

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1509 (1st Edition)

SHORT TITLE: Revenue Administrative Changes

SPONSOR(S): Rep. Holliman

FISCAL IMPACT

Yes () No () No Estimate Available (X)

FY 2002-03 **FY 2003-04** **FY 2004-05** **FY 2005-06** **FY 2006-07**

REVENUES

General Fund Potential Revenue Change – See Assumptions and Methodology

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Section 2 and 3 (quarterly sales tax returns) become effective October 1, 2002 and applies to taxes levied on or after that date. The remainder of the act becomes effective when law.

BILL SUMMARY: This proposal includes several changes recommended by the North Carolina Department of Revenue. Section 1 clarifies that equipment used to dispense plant growth inhibitors is not exempt from sales tax. Section 2 changes the due date for quarterly sales tax returns from the 15th of the month to the last day of the month, following the end of the quarter. Section 3 changes the underpayment penalty calculation for semimonthly taxpayers to conform to the Streamlined Sales Tax Project. Section 4 clarifies the use of sales and use tax exemption certificates. It is recommended by the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY:

Section 1: This proposal is a result of a North Carolina Court of Appeals decision. In American Ripener Co. Inc. v. Muriel K. Offerman, Secretary of Revenue, the court considered the application of state sales taxes to a plant growth regulator or stimulator which controls the ripening of fruits and vegetables (ethylene), as well as the equipment used to deliver that chemical. Tax on replacement parts was also an issue. The court held that all of these items are exempt from sales and use tax under G.S. 105-164.13(2) and G.S. 105-164.13 (2a) which exempts “plant growth inhibitors, regulators, or stimulators for agriculture including systematic and contact or other sucker control agents for tobacco and other crops”. The court also ruled that the generators and associate parts are also inhibitors and are therefore exempt from sales tax. The proposal effectively amends G.S. 105-164.13(2a) to make the equipment and parts associated with this gas treatment subject to sales and use taxes. (The Department had previously assumed all these items were taxable). In making its ruling, the court effectively reduced sales tax revenue. The bill would restore at least some of that

revenue to the General Fund. As such, the bill in and of itself would create a small revenue gain. However, Fiscal Research is unable to create an exact estimate of the value of ethylene delivery parts and equipment. As a result, no estimate is possible on this portion of the proposal.

Section 2: Currently the Department of Revenue receives monthly withholding returns, monthly sales tax returns, and quarterly sales tax returns on the 15th of the month. On the 15th of March, April, September, and October income tax returns are due as well. Shifting the due date of quarterly sales and use tax returns from the 15th of the month to the end of the month will create a more even distribution of work in the Department. Because the payments are due in the month following the end of the quarter (October, February, April, and July) the shift will not move any revenue from one fiscal year to the next. Some loss of interest on the payments or “float” will occur. However, because of the relatively small sums of money involved, the Department expects the loss to be minimal.

Section 3: This section changes the calculation of penalty for underpayment by semimonthly sales tax payers. Under current law the taxpayer must remit at least 95% of the amount due for each semimonthly payment period. This proposal allows the taxpayer to remit the lesser of this amount or the average semimonthly payment for the prior calendar year. Clearly this proposal will result in some loss of penalty revenue. However, no data is available to determine the magnitude of the loss. The Department expects the loss to be slight.

Section 4: Historically the Department of Revenue has issued exemption certificates to taxpayers in certain exempted industries to facilitate tax administration. However, there is no reference to exemption certificates in the statutes, except as it relates to penalties for misuse of such a certificate. This proposal would codify the practice of issuing exemption certificates. Since the proposal is only codifying the existing practice of the Department, no fiscal impact is expected.

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