

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04B .0612

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

***NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*So that I'm clear – this Rule holds that government employees are not in “the business” of practicing law as set forth in G.S. 105-33, such that G.S. 105-41 won't apply?*

*In (1), line 7, who determines “exclusively” here?*

*In (1) and (2), I take it that this may apply to any state, not just NC? If it is just NC, please be sure to capitalize “State”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04B .0612 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04B .0612 GOVERNMENT PHYSICIANS ATTORNEYS-AT-LAW AND OTHER**  
4 **PROFESSIONALS EXEMPT FROM PRIVILEGE LICENSE TAX**

5 ~~Physicians~~ An individual practicing a profession or engaging in a business as set forth in G.S. 105-41(a) shall not be  
6 required to pay the tax as set forth in G.S. 105-41 when all the following apply:

7 (1) The individual exclusively acts as an ~~employed employee of exclusively by the federal, state state, or~~  
8 local governments ~~when practicing the profession or engaging in the business.~~

9 (2) The individual ~~does and not holding- hold themselves himself or herself~~ out to the public as a professional  
10 described in G.S. 105-41(a) unless the representation is within the scope of employment with  
11 federal, state, or local governments. ~~and do not share in the fees paid, are not required to pay the~~  
12 privilege license under G.S. 105-41 which would otherwise be imposed upon them.

13 (3) The individual does not share in the fees paid to the government employing the individual.  
14

15 *History Note: Authority G.S. 105-41; 105-262;*  
16 *Eff. February 1, ~~1976~~ 1976;*  
17 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04B .2903

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (c)(3), line 10, and (5), line 13, what do you mean by "legal" name?*

*In (c)(6), line 14, and elsewhere the term is used in these rules, how does this designation work? Is this known by your regulated public ?*

*In (c)(7), what is "total face value"? Does your regulated public know? I am guessing so from the language in G.S. 105-83 and Rule .2904 that this term is understood by the regulated public, but I have no idea what this means.*

*In (c)(11)(A), line 20, is this signature the "verification" required by G.S. 105-83?*

*In (c)(11)(D), line 23, I take it that the use of "accurate and complete" is to mirror the statutory phrase "full, accurate and complete"?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04B .2903 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04B .2903** ~~QUARTERLY~~ INSTALLMENT PAPER DEALER QUARTERLY RETURN

4 (a) "Installment paper dealer" means a person required to file a return pursuant to G.S. 105-83.

5 (b) Installment paper dealers shall file their quarterly return using Form B-203, Installment Paper Dealer Tax Return,  
6 is used to remit the tax imposed under G.S. 105-83. B-203.

7 (c) Form B-203 requires the following:

8 (1) the reporting period for the return;

9 (2) information required by 17 NCAC 01C .0322(b);

10 (3) the installment paper dealer's legal name and mailing address;

11 (4) the trade name or doing-business-as name, if applicable;

12 (5) if the installment paper dealer elects to designate a contact person, the identity of a contact person,  
13 including his or her legal name, phone number, and fax number;

14 (6) a designation of whether the form is an amended form;

15 (7) the total face value of installment paper acquired during the reporting period;

16 (8) the tax due on the face value of installment paper acquired during the reporting period;

17 (9) the penalty and interest due, if any, in accordance with G.S. 105-236 and G.S. 105-241.21;

18 (10) the total payment due;

19 (11) for the person authorized to legally bind the installment paper dealer, his or her:

20 (A) signature;

21 (B) job title;

22 (C) date of signature; and

23 (D) affirmation that the return is accurate and complete;

24 (12) the location where the installment paper is held; and

25 (13) the face value of installment paper acquired delineated by location.

26 (d) The installment dealer shall file a return even if the installment paper dealer did not acquire obligations described  
27 in G.S. 105-83(a) during the reporting period.

28  
29 *History Note: Authority G.S. 105-83; 105-262;*

30 *Eff. February 1, 1976;*

31 *Amended Eff. July 1, 2000; October 30, 1981; June 11, 1977. 1977;*

32 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0101

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Consider removing Item (2) and just defining the term in Rule .0903. However, as you also use the term in Rule .1801, you may want to remove the citation to Rule .0903 and have this be more generally applicable within the Subchapter.*

*In (5), does your regulated public know who is not participating?*

*In (7), line 20, I take it you mean "consumer" as defined in G.S. 105-113.4?*

*On line 21, please delete the quotation marks after "State"*

*In the History Note, G.S. 105-113.4 does not confer rulemaking authority and I suggest you delete it.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

17 NCAC 04C .0101 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

## **SUBCHAPTER 4C - ~~CIGARETTE~~ TOBACCO PRODUCTS TAX**

### **17 NCAC 04C .0101      DEFINITIONS**

In addition to those definitions as set out in G.S. 105-113.4, the following terms and phrases as used in this Subchapter shall, unless the context requires otherwise, have the following meanings:

- (1) ~~Article.~~ "Article 2A" means the Tobacco Products Tax Act or Tobacco Products Tax Article, Article 2A, Chapter 105 of the General Statutes of North Carolina; Carolina.
- (2) ~~Department.~~ North Carolina Department of Revenue; "Equivalent information" means the information required by Rule .0903(c) of this Subchapter in an alternative format such as a spreadsheet, database, or other compilation.
- (3) ~~Excise Tax.~~ "Excise tax" means The the excise tax levied under G.S. 105-113.5, G.S. 105-113.6, and G.S. 105-113.35; 105-113.35, or G.S. 105-113.35A.
- (4) ~~In "In this State or within this State— State"~~ "In this State or within this State" means Within within the exterior limits of the State of North Carolina, and includes all territory within such the limits owned by, leased by by, or ceded to the United States of America; America.
- (5) "Nonparticipating manufacturer" means the term as defined in G.S. 66-292(3).
- (6) "Nonresident distributor" means a distributor who is licensed pursuant to G.S. 105-113.24.
- (7) "Nonresident purchaser" means a person who is not a consumer and does not have a place of business in this State."
- ~~(5)(8) Other Tobacco Product—A~~ "Other tobacco products" means a cigar or any other product that contains tobacco, other than a cigarette, and is intended for inhalation or oral use; and a vapor product.
- (6) ~~Revenue Agent. Revenue officer, auditor or other personnel of the North Carolina Department of Revenue authorized by the secretary to act in his behalf;~~
- (7) ~~State. State of North Carolina;~~
- (9) "Resident distributor" means a distributor who has a place of business within this State.
- (10) "Roll-your-own cigarette tobacco" means the term as defined in G.S. 66-290(4).
- (11) "Tax-paid cigarettes" mean cigarettes where the excise tax imposed by G.S. 105-113.5 or G.S. 105-113.6 has been paid.
- (12) "Tax-paid tobacco products" mean tobacco products where the excise tax imposed by G.S. 105-113.5, G.S. 105-113.6, G.S. 105-113.35, or G.S. 105-113.35A has been paid.
- ~~(8)(13) Vending Machine. Dispenser~~ "Vending machine" means a dispenser or dispensing machine; machine.
- (9) ~~Wholesale Cigarette Dealer. Any person who sells cigarettes to others for resale by them who does not qualify as a distributor under the definition of distributor in G.S. 105-113.4.~~

1

2 *History Note: Authority G.S. 105-113.4; 105-262;*

3 *Eff. February 1, 1976;*

4 *Amended Eff. January 1, 1994; June 1, 1992; October 30, ~~1981~~, 1981;*

5 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0104

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In the Submission for Permanent Rule form, Box 2, please correct the name of the Rule by replacing "Or" with "For"*

*In (b), line 6, please insert "105" into the citation "G.S. -113.36"*

*Should (c)(3)(F), Page 2, line 3, and (c)(5)(B), line 14, say "if a natural person" to mirror the language in (c)(3)(A), Page 1, line 32?*

*In (c)(6)(N)(i), Page 3, line 18, please insert a "G.S." before "105-113.35"*

*In (c)(7)(H), line 35, what is "accurate and complete"? Is this to mirror statutory language?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020



1 17 NCAC 04C .0104 is adopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0104 APPLICATION OR RENEWAL REQUIREMENTS FOR APPLICANTS AND**  
4 **LICENSEES UNDER ARTICLE 2A**

5 (a) A distributor obtaining, renewing, or updating a license pursuant to G.S. 105-113.12 shall use Form B-A-2.

