

V. EXCISE TAX
(Articles 2A, 2C, and 5E)

A. Tobacco Products Excise Tax (G.S. 105-113.2 – G.S. 105-113.40)

1. Scope (G.S. 105-113.3)

The taxes on cigarettes and other tobacco products are collected only once on the same tobacco product. A city or county may not levy a privilege license tax on the sale of tobacco products except as permitted by this Article.

2. Cigarette Distributor Licenses (G.S. 105-113.4A, G.S. 105-113.11, G.S. 105-113.12, 17 NCAC 04C.0201, 17 NCAC 04C.0205)

To obtain a license required by this Article, an applicant must apply to the Secretary on Application for Cigarette Distributor's License (Form B-A-1) and pay the tax due for the license. The application must be signed and verified by oath or affirmation by:

- The owner, if a natural person
- A member or partner, if an association or a partnership, or
- An executive officer, or any other person authorized in writing by the corporation, if a corporation

The distributor must notify the Secretary in writing of any changes in the information previously provided on the license application as such changes occur. Additionally, each cigarette distributor must notify the cigarette manufacturers from whom non-tax-paid cigarettes are purchased or received of the cigarette distributor's license issued by the Secretary and of any subsequent changes to the license.

A license is required for each place of business. "Place of business" means any place where a distributor receives or stores non-tax-paid cigarettes. The distributor must notify the Secretary in writing of the exact location and telephone number of all warehouse or storage facilities where non-tax-paid cigarettes are received or stored before such facilities are placed in use. A license is not transferable or assignable and must be displayed at the place of business for which it is issued. The tax due for the license cannot be prorated.

A refund of a license tax is allowed only when the tax was collected and paid in error. No refund is allowed when a license holder surrenders a license or the Secretary revokes a license.

A license holder may obtain a duplicate license, without charge, if it is established that the original license has been lost, destroyed, or defaced. An amended license may be obtained, without charge, if it is established that the location of the place of business for which the license was issued has changed. Each duplicate or amended license will state that it is a duplicate or amended license, as appropriate.

3. Revocation of Licenses (G.S. 105-113.4B)

The Secretary may revoke the license of any license holder who violates this Article or any Administrative Rule made pursuant to the provisions of this Article, or who engages in the illegal sale of cigarettes (G.S. 14-401.18). A license issued under this Article may be canceled upon written request of the license holder or if the Secretary finds that the license holder is

incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article.

The license holder is allowed a hearing before the license is revoked. The Secretary must give a person whose license may be cancelled after a hearing at least ten (10) days written notice of the date, time and place of the hearing. The notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

It is illegal for any distributor whose license has been suspended or revoked to sell cigarettes or permit the same to be sold during the period of such suspension or revocation on any premises occupied by said distributor, or upon other premises controlled by said distributor or others in any other manner or form whatever.

No disciplinary, penal, or regulatory proceeding or action will be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of this Article.

If any person licensed under the provisions of G.S. 105-164.4, G.S. 105-164.5, G.S. 105-164.6, and G.S. 105-164.29 is convicted by any court of competent jurisdiction in the State of any offense under this Article, the Secretary is authorized to revoke any or all licenses issued to such person under the provisions of the aforesaid sections of Chapter 5 of the General Statutes.

4. Master Settlement Agreement (G.S. 105-113.4C)

The Master Settlement Agreement between the states and the tobacco product manufacturers, incorporated by reference into the consent decree referred to in S.L. 1999-2, requires each state to diligently enforce Article 37 of Chapter 66 of the General Statutes. The Secretary must require the taxpayers of the tobacco excise tax to identify the amount of tobacco products of nonparticipating manufacturers sold by the taxpayers, and may impose this requirement as provided in G.S. 66-290(10). The Secretary must determine the amount of State tobacco excise taxes attributable to the products of nonparticipating manufacturers, based on the information provided by the taxpayers, and must report this information to the Office of the Attorney General.

