State of North Carolina

TOBACCO PRODUCTS TAX

Issued by:

Excise Tax Division Tax Administration
North Carolina Department of Revenue
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PREFACE

This publication supplements the information in the Administrative Rules but does not supersede the Administrative Rules. In addition, this bulletin does not cover all provisions of the law.

Taxpayers are cautioned that this publication is intended merely as a guide and that consideration must be given to all the facts and circumstances in applying this bulletin to particular situations. Taxpayers using this publication should be aware that additional changes may result from legislative action, court decisions, and rules adopted or amended under the Administrative Procedure Act, Chapter 150B of the General Statutes. To the extent there is any change to a statute, administrative rule, or new case law subsequent to the date of this publication, the provisions in this bulletin may be superseded or voided. Unless otherwise noted, this bulletin is intended to reflect changes made through the 2025 Regular Session of the North Carolina General Assembly.

Revised December 2025

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

The taxes on cigarettes, other tobacco products, and vapor 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 Article 2A, Tobacco Products Tax.

B. Definitions (G.S. 105-113.4, G.S. 14-313)

1. Alternative nicotine product. G.S. 105-113.4(1b) - A noncombustible product that contains nicotine, whether natural or synthetic, but does not contain tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, ingested, or by other means. This term does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.
2. Consumable product. G.S. 105-113.4(1k)- Any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.
3. Snuff. G.S. 105-113.4(10d) - A tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked.
4. Tobacco product. G.S. 105-113.4(11a) - A cigarette, a cigar, a vapor product, an alternative nicotine product, or any other product that contains tobacco and is intended for inhalation or oral use.
5. Tobacco product. G.S. 14-313(4) – Any product that contains tobacco and is intended for human consumption. For purposes of this section, the term includes an alternative nicotine product, vapor product, consumable product, or components of a vapor product.
6. FDA. G.S. 14-313(1c) – Food and Drug Administration.
7. Secretary. G.S. 14-313(3b) – The Secretary of the Department of Revenue.
8. Timely Filed Premarket Tobacco Product Application. G.S. 14-313(3c) – An application pursuant to 21 U.S.C. § 387j for a vapor product or consumable product containing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the United States Food and Drug Administration on or before September 9, 2020, and accepted for filing.
9. Vapor product. Tobacco product. G.S. 14-313(5) – Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a consumable product. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, and electronic pipe. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

C. Cigarette Tax

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

   To obtain or renew a license, an applicant must apply to the Secretary using Form B-A-2, Application for Cigarette Distributor's License and Tobacco Products (Other Than Cigarettes) or Update to an Existing Application 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
- If a corporation, then an executive officer, or any other person authorized in writing by the 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 location. A distributor shall obtain for each of the locations a distributor's license and pay a tax of twenty-five dollars ($25.00) for each license. The locations are:

1. Each location where a distributor receives or stores non-tax-paid cigarettes in this State.
2. For a distributor that is a delivery seller, each location from which the distributor receives or stores non-tax-paid cigarettes for delivery sales of cigarettes if the location is a location other than the location described in subdivision (1) of this subsection.

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 in a conspicuous place at each of the locations 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 licensee cancels a license or the Secretary revokes a license.

A licensee 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.

The Secretary must make available, upon request of a licensed manufacturer, a list of persons that hold a current license, by license category. The list must state the name, account number, and business address of each licensee on the list.

1. **Licenses Required (G.S. 105-113.4I)**
A person may not engage in business as a distributor, wholesale dealer, or retail dealer in this State, without having first obtained from the Department, the appropriate license for that purpose as prescribed in Article 2A. A license required by Article 2A is in addition to any other licenses that may be required by law

2. **License Required (G.S. 105-113.12)**
A distributor must obtain a license for each of the locations listed in this subsection and must pay a tax of twenty-five dollars ($25.00) for each license.

A license is in effect until June 30 of the year following the second calendar year after the date of issuance or renewal. A license is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

An out-of-state distributor that is not a delivery seller may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.4A and G.S. 105-113.24 and payment of a tax of twenty-five dollars ($25.00).

3. **Unlicensed Place of Business (G.S. 105-113.4J)**
It is unlawful for a person to maintain a place of business within this State required to be licensed to engage in the business of selling, offering for sale, or possessing with the intent to sell tobacco products without first obtaining all licenses required by Article 2A.

4. **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.

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.

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 the Tobacco Products Act 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.

5. **Investigation of Applicant and Secretary May Require a Bond or Irrevocable letter of Credit (G.S. 105.113.4A and 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 refuse to issue or renew a license to an applicant that has done any of the following:

a. Submitted false or misleading information on its application.
b. Had a license issued under this Article revoked by the Secretary.
c. Had a tobacco products license or registration issued by another state revoked.
d. Been convicted of fraud or misrepresentation.
e. Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.
f. Failed to remit payment for a tax debt under this Chapter. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
g. Failed to file a return due under this Chapter.
h. Failed to meet the requirements set out in G.S. 105-113.4A(b)

The Secretary may require a licensed distributor to furnish a bond in an amount that adequately protects the State from a licensed distributor's failure to pay taxes. A bond is conditioned on compliance, payable to the State, and must be in the form required by the Secretary. The amount of the bond is two times the licensed distributor's average expected monthly tax liability. The amount of bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary periodically reviews the sufficiency of bonds required of the licensed distributor and may increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the licensed distributor or may decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss.

A licensed distributor may substitute an irrevocable letter of credit for the secured bond required. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance and in the amounts stipulated in the Statute.

