

Part 3. Tax on Other Tobacco Products. [Repealed Effective July 1, 2022]

§ 105-113.35. (Repealed effective July 1, 2022, and applicable to sales or purchases occurring on or after that date) Tax on tobacco products other than cigarettes.

(a) Tax on Tobacco Products. – An excise tax is levied on tobacco products at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. The tax rate does not apply to the following:

- (1) Cigarettes subject to the tax in G.S. 105-113.5.
- (2) Vapor products subject to the tax in subsection (a1) of this section.

(a1) Tax on Vapor 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.

(a2) Limitation. – The taxes imposed under this section do not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product, other than cigarettes, distributed without charge. A sample tobacco product, other than cigarettes, may only be distributed in a "qualified adult-only facility" as that term is defined in 21 C.F.R. § 1140.16(d)(2).

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

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

(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco products. A manufacturer who is not a retail dealer and who ships vapor products to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the 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 this Part. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section 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.

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 applies to the tax imposed by this section 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.

(d1) Limitation. – Except as otherwise provided in this Article, a licensed wholesale dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes 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 other than cigarettes to, from, or with another integrated wholesale dealer.

(e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009. (1969, c. 1075, s. 2; 1977, c. 1114, s. 4; 1991, c. 689, s. 269; 1991 (Reg. Sess., 1992), c. 955, s. 10; 2003-284, s. 45A.1(b); 2004-84, s. 2(b); 2005-276, s. 34.1(c); 2007-323, s. 6.23(a); 2007-435, s. 3; 2009-451, s. 27A.5(c); 2009-559, s. 2; 2014-3, s. 15.1(b); 2015-6, s. 2.5(a); 2016-5, s. 4.2; 2019-169, s. 4.5; repealed by 2021-180, s. 42.9(f), effective July 1, 2022.)