5. Tax on Cigarettes (G.S. 105-113.5)

An excise tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of two and one-half mills (.0025) per individual cigarette (five cents per pack of twenty). For cigarettes sold on or after September 1, 2005 but before July 1, 2006, the tax rate is one and one-half cents per individual cigarette (thirty cents per pack of twenty). For cigarettes sold on or after July 1, 2006, the tax rate is one and three-fourths cents per individual cigarette (thirty-five cents per pack of twenty). Distributors are responsible for the tax on all packages of cigarettes received by them and should consider the desirability of insuring their cigarette inventories against loss by theft or otherwise, since distributors are liable for the tax upon any non-tax-paid cigarettes which are stolen or otherwise unaccounted for.

It is the responsibility of each wholesale cigarette dealer and retail dealer who purchases cigarettes from a distributor to determine that the tax is indicated as paid by the wording "North Carolina Cigarette Excise Tax Paid" on each invoice for cigarettes. If non-tax-paid cigarettes are received, such wholesale cigarette dealer or retail dealer must

immediately notify the distributor from whom said cigarettes are purchased, with a copy to the Department. Upon such notification, the distributor from whom said cigarettes were purchased must immediately determine if the tax has been paid and make the necessary invoice changes to their customer as well as make any payment corrections to the Department with applicable penalty and interest.

6. Use Tax Levied (G.S. 105-113.6)

A tax is levied upon the sale or possession for sale by a person other than a distributor, and upon the use, consumption, and possession for use or consumption of cigarettes within this State at the rate set in G.S. 105-113.5. This tax does not apply, however, to cigarettes upon which the tax levied in G.S.105-113.5 has been paid.

Railroads operating interstate are permitted to sell cigarettes by the pack, but such carriers must procure permission from the Secretary to sell cigarettes and must report all sales made within North Carolina to the Department on or before the 20th day of each month. The reports must be filed on forms prescribed by the Secretary and must state the amount of non-tax-paid cigarettes sold on the train in this State during the immediately preceding month. A remittance of the excise tax due the State on such sales must be submitted with the report.

Non-tax-paid cigarettes may be sold for use or consumption by or on ocean-going vessels which leave the continental United States and which ply the high seas in interstate or foreign commerce in the transport of freight or passengers for hire exclusively when delivered to an officer or agent of such vessel for use by or on such vessel accordingly. Receipt for delivery of such non-tax-paid cigarettes shall be signed for by an authorized officer or agent of such vessel, and such signed receipts shall be retained by the distributor for a period of three years; also, a copy of same shall be appended to the appropriate monthly tax report of the distributor. Only North Carolina tax-paid cigarettes may be sold by such vessels while in port or within the territorial limits of this State.

7. Tax on Inventory When Tax Rate Increases (G.S. 105-113.7)

Every distributor subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any cigarettes shall file a complete inventory of the cigarettes within 20 days after the effective date of the increase, and shall pay an additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate.

8. Federal Constitution and Statutes (G.S. 105-113.8)

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

Non-tax-paid cigarettes may be sold to the federal government and its instrumentalities, such as the Armed Forces Exchange Services, but sales by such services shall be limited to members of the armed forces and their dependents who hold identification cards entitling them to make purchases through armed forces exchange services.

Whenever deliveries of non-tax-paid cigarettes are made by distributors to armed forces exchange services, the person making such delivery shall have in his actual possession invoices for such cigarettes which shall show date, invoice number, name and address

of distributor, and the name and address of the purchaser and the quantity and brands of cigarettes being transported. If these conditions are not complied with, the non-tax-paid cigarettes shall be subject to confiscation, and the distributor taxed on such sales or deliveries made in an unauthorized manner. In the event of such deliveries of non-tax-paid cigarettes, the cigarettes shall be physically delivered by the distributor's conveyance or a duly authorized common carrier directly to the situs where the installation of the governmental agency is located. Upon such delivery the distributor shall require a duly receipted invoice or copy thereof from the governmental agent designated to accepted delivery. Distributors shall have a bona fide bill of lading, if delivery is made by common carrier.

