Secretary~~
27 ~~may authorize, shall be exhibited.~~ Every person licensed under this Article shall exhibit the
28 license in the place of business for which it is issued and in such manner as may be
29 prescribed by the Secretary.

30 (b) Every vending machine ~~which that~~ dispenses cigarettes tobacco products shall
31 be identified as to ownership in such manner as the Secretary may prescribe.

32 **"§ 105-113.18. Reports.**

33 The following reports are required to be filed with the Secretary:

34 (1) Every distributor required to affix stamps ~~as prescribed herein~~ shall file
35 a report on or before the twentieth day of each month, in such form as
36 the Secretary shall prescribe, ~~which report shall disclose~~ disclosing the
37 quantity of ~~cigarettes tobacco products~~ on hand on the first and last
38 days of the calendar month immediately preceding the month in which
39 ~~such the~~ report is required, the amount of stamps purchased, ~~used~~ used,
40 and on hand during the report period, and ~~such any other~~ information
41 ~~as that~~ the Secretary shall prescribe.

42 (2) Every other person who has acquired unstamped ~~cigarettes tobacco~~
43 products for sale, ~~use~~ use, or consumption subject to the tax imposed
44 by this Article shall, within 96 hours after receipt of ~~same,~~ the tobacco

1 products, complete and file, in such form as the Secretary shall
 2 prescribe, a report showing the amount of eigarettes-tobacco products
 3 ~~so-received and such-any other information as-that~~ the Secretary shall
 4 prescribe. ~~Said-The~~ report shall be accompanied by a remittance of the
 5 full amount of the tax.

6 (3) Any person, except a licensed distributor, who transports eigarettes
 7 tobacco products upon the public highways, ~~roads or streets~~ roads,
 8 streets, or waterways of this State, upon notice from the Secretary,
 9 shall file a report in ~~such-a~~ form, on ~~such-any~~ dates, and containing ~~such~~
 10 any information as-that the Secretary shall prescribe.

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

12 **"§ 105-113.19. Secretary to provide stamps.**

13 (a) The taxes levied by this Article shall be paid or payment shall be evidenced
 14 by the use of stamps, except as provided in G.S. 105-113.6. The Secretary shall ~~make~~
 15 ~~arrangements with some manufacturer to provide for the manufacture of the~~ taxpaid
 16 eigarette-tobacco products tax stamps provided for in this Article. The Secretary shall
 17 prescribe the form, design, ~~denominations and such-denominations,~~ and other matters as
 18 may be necessary with respect to ~~said-the~~ stamps. The Secretary may sell ~~such-the~~
 19 stamps directly to taxpayers and ~~he may also make arrangements-arrange~~ for release of
 20 taxpaid stamps to taxpayers by the manufacturer of ~~said-the~~ stamps. ~~Said-The~~
 21 manufacturer of the stamps shall furnish such bond as the Secretary may deem
 22 advisable, in such ~~amount-amount,~~ and upon such conditions as in the opinion of the
 23 Secretary will adequately protect the State in the collection of the taxes levied by this
 24 Article.

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

34 (c) A licensed distributor using a stamp metering machine as provided for in G.S.
 35 105-113.23 may make payment upon the same terms and conditions as in the case of the
 36 purchase of stamps as set forth in subsection (b) of this section.

37 **"§ 105-113.20. Distributors to affix stamps.**

38 Only licensed distributors ~~shall-may~~ affix stamps. A licensed distributor ~~shall-may~~
 39 not sell, borrow, loan, ~~buy-buy,~~ or exchange stamps to, ~~from-from,~~ or with any other
 40 person, except as provided in G.S. 105-113.19.

41 Unless stamps have been previously affixed, the stamps required by this Article shall
 42 be affixed to packages by the licensed distributor within 48 hours of the receipt of all
 43 unstamped eigarettes-tobacco products, exclusive of Saturdays, ~~Sundays-Sundays,~~
 44 and legal holidays of this State, and ~~prior to-before~~ any and-all deliveries to other persons

1 except deliveries to points outside the State, deliveries by manufacturers to licensed
2 ~~distributors~~ distributors, and ~~those~~ deliveries which this State is prohibited from taxing
3 under the Constitution or the statutes of the United States.

4 **"§ 105-113.21. Discount on sales of stamps.**

5 On sales of stamps, the Secretary shall allow a discount of seven twenty-fourths cent
6 (7/24¢) per stamp as compensation for the services and expenses of the licensed
7 distributor in handling and affixing ~~such~~ the stamps to packages. No discount shall be
8 allowed ~~or given~~ on any sales of stamps in amounts less than one hundred dollars
9 (\$100.00).