6. **Cancellation or Revocation of License (G.S. 105-113.4B)**

The Secretary may cancel a license issued upon the written request of the licensee. The licensee's request must include a proposed effective date of cancellation. The licensee must return the license to the Secretary on or before the proposed effective date. If the licensee's request does not a proposed effective date of cancellation, the license is cancelled 15 days after the Department receives the written request. If the license is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned. The Secretary shall notify the licensee when the license is cancelled.

The Secretary may revoke the license of any licensee who violates the Tobacco Products Act or any applicable Administrative Rule made pursuant to the provisions of the Tobacco Products Act, or who engages in the illegal sale of cigarettes (G.S. 14-401.18).

Summary Revocation and Procedure:

The Secretary must send a revoked licensee a notice of the revocation and a notice of hearing. The hearing must be held within 10 days after the date of the notice of revocation unless the revoked licensee requests, before the day of the hearing, that the hearing be rescheduled. Upon receipt of a timely request, the Secretary must reschedule the hearing and provide at least 10 days' notice of the rescheduled hearing. The revocation is not stayed pending the hearing

decision. A notice of hearing under this subsection must be in writing and indicate the date, time, and place of the hearing. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the revoked licensee in writing within 10 days of the hearing. The final decision must state the basis for the decision. The statement of the basis of a revocation does not limit the Department from changing the basis.

Non-Summary Revocation: After holding a hearing on whether the license should be revoked, the Secretary may revoke the license of a licensee that commits one or more of the following acts after affording the licensee an opportunity to have a hearing:

a. Fails to obtain a license in a timely manner or for all places of business as required by this Article.
b. Willfully fails to file a return required by this Article.
c. Willfully fails to pay a tax when due under this Article.
d. Makes a false statement in an application or return required under this Article.
e. Fails to keep records as required by this Article.
f. Refuses to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.
g. Fails to disclose the correct amount of tobacco product taxable in this State.
h. Fails to file a replacement bond or an additional bond if required by the Secretary under this Article.
i. Violates G.S. 14-401.18.
j. Fails to meet or maintain the requirements set out in G.S. 105-113.4A(b).

The Secretary must provide a licensee with a notice of proposed revocation. A licensee may contest a proposed revocation by filing a written hearing request within 45 days of the date the notice of proposed revocation was mailed, if the notice was delivered by mail, or delivered to the licensee, if the notice was delivered in person. A hearing request is considered filed as provided under G.S. 105-241.11(b). If the licensee does not file a timely hearing request, the license is revoked as provided in the notice of proposed revocation and the revocation is final and not subject to further administrative or judicial review.

The Secretary must give a licensee who filed a timely hearing request at least 20 days' written notice of the date, time, and place of the hearing, unless the Department and the licensee agree to a shorter period. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the licensee in writing within 60 days of the hearing. The Department and the licensee may extend this time by mutual agreement. Failure to issue a final decision within the required time does not affect the validity of the decision. The final decision must state the basis for the decision and, if the final decision includes revocation of the license, the effective date of the revocation. The statement of the basis of a revocation does not limit the Department from changing the basis.

The Secretary must deliver a notice in accordance with G.S. 105-241.20(b). In lieu of providing notice by United States mail, the Secretary may give notice by email or other electronic means if the licensee has consented to receiving notices via electronic means.

If a license is revoked, the revoked licensee must return to the Secretary, within 10 days of the issuance of the final decision, all licenses previously issued. If a license is unable to be returned, the revoked licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned.

It is illegal for any distributor whose license has been cancelled or revoked to sell cigarettes or permit the same to be sold during the period of such cancellation 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 whatsoever.

7. **Reports and Records (G.S. 105-113.4G, G.S. 105-113.18, G.S. 105-113.30 and 17 NCAC 04C.0903)**

Every person required to be licensed and every person required to make reports under the Tobacco Products Act shall keep complete and accurate records of all purchases, inventories, sales, shipments, deliveries of tobacco products, and other information as required by the Secretary. The records shall be in the form prescribed by the Secretary and shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary. These records shall be safely preserved for the applicable period of statute of limitations as set forth in Article 9 of Chapter 105 in a manner to ensure their security and accessibility for inspection by the Department. If the records apply to a transaction not required to be reported in a return, the records shall be kept for three years from the date of the transaction.

It is unlawful for any person who is required 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 (G.S. 105-113.30).

Every licensed distributor must file a report **for each of the locations** on or before the 20th day of each month showing transactions for cigarettes sold, shipped, delivered, or otherwise disposed of in this State for the preceding month. The report must show the quantity of all cigarettes transported or caused to be transported into the State by the licensed distributor or licensed manufacturer in the State for sales in this State and state the amount of tax due and must identify any transactions to which the tax does not apply and all other information as required by the report. **NOTE: A licensed distributor that is a delivery seller must also comply with the filing requirement under G.S. 105-113.4F.**

Monthly reports are required whether the licensed distributor had taxable transactions in the preceding month or not and whether any tax is shown to be payable or not.

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 complete 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.

NOTE: A "Sale" is "[a] transfer of possession, transfer of ownership, a trade, an

exchange, or a barter, in any manner or by any means, with or without consideration." (G.S. 105-113.4(10)).

If a distributor is also a retail dealer and sells cigarettes to consumers, an invoice or a memorandum must be prepared showing the transfer of all cigarettes from the distributor to the retail activity. Sales invoices of distributors, whether resident or nonresident and at the point of transfer must indicate payment of the excise tax by the wording, "North Carolina Cigarette Excise Tax Paid."

8. **Tax on Cigarettes (G.S. 105-113.5 and 17 NCAC 04C.0702)**
An excise tax is levied on the sale or possession for sale in this State, by a licensed distributor, of all cigarettes at the rate of two and one-fourth cents (2.25¢) per individual cigarette (forty-five cents (45¢) 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.