No sales of non-tax-paid cigarettes on military installations may be made through vending machines, other than those owned and operated by the federal government or instrumentalities thereof.

Members of the armed forces or their dependents authorized to purchase through armed forces exchange services cannot sell, offer for sale, or redistribute in any manner non-tax-paid cigarettes purchased on or through military installations. All such non-tax-paid cigarettes handled in violation of the cigarette law and its rules are subject to confiscation and the person(s) are subject to the tax, interest, and all penalties.

If a person engages in the sale of cigarettes on a military reservation, regardless of the fact that he may have a contract with the federal government, whereby the federal government will receive a commission, flat fee or some other type of compensation on such sales, same does not exempt the sale of such cigarettes from the cigarette excise tax. In such instance, such sales would not be made by the federal government or an instrumentality of the federal government. Instead, on all such sales, the cigarette tax is due.

9. Out-of-state Shipments (G.S. 105-113.9)

Any distributor engaged in interstate business shall be permitted to set aside part of the stock as necessary to conduct interstate business without paying the tax otherwise required by this Part, but only if the distributor complies with the requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration of this Part.

“Interstate business” as used in this section means:

- The sale of cigarettes to a nonresident where the cigarettes are delivered by the distributor to the business location of the nonresident purchaser in another state;
- The sale of cigarettes to a nonresident wholesaler or retailer registered through the Secretary who has no place of business in North Carolina and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser.

Only licensed North Carolina cigarette distributors may make out-of-state sales of non-tax-paid cigarettes to nonresident retail or wholesale cigarette dealers. Generally, these sales of non-tax-paid cigarettes by a licensed North Carolina distributor to nonresident retail or wholesale dealers must be delivered by the North Carolina distributor to the business location

of the nonresident in another state to qualify as an out-of-state sale exempted from the North Carolina cigarette excise tax. However, a nonresident dealer may accept delivery of cigarette purchases in this State provided:

- The nonresident dealer has no place of business in North Carolina.
- The nonresident dealer is purchasing cigarettes for the purpose of resale outside on North Carolina.
- The nonresident dealer's cigarette purchases must have affixed thereto by the North Carolina distributor the tax-paid cigarette indicia of the state of the nonresident purchaser where required.

Cigarettes sold and delivered outside this state must have affixed thereto by the North Carolina cigarette distributor selling same the tax-paid cigarette indicia of the state of the nonresident purchaser where required.

Cigarette distributors, wholesalers, and retailers must comply with all applicable State and federal laws regarding the sale and distribution of cigarettes, such as the Federal Contraband Act, the Federal Jenkins Act, and all state and federal laws prohibiting the sale of cigarettes to minors.

10. Manufacturers (G.S. 105-113.10)

Manufacturers are hereby required to forward the Secretary copies of all invoices, or equivalent information, of shipments of cigarettes to distributors, wholesalers or retail dealers in this State on a monthly basis, or at the time of shipment. An invoice is also required on gratis cigarettes by licensed distributors on behalf of the manufacturer.

No manufacturer may make shipments of cigarettes, including drop shipments, to any person in this State not qualified as a distributor without the manufacturer being licensed as a North Carolina cigarette distributor, keeping records, filing reports, and remitting tax as required.

The Secretary will permit the manufacturer to file monthly reports on complimentary cigarettes given by the manufacturer, which are not otherwise exempt under G.S. 105-113.5, when such packages of cigarettes have imprinted thereon the proper words reflecting that the cigarette excise tax has been paid. Remittance covering the cigarette tax must accompany the monthly report, which is due no later than the 20th day of the month following the close of the preceding month.

Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part.