10 **"§ 105-113.22. Manner of affixing and cancelling stamps.**

11 The Secretary shall regulate and prescribe the manner of affixing and cancelling
12 stamps, but no more than one stamp shall be affixed to any package and that stamp shall
13 represent the proper tax paid.

14 **"§ 105-113.23. Stamp metering machines.**

15 ~~The Secretary, if he shall determine~~ If the Secretary determines that it is practicable in
16 any case to permit licensed distributors to impress on or attach to each package of
17 ~~cigarettes~~ tobacco products evidence of tax payment by means of a metering machine, in
18 lieu of stamps, the Secretary may authorize any licensed distributor to use any metering
19 machine approved by the Secretary, ~~such if the machine to be~~ is sealed by the Secretary
20 before being used and used in accordance with rules and regulations prescribed by the
21 Secretary. All costs and expenses of procuring and using any metering machine shall be
22 borne by the user.

23 **"§ 105-113.24. Sale of stamps to ~~out~~distributors.**

24 (a) ~~In case the Secretary shall find that the collection of any tax imposed by this~~
25 ~~Article would be facilitated thereby, he may authorize, under reasonable conditions, any~~
26 ~~distributor~~ The Secretary may authorize any distributor outside this State engaged in the
27 business of selling and shipping ~~cigarettes~~ tobacco products into the State, upon
28 complying with the rules ~~and regulations~~ of the Secretary, to purchase and affix or cause
29 to be affixed on behalf of any purchaser of ~~cigarettes, who would otherwise be taxable~~
30 ~~therefor,~~ tobacco products the stamps required by this Article, or may authorize the use
31 of a machine by ~~such person~~ the distributor in the same manner and under the same
32 conditions as set forth in G.S. 105-113.23.

33 (b) ~~Any such~~ The nonresident distributor shall be required to agree to submit his
34 books, accounts, and records to reasonable examination by the Secretary or his duly
35 authorized ~~agents~~. ~~Each such nonresident distributor~~ agents and shall file with the Secretary
36 a performance bond fulfilling the terms and conditions set forth with respect to bonds in
37 ~~subsection (d) of G.S. 105-113.13.~~ G.S. 105-113.13(d).

38 (c) Each ~~such nonresident distributor,~~ distributor other than a foreign corporation
39 which has qualified with the Secretary of State as doing business in this State shall, by a
40 duly executed instrument filed in the office of the Secretary of State, ~~constitute and~~
41 appoint the Secretary of State his lawful attorney in fact upon whom any original
42 process in any action or legal proceeding against ~~such the~~ nonresident distributor arising
43 out of any matter relating to this Article may be served, and ~~therein shall~~ agree that any
44 original process against him so served shall be of the same force and effect as if served

1 on him within this State, and that the authority ~~thereof~~ of the instrument shall continue in
2 force irrevocably ~~so long as any such nonresident distributor shall remain as long as the~~
3 nonresident distributor remains liable for any taxes, ~~interest and interest,~~ or penalties
4 under this Article.

5 (d) Any nonresident distributor who ~~shall comply~~ complies with the provisions of
6 this section may be licensed as a distributor.

7 **"§ 105-113.25. Redemption and refund.**

8 The Secretary shall redeem any unused or mutilated, but identifiable, stamps that
9 any distributor may present for redemption, and refund ~~therefor~~ the face value of ~~said the~~
10 stamps, less the discount allowed at the time of the purchase of the stamps by ~~said the~~
11 distributor. In the event any stamped cigarettes-tobacco products are shipped out of this
12 ~~State, State~~ or are sold to those agencies or instrumentalities which this State is
13 prohibited from taxing under the Constitution or statutes of the United ~~States, States~~ by
14 any distributor, a refund of the face value of the ~~said the~~ stamps less the discount
15 allowed by the Secretary at the time of the purchase of the stamps by ~~said distributor, the~~
16 distributor shall be made upon the application of the distributor on forms prescribed by
17 the Secretary together with such evidence and proof of sale as the Secretary ~~shall~~ may
18 require.

19 **"§ 105-113.26. Records to be kept.**

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

25 All ~~such~~ records shall be safely preserved for a period of three years in such a
26 manner to ~~insure~~ ensure their security and accessibility for inspection by the Secretary
27 or his duly authorized agents. The Secretary ~~may, in his discretion, may~~ consent to the
28 destruction of any ~~such~~ records at any time, timewithin said period." § 105-113.27.