A licensed distributor who meets any of the following conditions is liable for the tax imposed by this section:

a. Is the first person to possess or acquire cigarettes in this State;
b. Is the first person to bring into this State cigarettes made outside the State;
c. Is the original consignee of cigarettes made outside the State that are shipped into the State;
d. Makes a delivery sale of cigarettes for which the delivery seller is required to collect sales and use tax under Article 5 of Chapter 105.

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 of Revenue. 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 of Revenue with applicable penalty and interest.

9. **Use Tax Levied (G.S. 105-113.6, 17 NCAC 04C.1101, and 17 NCAC 04C.1102)**
A tax is levied upon the sale or possession for sale by a person other than a licensed 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.

10. **Tax on Inventory When Tax Rate Increases (G.S. 105-113.4D)**
Every person subject to the taxes who, on the effective date of a tax increase, has on hand any tobacco products must file a complete inventory of the tobacco products within twenty (20) days after the effective date of the increase and must 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. For purposes of this section, a "tax increase" includes a new tax or a change to the methodology for calculating a tax that results in additional tax being due."

11. **Payment of Tax and Reports (G.S. 105-113.18, 17 NCAC 04C.0901 and 17 NCAC 04C.0902)**
The taxes 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 licensed distributor must file a monthly report in the form prescribed by the Secretary. The report covers cigarettes sold, shipped, delivered, or otherwise disposed of in this State in a calendar month and is due within twenty (20) days after the end of the month covered by the report. The report must show the quantity of all cigarettes transported or caused to be transported into the State by the licensed distributor or licensed manufacturer in the State for sales in this State and state the amount of tax due and must identify any transactions to which the tax does not apply. Every licensed resident distributor must file a report, Form B-A-5, Monthly Return for Resident Cigarette Distributor, on or before the 20th day of each month. Non-tax-paid cigarettes shipped, delivered, or sold outside the State during the month must be reported on supplemental Form B-A-5, Schedule I. Tax-paid cigarettes sold outside the state must be reported on page 4, Schedule D, line 7. Cigarettes returned to the manufacturer during the month must be reported on supplemental Form B-A-5, Schedule J. Every licensed nonresident distributor must file a report, Form B-A-6, Monthly Return of Nonresident Cigarette Distributor, on or before the 20th day of each month.

b. **Use Tax Report**
A person who is not a licensed distributor and has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed must, within ninety-six (96) hours after receipt of the cigarettes, file a report, Form B-A-8, Cigarette Use Tax Return, 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.

c. **Shipping Report**
Any person, except a licensed distributor, transports, or causes to transport, cigarettes upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary.

12. **Discount; Refund (G.S. 105-113.21 and 17 NCAC 04C.1002)**
A licensed distributor is allowed to deduct a discount equal to two percent (2%) of the tax due if the report is filed timely **and** the tax due is paid by the due date. The discount covers expenses incurred in preparing the records and reports and the expense of furnishing a bond.

A licensed 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 accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The licensed distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes.

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.

A distributor may not receive a refund of taxes paid on tax-paid cigarettes subsequently sold outside this State nor may the distributor include the number of tax-paid cigarettes sold outside this State on page 1, Schedule A, line 6 of Form B-A-5, Monthly Return for Resident Cigarette Distributor.

13. **Federal Constitution and Statutes (G.S. 105-113.4H and 17 NCAC 04C .0801)**
Any activities, which may purport to tax in violation of the Constitution of the United States or any Federal statute, are hereby expressly exempted from taxation.

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.

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.

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.

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.

14. **Out-of-State Shipments (G.S. 105-113.9 and 17 NCAC 04C.0504)**
Any licensed distributor engaged in interstate business is permitted to set aside part of the stock as necessary to conduct interstate business without paying the tax otherwise required, but only if the licensed distributor complies with the requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration.

"Interstate business" means:

a. The sale of cigarettes to a nonresident where the cigarettes are delivered by the licensed distributor to the business location of the nonresident purchaser in another state.
b. The sale of cigarettes to a nonresident purchaser 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 licensed 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 of 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.

15. **Manufacturers Exempt from Paying Tax (G.S. 105-113.10, G.S. 105-113.18)**
A licensed 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, but is not relieved from filing a report as required by G.S. 105-113.18. A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its facilities but is not relieved from filing a report as required by G.S. 105-113.18.

Manufacturers are required to forward the Secretary copies of all invoices, or equivalent information, of shipments of cigarettes to distributors or retail dealers in this State on a monthly basis, or at the time of shipment.

No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.

16. **Non-Tax-Paid Cigarettes (G.S. 105-113.27)**
Except as otherwise provided in the Tobacco Products Act, no person may legally possess, sell, or offer for sale, 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 or offered for sale, by any person, in North Carolina.

The possession of more than six hundred (600) 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 Part 2 of the Tobacco Products Tax Act.

17. **Possession and Transportation of Non-Tax-Paid Cigarettes; Seizure and Confiscation of Vehicle or Vessel (G.S. 105-113.31)**

It is unlawful for any person to transport non-tax-paid cigarettes. The Secretary may adopt rules allowing quantities of non-tax-paid cigarettes, not exceeding six hundred (600), 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.

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, 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 is considered to have complied and the vehicle or vessel in which the cigarettes are being transported is not subject to confiscation. 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 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 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 the Cigarette Tax statutes 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 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 as described above 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.

G.S. 105-113.31 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.

18. **Non-Tax-Paid Cigarettes Subject to Confiscation (G.S. 105-113.32)**
All non-tax-paid cigarettes subject to the tax 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 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.