6 (b) A wholesale dealer or retail dealer obtaining, renewing, or updating a license pursuant to G.S.113.36 shall use  
7 Form B-A-2.

8 (c) Form B-A-2 requires the following:

9 (1) a description of the transactions requested, including:

10 (A) a designation of whether the applicant or licensee is requesting an initial license, renewing  
11 a license, or updating information previously submitted on the form;

12 (B) the applicant's or licensee's business structure, such as a sole proprietorship, partnership,  
13 corporation, limited liability company, limited liability partnership;

14 (C) if requesting a new license or renewal of an existing license, the type of license requested;

15 (D) the seven digit number assigned by the North Carolina Secretary of State, if applicable;  
16 and

17 (E) the total payment due;

18 (2) the applicant's or licensee's business information, including:

19 (A) information required by 17 NCAC 01C .0322(b);

20 (B) the legal name;

21 (C) the date the business began operations;

22 (D) the trade name or doing-business-as name, if applicable;

23 (E) the physical location where non-tax-paid tobacco products are manufactured, received, or  
24 stored;

25 (F) the mailing address;

26 (G) the location where records are kept;

27 (H) the e-mail address, if available; and

28 (I) if the applicant or licensee elects to designate a contact person, the identity of the contact  
29 person including his or her legal name, telephone number, fax number, and e-mail address;

30 (3) the identity of the applicant's or licensee's owners, officers, partners, or members, and for each  
31 person identified, their:

32 (A) social security number, if a natural person;

33 (B) legal name;

34 (C) job title;

35 (D) residential address;

36 (E) phone number; and

- 1                   (F) misdemeanor or felony convictions, if any, and a statement describing the circumstances  
2                   of the conviction, including the offense, date of offense, date of conviction, case number,  
3                   court jurisdiction, and any active terms of probation;
- 4       (4) the identity of persons who previously held an ownership interest in the applicant, and for each  
5           person identified:
- 6           (A) their legal name;  
7           (B) the name of business at the time the interest was held;  
8           (C) the address of business at the time the interest was held; and  
9           (D) the last date of ownership in the applicant or licensee;
- 10       (5) if any person identified on the form previously owned, operated, or managed another legal entity  
11           selling, receiving, or purchasing tobacco products, the applicant or licensee shall include for each  
12           person identified:
- 13           (A) the person's legal name;  
14           (B) the person's social security number;  
15           (C) the person's residential address;  
16           (D) the name of the legal entity; and  
17           (E) the person's job title held at the legal entity;
- 18       (6) a description of the applicant's or licensee's operations, including:
- 19           (A) a designation of whether the applicant or licensee is a resident, nonresident, affiliated  
20           manufacturer, or integrated wholesaler;
- 21           (B) the percentage of operations that are associated with retail, distribution or wholesale,  
22           manufacturing, or other activities;
- 23           (C) the number of locations storing non-tax-paid tobacco products and the physical address for  
24           each location;
- 25           (D) the number of locations storing tax-paid tobacco products and the physical address for each  
26           location;
- 27           (E) the date when the applicant or licensee began or intends to begin to sell non-tax-paid  
28           tobacco products;
- 29           (F) a designation of whether a surety bond or letter of credit is included with the form;
- 30           (G) a designation of whether the applicant or licensee currently or intends to buy or sell tobacco  
31           products by Internet, telephone, catalog, or any other means that would qualify as a delivery  
32           sale;
- 33           (H) a designation of whether the applicant or licensee currently or intends to buy or sell roll-  
34           your own cigarette tobacco;
- 35           (I) a designation of whether the applicant or licensee currently or intends to import tobacco  
36           from out-of-country vendors;

- 1           (J)     if the applicant or licensee is a nonresident distributor or wholesale dealer, designating  
2                 whether the applicant or licensee is licensed in the applicant's or licensee's state of  
3                 residence;
- 4           (K)     a designation of whether the applicant or licensee currently or intends to purchase vapor  
5                 products;
- 6           (L)     a list of all states where the applicant or licensee holds a tobacco products license and the  
7                 license number for each license;
- 8           (M)     if the applicant or licensee is applying for a distributor's license:
- 9                 (i)     a list of all manufacturers that will sell to the applicant or licensee non-tax-paid  
10                 cigarettes;
- 11                (ii)     the address and phone number of all manufacturers that will sell to the applicant  
12                 or licensee non-tax-paid cigarettes;
- 13                (iii)    a letter from those manufacturers affirming the manufacturers intent to sell to the  
14                 applicant or licensee non-tax-paid cigarettes; and
- 15                (iv)     a list of all cigarette brands the applicant or licensee intends to sell;
- 16           (N)     if the applicant or licensee is applying for wholesale dealer's or retail dealer's license:
- 17                 (i)     a list of all suppliers providing the applicant or licensee other tobacco products  
18                 where the excise tax under 105-113.35 or G.S. 105-113.35A has not been paid;
- 19                 (ii)     the supplier's legal name;
- 20                 (iii)    the supplier's address;
- 21                 (iv)     the supplier's telephone number;
- 22                 (v)     for each supplier, the date the applicant or licensee first purchased other tobacco  
23                 products from the supplier; and
- 24                 (vi)     the delivery method for each supplier not located in this State;
- 25           (O)     a list of roll-your-own cigarette tobacco brands that the applicant or licensee intends to sell,  
26                 if any; and
- 27        (7)     for the person authorized to legally bind the applicant or licensee, his or her:
- 28                 (A)     typed legal name;
- 29                 (B)     job title;
- 30                 (C)     signature;
- 31                 (D)     date of signature;
- 32                 (E)     telephone number;
- 33                 (F)     fax number;
- 34                 (G)     e-mail address; and
- 35                 (H)     affirmation that the form is accurate and complete.

36

37     History Note: Authority G.S. 105-113.11; 105-113.12; 105-113.36; 105-262;



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0201

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b), line 16, to mirror language in Rule .1301, consider inserting "the" before "Form B-A-2" after "previously provided on"*

*In (d), how will they determine the amount? The statute includes a basic formula but also says the Secretary will determine it. How will this work?*

### **§ 105-113.13. Secretary may require a bond or irrevocable letter of credit**

(b) The Secretary may require a licensed distributor to furnish a bond in an amount that adequately protects the State from a licensed distributor's failure to pay taxes due under this Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the licensed distributor's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars (\$2,000) and may not be more than two million dollars (\$2,000,000). The Secretary should periodically review the sufficiency of bonds required of the licensed distributor and increase the required bond amount if the amount no longer covers the anticipated tax liability of the licensed distributor and decrease the amount if the Secretary finds that a lower bond amount will protect the State adequately from loss.

For purposes of this section, a licensed distributor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: November 24, 2020

17 NCAC 04C .0201 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

**SECTION .0200 - CIGARETTE ~~DISTRIBUTORS~~ DISTRIBUTOR'S LICENSE**

**17 NCAC 04C .0201      ~~APPLICATION OF LICENSE OR RENEWAL REQUIREMENTS FOR A~~  
DISTRIBUTOR'S LICENSE; DUTY TO UPDATE**

(a) ~~Before any distributor's license is issued, Application for Cigarette Distributor's License (Form B-A-1) shall be made. The application shall be signed and verified by oath or affirmation by:~~

~~(1) the owner, if a natural person,~~

~~(2) a member or partner, if an association or a partnership, or~~

~~(3) an executive officer, or any other person authorized in writing by the corporation, if a corporation.~~

A distributor obtaining, renewing, or updating a license pursuant to G.S. 105-113.12 shall use Form B-A-2 as set forth in Rule .0104 of this Subchapter.

(b) The A distributor shall notify the Secretary in writing of any changes in the information previously provided on the license application as such changes occur. Department of any changes to the information previously provided on Form B-A-2 by submitting a revised Form B-A-2. A distributor shall notify the Department at least 30 days before changing the physical location where non-tax-paid tobacco products are manufactured, received, or stored. A distributor shall notify the Department of all other changes previously provided on Form B-A-2 within 30 days of the change.