29 **Unstamped cigarettes-tobacco products.**

30 (a) Except as otherwise provided in this Article, licensed distributors ~~shall~~ may
31 not sell, borrow, ~~loan~~ loan, or exchange unstamped cigarettes-tobacco products to, ~~from~~
32 from, or with other licensed distributors.

33 (b) No person ~~shall~~ may sell or offer for sale unstamped cigarettes-tobacco
34 products.

35 (c) The possession of more than six hundred unstamped cigarettes or cigars or
36 more than thirty unstamped packages of smokeless tobacco products by any person
37 other than a licensed ~~distributor, distributor~~ shall be **prima facie** evidence that ~~such the~~
38 cigarettes-tobacco products are possessed in violation of the provisions of this Article.

39 **"§ 105-113.28. Displaying unstamped cigarettes-tobacco products for sale.**

40 It ~~shall be~~ is unlawful for any person to display for sale or offer for sale unstamped
41 cigarettes-tobacco products within this State.

42 **"§ 105-113.29. Unlicensed place of business.**

1 It ~~shall be~~ is unlawful for any person to maintain a place of business within this State
2 required by this Article to be licensed to engaged in the business of selling or offering
3 for sale ~~eigarettes tobacco products~~ without first obtaining ~~such the~~ required licenses."

4 "**§ 105-113.30. Records and reports.**

5 It ~~shall be~~ is unlawful for any person who is required under ~~the provisions of this~~
6 Article to keep records or make reports, to fail to keep ~~such the~~ records, refuse to keep
7 ~~such make the~~ reports, make false entries in ~~such the~~ records, fail to produce ~~such the~~
8 records for inspection by the Secretary or his duly authorized agents, fail to file a report,
9 or make a false or fraudulent report or statement.

10 "**§ 105-113.31. Possession and transportation of unstamped eigarettes; tobacco**
11 **products; seizure and confiscation of vehicle or vessel.**

12 (a) It ~~shall be~~ is unlawful for any person to transport unstamped ~~eigarettes tobacco~~
13 ~~products~~ in violation of the provisions of this Article, or to fail or refuse to comply with
14 ~~regulations and administrative rules~~ promulgated by the Secretary ~~in regard thereto.~~
15 Secretary. The Secretary may make reasonable rules and ~~regulations~~ governing
16 quantities of untaxed ~~eigarettes, cigarettes and cigars~~, not exceeding six hundred, and of
17 untaxed packages of smokeless tobacco products, not exceeding thirty, which may be
18 brought into this State by any transient, tourist, or person returning to this State after
19 traveling outside this State, for the use of ~~such that~~ transient, ~~tourist~~ tourist, or person;
20 and the possession or transportation of ~~such these~~ quantities ~~shall not be~~ are not subject to
21 the penalties imposed by this section.

22 (b)

- 23 (1) Every person who ~~shall transport~~ transports ~~eigarettes tobacco products~~
24 not stamped as required by this Article upon the public highways,
25 roads, ~~streets streets,~~ or waterways of this State shall have in his actual
26 possession invoices or delivery tickets for ~~such the~~ eigarettes tobacco
27 products which ~~shall~~ show the true name and complete and exact
28 address of the consignee or purchaser, the quantity and brands of the
29 ~~eigarettes transported~~ products transported, and the true name and
30 complete and exact address of the person who has paid or who shall
31 assume the payment of the tax imposed by this Article or the tax, if
32 any, of the state or foreign country at the point of ultimate destination.
- 33 (2) Any common carrier which has issued a bill of lading for a shipment
34 of ~~eigarettes tobacco products~~ and is without notice to itself or to any
35 of its agents or employees that ~~said the~~ eigarettes tobacco products are
36 not stamped as required by this Article shall be deemed to have
37 complied with this Article and the vehicle or vessel in which ~~said the~~
38 eigarettes tobacco products are being transported ~~shall not be~~ is not
39 subject to confiscation ~~hereunder.~~ under this section. In the absence of
40 such invoices, delivery ~~tickets tickets,~~ or bills of lading, as the case
41 may be, the ~~eigarettes tobacco products~~ so transported, the vehicle or
42 vessel in which the ~~eigarettes tobacco products~~ are being ~~transported~~
43 transported, and any paraphernalia or devices used in connection with
44 the unstamped ~~eigarettes tobacco products~~ are ~~declared to be~~ contraband

1 goods and may be seized by any officer of the law, who shall take
2 possession of the ~~vehicle or vessel and unstamped cigarettes therein,~~
3 contraband goods and shall arrest any person in ~~charge thereof.~~ charge
4 of them.

