

# REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

(Huggins, Simrill, G.M. Smith, Hosey & Limehouse - Staff Contact: Katie Owen)

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## HOUSE BILL 4151

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H. 4151 -- Reps. Pitts, White and Bannister: A BILL TO AMEND SECTION 12-21-735, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STAMP TAX ON CIGARETTES AND TOBACCO PRODUCTS, SO AS TO REQUIRE AND PROVIDE FOR THE PROPER AFFIXING OF STAMPS, INCLUDING PROVISIONS FOR EXEMPT PACKAGES, UNIQUE SERIAL NUMBERING OF STAMPS, REVOCATION OF THE LICENSE OF A PERSON VIOLATING THESE PROVISIONS, LIMITATIONS ON THE RECEIPT AND SALE OF UNTAXED CIGARETTES, TO PROVIDE FOR RETURN AND PAYMENT OF THE TAX, AND TO AUTHORIZE THE DEPARTMENT OF REVENUE TO PROMULGATE REGULATIONS NECESSARY TO ESTABLISH, IMPLEMENT, AND ENFORCE THESE PROVISIONS.

***Summary of Bill:***

This bill provides and requires for the proper affixing of a stamp on cigarette packs as indication of tax paid. The bill also provides for a maximum \$125k tax credit for distributors against the tobacco tax for costs incurred for purchase of the stamping machine and equipment. A 4.25% credit is also given to the wholesalers as compensation for affixing the stamp. The bill also requires the Department of Revenue to promulgate regulations to enforce, establish and implement these provisions.

***Introduced:*** 05/07/2015

***Received by Ways and Means:*** 05/07/2015

***Estimated Fiscal Impact:***

Pending

***Subcommittee Recommendation:***

Favorable

***Full Committee Recommendation:***

Pending

***Other Notes/Comments:***

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**South Carolina General Assembly**  
121st Session, 2015-2016

**H. 4151**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pitts, White and Bannister

Document Path: I:\council\bill\dk\3106sa15.docx

Introduced in the House on May 7, 2015

Currently residing in the House Committee on **Ways and Means**

Summary: Stamp tax on tobacco products

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
5/7/2015	House	Introduced and read first time ( <u>House Journal-page 63</u> )
5/7/2015	House	Referred to Committee on <b>Ways and Means</b> ( <u>House Journal-page 63</u> )

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**VERSIONS OF THIS BILL**

5/7/2015

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**A BILL**

11 TO AMEND SECTION 12-21-735, CODE OF LAWS OF SOUTH  
12 CAROLINA, 1976, RELATING TO THE STAMP TAX ON  
13 CIGARETTES AND TOBACCO PRODUCTS, SO AS TO  
14 REQUIRE AND PROVIDE FOR THE PROPER AFFIXING OF  
15 STAMPS, INCLUDING PROVISIONS FOR EXEMPT  
16 PACKAGES, UNIQUE SERIAL NUMBERING OF STAMPS,  
17 REVOCATION OF THE LICENSE OF A PERSON VIOLATING  
18 THESE PROVISIONS, LIMITATIONS ON THE RECEIPT AND  
19 SALE OF UNTAXED CIGARETTES, TO PROVIDE FOR  
20 RETURN AND PAYMENT OF THE TAX, AND TO  
21 AUTHORIZE THE DEPARTMENT OF REVENUE TO  
22 PROMULGATE REGULATIONS NECESSARY TO  
23 ESTABLISH, IMPLEMENT, AND ENFORCE THESE  
24 PROVISIONS.