19. **Criminal Penalties (G.S. 105-113.4K)**
Any person who violates any of the provisions of the Tobacco Products Act for which no other punishment is specifically prescribed shall be guilty of a Class 1 misdemeanor.

20. **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.

21. **Federal Tobacco Tax Reporting (G.S. 105-113.4L)**
A person required to be licensed under this Article and who files a report with the Department in accordance with 15 U.S.C. § 376 must file in the form required by the Secretary.

22. **Power of Attorney and Declaration of Representative, Business Address Correction, or Out-of-Business Notification**

It is the Department of Revenue's policy to accept a paid preparer's signature on a return as authorization to discuss certain matters relating to that return, such as assessment and adjustment notices, information contained or missing on the return, and information about a refund or payment. With the exception of certified service providers who enter into a contract with the Secretary pursuant to N.C. Gen. Stat. §105-164.42I, this authority is extended only to an individual paid preparer, not to a company, and does not include discussing audit activity or requests for review of proposed assessments or proposed denials of refunds. Those matters

require a Form GEN-58, Power of Attorney and Declaration of Representative, to be filed. **Note:** With respect to any Federal tax information (FTI) provided to the Department pursuant to our exchange agreement with the Internal Revenue Service, we are prohibited from discussing such information with a representative without the taxpayer's express written authority to do so.

In the event of a change in a taxpayer's business address, the taxpayer should notify the Department of Revenue by completing and mailing Form NC-AC, Business Address Correction. Do not mail Form NC-AC along with any tax return. Mail it separately.

If a taxpayer closes or goes out of business and no longer does business in North Carolina, the taxpayer should notify the Department by completing and mailing Form NC-BN, Out- of-Business Notification. Do not mail Form NC-BN along with any tax return. Mail it separately.

D. Tax on Tobacco Products Other Than Cigarettes (includes Vapor Products Tax)

Note: All References to Tobacco Products in the Section refer to All Tobacco Products Other Than Cigarettes

1. **License Required (G.S. 105-113.39A, G.S. 105-113.4A(a) and 17 NCAC 04C.1301)**
   A wholesale dealer or a retail dealer must obtain from the Secretary a license in accordance with subsections (a1) and (a2) of this section and must pay the required license tax for each license.

   (a1) <u>Other Tobacco Products License</u> – A wholesale dealer or a retail dealer must obtain another tobacco products license for all of the following locations:

   1) Each location where a wholesale dealer makes tobacco products other than vapor products.
   2) Each location where a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than vapor products.
   3) Each location from where a retail dealer that is a delivery seller or remote seller receives or stores non-tax-paid tobacco products for delivery sales or remote sales of tobacco products other than vapor products if the location is a location other than the location described in subdivision (2) of this subsection.

   (a2) <u>Vapor Products License (Effective July 1, 2024)</u> – A wholesale dealer or a retail dealer must obtain a vapor products license for all of the following locations:

   1) Each location where a wholesale dealer makes vapor products.
   2) Each location where a wholesale dealer or a retail dealer receives or stores non-tax-paid vapor products.
   3) Each location from where a retail dealer that is a delivery seller or remote seller receives or stores non-tax-paid vapor products for delivery sales if the location is a location other than the location described in subdivision (2) of this subsection.

   The license tax amounts are as follows:
   1) Wholesale dealer $25.00

2) Retail dealer $10.00

A license is in effect until June 30 of the year following the second calendar year after the date of issuance or renewal, unless cancelled or revoked prior to expiration. A license is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

The application for each license must be on Form B-A-2, Application for Cigarette Distributor's License and Tobacco Products (Other than Cigarettes) or Update to an Existing Application 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 a 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 must be displayed at each of the locations of business for which it is issued. Also, the license tax is not prorated.

An out-of-state wholesale dealer of tobacco products that is not a delivery seller or a remote seller may obtain a wholesale dealer's license upon compliance with the provisions of G.S. 105-113.4A and payment of a tax of twenty-five dollars ($25.00).

2. **Bond or Irrevocable Letter of Credit (G.S. 105-113.39C)**

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from a wholesale dealer's or a retail dealer's failure to pay taxes due. A bond must be conditioned on compliance, must be payable to the State, and must be in the form required by the Secretary. The amount of the bond is two times the wholesale or retail dealer's average expected monthly tax liability, as determined by the Secretary, provided the mount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary will periodically review the sufficiency of bonds required of dealers, 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, and decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss.

A wholesale dealer or a retail dealer may substitute an irrevocable letter of credit for the secured bond. The letter of credit must be issued by a commercial bank acceptable to the Secretary and

available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance and in the amounts stipulated in G.S. 105-113.38C.

3. **Records of Sales, Inventories, and Purchases to be Kept (G.S. 105-113.4G and 17 NCAC 04C.1803)**
   Every person required to be licensed under this Article, and their customers, must keep complete and accurate records of dealer's purchases, inventories, sales, shipments, and deliveries of tobacco products, and any other information. 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 shall be in the form prescribed by the Secretary, open at all times for inspection by the Secretary or an authorized representative of the Secretary and safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department.

4. **Tax Rates; Liability for Tax (G.S. 105-113.4(2), G.S. 105-113.36A, G.S. 105-113.37A & 37B, 17 NCAC 04C.1601, 17 NCAC 04C.1602 and 17 NCAC 04C.1603)**
   An excise tax is levied on the sale, use, consumption, handling, or distribution of tobacco products at the following rates:

   1) On vapor products, the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.
   2) On cigars, the rate of twelve and eight-tenths percent (12.8%) of the cost price, subject to a cap of thirty cents (30¢) per cigar.
   3) On snuff, the rate of forty cents (40¢) per ounce and a proportionate rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.
   4) On alternative nicotine products, the rate of ten cents (10¢) per container containing up to 20 units, and at the rate of one-half cent (1/2¢) per unit for any amount in a container containing over 20 units.
   5) On all other tobacco products, the rate of twelve and eight-tenths percent (12.8%) of the cost price.

