

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-435
HOUSE BILL 1460**

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

The General Assembly of North Carolina enacts:

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

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

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

SECTION 2. G.S. 105-113.4 reads as rewritten:
"§ 105-113.4. Definitions.

The following definitions apply in this Article:

- (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, is the only person to whom the manufacturer sells its products, and is not a retail

dealer. An 'affiliate' is a person who directly or indirectly controls, is controlled by, or is under common control with another person.

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

"(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. Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

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."

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

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:10 a.m. this 23rd day of August, 2007