25  
26 Be it enacted by the General Assembly of the State of South  
27 Carolina:

28  
29 SECTION 1. Section 12-21-735 of the 1976 Code is amended to  
30 read:

31  
32 “Section 12-21-735. (A) Each person or distributor of  
33 cigarettes taxable under this article, first receiving untaxed  
34 cigarettes for sale or distribution in this State, is subject to the tax  
35 imposed in Section 12-21-620. ~~Each distributor required to pay the~~  
36 ~~tax shall make a report to the department, in the form the department~~  
37 ~~prescribes, of all cigarettes sold or disposed of in this State, and pay~~  
38 ~~taxes due thereon not later than the twentieth day of the month next~~  
39 ~~succeeding the month of the sale or disposition. However, any~~  
40 ~~person or distributor making shipments of cigarettes to retail~~  
41 ~~locations in and out of this State shall apply to the department for a~~  
42 ~~license which enables them to purchase cigarettes free of tax, and~~

1 ~~report and pay tax as provided in this section on sales of cigarettes~~  
2 ~~sold to locations in this State.~~

3 ~~The department shall require bonds or statements of financial~~  
4 ~~stability satisfactory to the department to cover possible losses~~  
5 ~~resulting from failure to remit taxes due. When the return required~~  
6 ~~by this section is timely filed and the taxes shown to be due are paid~~  
7 ~~by the date specified in this section, the person or distributor may~~  
8 ~~deduct three and one half percent of the tax due. The taxes imposed~~  
9 ~~on cigarettes pursuant to this chapter must be paid by affixing~~  
10 ~~stamps in the manner and at the time provided in this section. Except~~  
11 ~~as otherwise provided in this section, stamps must be affixed to each~~  
12 ~~individual package of cigarettes by distributors before being sold,~~  
13 ~~distributed, or shipped to another person. A distributor may affix~~  
14 ~~stamps only to packages of cigarettes obtained directly from a~~  
15 ~~manufacturer or importer with a valid permit issued pursuant to 26~~  
16 ~~U.S.C. Section 5713. If cigarettes are manufactured in this State and~~  
17 ~~sold directly to consumers in this State by a manufacturer or~~  
18 ~~importer, the cigarette packages must be stamped by a licensed~~  
19 ~~distributor before being sold.~~

20 (B) Only manufacturers or importers with a valid permit issued  
21 pursuant to 26 U.S.C. Section 5713, or licensed distributors, may  
22 receive or possess unstamped packages of cigarettes. Only a  
23 manufacturer or importer with a valid permit issued pursuant to 26  
24 U.S.C. Section 5713 may ship or otherwise cause to be delivered  
25 unstamped packages of cigarettes in, into, or from this State, except  
26 that a licensed distributor may transfer, transport, or cause to be  
27 transported unstamped cigarettes from a facility owned by the  
28 distributor to another facility, wherever located, owned by the  
29 distributor.

30 (C) A qualified distributor licensed pursuant to this chapter may  
31 sell cigarettes without South Carolina stamps affixed to the package,  
32 provided that:

33 (1) the cigarettes are set forth in separate stock for sale to a  
34 licensed distributor of cigarettes in another state;

35 (2) if the cigarettes are not in the possession of a qualified  
36 distributor licensed pursuant to this chapter, the cigarettes must be  
37 in the possession of a person having immediate evidence of a license  
38 in business as a distributor of cigarettes in the another state, and the  
39 cigarettes must be purchased for the purpose of resale in the other  
40 state;

41 (3) the cigarettes, at the time of sale by the distributor,  
42 properly are stamped with revenue stamps authorized and issued by  
43 another state for use on the cigarettes, if the other state requires

1 revenue stamps, or any applicable tax imposed on the cigarettes by  
2 the other state has been paid if the law of the other state permits the  
3 sale of the cigarettes to consumers in a package not bearing a stamp;  
4 and

5 (4) at all times there is accompanying the cigarettes an  
6 invoice, indicating the purchase date, the name, address, and  
7 telephone number of the seller, and the name, address, and telephone  
8 number of the purchaser. A distributor shall have on file a record of  
9 each sale, the original purchase order, a copy of the invoice, and a  
10 signed receipt from the purchaser showing that the purchase was  
11 made exclusively for resale in another state.