Manufacturers may also qualify as distributors under this Article, and set aside a portion of their stock of cigarettes accordingly for that purpose. Such inventory must be reported as required of all distributors under this Article. When a manufacturer qualifies as a distributor and makes shipments into North Carolina, the invoice must indicate payment of the excise tax by the wording, "North Carolina Cigarette Excise Tax Paid." A copy of each invoice or charge-out by the manufacturer to its distributor operation must be forwarded to the Department on a monthly basis accordingly.

11. Licenses Required (G.S. 105-113.11)

No person can legally engage in business as a distributor in this State, without having first obtained from the Secretary the appropriate license for that purpose as prescribed herein. Any license required by this Article shall be in addition to any and all other licenses which may be required by law.

12. Distributor Must Obtain License (G.S. 105-113.12)

A distributor shall obtain for each place of business a continuing distributor's license and shall pay a tax of twenty-five dollars (\$25.00) for the license. For the purposes of this section, a "place of business" is a place where a distributor receives or stores non-tax-paid cigarettes. An out-of-state distributor may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.24 and payment of a tax of twenty-five dollars (\$25.00).

13. Investigation of Applicant and Bond Requirement (G.S. 105-113.13)

The Secretary may investigate an applicant for a distributor's license to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed as a distributor. The Secretary may decline to issue a distributor's license to an applicant when the Secretary has reasonable cause to believe any of the following:

- That the applicant has willfully withheld information requested by the Secretary for the purpose of determining the applicant's eligibility for the license.
- That information submitted with the application is false or misleading.
- That the application is not made in good faith.

The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall set the bond amount based on the anticipated tax liability of the distributor. The Secretary shall periodically review the sufficiency of bonds required of the distributor and shall increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor. The Secretary shall decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss.

14. Identification of Dispensers (G.S. 105-113.17)

Each vending machine that dispenses cigarettes must be marked to identify its owner in the manner required by the Secretary.

Distributors, wholesalers or retail dealers owning, leasing, furnishing or operating cigarette vending machines shall affix to each such machine in a conspicuous place an identification sticker or device, which shall show the name, address and telephone number of the operator owning and placing such machine on location. The owner of the business wherein such machine is located shall also be responsible for seeing that such vending machine is so identified. No cigarette-dispensing machine shall be allowed to operate in this State that does not have affixed thereto the identification required under G.S.105-113.17.

It shall be the duty of any person, firm or corporation operating cigarette vending machines to have available for the Department information as to the location of any and all vending machines so operated by such operator and make such information available at any time to the secretary or his authorized agent.

15. Payment of Tax and Required Reports (G.S. 105-113.18)

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

a. Distributor's Report

A distributor shall file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the amount of tax due and shall identify any transactions to which the tax does not apply. Every licensed resident distributor shall file a report, Form B-A-5, on or before the 20th day of each month. Non-tax-paid cigarettes shipped, delivered, or sold outside the State during the month shall be reported on supplemental Form B-A-5, Schedule I. Cigarettes returned to the manufacturer during the month shall be reported on supplemental Form B-A-5, Schedule J. Every licensed nonresident distributor shall file a report, Form B-A-6 on or before the 20th day of each month.

b. Report of Free Cigarettes

A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.

c. Use Tax Report

Every other person who has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed by this Part must, within 96 hours after receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report must be accompanied by payment of the full amount of the tax.

d. Shipping Report

Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary.

16. Discount; Refund (G.S. 105-113.21)

Effective for reporting periods beginning on or after August 1, 2004, a distributor is allowed to deduct a discount equal to two percent (2%) of the tax due *if* the report is filed and the tax due is paid by the due date. The discount covers expenses incurred in preparing the records and reports required by this Part and the expense of furnishing a bond.

A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer and apply to the Secretary for refund of the tax, less the discount allowed. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant.

Any spoiled packages of tax-paid cigarettes in the hands of a retailer or wholesaler should be returned to its respective distributors, as refunds of the cigarette excise tax will be made only to the distributor.