5 (3) ~~Such~~ The officer shall at once proceed against the person
6 arrested, under the provisions of this Article, in any court having
7 competent jurisdiction; but the ~~said~~ vehicle or vessel shall be
8 returned to the owner upon execution by him of a good and valid
9 bond, with sufficient sureties, in a sum double the value of the
10 property, which ~~said~~ bond shall be approved by ~~said~~ the officer and
11 shall be conditioned to return ~~said~~ the property to the custody of ~~said~~
12 the officer on the day of trial to abide the judgment of the court. All
13 unstamped ~~cigarettes~~ tobacco products seized under this section shall
14 be held and shall, upon the acquittal of the person so charged, be
15 returned to the established owner.

16 (4) Unless the claimant can show that the unstamped ~~cigarettes~~
17 tobacco products seized were not transported in violation of this
18 Article and that the property seized is his property, or that in the
19 case of property other than ~~cigarettes,~~ tobacco products, ~~such~~ the
20 property was used in transporting unstamped ~~cigarettes~~ tobacco
21 products in violation of this Article without his knowledge or
22 consent, with the right on the part of the claimant to have a jury pass
23 upon his claim, the court shall order a sale by public auction of the
24 property seized, and the officer making the sale, after deducting the
25 cost of stamps which he shall affix to ~~said~~ the ~~cigarettes~~ tobacco
26 products upon sale, expenses of keeping the property, the fee for the
27 seizure, and the costs of the sale, shall pay all liens according to their
28 ~~priorities,~~ priorities which are established, by intervention or
29 otherwise, at ~~said~~ the hearing or in other ~~proceeding~~ proceedings
30 brought for ~~said~~ that purpose as being bona fide and as having been
31 created without the lienor having any notice that the vehicle or
32 vessel was being used for the unlawful transportation of unstamped
33 ~~cigarettes,~~ tobacco products and shall pay the balance of the proceeds
34 to the State Treasurer for the ~~general fund.~~ General Fund.

35 (5) All liens against property sold under the provisions of this
36 section shall be transferred from the property to the proceeds of the
37 sale of the property. If, however, no one ~~shall be found claiming~~
38 claims the ~~cigarettes,~~ tobacco products or the vehicle or vessel, the
39 taking of the ~~same, with a description thereof,~~ property, including a
40 description, shall be advertised in some newspaper published in the
41 city or county where taken, or, if there ~~be~~ is no newspaper published
42 in ~~such~~ that city or county, in a newspaper having circulation in the
43 county, once a week for two weeks and by notices posted in three
44 public places near the place of seizure, and if no claimant ~~shall appear~~

1 appears within ten days after the last publication of the
2 advertisement, the property shall be sold, and the proceeds, after
3 deducting the expenses and costs, shall be paid to the State Treasurer
4 for the ~~general fund~~ General Fund.

5 (6) Nothing in this section shall be construed to authorize any
6 officer to search any vehicle or vessel or baggage of any person
7 without a search warrant duly issued, except where the officer sees
8 or has knowledge that there are unstamped ~~cigarettes~~ tobacco
9 products in such the vehicle or vessel.

10 **"§ 105-113.32. Unstamped ~~cigarettes~~ tobacco products subject to confiscation.**

11 All ~~cigarettes~~ tobacco products subject to the tax imposed by this Article, to which
12 stamps have not been affixed as required by this Article, together with any container in
13 which they are ~~stored~~, stored, or displayed for sale (including but not limited to vending
14 machines) are ~~declared to be~~ contraband goods and may be seized by any officer of the
15 law, who shall arrest any person in charge ~~thereof~~ of the contraband goods. ~~Such~~ The
16 officer shall at once proceed against the person arrested, under the provisions of this
17 Article, in any court having competent jurisdiction and the disposition of ~~said~~ the
18 unstamped ~~cigarettes~~ tobacco products and container shall be governed ~~and controlled by~~
19 the provisions of G.S. 105-113.31.

20 **"§ 105-113.33. Criminal penalties.**

21 Any person who violates any of the provisions of this Article for which no other
22 punishment is specifically prescribed shall be guilty of a misdemeanor punishable by a
23 fine or imprisonment or both in the discretion of the court.

24 **"§ 105-113.34. Forging or counterfeiting revenue stamps.**

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

34 If any person secures, ~~manufactures~~ manufactures, or causes to be ~~secured~~, secured or
35 manufactured, or has in his possession any stamp or any counterfeit impression device
36 not prescribed or authorized by the Secretary, ~~such that~~ that person shall be guilty of a felony
37 ~~and subject to the punishment above provided for in the first paragraph of this section.~~
38 punishable by a fine not to exceed two thousand dollars (\$2,000), imprisonment not to
39 exceed five years, or both, in the discretion of the court.