      "Cost price" means the actual price paid for an item subject to the tax by the person liable for the tax, before any discount, rebate, or allowance, for an item identified as a stock keeping unit by a unique code or identifier representing the item. If the cost price for an item cannot be determined to the Department's satisfaction, the Department will determine a value based on either of the following:

      a. The cost price of comparable items
      b. The average of the actual price paid for the item over the 12 calendar months before January 1 of the year in which the sale occurs.

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.

NOTE: Pursuant to G.S. 105-113.36A(f) if a person liable for the tax imposed by this Part cannot produce to the Secretary's satisfaction documentation of the cost price, weight, count, or volume of the items subject to tax, based on the applicable tax imposed, the Secretary may determine a value based on the cost price, weight, count, or volume of comparable items.

The taxes imposed under this section do 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. A sample tobacco product may only be distributed in a "qualified adult-only facility" as that term is defined in 21C.F.R. § 1140.16(d)(2).

A wholesale dealer that has not been relieved of paying tax under G.S. 105-113.37A or a retail dealer is primarily liable for the tax imposed by G.S. 105-113.36A if the dealer meets any of the following conditions:

1) Is the first person to possess or acquire the tobacco product in this State;
2) Is the first person to bring a tobacco product made outside the State into this State;
3) Is the original consignee of a tobacco product made outside the State that is shipped into the State;
4) Makes a remote sale or a delivery sale for which the dealer is required to collect sales and use tax under Article 5 of Chapter 105.

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 located in this State who acquires from a wholesale dealer non-tax-paid tobacco products subject to the tax imposed by this section is liable for any tax due on the tobacco products. A retail dealer who is liable 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 to either a licensed wholesale or retail dealer may apply to the Secretary to be relieved of paying the tax on the tobacco products. A manufacturer who is not a retail dealer and who ships vapor products to either a licensed wholesale or retail dealer may apply to the Secretary to be relieved of paying the tax imposed on the vapor products shipped to either a wholesale dealer or retail dealer.

Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary but **is not relieved from filing a report** as required by G.S. 105-113.39B. To

be relieved of payment of the tax imposed, a manufacturer must comply with the requirements set by the Secretary.

If a manufacturer has been relieved of paying tax, the permission granted to be relieved of paying the tax also applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given the manufacturer permission to be relieved of paying the tax.

A licensed wholesale dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products to, from, or with another licensed wholesale dealer and an integrated wholesale dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products to, from, or with another integrated wholesale dealer.

If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products and the person is granted permission under G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission also applies to the tax imposed on tobacco products. A cigarette manufacturer who becomes a wholesale dealer after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer.

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.

5. **Manufacturers of Other Tobacco Products (G.S. 105-113.36A)**
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. 105-113.39A for payment of the other tobacco

products excise tax is relieved of the requirement of paying tax.

A retail dealer who manufacturers 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. 105.113.36A.

6. **Use Tax Levied (G.S. 105-113.36A(e) and G.S. 105-113.39B(b))**
A tax is levied upon the sale or possession for sale by a person other than a licensed wholesale dealer or licensed retail dealer and upon the use, consumption, and possession for use or consumption of tobacco products within this State at the rate set in G.S. 105- 113.36A(a). This tax does not apply to tobacco products upon which the tax levied has been paid.

A person who is not licensed and has acquired non-tax-paid tobacco products for sale, use, or consumption subject to the tax imposed by this Part must, within 96 hours after receipt of the tobacco products, file a report in the form prescribed by the Secretary showing the amount of tobacco products received and any other information required by the Secretary. The report must be accompanied by payment of the full amount of the tax.

7. **Payment of Tax (G.S. 105-113.39B, 17 NCAC 04C.1701, 17 NCAC 04C.1704, 17 NCAC 04C.1705, 17 NCAC 04C.1707, 17 NCAC 04C.1801, and 17 NCAC 04C.1802)**
Taxes levied are payable by the entity that is primarily liable for the tax when a report is required to be filed. The monthly reports covering tobacco products sold, shipped, delivered, or otherwise disposed of in this State occurring in a calendar month are due within twenty (20) days after the end of the month covered by the report. Monthly reporting of transactions for tobacco products must be filed on Form B-A-101, Monthly Other Tobacco Products Excise Tax Return. Monthly reporting of transactions for vapor products must be filed on Form B-A-102, Monthly Vapor Products Excise Tax Return. Both forms must contain the information required by the Secretary. **A return must be filed each month even if no tax is due for that month.**

Vapor Product wholesale dealers and retail dealers filing Form B-A-102, Monthly Vapor Products Excise Tax Return, may only make payments for the excise tax due via check or money order.

NOTE: Payment for Excise Tax due on both Vapor Products and Tobacco Products Other Than Cigarettes may not be made using one (1) check or money order for both taxes together. Failure to make separate payments for taxes due on Vapor Products as reported on Form B-A-102 and Tobacco Products Other than Cigarettes as reported on Form B-A-101 may result in your payment being misapplied as well as the assessment of penalties and interest.

A person who transports, or causes to transport, tobacco products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary.

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.

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 are not entitled to the timely payment discount.

Once tobacco products are designated as tax exempt under G.S. 105-113.36A, they must be sold in tax-exempt transactions.