17. Registration of Out-of-state Distributors and Tax Remittance (G.S. 105-113.24)

The Secretary may authorize any distributor outside this State engaged in the business of selling and shipping cigarettes into the State to obtain a license and report and pay taxes required by this Part.

A nonresident distributor must agree to submit the distributor's books, accounts, and records to reasonable examination by the Secretary or the Secretary's duly authorized agents. Any nonresident distributor applying for a license as a North Carolina distributor who does not have any located place of business in the State from which such business is being conducted will be required by the Secretary to post a bond as provided for under G.S. 105-113.13, before such nonresident license is issued. The minimum bond amount will be \$5,000.

Each such nonresident distributor, other than a foreign corporation which has qualified with the Secretary of State as doing business in this State shall, by a duly executed instrument filed in the office of the Secretary of State, constitute and appoint the Secretary of State his lawful attorney in fact upon whom any original process in any action or legal proceeding against such nonresident distributor arising out of any matter relating to this Article may be served, and therein agree that any original process against him so served shall be of the same force and effect as if served on him within this State, and that the authority thereof shall continue in force irrevocably so long as any such nonresident distributor shall remain liable for any taxes, interest and penalties under this Article.

Any nonresident distributor who shall comply with the provisions of this section may be licensed as a distributor.

18. Reports and Records (G.S. 105-113.26, G.S. 105-113.30)

Every licensed distributor must file a report on or before the 20th day of each month with tax remittance on form prescribed by the Secretary showing transactions for the preceding month, and such other information as required by the report. Monthly reports are required whether or not any tax is shown to be due.

Distributors who operate in a period, other than a calendar month, must provide the Tobacco Products Excise Tax Unit of the Department a list of the period ending dates for each coming year. This period ending schedule is due in November of each year unless advised otherwise. The cigarette monthly report is due within 20 days after the particular period ends.

Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all sales and other information as required under this Article. The records shall be in the form prescribed by the

Secretary. These records shall be safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department. The Secretary may consent to the destruction of any records at any time within this three-year period.

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

Each sale of cigarettes at wholesale, including cash and credit transactions, and regardless of whether the sale is made to another distributor, wholesale dealer, retail dealer, or is a transfer to a self-owned outlet or an agency or agent, must be accompanied by a completed invoice indicating the person to whom the cigarettes were sold, the address of the purchaser, the date of the sale, the quantity sold, and the price charged.

Sales invoices of distributors, whether resident or nonresident, must indicate payment of the excise tax by the wording, "North Carolina Cigarette Excise Tax Paid."

If a distributor is also a retail dealer and sells cigarettes to consumers, an invoice or an memorandum must be prepared showing the transfer of all cigarettes from the distributor to the retail activity. Cigarette excise tax is applicable at the point of transfer and the required documents must reflect payment of the tax by the wording, "North Carolina Cigarette Excise Tax Paid."

19. Non-tax-paid Cigarettes (G.S. 105-113.27)

Except as otherwise provided in this Article, no person may legally possess non-tax-paid cigarettes in this State. Only licensed distributors may receive non-tax-paid cigarettes. Licensed distributors are not allowed to sell, borrow, loan, or exchange non-tax-paid cigarettes to, from, or with other licensed distributors. Under no circumstances may non-tax-paid cigarettes be sold in North Carolina.

The possession of more than six hundred cigarettes on which tax has been paid to another state or country, by any person other than a licensed distributor, is prima facie evidence that the cigarettes are possessed in violation of this Part.

20. Unlicensed Place of Business (G.S. 105-113.29)

It shall be unlawful for any person to maintain a place of business within this State required by this Article to be licensed to engaged in the business of selling or offering for sale cigarettes without first obtaining such licenses.

21. Possession and Transportation of Non-tax-paid Cigarettes (G.S. 105-113.31)

It shall be unlawful for any person to transport non-tax-paid cigarettes in violation of this Part. The Secretary may adopt rules allowing quantities of non-tax-paid cigarettes, not exceeding six hundred, to be brought into this State by a transient, a tourist, or a person returning to this State after traveling outside this State, for their own use. The possession or transportation of these cigarettes is not subject to the penalties imposed by this section.