40 **"§ 105-113.35. Interest and penalty.**

41 If any person ~~shall neglect, fail or refuse~~ neglects, fails, or refuses to pay any tax due
42 under this Article, interest shall be added ~~thereto~~ to the tax at the rate established
43 pursuant to G.S. 105-241.1(i) from the date due until paid and there shall also be
44 added to ~~said~~ the tax an amount equal to fifty percent (50%) ~~thereof~~ of the tax."

1 **"§ 105-113.36. General administrative provisions of Revenue Act applicable.**

2 All provisions not inconsistent with this Article contained in Article 9 entitled
3 'General Administration; Penalties and Remedies' of Subchapter I of Chapter 105 of the
4 General Statutes, ~~this Chapter including but not limited to administration, auditing, making~~
5 ~~returns, promulgation of administrative rules and regulations by the Secretary, additional taxes,~~
6 ~~assessment procedure, imposition and collection of taxes of the lien thereof, assessments,~~
7 ~~refunds and penalties are hereby~~ are made a part of and shall apply to this Article. ~~this~~
8 ~~Article and shall be applicable thereto.~~

9 **"§ 105-113.37. Secretary to make ~~rules and regulations.~~ rules.**

10 Subject to the provisions of G.S. 105-262, the Secretary is ~~hereby authorized and~~
11 ~~empowered to~~ shall make all reasonable regulations and administrative rules necessary for
12 the efficient administration and enforcement of this Article not inconsistent with the
13 provisions of this Article. Upon request, ~~he~~ the Secretary shall furnish any taxpayer with
14 a copy of ~~such rules and regulations.~~ these rules. All provisions with respect to reviews
15 and appeals from the Secretary's decisions as provided by G.S. 105-241.2, ~~105-241.3~~
16 ~~105-241.3, and 105-241.4 of the General Statutes shall be applicable~~ apply to this Article.

17 **"§ 105-113.38. Tax to be paid only once.**

18 Whenever the tax levied by this Article has been computed and paid to the State
19 with respect to any ~~cigarettes~~ tobacco products as provided by this Article, and
20 appropriate stamps affixed, ~~the same shall not be required to tax~~ need not be paid again to
21 the State regardless of how many times ~~such~~ the cigarettes tobacco products ~~may~~
22 ~~thereafter be~~ are sold or resold, but the seller may add to ~~his~~ the sales price ~~thereafter~~ the
23 amount of ~~such tax.~~ the tax paid.

24 **"§ 105-113.39. Local units prohibited to tax.**

25 No city, ~~town~~ town, or county ~~shall~~ may levy any privilege license tax with respect to
26 the sale of ~~cigarettes~~ tobacco products other than as permitted by Article 2 of Subchapter I
27 of Chapter 105 of the General Statutes." this Chapter."

28 ~~"§105 This Article shall be in full force and effect on and after July 1, 1969, or on~~
29 ~~the first day of the month next after the ninetieth day from its~~
30 ~~ratification, whichever is the later date. However, the Secretary is~~
31 ~~authorized, prior to that time, to do all things necessary to the~~
32 ~~implementation of the provisions of this Article, including making~~
33 ~~regulations and administrative rules, procuring the manufacture of~~
34 ~~stamps, and providing for sale of the same, in order to secure effective~~
35 ~~administration of this Article on and after its effective date."~~

36 Sec. 5. Every person subject to the taxes levied in G.S. 105-113.5 and G.S.
37 105-113.6 who, on October 1, 1991, has on hand any tobacco products shall file a
38 complete inventory of the tobacco products by October 21, 1991, and shall pay to the
39 Secretary at the time of filing the inventory the tax or additional tax due on the tobacco
40 products under G.S. 105-113.5 and G.S. 105-113.6. The provisions of Article 2A of the
41 General Statutes as amended by this act relative to the collection, verification, and
42 administration of the tax shall, insofar as pertinent, apply to the tax imposed by this
43 section, but the affixing of stamps as evidence of the payment of the tax by persons

1 subject to the taxes levied in G.S. 105-113.6 is not necessary except as the Secretary by
2 regulation or administrative rule may require.

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

8 Sec. 7. Sections 1 and 2 of this act are effective for taxable years beginning
9 on or after January 1, 1991. Section 4 of this act becomes effective October 1, 1991.
10 The remainder of this act is effective upon ratification.