

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1460
Committee Substitute Favorable 5/21/07
Senate Finance Committee Substitute Adopted 7/30/07

Short Title: Qtrly Escrow Deposits/Affiliated Dealers. (Public)

Sponsors:

Referred to:

April 16, 2007

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE ATTORNEY GENERAL TO REQUIRE CERTAIN
2 CIGARETTE MANUFACTURERS TO MAKE QUARTERLY ESCROW
3 DEPOSITS, TO TREAT CERTAIN AFFILIATES OF A MANUFACTURER OF
4 OTHER TOBACCO PRODUCTS AS IF THEY WERE THE MANUFACTURER
5 FOR PURPOSES OF ADMINISTRATION OF THE EXCISE TAX ON OTHER
6 TOBACCO PRODUCTS, AND TO PROVIDE THAT THE PERMISSION
7 GRANTED TO A CIGARETTE MANUFACTURER TO BE RELIEVED OF
8 PAYING THE CIGARETTE EXCISE TAX APPLIES TO ALL TOBACCO
9 PRODUCTS DISTRIBUTED BY THE MANUFACTURER.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 66-294.1 is amended by adding a new subsection to read:
12 **"§ 66-294.1. Duties of Attorney General.**

13 ...

14
15 (c) Quarterly Escrow Installments. – To promote compliance with this Article,
16 the Attorney General shall require a nonparticipating manufacturer to make the escrow
17 deposits required by G.S. 66-291(a)(2) in quarterly installments during the year in
18 which the sales covered by the deposits are made if one or more of the conditions in this
19 subsection apply. A quarterly installment must be made by the last day of the month
20 following the end of the quarter. The Attorney General must notify a nonparticipating
21 manufacturer required to make quarterly escrow deposits under this subsection of its
22 duty to do so by first-class mail sent to the manufacturer's last known address. The
23 Attorney General may require production of information sufficient to enable the
24 Attorney General to determine the adequacy of the amount of any installment escrow
25 payment.

26 (1) The nonparticipating manufacturer has not previously established and
27 funded a qualified escrow fund in North Carolina.

- 1 (2) The nonparticipating manufacturer has not made any escrow deposits
2 for more than one year.
- 3 (3) The nonparticipating manufacturer has failed to make a timely and
4 complete escrow deposit in any prior calendar year.
- 5 (4) The nonparticipating manufacturer has failed to pay any judgment,
6 including any civil penalty.
- 7 (5) The Attorney General has reasonable cause to believe that the
8 nonparticipating manufacturer may not make its full required escrow
9 deposit by April 15 of the year following the year in which the
10 cigarette sales are made."

11 **SECTION 2.** G.S. 105-113.4 reads as rewritten:

12 **"§ 105-113.4. Definitions.**

13 The following definitions apply in this Article:

- 14 ...
- 15 (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of
16 a manufacturer of tobacco products, other than cigarettes, is the only
17 person to whom the manufacturer sells its products, and is not a retail
18 dealer. An 'affiliate' is a person who directly or indirectly controls, is
19 controlled by, or is under common control with another person.

20 "

21 **SECTION 3.** G.S. 105-113.35(d) reads as rewritten:

22 "(d) **Manufacturer's Option.** – A manufacturer who is not a retail dealer and who
23 ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer
24 licensed under this Part may apply to the Secretary to be relieved of paying the tax
25 imposed by this section on the tobacco products. Once granted permission, a
26 manufacturer may choose not to pay the tax until otherwise notified by the Secretary.
27 To be relieved of payment of the tax imposed by this section, a manufacturer must
28 comply with the requirements set by the Secretary.

29 Permission granted under this subsection to a manufacturer to be relieved of paying
30 the tax imposed by this section applies to an integrated wholesale dealer with whom the
31 manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated
32 wholesale dealer with whom it is an affiliate when the manufacturer applies to the
33 Secretary for permission to be relieved of paying the tax and when an integrated
34 wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given
35 the manufacturer permission to be relieved of paying the tax.

36 If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco
37 products other than cigarettes and the person is granted permission under
38 G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission applies
39 to the tax imposed by this section on tobacco products other than cigarettes. A cigarette
40 manufacturer who becomes a wholesale dealer after receiving permission to be relieved
41 of the cigarette excise tax must notify the Secretary of the permission received under
42 G.S. 105-113.10 when applying for a license as a wholesale dealer."

43 **SECTION 4.** Section 1 of this act becomes effective January 1, 2008. The
44 remainder of this act becomes effective October 1, 2007.