Every person who transports non-tax-paid cigarettes on the public highways, roads, streets, or waterways of this State must transport with the cigarettes invoices or delivery tickets for the cigarettes showing the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported, and the true name and complete and exact address of the person who has paid or who will pay the tax imposed by this Part or the tax, if any, of the state or foreign country at the point of ultimate destination.

A common carrier that has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that the cigarettes are non-tax-paid in violation of this Part is considered to have complied with this Part and the vehicle or vessel in which the cigarettes are being transported is not subject to confiscation under this section. In the absence of the required invoices, delivery tickets, or bills of lading, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being transported, and any paraphernalia or devices used in connection with the non-tax-paid cigarettes are declared to be contraband goods and may be seized by any officer of the law, who shall take possession of the vehicle or vessel and cigarettes and shall arrest any person in charge of the vehicle or vessel and cigarettes.

The officer shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction; but the vehicle or vessel shall be returned to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which bond shall be approved by the officer and shall be conditioned to return the property to the custody of the officer on the day of trial to abide the judgment of the court. All non-tax-paid cigarettes seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner.

Unless the claimant can show that the non-tax-paid cigarettes seized were not transported in violation of this Part and that the property seized belongs to the claimant or that in the case of property other than cigarettes, the property was used in transporting non-tax-paid cigarettes in violation of this Part without the claimant's knowledge or consent, with the right on the part of the claimant to have a jury pass upon this claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the cost of the tax due, which the officer shall pay upon sale, expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, at the hearing or in another proceeding brought for the purpose as being bona fide and as having been created without the lien or having any notice that the vehicle or vessel was being used for the unlawful transportation of non-tax-paid cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the General Fund.

All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one is found claiming the cigarettes, or the vehicle or vessel, then the taking of the cigarettes, vehicle, or vessel, along with a description, shall be advertised in a newspaper having circulation in the county where the items were taken, once a week for two weeks and by notices posted in three public places near the place of seizure, and if no claimant appears within ten days after

the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the State Treasurer for the General Fund.

This section does not authorize an officer to search any vehicle or vessel or baggage of any person without a search warrant duly issued, except where the officer has knowledge that there are non-tax-paid cigarettes in the vehicle or vessel.

22. Non-tax-paid Cigarettes Subject to Confiscation (G.S. 105-113.32)

All non-tax-paid cigarettes subject to the tax imposed by this Part, together with any container in which they are stored or displayed for sale (including but not limited to vending machines), are declared to be contraband goods and may be seized by any officer of the law. The officer shall arrest any person in charge of the contraband goods and shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction. The disposition of the seized cigarettes and container are governed by the provisions of G.S. 105-113.31.

23. Criminal Penalties (G.S. 105-113.33)

Any person who violates any of the provisions of this Article for which no other punishment is specifically prescribed shall be guilty of a Class 1 misdemeanor.

24. Tax on Tobacco Products Other Than Cigarettes (G.S. 105-113.35)

An excise tax is levied on tobacco products other than cigarettes at the rate of two percent (2%) of the cost price of the products. For other tobacco products sold on or after September 1, 2005, the tax rate is three percent (3%). "Cost price" means the actual gross purchase price of the other tobacco products before any discounts, rebates, or allowances and before the excise tax is applied. Additional charges which are included and are not set out separately on the invoice, such as freight charges that are not separately stated, are considered part of the cost price and the tax is applied to the total invoice amount before any deductions.

This tax does not apply to the following:

- A tobacco product sold outside the State.
- A tobacco product sold to the federal government.
- A sample tobacco product distributed without charge.

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

Examples are:

- The out-of-state wholesale dealer or retail dealer who brings such products into the State on its own truck.
- The in-state wholesale dealer or retail dealer who brings such products into the State on its own truck.