8. **Discount; Refund (G.S. 105-113.37C)**
A wholesale dealer or a retail dealer who is primarily liable for taxes on tobacco products not including vapor products 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 and the expense of furnishing a bond.

A wholesale dealer or a retail dealer who is primarily liable for the excise tax and is in possession of stale or otherwise unsalable tobacco products, including vapor products, upon which the tax has been paid may return the tobacco products, including vapor products, to the manufacturer and apply to the Secretary for refund of tax paid, less any discount allowed on the unsalable tobacco products, not including vapor products. The application must be either Form B-A-102R, Application for Other Tobacco Products Excise Tax Refund for North Carolina Tax-Paid Other Tobacco Products Returned to Manufacturer for other tobacco products or Form B-A-102R, Application for Vapor Products Excise Tax Refund for North Carolina Tax-Paid Vapor Products Returned to Manufacturer for vapor products and shall be accompanied by a written certificate signed under penalty of perjury or by an affidavit from the manufacturer listing the tobacco products returned to the manufacturer by the applicant.

E. Modified Risk Tobacco Products (G.S. 105-113.4E)
The term "modified risk tobacco product" means a tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

Tax Rate Reduction - the tax imposed is reduced by the following:

1) Fifty percent (50%) for a modified risk tobacco product issued a risk modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(1).
2) Twenty-five percent (25%) for a modified risk tobacco product issued an exposure modification order by the United States Food and Drug Administration under 21 U.S.C. § 387k(g)(2).

Generally, tobacco products are subject to the tax imposed, unless a manufacturer substantiates that a product qualifies as a modified risk tobacco product and is subject to a reduced rate of tax in accordance with the rate reduction. A manufacturer may substantiate that a product qualifies as

a modified risk tobacco product by providing the Department a copy of the order issued by the United States Food and Drug Administration verifying the product as a modified risk tobacco product. Once the manufacturer provides the order to the Department, the Department must reduce the tax due as required under the rate reduction effective on the first day of the next calendar month. If the order indicating a product qualifies as a modified risk tobacco product is renewed, the manufacturer must provide the order renewing the product to the Department within 14 days of receipt.

If the product no longer qualifies as a modified risk tobacco product, the rate reduction is forfeited. A product no longer qualifies when the order qualifying the product as a modified risk tobacco product expires and is not renewed or the order is withdrawn by the United States Food and Drug Administration. The manufacturer must provide notice of such expiration or withdrawal to the Department within 14 days of receipt. Upon determination by the Department that the product no longer qualifies as a modified risk tobacco product, the Department must determine if the taxpayer paid a reduced rate after the order expired or was withdrawn. If the taxpayer did avoid taxes, the taxpayer is liable for all past taxes avoided as a result of the product no longer qualifying plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the rate reduction had not been allowed. The past taxes and interest are due 30 days after the date the rate reduction is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

F. Delivery Sales of Certain Tobacco Products; Age Verification (G.S. 105-113.4F and G.S. 105-113.4(10b))

A "delivery sale" is defined as a sale of cigarettes, smokeless tobacco, or vapor products to a consumer (an individual who purchases, receives, or possesses tobacco products for personal consumption and not for resale) in which either of the following apply:

a. The consumer submits the order for the sale by telephone, mail, the Internet or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order or

b. The cigarettes, smokeless tobacco, or vapor products are delivered via mail or a delivery service (a person engaged in the commercial delivery of letters, packages, or other containers).

NOTE: Smokeless tobacco is defined as any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

In accordance with N.C.G.S. 105-113.4F, a delivery seller (a person located within or outside this State who makes a delivery sale) must, do all of the following with respect to a delivery sale:

1) Obtain a license from the Department as required by the requirements of Article 2A of Chapter 105 before accepting an order;
2) Comply with the age verification requirements in N.C.G.S. 14-313(b2);
3) Report, collect, and remit to the Department all applicable taxes as set out in Article 2A and Article 5 of Chapter 105.

Furthermore, delivery seller that meets the definition of a "retailer" as defined in Article 5 of Chapter 105 is subject to all State laws that apply to a retailer in this State.

N.C.G.S. 105-113.4F(c) requires that a delivery seller who has made a delivery sale, or shipped or delivered tobacco products in connection with a delivery sale, for which tax is due, during the previous month must, not later than the tenth (10) day of each month, file with the Department a memorandum or a copy of the invoice for every delivery sale made during the previous month. A delivery seller who complies with 15 U.S.C. § 376 with respect to tobacco products covered by that section is considered to have complied with the filing requirements.

The deliver seller may utilize Form B-A-10, Report of Delivery Sales of Certain Tobacco Products (other than cigars), for purpose of reporting delivery sales made into North Carolina. This form will require the following information:

- The name, address, telephone number, and e-mail address of the consumer;
- The type and the brand, or brands, of tobacco products that were sold;
- The quantity of tobacco products that were sold.

A person who violates this section is subject to the following penalties:

1) For the first violation, a penalty of one thousand dollars ($1,000).
2) For a subsequent violation, a penalty not to exceed five thousand dollars ($5,000), as determined by the Secretary.

G. Remote Sales and Remote Seller Requirements (G.S. 105-113.4(8a) & (8b) and G.S. 105-113.38A, 38B, & 38C)

A "remote sale" is defined as the sale of tobacco products other than cigarettes, smokeless tobacco, or vapor products to a consumer in this State in which either of the following applies:

a. The consumer submits the order for the sale by telephone, mail, the internet, or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order.
b. The tobacco products other than cigarettes, smokeless tobacco, or vapor products are delivered via mail or a delivery service.