(c) The distributor shall also notify the Secretary in writing of the exact location and telephone number of all warehouse or storage facilities where non-tax-paid cigarettes are received or stored before such facilities are placed in use. A distributor obtaining a new license or renewing an expired license shall remit the tax required by G.S. 105-113.12 with Form B-A-2.

(d) A distributor obtaining a new license shall include a bond or an irrevocable letter of credit pursuant to G.S. 105-113.13 with Form B-A-2.

(e) A distributor shall notify the manufacturers from whom cigarettes are purchased or received when the Department issues it a distributor's license or when there are changes to its distributor's license.

(f) A distributor shall submit Form B-A-2 for each place of business as defined by G.S. 105-113.12.

*History Note:      Authority G.S. 105-113.11; 105-113.12; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994; October 30, ~~1981~~ 1981;  
Readopted Eff. January 1, 2021.*

1 17 NCAC 04C .0504 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0504** ~~OUT OF STATE SALES: NONRESIDENT REGISTRATION~~ INTERSTATE  
4 CIGARETTE SALES; LICENSURE

5 (a) ~~Sales of non tax paid cigarettes by a licensed North Carolina distributor to nonresident retail or wholesale dealers~~  
6 ~~must be delivered by the North Carolina distributor to the business location of the nonresident in another state to~~  
7 ~~qualify as an out of state sale exempted from the North Carolina cigarette excise tax. A nonresident dealer purchaser~~  
8 ~~is not required to obtain a license under G.S. 105-113.12 if it accepts delivery of non-tax-paid cigarettes in this State~~  
9 ~~and all the following apply:~~

10 ~~may accept delivery of cigarette purchases in this State provided:~~

11 (1) ~~The nonresident dealer has no place of business in North Carolina; The nonresident purchaser~~  
12 ~~receives non-tax-paid cigarettes from a licensed distributor at the licensed distributor's business~~  
13 ~~location in this State.~~

14 (2) ~~The nonresident dealer purchaser is purchasing cigarettes for the purpose of resale outside of North~~  
15 ~~Carolina; Carolina.~~

16 (3) ~~The nonresident dealer is registered with the Documents and Payments Processing Division,~~  
17 ~~Tobacco Tax Unit of this department as a nonresident retail and wholesale cigarette dealer; and~~

18 (4)(3) ~~The licensed distributor nonresident dealer's affixes to the cigarette cigarettes purchases must have~~  
19 ~~affixed thereto by the North Carolina distributor the taxpaid cigarette indicia of the state of the~~  
20 ~~nonresident purchaser dealer where required by the state of the nonresident dealer.~~

21 (b) ~~Registration of the nonresident retail or wholesale cigarette dealer is not required where the North Carolina~~  
22 ~~resident cigarette distributor delivers cigarette purchases of such nonresident dealer to the nonresident business~~  
23 ~~location outside this state.~~

24 (e)(b) ~~Cigarettes sold and delivered outside this state must have affixed thereto by the North Carolina cigarette~~  
25 ~~distributor selling same the A distributor who sells cigarettes outside this State or delivers cigarettes to a nonresident~~  
26 ~~purchaser in this State for resale outside of this State shall affix to cigarettes taxpaid cigarette indicia of the state of~~  
27 ~~the nonresident purchaser where required by the state of the nonresident purchaser.~~

28 (d)(c) ~~The North Carolina cigarette A distributor shall be held responsible for the accuracy and authenticity of the~~  
29 ~~nonresident retail or wholesale dealer's registration number. Verification may be made at any time by inquiry to the~~  
30 ~~Documents and Payments Processing Division, Tobacco Tax Unit of this department. It is also the distributor's~~  
31 ~~responsibility to keep and retain in his records the executed certificate, Form B-A-52, for examination and audit and~~  
32 ~~the distributor shall be required to identify each invoice or bill of sale made to such nonresident retail or wholesale~~  
33 ~~cigarette dealer by noting thereon his registration number. report sales to nonresident purchasers on Form B-A-5 as~~  
34 ~~required in Rule .0901 of this Subchapter.~~

35  
36 *History Note: Authority G.S. 105-113.9; 105-262;*

37 *Eff. September 20, 1977;*

1                    *Amended Eff. April 1, 2008; January 1, 1994; October 30, ~~1981~~. 1981.*  
2                    *Readopted Eff. January 1, 2021.*



1 17 NCAC 04C .0602 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0602 INVOICE REQUIREMENT**  
4

5 *History Note: Authority G.S. 105-113.10; 105-262;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. October 30, 1981; June 11, ~~1977~~ 1977;*

8 *Repealed Eff. January 1, 2021.*

1 17 NCAC 04C .0702 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0702     ~~INSURE~~ EXCISE TAX LIABILITY FOR CIGARETTE INVENTORY**

4 A distributor is liable for the tax upon any non-tax-paid cigarettes ~~which~~ that are stolen or otherwise unaccounted for.

5  
6 *History Note:*     *Authority G.S. 105-113.5; 105-262;*  
7                     *Eff. February 1, 1976;*  
8                     *Amended Eff. January 1, ~~1994~~. 1994;*  
9                     *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0901

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In the name of the Rule, line 3, please underline the addition of "Distributors"*

*In (a), line 5, I believe the citation should be to G.S. 105-113.18(1), not (a).*

*In (b)(8), line 16, and elsewhere the term is used, what is "designated by packs"? Does your regulated public know?*

*In (b)(9)(C), Page 2, line 20, what does this mean? I am sure your regulated public understands this, but I do not, so I wanted to ask.*

*In (b)(9)(D), line 21, what do you mean by "with explanations provided"?*

*In (b)(14), line 36, and (g)(8), Page 3, line 37, what is "accurate and complete"? Is this to mirror statutory language?*

*In (d)(4), Page 3, line 10, please either delete "a" before "nonparticipating" or make "manufacturers" singular.*

*In (g)(7)(F), line 32, please insert an "and" at the end of the line after "brands;"*

*Please end (g)(8)(D) with a period, not a semicolon.*

*In the History Note, Page 4, please put the citations in numerical order by inserting G.S. 105-113.4G first.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04C .0901 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0901 MONTHLY REPORT FOR RESIDENT ~~DISTRIBUTOR~~ DISTRIBUTORS**

4 (a) ~~Every licensed resident distributor shall file a report (Form B-A-5) on or before the 20th day of each month.~~

5 Resident distributors filing a report pursuant to G.S. 105-113.18(a) shall file Form B-A-5 and Form B-A-7.

6 (b) ~~Non-tax-paid cigarettes shipped, delivered or sold outside the state during the month shall be reported on~~  
7 ~~supplemental Form B-A-5, Schedule I. Form B-A-5 requires the following:~~

8 (1) the reporting period for the report;

9 (2) information required by 17 NCAC 01C .0322(b);

10 (3) the distributor's legal name and mailing address;

11 (4) the trade name or doing-business-as name, if applicable;

12 (5) if the distributor elects to designate a contact person, the identity of a contact person, including his  
13 or her legal name, phone number, and fax number;

14 (6) the distributor's state of domicile;

15 (7) designation of whether the form is an amended form;

16 (8) an inventory of non-tax-paid cigarettes during the reporting period, designated by packs, including:

17 (A) the beginning inventory of non-tax-paid cigarettes possessed by the distributor on the first  
18 day of the reporting period;

19 (B) the number of non-tax-paid cigarettes sold to the distributor from a manufacturer, and the  
20 following information regarding these transactions to be included on Schedule C of the  
21 form:

22 (i) the invoice date;

23 (ii) the invoice number;

24 (iii) the name and address of the person who sold the distributor cigarettes; and

25 (iv) the amount of cigarettes sold to the distributor;

26 (C) the number of non-tax-paid cigarettes sold to the federal government, and the following  
27 information regarding these transactions to be included on Schedule B of the form:

28 (i) the date cigarettes were sold;