- The in-state wholesale dealer or retail dealer who first receives such products from outside the State by common carrier or contract carrier.

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

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

Other tobacco products sold to the federal government and its instrumentalities, such as the Armed Forces Exchange Services, are exempt from the excise tax. However, to qualify for exemption, sales of other tobacco products by such services must be limited to members of the armed forces and their dependents who hold identification cards entitling them to make purchases through armed forces exchange services.

Whenever tax-exempt deliveries of other tobacco products are made by dealers to armed forces exchange services, the dealer must require a duly receipted invoice or copy thereof from the governmental agent designated to accept delivery.

If a person engages in the sale of any other tobacco products on a military reservation, regardless of the fact that he may have a contract with the federal government, whereby the federal government will receive a commission, flat fee, or some other type of compensation on such sales, same does not exempt the sale of such products from the excise tax. In such instances, such sales would not be made by the federal government or an instrumentality thereof. Instead, all such sales are subject to the excise tax.

25. Manufacturers of Other Tobacco Products (G.S. 105-113.35)

No manufacturer may make shipments of other tobacco products directly to a person in this State not qualified and licensed as a wholesale or retail dealer of other tobacco products.

Any manufacturer of other tobacco products shipping such products to other wholesale or retail dealers who are licensed pursuant to G.S. 105-113.36 for payment of the other tobacco products excise tax is relieved of the requirement of paying tax.

A retail dealer who manufactures other tobacco products and sells those products to consumers in this State is liable for the tax except for those transactions in other tobacco products which meet exemption from the tax under G.S. 105.113.35.

26. Wholesale Dealer and Retail Dealer Must Obtain License (G.S. 105-113.36)

Wholesale dealers and retail dealers, liable for excise tax on other tobacco products under G.S. 105-113.35, must obtain a continuing Other Tobacco Products Tax License for each place of business. "Place of business" means any place where a wholesale dealer or a retail

dealer makes tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than cigarettes.

The application for each license must be on a form prescribed by the Secretary and the appropriate license tax, twenty-five dollars (\$25) for wholesale dealers and ten dollars (\$10) for retail dealers, must accompany the application form.

The application for license must be signed and verified by oath or affirmation by the owner, if an natural person, and in the case of an association or partnership, by a member or partner thereof, and in the case of a corporation, by an executive officer thereof or by any person specifically authorized by the corporation to sign the application to which shall be attached the written evidence of his authority.

The licensee must notify the Secretary in writing of any changes in the information previously provided on the license application as such changes occur. Additionally, the licensee is responsible for notifying the manufacturers from whom other tobacco products are purchased or received of the other tobacco products license issued by the Secretary and of any subsequent change relative to the license.

The license is not assignable or transferable and the license tax is not prorated.

27. Payment of Tax (G.S. 105-113.37)

Except for tax on sales designated as tax-exempt under G.S. 105-113.35, the taxes levied by this Article are payable when a report is required to be filed. Monthly reports covering sales and other activities occurring in a calendar month are due within 20 days after the end of the month covered by the report. Each report must be filed on a form provided by the Secretary and must contain the information required by the Secretary. A return must be filed each month even if no tax is due for that month.

Wholesale dealers and retail dealers who operate in a period other than a calendar month, must provide the Tobacco Products Excise Tax Unit of the Department a list of the period ending dates for each coming year. This period ending schedule is due in November of each year unless advised otherwise. The other tobacco products monthly report and tax remittance are due within 20 days after the particular period ends.

Sales invoices of wholesale dealers, whether resident or nonresident, liable for the tax must indicate payment of the excise tax on other tobacco products by the wording "North Carolina Other Tobacco Products Tax Paid."

All sales invoices of nonresident wholesale dealers must show the point of origin and mode of transportation for all shipments of other tobacco products into this State.

