

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1554
Second Edition Engrossed 8/10/98
House Committee Substitute Favorable 9/23/98

Short Title: Modify Controlled Substances Tax.

(Public)

Sponsors:

Referred to:

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.
Whereas, North Carolina enacted the Controlled Substances Tax Act in 1989 for the purpose of levying an excise tax to generate revenue for State and local law enforcement agencies and the General Fund and to collect taxes from persons engaged in a highly profitable activity that had escaped taxation; and
Whereas, the intent of the General Assembly in enacting this tax continues to be to raise revenue through a civil tax on this highly profitable activity; and
Whereas, the intent of the General Assembly in enacting this tax is not to create a criminal penalty, other than for nonpayment of the tax, above and beyond the criminal sanctions in the criminal code; and
Whereas, upon constitutional challenge on double jeopardy grounds by a defendant who had been assessed for the tax and also convicted of criminal drug charges, the North Carolina Court of Appeals held that the tax "was not predicated upon whether the taxpayer in possession of the controlled substance has been arrested or charged with criminal conduct, nor is it assessed on property that necessarily has been confiscated or destroyed"; and

Whereas, the court further held that the statute "is a legitimate and remedial effort to recover revenue from those persons who would otherwise escape taxation when engaging in the highly profitable, but illicit and sometimes deadly activity of possessing, delivering, selling, or manufacturing large quantities of controlled drugs" and that the statute "does not have such fundamentally punitive characteristics as to render it violative of the prohibition against multiple punishments for the same offense contained in the Double Jeopardy Clause"; and

Whereas, that decision was affirmed on appeal to the North Carolina Supreme Court and not disturbed by the United States Supreme Court; and

Whereas, upon further challenge in the federal courts, the controlled substance tax has been found to be a criminal penalty, and a petition for certiorari is now pending in the United States Supreme Court; and

Whereas, according to law enforcement officials, the current market price of cocaine is approximately \$100.00 per gram and hence the excise tax imposed herein is proportionately less than the tax imposed by the taxing authorities in many states upon cigarettes; and

Whereas, it is, therefore, the intent of the North Carolina General Assembly to modify the tax during the pendency of the appeal so that the tax may continue to be assessed in a manner consistent with the opinion now in effect, but to reinstate it as it read on January 12, 1998, if the United States Supreme Court reverses the lower court decision and finds the tax constitutional; and

Whereas, it is also the intent of the General Assembly that if the lower court decision is reversed, the higher tax rate should be reinstated; Now, therefore,

1 The General Assembly of North Carolina enacts:

2 Section 1. G.S. 105-113.107(a) reads as rewritten:

3 "(a) Controlled Substances. – An excise tax is levied on controlled substances
4 possessed, either actually or constructively, by dealers at the following rates:

5 (1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of
6 harvested marijuana stems and stalks that have been separated from and
7 are not mixed with any other parts of the marijuana plant.

8 (1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
9 fraction thereof, of marijuana, other than separated stems and stalks
10 taxed under subdivision (1) of this section.

11 (1b) At the rate of fifty dollars (\$50.00) for each gram, or fraction thereof, of
12 cocaine.

13 (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction
14 thereof, of any other controlled substance that is sold by weight.

15 (2a) At the rate of fifty dollars (\$50.00) for each 10 dosage units, or fraction
16 thereof, of any low-street-value drug that is not sold by weight.

17 (3) At the rate of ~~four hundred dollars (\$400.00)~~ two hundred dollars
18 (\$200.00) for each 10 dosage units, or fraction thereof, of any other
19 controlled substance that is not sold by weight.

1 (a1) Weight. – A quantity of marijuana or other controlled substance is measured
2 by the weight of the substance whether pure or impure or dilute, or by dosage units when
3 the substance is not sold by weight, in the dealer's possession. A quantity of a controlled
4 substance is dilute if it consists of a detectable quantity of pure controlled substance and
5 any excipients or fillers."

6 Section 2. G.S. 105-113.110A reads as rewritten:

7 "**§ 105-113.110A. ~~Interest and penalty.~~ Administration.**

8 ~~The tax due under this Article shall bear interest at the rate established pursuant to~~
9 ~~G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails,~~
10 ~~or refuses to pay the tax due under this Article is liable for a penalty equal to fifty percent~~
11 ~~(50%) of the tax. Article 9 of this Chapter applies to this Article.~~"

12 Section 3. This act is effective when it becomes law. If the United States
13 Supreme Court rules in Lynn, et al. v. West, et al. that the provisions of Article 2D of
14 Chapter 105 of the General Statutes, as they existed on January 12, 1998, are
15 constitutional, then Section 1 of this act is repealed effective on the date the United States
16 Supreme Court's ruling is issued.