29 (ii) the name and address of the agency or instrumentality to whom cigarettes were  
30 sold; and

31 (iii) the amount of cigarettes sold;

32 (D) the number of non-tax-paid cigarettes sold outside North Carolina, and the following  
33 information regarding these transactions to be included on Schedule I:

34 (i) the date the cigarettes were shipped;

35 (ii) the shipping method (such as distributor truck, common or contract carrier, parcel  
36 post, or customer truck);

37 (iii) the name and address of the person to whom cigarettes were sold;

- 1                   (iv)     the identification of cigarette brands from a nonparticipating manufacturer; and  
2                   (v)     the amount of cigarettes sold outside North Carolina;  
3           (E)     the number of non-tax-paid cigarettes returned to a manufacturer;  
4           (F)     other increases or decreases in non-tax paid inventory, with explanations provided with the  
5                   form; and  
6           (G)     the ending physical inventory of non-tax-paid cigarettes possessed by the distributor on the  
7                   last day of the reporting period;  
8   (9)     an inventory of tax-paid cigarettes during the reporting period, designated by packs, and the  
9           following information to be included on Schedule D:  
10          (A)     the beginning inventory of tax-paid cigarettes possessed by the distributor on the first day  
11               of the reporting period;  
12          (B)     tax-paid cigarettes purchased or received from other sources, and the following information  
13               regarding these transactions to be included on Schedule E:  
14               (i)     the invoice date;  
15               (ii)    the invoice number;  
16               (iii)   the name and address of the person who sold the distributor cigarettes;  
17               (iv)    the amount of cigarettes sold; and  
18               (v)     copies of all invoices containing the information listed in Rule .0903(c) of this  
19                   Subchapter;  
20          (C)     non-tax-paid purchases that are tax-paid on the form;  
21          (D)     other increases or decreases in tax paid inventory, with explanations provided with the  
22               form;  
23          (E)     the number of tax-paid cigarettes sold in North Carolina  
24          (F)     the number of tax-paid cigarettes returned to the manufacturer; and  
25          (G)     the ending physical inventory of tax-paid cigarettes possessed by the distributor on the last  
26               day of the reporting period;  
27   (10)    the excise tax due on non-tax-paid cigarettes;  
28   (11)    the discount under G.S. 105-113.21(a1), if applicable;  
29   (12)    penalty and interest due on non-tax paid cigarettes, if any, in accordance with G.S. 105-236 and  
30            G.S. 105-241.21;  
31   (13)    total payment due; and  
32   (14)    for the person authorized to legally bind the distributor, his or her:  
33            (A)     signature;  
34            (B)     job title;  
35            (C)     date of signature; and  
36            (D)     affirmation that the form is accurate and complete.

1 ~~(c) Cigarettes returned to the manufacturer during the month shall be reported on supplemental Form B-A-5, Schedule~~  
2 ~~J. The distributor shall include a separate Schedule I for each state to which the distributor shipped cigarettes during~~  
3 ~~the reporting period.~~

4 (d) When cigarettes are returned to a manufacturer, the distributor shall include the following information on Schedule  
5 J:

6 (1) the date the cigarettes were shipped;

7 (2) the shipping method (such as distributor truck, common or contract carrier, parcel post, or customer  
8 truck);

9 (3) the name and address of the manufacturer;

10 (4) the identification of cigarette brands from a nonparticipating manufacturers;

11 (5) designating whether the cigarettes returned were non-tax paid cigarettes or tax-paid cigarettes; and

12 (6) the total non-tax paid cigarettes and total tax-paid cigarettes returned to the manufacturer.

13 (e) Form B-A-5 shall be filed each month even if no cigarettes were sold, shipped, delivered, or otherwise disposed  
14 of during the reporting period.

15 (f) The Department may disallow any deduction for the distributor's failure to include information on a designated  
16 schedule.

17 (g) Form B-A-7 requires the following:

18 (1) the reporting period for the report;

19 (2) information required by 17 NCAC 01C .0322(b);

20 (3) the legal name and mailing address of the person filing the form;

21 (4) the trade name or doing-business-as name, if applicable;

22 (5) if the person filing the form elects to designate a contact person, the identity of a contact person,  
23 including his or her legal name, phone number, and fax number;

24 (6) designation of whether the form is an amended form;

25 (7) for all tax-paid products from nonparticipating manufacturers, the person filing the form shall  
26 include:

27 (A) the brand name;

28 (B) the number of tax-paid cigarettes, designated by packs;

29 (C) the number of ounces of roll-your-own cigarette tobacco;

30 (D) the name and address of the nonparticipating manufacturer;

31 (E) the name and address of the person from whom the brand was purchased; and

32 (F) the name and address of the first importer of foreign manufactured brands;

33 (8) for the person authorized to legally bind the person required to file the form, his or her:

34 (A) signature;

35 (B) job title;

36 (C) date of signature; and

37 (D) affirmation that the form is accurate and complete;

1 (h) Form B-A-7 shall be filed each month even if no tobacco products from nonparticipating manufacturers were  
2 sold, shipped, delivered, or otherwise disposed of in this State for the reporting period.

3 (i) Form B-A-7 shall be filed in duplicate.  
4

5 *History Note: Authority G.S. 105-113.18; G.S. 105-113.4G; 105-262;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. January 1, ~~1994~~, 1994;*

8 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0902

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b)(2), line 9, to be consistent with other Rules, consider citing to .0322**(b)***

*In (b)(8), line 16, what do you mean by "designated by packs"?*

*In (b)(13)(D), line 26, is "accurate and complete" to mirror statutory language?*

*Please end (b)(14)(B)(v), Page 2, line 2, with a semicolon, rather than a period.*

*In (b)(13)(E, line 6, what do you mean by "with explanations provided"?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020



1 17 NCAC 04C .0902 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0902 MONTHLY REPORT FOR NONRESIDENT ~~DISTRIBUTOR~~ DISTRIBUTORS**

4 ~~Every licensed nonresident distributor shall file a report (Form B-A-6) on or before the 20th day of each month.~~

5 (a) Nonresident distributors filing a report pursuant to G.S. 105-113.18 shall file Form B-A-6 and Form B-A-7. The  
6 requirements of Form B-A-7 are provided in 17 NCAC 04C .0901(g) through (i).

7 (b) Form B-A-6 requires the following:

8 (1) the reporting period for the report;

9 (2) information required by 17 NCAC 01C .0322;

10 (3) the distributor's legal name and mailing address;

11 (4) the trade name or doing-business-as name, if applicable;

12 (5) if the resident distributor elects to designate a contact person, the identity of a contact person,  
13 including his or her legal name, phone number, and fax number;

14 (6) the distributor's state of domicile;

15 (7) designation of whether the form is an amended form;

16 (8) the number of cigarettes sold, designated by packs, in North Carolina where excise tax is due;

17 (9) the excise tax due on non-tax-paid cigarettes;

18 (10) the discount under G.S. 105-113.21(a1), if applicable;

19 (11) penalty and interest due on non-tax paid cigarettes, if any, in accordance with G.S. 105-236 and  
20 G.S. 105-241.21;

21 (12) total payment due;

22 (13) for the person authorized to legally bind the distributor, his or her:

23 (A) signature;

24 (B) job title;

25 (C) date of signature; and

26 (D) affirmation that the form is accurate and complete;

27 (14) an inventory of tax-paid cigarettes during the reporting period, designated by packs, including the  
28 following information on Schedule B of the Form:

29 (A) the beginning inventory of tax-paid cigarettes possessed by the distributor on the first day  
30 of the reporting period;

31 (B) the number of tax-paid cigarettes purchased or received from other sources, including the  
32 following information regarding these transactions to be included on Schedule C of the  
33 form:

34 (i) the invoice date;

35 (ii) the invoice number;

36 (iii) name and address from where the cigarettes were purchased or received;

37 (iv) the amount of cigarettes purchased or received; and

1                   (v) copies of all invoices containing the information listed in Rule .0903(c) of this  
2                   Subchapter.