Remote sellers (persons located within or outside this State who make remote sales) must do all of the following with respect to a remote sale:

1) Obtain a license from the Department as required by the requirements of Article 2A of Chapter 105 before accepting an order;
2) Report, collect, and remit to the Department all applicable taxes as set out in Article 2A and Article 5 of this Chapter 105.

NOTE: A remote seller that meets the definition of a "retailer" as defined in Article 5 of Chapter 105 and is subject to all State laws that apply to a retailer in this State

In addition to the records required to be kept under G.S. 105-113.4G, a remote seller required to be licensed must maintain the following:

1) A list, updated annually, showing the cost price paid by the remote seller for each stock keeping unit of cigars.
2) Invoices documenting remote or delivery sales to consumers in this State.
3) Records necessary to document the cost price, weight, or count based on the applicable tax imposed of purchases of all tobacco products sold to consumers in this State.

A person who violates G.S. 105-113.38A is subject to the following penalties:

1) For the first violation, a penalty of one thousand dollars ($1,000).
2) For a subsequent violation, a penalty not to exceed five thousand dollars ($5,000), as determined by the Secretary.

H. Certification Process (G.S. 143B-245.11, 17 NCAC 04C .2003, 17 NCAC 04C .2004, 17 NCAC 04C .2005)

(a) Beginning March 1, 2025, and annually thereafter, every manufacturer of vapor products and consumable products sold for retain sale in this State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Secretary, a certification to the Secretary under penalty of perjury, of the following:

(1) The manufacturer received a marketing granted order granted pursuant to 21 U.S.C. §387j(c) for the vapor product or consumable product from the FDA.
(2) The manufacturer submitted a timely filed premarket tobacco product application (PMTA) as defined in G.S. 14-313(a)(3c) for the vapor or consumable product and
    a. The application remains under review by the FDA or
    b. there has been a denial order that has been stayed by the FDA or a court order or
    c. the denial order has been rescinded by the FDA or vacated by a court.
(3) The manufacturer is exempt from the requirement of subdivision (1) or (2) of this subsection because the vapor product or consumable product only reflects changes to the name, brand style, or packaging of a vapor product or consumable product.

(b) Requirements for manufacturers; fees – In addition to the requirements contained in subsection (a) of this section, each manufacturer shall provide to the Secretary the following:

(1) For each vapor product and consumable product offered by the manufacturer a copy of
    (i) The marketing granted order issued by the FDA pursuant to 21 U.S.C. Section 387j;
    (ii) A copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C. Section 387j for a timely filed PMTA or
    (iii) A document issued by the FDA or by a court confirming that the PMTA has received a denial order that is not yet in effect and

(2) An initial fee of two thousand dollars ($2,000) to offset the costs incurred by the Department

of Revenue for processing the certifications and operating the directory and an annual renewal fee of five hundred dollars ($500) each year on March 1 to offset the costs associated with maintaining the directory and satisfying the requirements of this section for each consumable product or vapor product to be listed on the directory.

(c) The certification form shall separately list each brand name, category, product name, and flavor for each consumable product or vapor product that is sold in this State.
(d) Confidentiality. – The information submitted by the manufacturer pursuant to subsections (a) and (b) of this section shall be considered confidential commercial or financial information for purposes of G.S.132-1.2. The manufacturer may redact certain confidential commercial or financial information provided under subsection (a) of this section. The Secretary shall not disclose such information except as required or authorized by law.
(e) Any manufacturer submitting a certification pursuant to subsections (a) and (b) or this section shall notify the Secretary as soon as practicable but not later than 30 days of any material change to the certification, including the issuance or denial of a marketing authorization or other order by the FDA pursuant to 21 U.S.C. §387j, or any other order or action by the FDA or any court that affects the ability of the consumable product or vapor product to be introduced or delivered into interstate commerce for commercial distribution in the United States.

I. Public Directory (G.S. 143B-245.12, 17 NCAC 04C .2002)

(a) Beginning May 1, 2025, the Secretary shall develop, maintain, and make publicly available on the Secretary's public website (www.ncdor.gov) a directory listing all manufacturers of consumable products or vapor products that have provided certifications that comply with G.S. 145B-245.11(a) and (b) and all product names, brand names, categories, and flavors for which certifications have been submitted and approved by the Secretary. The Secretary shall update the directory at least monthly to ensure accuracy.

(b) No manufacturer or the manufacture's consumable products or vapor products shall be included or retained in the directory if the Secretary determines that any of the following apply:

(1) The manufacturer failed to provide a complete and accurate certification as required by G.S. 145B-245.11(a) and (b).
(2) The manufacturer submitted a certification that does not comply with the requirements of G.S. 145B-245.11(c).
(3) The manufacturer failed to include with its certification the payment required by G.S. 145B-245.11(b).
(4) The manufacturer sold products in North Carolina required to be certified under this Act during a period when either the manufacturer or the product has not been certified and listed on the directory.
(5) The information provided by the manufacturer in its certification is determined by the Secretary to contain false information or contains material misrepresentations or omissions.

(c) The Secretary shall provide the manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or products from the directory.

(1) The Secretary may not remove the manufacturer or its products from the directory until at least 30 days after the manufacturer has been given notice of an intended action.

Notice shall be sufficient and be deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in its most recent certification filed under G.S.143B-245.11(a). 14

(2) The manufacturer shall have 15 business days from the date of service of the notice of the Secretary's intended action to establish that the manufacturer of consumable products or vapor products should be included in the directory.

(3) Retailers shall have 30 days following the removal of a manufacturer or its products from the directory to sell such products that were in the retailer's inventory as of the date of removal.

