

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 777
Finance Committee Substitute Adopted 5/5/09
House Committee Substitute Favorable 8/5/09

Short Title: Affiliate Liability for OTP Excise Tax.

(Public)

Sponsors:

Referred to:

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO
3 BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF
4 PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS, TO
5 PROHIBIT INTEGRATED WHOLESALE DEALERS FROM SELLING, BORROWING,
6 LOANING, OR EXCHANGING NON-TAX-PAID TOBACCO PRODUCTS OTHER
7 THAN CIGARETTES TO, FROM, OR WITH OTHER INTEGRATED WHOLESALE
8 DEALERS, AND TO REQUIRE PERSONS TRANSPORTING OTHER TOBACCO
9 PRODUCTS TO FILE A SHIPPING REPORT WITH THE SECRETARY OF REVENUE.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 105-113.4 reads as rewritten:

12 "**§ 105-113.4. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco,
15 other than a cigarette.
- 16 (1a) Cigarette. – Any of the following:
17 a. A roll of tobacco wrapped in paper or in a substance that does not
18 contain tobacco.
19 b. A roll of tobacco wrapped in a substance that contains tobacco and
20 that, because of its appearance, the type of tobacco used in the filler,
21 or its packaging and labeling, is likely to be offered to or purchased
22 by a consumer as a cigarette described in subpart a. of this
23 subdivision.
- 24 (2) Cost price. – The price a person liable for the tax on tobacco products
25 imposed by Part 3 of this Article paid for the products, before any discount,
26 rebate, or allowance or the tax imposed by that Part.
- 27 (3) Distributor. – Either of the following:
28 a. A person, wherever resident or located, who purchases non-tax-paid
29 cigarettes directly from the manufacturer of the cigarettes and stores,
30 sells, or otherwise disposes of the cigarettes.
31 b. ~~A person who manufactures or produces cigarettes or causes them to~~
32 ~~be manufactured or produced.~~ manufacturer of cigarettes.
- 33 (4) Repealed by Session Laws 1991, c. 689, s. 267.
- 34 (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a
35 manufacturer of tobacco products, other than cigarettes, ~~is the only person to~~
36 ~~whom the manufacturer sells its products,~~ and is not a retail dealer. An



- 1 "affiliate" is a person who directly or indirectly controls, is controlled by, or
2 is under common control with another person.
- 3 (5) Licensed distributor. – A distributor licensed under Part 2 of this Article.
- 4 (6) Manufacturer. – A person who ~~manufactures or~~ produces tobacco
5 ~~products~~ products or a person who contracts with another person to produce
6 tobacco products and is the exclusive purchaser of the products under the
7 contract.
- 8 (7) Package. – The individual packet, can, box, or other container used to
9 contain and to convey tobacco products to the consumer.
- 10 (8) Person. – Defined in G.S. 105-228.90.
- 11 (9) Retail dealer. – A person who sells a tobacco product to the ultimate
12 consumer of the product.
- 13 (10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any
14 means, with or without consideration.
- 15 (10a) Secretary. – The Secretary of Revenue.
- 16 (11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- 17 (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains
18 tobacco and is intended for inhalation or oral use.
- 19 (12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- 20 (13) Use. – The exercise of any right or power over cigarettes, incident to the
21 ownership or possession thereof, other than the making of a sale thereof in
22 the course of engaging in a business of selling cigarettes. The term includes
23 the keeping or retention of cigarettes for use.
- 24 (14) Wholesale dealer. – ~~A~~ Either of the following:
- 25 a. A person who ~~makes tobacco products other than cigarettes or who~~
26 acquires tobacco products other than cigarettes for sale to another
27 wholesale dealer or to a retail dealer.
- 28 b. A manufacturer of tobacco products other than cigarettes."
- 29 **SECTION 2.** G.S. 105-113.35 is amended by adding a new subsection to read:
30 "(d1) Limitation. – Except as otherwise provided in this Article, integrated wholesale
31 dealers may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than
32 cigarettes to, from, or with other integrated wholesale dealers."
- 33 **SECTION 3.** G.S. 105-113.37 is amended by adding a new subsection to read:
34 "(d) Shipping Report. – Any person who transports other tobacco products upon the
35 public highways, roads, or streets of this State must, upon notice from the Secretary, file a
36 report in a form prescribed by and containing the information required by the Secretary."
- 37 **SECTION 4.** This act becomes effective September 1, 2009.