3           (C) the number of tax-paid cigarettes sold in this State;

4           (D) the number of cigarettes returned to a manufacturer, including information regarding these  
5           transactions to be included on Schedule J as required by Rule .0901(d) of this Section.

6           (E) other increases or decreases in inventory, with explanations provided with the form;

7           (F) the ending inventory of tax-paid cigarettes possessed by the distributor on the last day of  
8           the reporting period; and

9           (G) the number of non-tax-paid cigarettes, designated by packs, sold to the federal government,  
10           including the following information regarding these transactions to be included on  
11           Schedule D of the form:

12                   (i) the date the cigarettes were sold;

13                   (ii) the name and address of the agency or instrumentality to whom cigarettes were  
14                   sold; and

15                   (iii) the amount of cigarettes sold.

16 (c) Form B-A-6 shall be filed each month even if no cigarettes were sold, shipped, delivered, or otherwise disposed  
17 of in North Carolina for the reporting period.

18  
19 *History Note:*    Authority G.S. 105-113.18; 105-262;

20                   Eff. February 1, 1976, 1976;

21                   Readopted Eff. January 1, 2021.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0903

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*I am simply inquiring – in (a), lines 8 and 9, why do you need “whether other record keeping requirements apply,”?*

*In (c), line 16, should this read, “Invoices or equivalent information”*

*In the History Note, please put the citations in numerical order.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

17 NCAC 04C .0903 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows

**17 NCAC 04C .0903      ~~RECORD~~—~~REQUIREMENT~~      INVOICING      REQUIREMENTS      FOR  
DISTRIBUTORS**

(a) ~~Each sale of cigarettes at wholesale, including cash and credit transactions, and regardless of whether the sale is made to another distributor, wholesale dealer, retail dealer, or is a transfer to a self-owned outlet or an agency or agent, shall be accompanied by a completed invoice indicating the person to whom the cigarettes were sold, the address of the purchaser, the date of the sale, the quantity sold, and the price charged. Except for sales to consumers, where other record keeping requirements apply, a distributor shall maintain an invoice for every cigarette it sells, ships, or delivers in this State or outside of this State. A distributor shall also maintain an invoice when it transfers cigarettes to other places of business maintained by the distributor.~~

(b) ~~If a distributor is also a retail dealer and sells cigarettes directly to consumers, an invoice or a memorandum shall be prepared showing the transfer of all cigarettes from the distributor to the retail activity. A distributor shall forward to the Department copies of invoices of cigarette sales or transfers required by Paragraph (a) of this Rule, or equivalent information, monthly.~~

(c) Invoices shall include the following information:

(1) the invoice date;

(2) the invoice number;

(3) the date of purchase, if applicable;

(4) the name and address of the purchaser and seller, if applicable;

(5) the name and address of the person from whom tobacco products were shipped;

(6) the name and address of the person to whom tobacco products were shipped;

(7) the mode of transportation;

(8) the brand and the quantity of tobacco products;

(9) the price charged for the tobacco products, if applicable; and

(10) when the excise tax has been paid, the following phrase shall appear on the invoice: "North Carolina Tobacco Products Tax Paid."

(d) Invoices addressed in Paragraph (a) of this Rule shall be maintained for three years by all persons party to cigarette sales who are required to be licensed under Article 2A. All persons party to the sale must be issued identical invoices, and the invoices shall not be altered after issuance. If the invoice requires modification, a separate document must accompany the invoice describing the change to the invoice. This document must include the date it was prepared and must be delivered to and maintained by any other party to the sale.

(e) Notwithstanding Paragraph (a) of this Rule, a distributor shall comply with the invoice requirements for delivery sales in accordance with G.S. 105-113.4F.

*History Note: Authority ~~G.S. 105-113.26~~; G.S. 105-113.10; 105-113.4G; 105-262;  
Eff. February 1, 1976;*

- 1                    *Amended Eff. January 1, ~~1994~~ 1994;*
- 2                    *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .0904

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What do you mean by "segregate"? Will your regulated public know what this means?*

*In the History Note, please insert a hyphen in the citation to G.S. 105-262*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04C .0904 is adopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .0904 RECORD REQUIREMENTS FOR DISTRIBUTORS**

4 Distributors maintaining records pursuant to G.S. 105-113.4G shall segregate records of cigarette sales that are exempt  
5 from the excise tax.

6  
7 *History Note: Authority G.S. 105-113.4G; 105 262;*

8 *Eff. January 1, 2021.*

1 17 NCAC 04C .1002 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .1002 REFUNDS ONLY TO LICENSED DISTRIBUTORS**

4 ~~Any spoiled packages of tax-paid cigarettes in the hands of a retailer or wholesaler shall be returned to its respective~~  
5 ~~distributors, as refunds of the cigarette tax thereon will only be made to the distributor.~~

6 (a) A distributor filing a refund claim pursuant to G.S. 105-113.21(b) shall file Form B-A-18.

7 (b) Form B-A-18 requires the following:

8 (1) the reporting period for the refund claim;

9 (2) information required by 17 NCAC 01C .0322(b);

10 (3) the distributor's legal name and mailing address;

11 (4) the trade name or doing-business-as name, if applicable;

12 (5) if the distributor elects to designate a contact person, the identity of a contact person, including his  
13 or her legal name, phone number, and fax number;

14 (6) the distributor's state of domicile;

15 (7) designation of whether the form is an amended form;

16 (8) the number of tax-paid cigarettes, designated by packs, returned to the manufacturer;

17 (9) any discount previously allowed under G.S. 105-113.21(a1);

18 (10) the refund due;

19 (11) for the person authorized to legally bind the person required to file the form, his or her:

20 (A) signature;

21 (B) job title;

22 (C) date of signature; and

23 (D) affirmation that the form is accurate and complete; and

24 (12) an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by  
25 the distributor requesting the refund.

26 (c) Only the licensed distributor who originally paid excise tax pursuant to G.S. 105-113.5 is eligible for the refund.

27  
28 *History Note: Authority G.S. ~~105-113.25; 105-113.21; 105-262;~~*

29 *Eff. February 1, 1976;*

30 *Amended Eff. January 1, 1994; 1994;*

31 *Readopted Eff. January 1, 2021.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .1301

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 9, please insert the full citation of "G.S. 105-113.36"*

*In (d), how will this work, as G.S. 105-113.38 says, "The amount of the bond is two times the wholesale or retail dealer's average expected monthly tax liability under this Article, as determined by the Secretary[.]"?*

*In the History Note, I am only asking – why are you citing to G.S. 105-113.35?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04C .1301 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .1301**     **LICENSE REQUIREMENTS APPLICATION OR RENEWAL REQUIREMENTS**  
4                                **FOR WHOLESALE DEALER'S OR RETAIL DEALER'S LICENSE; DUTY TO**  
5                                **UPDATE**

6 (a) ~~Wholesale dealers and retail dealers, liable for excise tax on other tobacco products under G.S. 105-113.35, must~~  
7 ~~obtain a continuing Other Tobacco Products Tax License on forms prescribed by the Secretary for each "place of~~  
8 ~~business" as defined under G.S. 105-113.36. A wholesale dealer or retail dealer obtaining, renewing, or updating a~~  
9 ~~license pursuant to G.S-113.36 shall use Form B-A-2 as set forth in Rule .0104 of this Subchapter.~~

10 (b) ~~The application for license shall be signed and verified by oath or affirmation by the owner, if a natural person,~~  
11 ~~and in the case of an association or partnership, by a member or partner thereof, and in the case of a corporation, by~~  
12 ~~an executive officer thereof or by any person specifically authorized by the corporation to sign the application to which~~  
13 ~~shall be attached the written evidence of his authority. A wholesale dealer or retail dealer shall notify the Department~~  
14 ~~of any changes to the information previously provided on the Form B-A-2 by submitting a revised Form B-A-2. A~~  
15 ~~wholesale dealer or retail dealer shall notify the Department at least 30 days before changing the physical location~~  
16 ~~where non-tax-paid tobacco products are manufactured, received, or stored. A wholesale dealer or retail dealer shall~~  
17 ~~notify the Department of all other changes previously provided on Form B-A-2 within 30 days of the change.~~