A wholesale dealer who sells a tobacco product to a person who has notified the wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.35(a)(1) or (2) may, when filing a monthly report, designate the quantity of tobacco products sold to the person for resale. A wholesale dealer must report all designated sales during a taxable period on Form B-A-101. The wholesale dealer must separately invoice and indicate the other tobacco products designated for exempt transactions. For example, sales designated for customers with other tobacco product sales outside North Carolina must be invoiced to read, "Designated for Sale Outside North Carolina". A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. However,

where prior written notification is not provided, the wholesale dealer must remit applicable tax.

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

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

The tax liability plus penalties and interest will be held against the wholesaler's customer who sells other tobacco products designated exempt in a taxable transaction. Customers violating designation procedures can expect full penalties to be held on designated products improperly handled.

Once other tobacco products are designated as tax exempt under G.S. 105-113.35, they must be sold in tax-exempt transactions.

28. Bond (G.S. 105-113.38)

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under Part 3 of the Tobacco Products Tax Act. A bond must be conditioned on compliance with this Part, must be payable to the State, and must be in the form required by the Secretary. The Secretary will proportion a bond amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary will periodically review the sufficiency of bonds required of dealers, and will increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary will decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss.

29. Discount; Refund (G.S. 105-113.39)

Effective for reporting periods beginning on or after August 1, 2004, a wholesale dealer or a retail dealer who is primarily liable for the taxes imposed by this Part is allowed to deduct a discount equal to two percent (2%) of the tax due *if* the report is filed and the tax due is paid by the due date. The discount covers losses due to damage to tobacco products, expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

Effective for reporting periods beginning on or after September 1, 2005, a wholesale dealer or a retail dealer who is primarily liable for the excise tax and is in possession of stale or

otherwise unsalable cigars upon which the tax has been paid may return the cigars to the manufacturer and apply to the Secretary for refund of tax paid, less any discount allowed on the unsalable cigars. The application must be in the form prescribed by the Secretary and must be accompanied by an affidavit from the manufacturer stating the number of cigars returned to the manufacturer by the applicant.

30. Records (G.S. 105-113.40)

Every wholesale dealer, every retail dealer and their customers must keep accurate records of inventories, purchases, and sales of tobacco products for at least three years. These records and inventories must be maintained separately in such a manner as can be inspected and audited by the Secretary or duly authorized representative at any time without having to go through and separate or segregate all sales of the taxpayer in order to arrive at the amount of exempt sales or inventories. These records must be open at all times for inspection by the Secretary or an authorized representative of the Secretary.

31. Other Tobacco Products Vending Machines

No other tobacco products dispensing machine will be allowed to operate in this State that does not have affixed thereto the identification required under the Tobacco Products Tax Article.

Wholesale dealers or retail dealers owning, leasing, furnishing or operating other tobacco products vending machines must affix to each machine in a conspicuous place an identification sticker or device, which shows the name, address and telephone number of the operator owning and placing such machine on location. The owner of the business wherein such machine is located is also responsible for seeing that such vending machine is so identified.

It is the duty of any person, firm or corporation operating other tobacco products vending machines to have available for the Department information as to the location of any and all vending machines so operated by such operator, and make such information available at any time to the Secretary or his authorized agent.

32. Refund of Overpaid Tax

A wholesale dealer or a retail dealer who pays tax to the Department on other tobacco products that are exempt from the excise tax may obtain a refund for the net amount of tax paid by filing an application for refund form provided by the Secretary. Applications for refund must be submitted within the time allowed by G.S. 105-266 or G.S. 105-266.1

33. Interest and Penalties (G.S. 105-236, G.S. 105-241.1(i))

Interest, at the rate set by the Secretary, is applicable to all late payments of the tobacco products excise tax and to all assessments of additional tax due.

The North Carolina Statutes provide both civil and criminal penalties for failure to comply with the tax laws. See Section VIII General Administration for additional information. Also, see Item 24 above for information on penalties specific to this Article.