

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 777

Short Title: Tobacco Products Tax Revisions. (Public)

Sponsors: Senator Garrou.

Referred to: Finance.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE SCOPE OF TOBACCO PRODUCT MANUFACTURERS AND
3 WHOLESALE DEFINITIONS.

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 tobacco,
9 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 not
12 contain tobacco.

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

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

21 (3) Distributor. – Either of the following:

22 a. A person, wherever resident or located, who purchases non-tax-paid
23 cigarettes directly from the manufacturer of the cigarettes and stores,
24 sells, or otherwise disposes of the cigarettes.

25 b. A person who manufactures or produces cigarettes or causes them to
26 be manufactured or produced.

27 (3a) Federal excise tax bond. – A bond securing the payment of taxes imposed by
28 sections 5701 or 7652 of the Code that is required by the United States
29 Department of Treasury in order to possess a Tobacco Manufacturer's
30 Permit.

31 (4) Repealed by Session Laws 1991, c. 689, s. 267.

32 (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a
33 manufacturer of tobacco products, other than cigarettes, ~~is the only person to~~
34 whom the manufacturer sells its products, and who is not a retail dealer. An
35 "affiliate" is a person who directly or indirectly controls, is controlled by, or
36 is under common control with another person.

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



- 1 (6) Manufacturer. – A person who manufactures or produces tobacco
2 ~~products, products or causes them to be manufactured or produced.~~
3 (7) Package. – The individual packet, can, box, or other container used to
4 contain and to convey tobacco products to the consumer.
5 (8) Person. – Defined in G.S. 105-228.90.
6 (9) Retail dealer. – A person who sells a tobacco product to the ultimate
7 consumer of the product.
8 (10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any
9 means, with or without consideration.
10 (10a) Secretary. – The Secretary of Revenue.
11 (11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
12 (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains
13 tobacco and is intended for inhalation or oral use.
14 (12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
15 (13) Use. – The exercise of any right or power over cigarettes, incident to the
16 ownership or possession thereof, other than the making of a sale thereof in
17 the course of engaging in a business of selling cigarettes. The term includes
18 the keeping or retention of cigarettes for use.
19 (14) Wholesale dealer. – A person who ~~makes~~ manufactures or produces tobacco
20 products other than cigarettes or causes them to be manufactured or
21 produced, or who acquires tobacco products other than cigarettes for sale to
22 another wholesale dealer or to a retail dealer."

23 **SECTION 2.** G.S. 105-113.35 reads as rewritten:

24 "**§ 105-113.35. Tax on tobacco products other than cigarettes; use of proceeds.**

25 (a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of
26 ten percent (10%) of the cost price of the products. This tax does not apply to the following:

- 27 (1) A tobacco product sold outside the State.
28 (2) A tobacco product sold to the federal government.
29 (3) A sample tobacco product distributed without charge.
30 (4) A tobacco product that remains under federal excise tax bond.

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32 **SECTION 3.** If any clause, sentence, paragraph, division, or other portion of this
33 act shall for any reason be found by a court of competent jurisdiction to be invalid for any
34 reason, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall
35 be confined in its operation to the clause, sentence, paragraph, division, or other portion found
36 to be invalid.

37 **SECTION 4.** This act becomes effective July 1, 2009, and applies to tobacco
38 products subject to the tax imposed by G.S. 105-113.35 that are sold or distributed on or after
39 that date.