18 (c) ~~The licensee shall notify the Secretary in writing of any changes in the information previously provided on the~~  
19 ~~license application as such changes occur. A wholesale dealer or retail dealer obtaining a new license or renewing an~~  
20 ~~expired license shall remit the tax required by G.S. 105-113.36 with Form B-A-2.~~

21 (d) ~~A wholesale dealer or retail dealer obtaining a new license shall include a bond or an irrevocable letter of credit~~  
22 ~~pursuant to G.S. 105-113.38.~~

23 (d)(e) ~~The licensee A wholesale dealer or retail dealer shall be responsible for notifying notify the manufacturers from~~  
24 ~~whom other tobacco products are purchased or received of the other tobacco products license issued by the Secretary~~  
25 ~~and of any subsequent change relative to the license. when the Department issues it a wholesale dealer's license or~~  
26 ~~retail dealer's license or when there are changes to its license.~~

27 (e)(f) ~~The license is not assignable, transferable, or prorated. A wholesale dealer or retail dealer shall submit Form B-~~  
28 ~~A-2 for each place of business as defined by G.S. 105-113.36.~~

29 (g) ~~A wholesale dealer who is also a retail dealer is only subject to the license tax under G.S. 105-113.36(a)(1) and is~~  
30 ~~not required to remit the license tax for its retail dealer activity.~~

31  
32 *History Note:*     *Authority G.S. 105-113.35; 105-113.36; 105-262;*  
33                                *Eff. June 1, 1992;*  
34                                *Amended Eff. January 1, 1994; 1994;*  
35                                *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .1401 - .1403

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*As these are consecutive repeals with the same effective date and repeal date, you will combine these into one document. It will look like this:*

17 NCAC 04C .1401 - .1403 are repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

**17 NCAC 04C .1401      INVOICE REQUIREMENT**

**17 NCAC 04C .1402      SALES TO LICENSED DEALERS ONLY**

**17 NCAC 04C .1403      MANUFACTURERS ACTING AS RETAILER**

*History Note:      Authority G.S. 105-113.35; 105-113.37; 105-262;  
                         Eff. June 1, 1992;  
                         Amended Eff. January 1, 1994;  
                         Repealed Eff. January 1, 2021.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04C .1401 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .1401 INVOICE REQUIREMENT**  
4

5 *History Note: Authority G.S. 105-262;*

6 *Eff. June 1, ~~1992~~ 1992;*

7 *Repealed Eff. January 1, 2021.*

1 17 NCAC 04C .1402 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2

3 **17 NCAC 04C .1402 SALES TO LICENSED DEALERS ONLY**

4

5 *History Note: Authority G.S. 105-113.35; 105-113.37; 105-262;*

6 *Eff. June 1, 1992;*

7 *Amended Eff. January 1, ~~1994~~ 1994;*

8 *Repealed Eff. January 1, 2021.*

17 NCAC 04C .1403 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

**17 NCAC 04C .1403 MANUFACTURERS ACTING AS RETAILER**

*History Note:* Authority G.S. 105-113.35; 105-262;

*Eff. June 1, ~~1992~~. 1992;*

Repealed Eff. January 1, 2021.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .1801

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b)(8), line 19, and elsewhere the term is used, what is "cost price"? Does your regulated public know?*

*In (d)(7), Page 2, I note that this language is slightly different from (a)(7), line 18 ("designation of" versus "designating") Should these be the same?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

17 NCAC 04C .1801 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

**17 NCAC 04C .1801      MONTHLY RETURN REQUIREMENTS      REPORT FOR WHOLESALE DEALERS AND RETAIL DEALERS**

~~A tobacco products wholesale dealer or retail dealer licensed under G.S. 105-113.36 must file a monthly return in accordance with G.S. 105-113.37. A return must be filed each month even if no tax is due for that month.~~

(a) Wholesale dealers and retail dealers filing a report pursuant to G.S. 105-113.37 for other tobacco products, except vapor products, shall file Form B-A-101 and Form B-A-7. The requirements of B-A-7 are provided in 17 NCAC 04C .0901(g) through (i).

(b) Form B-A-101 requires the following:

- (1) the reporting period for the report;
- (2) information required by 17 NCAC 01C .0322(b);
- (3) the wholesale dealer or retail dealer's legal name and mailing address;
- (4) the trade name or doing-business-as name, if applicable;
- (5) if the wholesale dealer or retail dealer elects to designate a contact person, the identity of a contact person, including his or her legal name, phone number, and fax number;
- (6) the wholesale dealer's or retail dealer's state of domicile;
- (7) designation of whether the form is an amended form;
- (8) the cost price of other tobacco products, except vapor products, subject to the excise tax under G.S. 105-113.35(a), sold or purchased during the reporting period, with a copy of an invoice or equivalent information for each sale or purchase;
- (9) the cost price of other tobacco products, except vapor products, sold or purchased during the reporting period that were sold outside the State, with a copy of an invoice or equivalent information for each sale or purchase;
- (10) the cost price of other tobacco products, except vapor products, sold or purchased during the reporting period that were sold to the federal government, with a copy of an invoice or equivalent information for each sale or purchase;
- (11) the cost price of other tobacco products, except vapor products, sold or purchased during the reporting period that were exempt or subject to an excise tax reduction under G.S. 105-113.4E;
- (12) any discount allowed under G.S. 105-113.39;
- (13) the total excise tax due;
- (14) penalty and interest due on tobacco products, if any, in accordance with G.S. 105-236 and G.S. 105-241.21;
- (15) total payment due; and
- (16) for the person authorized to legally bind the person required to file the form, his or her:
  - (A) signature;
  - (B) job title;



1                   (C)     date of signature; and  
2                   (D)     affirmation that the form is accurate and complete.  
3   (c) Wholesale dealers and retail dealers filing a report pursuant to G.S. 105-113.37 for vapor products shall file Form  
4   B-A-102.  
5   (d) Form B-A-102 requires the following:  
6       (1)     the reporting period for the report;  
7       (2)     information required by 17 NCAC 01C .0322(b);  
8       (3)     the wholesale dealer or retail dealer's legal name and mailing address;  
9       (4)     the trade name or doing-business-as name, if applicable;  
10      (5)     if the wholesale dealer and retail dealer elects to designate a contact person, the identity of a contact  
11             person, including his or her legal name, phone number, and fax number;  
12      (6)     the wholesale dealer's or retail dealer's state of domicile;  
13      (7)     designating whether the form is an amended form;  
14      (8)     the number of milliliters of vapor products sold or purchased during the reporting period, with a  
15             copy of an invoice or equivalent information for each sale or purchase;  
16      (9)     the number of milliliters of vapor products sold or purchased during the reporting period that were  
17             sold outside the State, with a copy of an invoice or equivalent information for each sale or purchase;  
18      (10)    the number of milliliters of vapor products sold or purchased during the reporting period that were  
19             sold to the federal government with a copy of an invoice or equivalent information for each sale or  
20             purchase;  
21      (11)    the number of milliliters of vapor products sold or purchased during the reporting period that were  
22             exempt or subject to an excise tax reduction under G.S. 105-113.4E;  
23      (12)    the total vapor products tax due;  
24      (13)    penalty and interest due on tobacco products, if any, in accordance with G.S. 105-236 and G.S. 105-  
25             241.21;  
26      (14)    the total payment due; and  
27      (15)    for the person authorized to legally bind the person required to file the form, his or her:  
28             (A)     signature;  
29             (B)     job title;  
30             (C)     date of signature; and  
31             (D)     affirmation that the form is accurate and complete.  
32   (e) Invoices or equivalent information provided in accordance with Paragraphs (b) and (d) of this Rule shall contain  
33   the information required in Rule .0903(c) of this Subchapter.  
34   (f) Wholesale dealers and retail dealers required to file Form B-A-101 shall file the form even if no other tobacco  
35   products, except vapor products, were sold, shipped, delivered, or otherwise disposed of during the reporting period.  
36   Wholesale dealers and retail dealers required to file Form B-A-102 shall file the form even if no vapor products were  
37   sold, shipped, delivered, or otherwise disposed of during the reporting period.