12 (D) Cigarettes may be sold by qualified distributors without  
13 revenue stamps affixed to the package when exempted from tax by  
14 Section 12-21-100. A distributor that receives or possesses  
15 cigarettes intended for sale or distribution into or within this State  
16 which are exempt from the taxes imposed pursuant to this chapter  
17 shall affix stamps that indicate the package of cigarettes is exempt  
18 from tax.

19 (E) The department shall prescribe, prepare, and furnish stamps  
20 of denominations and quantities as necessary for the payment of the  
21 tax imposed by this chapter. The department also shall cause to be  
22 prepared and distributed to licensed distributors stamps that indicate  
23 that a package of cigarettes is exempt from the taxes imposed  
24 pursuant to this chapter.

25 (1) The stamps must be of a type that when affixed on each  
26 individual package the stamps cannot be removed without being  
27 mutilated or destroyed.

28 (2) The department, by rules and regulations, shall designate  
29 the type of stamps to be applied.

30 (3) The stamps must be sold only in amounts of thirty  
31 thousand or multiples of thirty thousand.

32 (4) In addition to stamps, the department, by rules and  
33 regulations, may authorize licensed distributors to use other devices  
34 which imprint distinctive indicia evidencing the payment of the tax  
35 upon each individual package. The machines must be constructed in  
36 a manner as accurately records or meters the number of impressions  
37 or tax stamps made. The tax meter machines or other devices must  
38 be kept available at all reasonable times for inspection by the  
39 department.

40 (5) The department, by rules and regulations, may authorize a  
41 process allowing for a credit for damaged tax stamps, for product  
42 returned as unsellable, and for product unrecoverable as a result of  
43 bad debt.

1       (6) The department, by rules and regulations, may authorize a  
2 tax credit for the purchase of one stamping machine and equipment  
3 acquired by a distributor within one year of implementation by the  
4 department. Beginning in the first calendar month following the  
5 purchase of the machine and equipment and continuing for the  
6 immediately succeeding seventeen months, a distributor may  
7 receive a tax credit of the direct costs actually incurred by the  
8 distributor, as determined by the department, in an amount equal to  
9 five and fifty-five one hundredths percent of the total net purchase  
10 up to one hundred twenty-five thousand dollars. The credit must  
11 exclude costs for shipping, installation, or for ongoing maintenance  
12 related to the machine. Any tax credit must be applied only to the  
13 tax remitted under this chapter.

14       (F) All stamps prescribed by the department must be designed  
15 and furnished in a fashion that permits identification of the  
16 distributor that affixed the stamp to the particular package of  
17 cigarettes by means of a serial number or other mark on the stamp.  
18 A stamp on a package of cigarettes must note whether the taxes  
19 prescribed in this chapter were paid or whether the package of  
20 cigarettes was exempt from the taxes.

21       (G) Stamps only may be affixed to packages of cigarettes that are  
22 listed on the South Carolina Tobacco Directory published by the  
23 Office of the Attorney General pursuant to Section 11-48-30.

24       (H) The department may appoint manufacturers and distributors  
25 of cigarettes, in or out of this State, as agents to buy or affix stamps  
26 to be used in paying the tax imposed by this chapter, but the agent  
27 at all times has the right to appoint a person in his employ who is to  
28 affix the stamps to any cigarette under the agent's control.

29       (1) When the department sells and delivers to an agent, the  
30 agent is entitled to receive as compensation for his services and  
31 expenses as an agent in affixing and accounting for the taxes  
32 represented by the stamps and to retain out of the money to be paid  
33 by the agent for the stamps a discount of four and twenty-five one  
34 hundredths percent of the face value of the stamps.

35       (2) The department, by rules and regulations, shall provide a  
36 method of purchasing stamps.

37       (I) The department may promulgate regulations necessary to  
38 enforce this section."

39  
40 SECTION 2. This act takes effect on January 1, 2018, except that  
41 Section 12-21-735(I) takes effect upon approval by the Governor.

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