(4) After thirty 30 days following removal from the directory, the consumable product or vapor product of a manufacturer identified in the notice of removal and intended for retail sale in North Carolina may not be purchased or sold for retail sale in North Carolina.

(5) A determination by the Secretary to not include or to remove from the directory a manufacturer or a manufacturer's product shall be subject to review by the filing of a civil action for prospective declaratory or injunctive relief.

J. Retail Sale of Consumable Products and Vapor Products (G.S. §143B-245.13)

(a) Except as provided in subdivisions (1) and (2) of this subsection, beginning May 1, 2025, or on a date the Department of Revenue first makes the directory available for public inspection on its public website, consumable products or vapor products not included in the directory, may not be sold for retail sale in North Carolina, either directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries.

(1) Each retailer shall have sixty (60) days from the date that the Secretary first makes the directory available for inspection on its public website to sell products that were in its inventory and not included in the directory or remove those products from inventory and return them to the distributor or wholesaler from whom the products were purchased for a refund.

(2) Each distributor or wholesaler shall have sixty (60) days from the date that the Secretary first makes the directory available for inspection on its public website to remove those products intended for ultimate retail sale in this State from its inventory.

(3) After sixty (60) calendar days following publication of the directory, consumable products or vapor products not listed in the directory and intended for retail sale in North Carolina may not be purchased or sold for retail sale in North Carolina except as provided in G.S. 143B-245.12(c).

K. Agent for Service of Process (G.S. 143B-245.14, 17 NCAC 04C .2006)

(a) Registered agent. – The following conditions apply:

(1) A manufacturer not registered to do business in the state shall, as a condition precedent to having its name or its products listed and retained in the directory, appoint and continually engage without interruption a registered agent in this state for service of process on whom all process and any action or proceeding arising out of the enforcement of this Part or G.S. 14-313 (g) and (h) may be served. The manufacturer shall provide to the Secretary the name, address, and telephone number of its agent for

service of process and shall provide any other information relating to its agent as may be requested by the Secretary.

(2) A manufacturer located outside of the United States shall, as an additional condition precedent to having its products listed or retained in the directory, cause each of its importers of any of its products to be sold in the state to appoint, and continually engage without interruption, the services of an agent in the state in accordance with the provisions of this section. All obligations of a manufacturer imposed by this section with respect to appointment of its agent shall also apply to the importers with respect to appointment of their agents.

(3) A manufacturer shall provide written notice to the Secretary calendar days prior to the termination of the authority of an agent appointed pursuant to subdivisions (1) and (2) of this subsection. No less than five calendar days prior to the termination of an existing agent appointment, a manufacturer shall provide to the Secretary the name, address, and telephone number of its newly appointed agent for service of process and shall provide any other information relating to the new appointment as may be requested by the Secretary. In the event an agent terminates an agency appointment, the manufacturer shall notify the division of the termination within five calendar days and shall include proof to the satisfaction of the division of the appointment of a new agent.

L. Compliance (G.S. 143B-245.15)

(a) Unannounced Compliance Check

Each retailer, distributor, and wholesaler that sells or distributes consumable product or vapor products in this State shall be subject to unannounced compliance checks by the Secretary or its designee, which may include State and local law enforcement officials, for purposes of enforcing this Part. Unannounced follow-up compliance checks of all noncompliant retailers, distributors, and wholesalers shall be conducted within 30 days after any violation of this Part.

(1) Any person who observes a violation described in G.S. 143B-245.13 may alert the Secretary of such violation, and the Secretary shall cause an unannounced compliance check to occur with respect to the person alleged to be in violation.

(2) The Secretary shall publish the results of all compliance checks at least annually and shall make the results available to the public on request.

M. Fines and Civil Penalties (G.S. 14-313(h))

The following penalties shall apply to violations of the certification requirements for consumable products and vapor products required by Part 3 of Article 4 of Chapter 143B of the General Statutes.

(1) Retailer, Distributor, or Wholesaler: A retailer, distributor, or wholesaler who offers for sale a consumable product or vapor product intended for ultimate retail sale in this State that is not included in the directory is subject to a warning with a mandatory re-inspection of the retailer within 30 days of the violation of Part 3 of Article 4 of Chapter 143B of the General Statutes:

a. For a second violation of this type within a 12-month period, the fine shall be at least five hundred dollars ($500.00) but not more than seven hundred fifty dollars ($750.00) and, if licensed, the licensee's license shall be suspended for 30 days.

b. For a third or subsequent violation of this type within a 12-month period, the fine shall be at least one thousand dollars ($1,000) but not more than one thousand five hundred dollars ($1,500) and, if licensed, the licensee's license shall be revoked.

c. Upon a second or subsequent violation of this type, consumable products or vapor products that are not on the directory as required by G.S. 143B-245.12, and are possessed by a retailer, distributor, or wholesaler, shall be subject to seizure, forfeiture, and destruction. The cost of such seizure, forfeiture, and destruction shall be borne by the person from whom the products are confiscated, except that no products may be seized from a consumer who has made a bona fide purchase of such product. The Secretary may store and dispose of the seized products as appropriate, in accordance with federal, State, and local laws pertaining to storage and disposal of such products.

(2) Manufacturer: A manufacturer whose consumable products or vapor products are not listed in the directory as required by G.S. 143B-245.12, and who causes the products that are not listed to be sold for retail sale in North Carolina, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of ten thousand dollars ($10,000) for each individual product offered for sale in violation of Part 3 of Article 4 of Chapter 143B of the General Statutes until the offending product is removed from the market or until the offending product is properly listed on the directory. In addition, any manufacturer that falsely represents any information required by a certification form shall be guilty of a misdemeanor for each false representation.