1  
2   *History Note:*    *Authority G.S. 105-113.37; 105-262;*  
3                    *Eff. June 1, 1992;*  
4                    *Amended Eff. July 1, ~~2000~~; 2000;*  
5                    *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .1802

### **DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*I am simply inquiring – in (a), line 7, why do you need “whether other record keeping requirements apply,”?*

*In (c), line 15, should this read, “Invoices or equivalent information”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04C .1802 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:  
2

3 **17 NCAC 04C .1802 INVOICING REQUIREMENTS FOR WHOLESALE DEALERS AND RETAIL**  
4 **DEALERS**

5 ~~(a) Sales invoices of wholesale dealers, whether resident or nonresident, liable for the tax shall indicate payment of~~  
6 ~~the excise tax on other tobacco products by the wording "North Carolina Other Tobacco Products Tax Paid". Except~~  
7 ~~for sales to consumers, where other record keeping requirements apply, a wholesale dealer or retail dealer shall~~  
8 ~~maintain an invoice for every other tobacco product that it sells, ships, or delivers in this State or outside this State. A~~  
9 ~~wholesale dealer or retail dealer shall also maintain an invoice when it transfers other tobacco products to other places~~  
10 ~~of business operated or caused to be operated by the wholesale dealer or retail dealer.~~

11 ~~(b) All sales invoices of nonresident wholesale dealers shall show the point of origin and mode of transportation for~~  
12 ~~all shipments of other tobacco products into this State. A wholesale dealer or retail dealer shall forward to the~~  
13 ~~Department copies of invoices of other tobacco product sales or transfers required by Paragraph (a) of this Rule, or~~  
14 ~~equivalent information, monthly.~~

15 ~~(c) Invoices shall contain the information required in Rule .0903(c) of this Subchapter.~~

16 ~~(d) Invoices addressed in Paragraph (a) of this Rule shall be maintained for three years by all persons party to the sale~~  
17 ~~of other tobacco products who are required to be licensed under Article 2A. All parties to the sale must be issued~~  
18 ~~identical invoices, and the invoices shall not be altered after issuance. If the invoice requires modification, a separate~~  
19 ~~document must accompany the invoice describing the change to the invoice. This document must include the date it~~  
20 ~~was prepared and must be delivered to and maintained by any other party to the sale.~~

21 ~~(e) Notwithstanding Paragraph (a) of this Rule, a wholesale dealer or retail dealer shall comply with the invoice~~  
22 ~~requirements for delivery sales in accordance with G.S. 105-113.4F.~~

23  
24 *History Note: Authority G.S. 105-113.37; 105-262;*

25 *Eff. June 1, 1992, 1992;*

26 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04C .1803

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What do you mean by "segregate"? Will your regulated public know what this means?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04C .1803 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04C .1803      RECORDS REQUIREMENTS FOR WHOLESALE DEALERS AND RETAIL**  
4 **DEALERS**

5 ~~Every retail dealer and every wholesale dealer and their customers must keep records of inventories, purchases, and~~  
6 ~~sales of other tobacco products for at least three years. These records and inventories must be maintained separately~~  
7 ~~in such a manner as can be inspected and audited by the Secretary or duly authorized representative at any time without~~  
8 ~~having to go through and separate or~~ Wholesale dealers and retail dealers maintaining records pursuant to G.S. 105-  
9 113.4G shall segregate all records of other tobacco product sales of the taxpayer in order to arrive at the amount of  
10 that are exempt sales or inventories. from the excise tax.

11  
12 *History Note:      Authority G.S. ~~105-113.37~~; 105-113.4G; 105-262;*

13 *Eff. June 1, ~~1992~~; 1992;*

14 *Readopted Eff. January 1, 2021.*

1 17 NCAC 04E .0204 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:  
2

3 **17 NCAC 04E .0204 OUT-OF-STATE SHIPMENTS REPORTING**

4 ~~Records of out-of-state shipments by the resident wholesaler or importer shall be maintained which can be properly~~  
5 ~~checked by the Secretary of Revenue, and bills of lading shall also be kept on such out-of-state shipments.~~

6 (a) For all out-of-state shipments, resident wholesalers and importers shall maintain invoices, and if using a common  
7 carrier for shipment, bills of lading.

8 (b) If delivered by the using wholesaler's or importer's own truck, mode of transportation, the wholesale or importer  
9 shall maintain the name, signature, and address and social security number of the person receiving beer malt beverages  
10 or wine from the wholesaler or importer shall be kept for verification by the secretary. Such sales shall be reported  
11 on the monthly report form in the space provided. importer.  
12

13 *History Note: Authority G.S. 105-113.81; 105-113.88; 105-262;*

14 *Eff. February 1, 1976. 1976;*

15 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04E .0205

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 9, consider inserting a "the" before "Form"*

*On line 10, consider inserting "the Form" before "B-C-750"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020



1 17 NCAC 04E .0205 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0205 MAJOR DISASTER REPORTING**

4 ~~Losses from a "major disaster" as defined in G.S. 105-113.81(a) shall be verified by an agent of the Department of~~  
5 ~~Revenue and Form B-C-750 must be completed "before" they can be claimed by the wholesaler or importer on his~~  
6 ~~monthly report.~~

7 (a) To claim a major disaster exemption pursuant to G.S. 105-113.81(a), wholesalers and importers of malt beverages  
8 or wine must submit Form B-C-750 to the Department. If the wholesaler or importer meets the requirements of G.S.  
9 105-113.81(a) and is therefore qualified to take the exemption, the Department will return Form B-C-750 verifying  
10 that an exemption can be claimed. If verified by the Department, the wholesalers or importers shall include B-C-750  
11 with the monthly report filed pursuant to G.S. 105-113.83.

12 (b) Form B-C-750 requires the following:

13 (1) the reporting period for the report;

14 (2) information required by 17 NCAC 01C .0322(b);

15 (3) the wholesaler or importer's legal name and mailing address;

16 (4) the trade name or doing-business-as name, if applicable;

17 (5) if the wholesaler or importer elects to designate a contact person, the identity of a contact person,  
18 including his or her legal name, phone number, and fax number;

19 (6) the type of product subject to the major disaster;

20 (7) the brand name of the product subject to the major disaster;

21 (8) the amount of malt beverages or wine subject to the major disaster; and

22 (9) documentation to support that a major disaster occurred.

23 (c) Several small disasters cannot be accumulated and then classified as a major disaster. A major disaster shall be  
24 classified as only one event only in which such when the loss occurs, and not an accumulation of events. Any missing  
25 beverage inventory which that cannot be classified as a major disaster shall be considered as beer malt beverage or  
26 wine sold and subject to the excise tax accordingly, unless otherwise provided. tax.

27 (d) Resident wholesalers or importers cannot claim an exemption or deduction for losses in their inventory unless the  
28 losses qualify for the exemption under G.S. 105-113.81(a).

