



March 7, 2016

*Via Electronic Submission*

Revenue Laws Study Committee  
Raleigh, NC

**Re: Tax on Other Tobacco Products: N.C. Gen. Stat. 105-113.35**

Dear Sir/Madam:

Madvapes Holdings, LLC ("Madvapes") appreciates the opportunity to submit comments to the Revenue Laws Study Committee in regard to proposed changes to N.C. Gen. Stat. § 105-113.35, tax on tobacco products other than cigarettes.

Madvapes is among the largest companies in the United States with business interests represented in all segments of the vapor industry; including the manufacturing of, distribution of and sales of e-liquid and other vapor products. Madvapes is a leading retailer of electronic cigarettes headquartered in Mooresville NC, employing over 300 people in 50 stores and two corporate facilities across the state. Madvapes' operates an e-liquid manufacturing facility in Mooresville that supports both retail stores and a \$12,000,000 wholesale vaping supply business. Under the excise tax on vapor products (N.C. Gen. Stat. 105-113.35), Madvapes anticipates remitting to the State excise tax liability approaching \$1,000,000 for 2016.

Following the enactment of the vapor products excise tax on June 1, 2105, North Carolina wholesalers suffered a competitive disadvantage as compared to wholesalers located outside of the state. The proposed Wholesaler's Option, as outlined on the attached form (N.C. Gen. Stat. 105-113.35 Sec. F), would enable North Carolina wholesalers to price e-liquids competitive with wholesalers located outside of the state. Madvapes has discussed the possibility of a Wholesaler's Option and provided a copy of the proposed language to Al Milak, Assistant Director of the NC Department of Revenue Excise Tax Division.

Thank you for your consideration in this matter.

Sincerely,

Mike Russell  
Chief Operating Officer

Teresa Shields  
General Counsel

Madvapes Holdings, LLC · 138 Cedar Point Drive · Mooresville, North Carolina 28117  
Phone: 704-624-8551 · [corporate@Madvapes.com](mailto:corporate@Madvapes.com)

N.C. Gen. Stat. § 105-113.35

Statutes current through the 2015 Regular Session

General Statutes of North Carolina > CHAPTER 105. TAXATION > SUBCHAPTER 01. LEVY OF TAXES  
> ARTICLE 2A. TOBACCO PRODUCTS TAX > PART 3. TAX ON OTHER TOBACCO PRODUCTS

**§ 105-113.35. Tax on tobacco products other than cigarettes**

---

- (a) **Tax on Tobacco Products.** --An excise tax is levied on tobacco products other than cigarettes and vapor products at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products.
- (a1) **Tax on Vapor Products.** --An excise tax is levied on vapor products at the rate of five cents (5 cent(s) ) 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 distributed without charge.
- (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 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. 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, 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.

**(e)** Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009.

**(f) Wholesaler's Option.** -- A wholesaler who ships *vapor products* to a 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 a retail dealer. Once granted permission, a wholesaler 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 wholesaler must comply with the requirements set by the Secretary.