

State of North Carolina

TOBACCO PRODUCTS TAX

**Reflecting Changes Made in the 2018 Regular Session of the North
Carolina General Assembly**

Issued by:

**Excise Tax Division
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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administrative rule, or new case law subsequent to the date of this publication, the provisions in this bulletin may be superseded or voided.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 in the **2018 Regular Session** of the North Carolina General Assembly.

Revised November 2018

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. 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 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 place of business. A distributor shall obtain for each place of business a distributor's license and pay a tax of twenty-five dollars (\$25.00) for each license. "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 licensee surrenders 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. Each duplicate or amended license will state that it is a duplicate or amended license, as appropriate.

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

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

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

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

4. 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 to be licensed to engage in the business of selling or offering for sale cigarettes or other tobacco products without first obtaining such licenses.

5. 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.

6. 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 decline to issue a distributor's license in accordance with G.S. 105-113.4A(c).

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. 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 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 distributor and may increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor.

The Secretary 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 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.

7. 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 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).

The licensee is allowed a hearing before the license is revoked. The Secretary must give a person whose license may be revoked 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 revocation and a notice of hearing must be sent by registered mail to the last known address of the licensee.

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.

8. Reports and Records (G.S. 105-113.18, G.S. 105-113.26, 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 sales and other information. 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.

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 place of business** on or before the 20th day of each month showing transactions for the preceding month, any tax due, and all other information as required by the report. Monthly reports are required whether the 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 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.

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."

9. 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 distributor, of all cigarettes at the rate of two and one-fourth cents 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.

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.

10. 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 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.

11. 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.

12. 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 distributor is required to 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 twenty (20) days after the end of the month covered by the report. The report must state the amount of tax due and 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

Every other person who 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, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, must file a report containing the information required by the Secretary.

13. Discount; Refund (G.S. 105-113.21 and 17 NCAC 04C .1002)

A 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 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 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.

14. Federal Constitution and Statutes (G.S. 105-113.8 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.

15. Out-of-State Shipments (G.S. 105-113.9 and 17 NCAC 04C .0504)

Any 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 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:

- 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 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 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.

16. Manufacturers Exempt from Paying Tax (G.S. 105-113.10, G.S. 105-113.18(a) and NCAC 04C .0602)

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. 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.

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.

17. Non-Tax-Paid Cigarettes (G.S. 105-113.27)

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 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.

18. 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.

19. 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.

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

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.

21. 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.

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.

C. Other Tobacco Products Tax (includes Vapor Products Tax)

1. Wholesale Dealer and Retail Dealer Must Obtain License (G.S. 105-113.36, G.S. 105-113.4A(a) and 17 NCAC 04C .1301)

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 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 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 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 must be displayed at the place of business for which it is issued. Also, the license tax is not prorated.

2. Bond or Irrevocable Letter of Credit (G.S. 105-113.38)

The Secretary requires 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. 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 monthly tax liability. 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, 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.

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. 105-113.38.

3. Records of Sales, Inventories, and Purchases to be Kept (G.S. 105-113.40 and) 17 NCAC 04C. 1803)

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.

4. Tax on Tobacco Products Other Than Cigarettes (G.S. 105-113.35, 17 NCAC 04C .1501, 17 NCAC 04C .1601, 17 NCAC 04C .1602 and 17 NCAC 04C .1603)

An excise tax is levied on tobacco products other than cigarettes at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. An excise tax is levied on vapor products at 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. "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 is liable for the tax. 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 from a wholesale dealer 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 other than cigarettes 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 ships vapor products to either a licensed wholesale 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. To be relieved of payment of the tax imposed, a manufacturer must comply with the requirements set by the Secretary.

Permission granted to a manufacturer 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 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.

Integrated wholesale dealers may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with other integrated wholesale dealers.

If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products other than cigarettes 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 other than cigarettes. 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. 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.

6. Manufacturers of Other Tobacco Products (G.S. 105-113.35, 17 NCAC 04C .1402, and 17 NCAC 04C .1403)

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.

7. Payment of Tax (G.S. 105-113.37, 17 NCAC 04C .1701, 17 NCAC 04C .1704, 17 NCAC 04C .1705 and 17 NCAC 04C .1707, 17 NCAC 04C .1801, and 17 NCAC 04C .1802)

Except for tax on sales designated as tax-exempt under G.S. 105-113.35, the taxes are payable when a report is required to be filed. Monthly reports **for each place of business**

covering sales and other activities 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 other 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.

Also, please be aware, if wholesale dealers or retail dealers handle both vapor products and tobacco products other than cigarettes, in addition to separately filing Form B-A-102, Monthly Vapor Products Excise Tax Return and Form B-A-101, Monthly Other Tobacco Products Excise Tax Return, you must also issue two (2) separate checks or money orders. 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.

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(a2)(1) or G.S. 105-113.35(a2)(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, Monthly Other Tobacco Products Excise Tax Return or Form B-A-102, Monthly Vapor Products Excise Tax Return. 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.

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(a2)(1) or G.S. 105-113.35(a2)(2).

A person who does not sell a tobacco product in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(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 are not entitled to the timely payment discount.

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

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

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.

9. 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. 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 taxpayer 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 taxpayer 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 taxpayer 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 order renewing the product must be provided 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 taxpayer 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.