29  
30 *History Note: Authority G.S. 105-113.81; 105-113.83; 105-262;*

31 *Eff. February 1, 1976;*

32 *Amended Eff. April 1, 1986; October 30, 1981; 1981;*

33 *Readopted Eff. January 1, 2021.*

1 17 NCAC 04E .0206 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0206 WHOLESALE BUYING FROM WHOLESALE**

4  
5 *History Note:* Authority G.S. 105-113.83; 105-262;  
6 *Eff. February 1, 1976.*  
7 *Repealed Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04E .0301 and .0302

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*As these are consecutive repeals with the same effective date and repeal date, you will combine these into one document. It will look like this:*

17 NCAC 04E .0301 - .0302 are repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

**17 NCAC 04E .0301      SPOILAGE OR DESTRUCTION OF NONTAXPAID BEER OR WINE**

**17 NCAC 04E .0302      SPOILAGE OF TAXPAID BEER OR WINE**

*History Note:      Authority G.S. 105-113.81; 105-113.85; 105-262;  
Eff. February 1, 1976;  
Amended Eff. December 1, 2003; July 1, 2000; March 14, 1980; April 1, 1986; October 30, 1981;  
Repealed Eff. January 1, 2021.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04E .0301 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0301 SPOILAGE OR DESTRUCTION OF NONTAXPAID BEER OR WINE**

4  
5 *History Note: Authority G.S. 105-113.85; 105-262;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. December 1, 2003; April 1, 1986; October 30, ~~1981~~ 1981;*

8 *Repealed Eff. January 1, 2021.*

1 17 NCAC 04E .0302 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0302 SPOILAGE OF TAXPAID BEER OR WINE**  
4

5 *History Note: Authority G.S. 105-113.81; 105-262;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. July 1, 2000; March 14, ~~1980~~ 1980;*

8 *Repealed Eff. January 1, 2021.*

1 17 NCAC 04E .0303 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0303      DESTRUCTION OF MALT BEVERAGES OR WINE WHEN IN TRANSIT**

4 ~~Destruction of nontaxpaid beer or~~ Non-tax-paid malt beverages and wine that are destroyed while in the possession  
5 of a common carrier who is transporting these alcoholic beverages in transit from the brewery or winery to the resident  
6 wholesaler or resident importer when such beer or wine is in the hands of the common carrier; even though such  
7 common carrier may be considered as the agent of the resident wholesaler or importer, and when such beer or wine is  
8 accounted for by the common carrier by payment of such beverage loss to the resident wholesaler or importer; shall  
9 not be considered as part of the taxable inventory of the resident wholesaler or importer, and thus not subject to the  
10 beverage excise tax. shall not be considered part of the taxable inventory of the resident wholesaler or resident  
11 importer.

12  
13 *History Note:      Authority G.S. ~~105-113.84; 105-113.83; 105-262;~~*

14 *Eff. February 1, ~~1976~~ 1976;*

15 *Readopted Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04E .0502

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In the Rule name and on line 5, consider making "oceangoing" one word to match the statute.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04E .0502 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0502      ~~RECEIPT RECEIPTS FOR DELIVERY REQUIRED~~ MALT BEVERAGES AND**  
4 **WINE DELIVERED TO OCEAN-GOING VESSELS**

5 Receipt for delivery of ~~nontaxpaid beer~~ non-tax-paid malt beverages and wine to ocean-going vessels ~~must~~ shall be  
6 signed for by an authorized officer or agent of ~~such the vessel, vessel, and such~~ The signed receipts must be retained  
7 by the wholesaler or importer for a period of three years.

8  
9 *History Note:*      *Authority G.S. 105-113.81; 105-262;*

10 *Eff. February 1, ~~1976~~. 1976;*

11 *Readopted Eff. January 1, 2021.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 04E .0601

**DEADLINE FOR RECEIPT: Thursday, December 10, 2020**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 6, and (b), line 32, is this to address all bonds created by G.S. 105-113.86 or only for the bond in G.S. 105-113.86(a)? If it's only one type, consider inserting the exact citation.*

*Please insert an "and" at the end of (a)(8)(B), line 23, after "valid;"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: November 24, 2020

1 17 NCAC 04E .0601 is readopted without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0601 BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED OF**  
4 **WHOLESALE WHOLESALE AND IMPORTER IMPORTERS OF MALT**  
5 **BEVERAGES OR WINE**

6 (a) A bond submitted to the Department pursuant to G.S. 105-113.86 shall be filed on Form B-C-790. Form B-C-790  
7 requires the following:

8 (1) the bond number;

9 (2) the principal's legal name;

10 (3) the surety's name;

11 (4) the written value of bond amount;

12 (5) the numeric value of bond amount;

13 (6) the bond effective date;

14 (7) the date the bond is executed;

15 (8) the authorization, printed name, and signature of the Attorney-in-Fact acting on behalf of the surety  
16 in accordance with the following:

17 (A) surety shall affix its seal to the form;

18 (C) surety shall include with the form a power of attorney authorizing the Attorney-in-Fact to  
19 sign on behalf of the surety; and

20 (B) surety shall prepare the power of attorney on the surety's own form executed under the  
21 surety's seal. If the power of attorney submitted with the form is other than a manually  
22 signed original, it shall be accompanied by a certification from the surety that the power of  
23 attorney is valid;

24 (9) the authorization, printed name, signature, and title of the person authorized to legally bind the  
25 principal in accordance with the following:

26 (A) if the principal has a seal, the principal shall affix its seal to the form;

27 (B) if the principal does not have a seal, the person signing the form shall have his or her  
28 signature notarized on the form; and

29 (C) the principal shall include documentation (such as the principal's bylaws, operating  
30 agreement, or resolution) showing that the person signing the form has the authority to bind  
31 the principal.

32 (b) An irrevocable letter of credit submitted to the Department pursuant to G.S. 105-113.86 shall be issued on the  
33 financial institution's letterhead and include the following:

34 (1) the irrevocable letter of credit number;

35 (2) the North Carolina Department of Revenue designated as the beneficiary;

36 (3) the principal name and address;

37 (4) the irrevocable letter of credit is issued for alcoholic beverage taxes imposed under G.S 105-113.80;

- 1       (5) the coverage period, including effective and expiration dates;  
2       (6) the liability release date, which shall be three years after the expiration date;  
3       (7) the credit amount;  
4       (8) the issuing financial institution's name, address, telephone number, and fax number; and  
5       (9) the signature, printed name, and title of authorized person issuing the irrevocable letter of credit on  
6       behalf of the issuing financial institution.

7 (c) The amount of the bond or irrevocable letter of credit submitted to the Department pursuant to G.S. 105-113.86(a)  
8 or (c) in response to a periodic review shall be Proper bond shall be posted by resident wholesalers and importers  
9 subject to the beer or wine excise levies. This bond may vary yearly, based upon a review by the Documents and  
10 Payments Processing Division, Alcoholic Beverage and Amusements Tax Unit of the wholesaler's or importer's tax  
11 payments during the best 3 months of the previous 12 month period, and shall not be less than five thousand dollars  
12 (\$5,000), nor more than fifty thousand dollars (\$50,000). Bond requirements are as follows:

- 13       (1) where the combined tax due for any three months of the previous 12 months exceeds forty thousand  
14       dollars (\$40,000), the amount of the bond shall be fifty thousand dollars (\$50,000);  
15       (2) where the combined tax due for any three months of the previous 12 months exceeds twenty-five  
16       thousand dollars (\$25,000) but does not exceed forty thousand dollars (\$40,000), the amount of the  
17       bond shall be forty thousand dollars (\$40,000);  
18       (3) where the combined tax due for any three months of the previous 12 months exceeds twelve  
19       thousand five hundred dollars (\$12,500) but does not exceed twenty-five thousand dollars  
20       (\$25,000), the amount of the bond shall be twenty-five thousand dollars (\$25,000);  
21       (4) where the combined tax due for any three months of the previous 12 months exceeds five thousand  
22       dollars (\$5,000) but does not exceed twelve thousand five hundred dollars (\$12,500), the amount of  
23       the bond shall be twelve thousand five hundred dollars ~~(\$12,500);~~ (\$12,500); and  
24       (5) where the combined tax due for any three months of the previous 12 months does not exceed five  
25       thousand dollars (\$5,000), the amount of the bond shall be five thousand dollars (\$5,000).

26 (d) The amount of the bond or irrevocable letter of credit submitted to the Department pursuant to G.S. 105-113.86(b)  
27 shall be two thousand dollars (\$2,000).

28  
29 *History Note: Authority G.S. 105-113.86; 105-262;*  
30 *Eff. February 1, 1976;*  
31 *Amended Eff. April 1, 2008; January 1, 1994; April 1, ~~1986.~~ 1986;*  
32 *Readopted Eff. January 1, 2021.*

1 17 NCAC 04E .0602 is repealed through readoption without notice pursuant to G.S. 150B-1(d)(4) as follows:

2  
3 **17 NCAC 04E .0602 NEW WHOLESALE OR IMPORTER BOND**  
4

5 *History Note:* Authority G.S. 105-113.86; 105-262;  
6 Eff. February 1, 1976;  
7 Amended Eff. January 1, ~~1994~~ 1994;  
8 Repealed Eff. January 1, 2021.