GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 751 (Third Edition)

SHORT TITLE: Expand Excise Tax on Mill Machinery.

SPONSOR(S): Representative McComas

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2011-12	**FY 2012-13**	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**
REVENUES:					
Article 5F Modifications					
Ports			$58,872	$60,326	$61,828
Distribution Cntrs			81,848	42,553	43,612
Total			**$ 140,720**	**$ 102,879**	**$ 105,440**
Retain Article 3A	*$400,000*	*$400,000*	*$400,000*	*$400,000*	*$400,000*
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
North Carolina Department of Revenue

EFFECTIVE DATE: Includes various effective dates.

BILL SUMMARY: HB 751 expands the definition of mill machinery. HB 751 would allow purchases of specialized machinery utilized in the business activities of port facilities, particularly machinery used in the unloading or processing of bulk cargo to be exempt from the sales tax and subject to the tax on mill machinery under Article 5F. The bill also expands Article 5F, the 1%/$80 excise tax, to include specialized machinery purchased by a large manufacturing and distribution facility. Both changes become effective July 1, 2013.

Large manufacturing and distribution facilities that purchase specialized machinery during FY 2012-13 are allowed a refund of state and local sales tax paid. This refund would be awarded in FY 2013-14 and equivalent to the tax paid less what would be due if the company were subject to the 1%/$80 excise tax under Article 5F. Eligible companies must apply for this refund between July 1, 2013 and January 1, 2014.

The second change in HB 751 creates a definition for Port Enhancement Zones, allowing a credit under Article 3J. This change has no foreseen fiscal impact in the 2011-12 biennium. The fiscal impact in future years is unknown.

Lastly, HB 751 modifies the criteria applicable to companies that take the Article 3A tax credits. The William Lee Act is a package of tax credits designed to benefit new and expanding businesses. It includes a tax credit for "substantial investment in other property" that is available to taxpayers that meet certain eligibility requirements. One of these requirements is that a taxpayer has to create 200 jobs within two years of the time the qualifying property is placed in service. Additionally, a taxpayer must invest at least $10 million in real property within a three year period. The credit is equal to 30% of the real property investment. The credit is taken in seven equal installments beginning the year after the property is placed in service. If an installment cannot be used because it exceeds 50% of the taxpayer's tax liability for the year, each installment may be carried forward for 20 years.

The credit expires if during one of the seven years in which an installment accrues, the total number employed by the taxpayer falls below 200. Expiration means that the taxpayer cannot take any remaining installments of the credit. The taxpayer is not required to forfeit installments of credits that accrued in previous years. The proposal would modify the expiration provision. The taxpayer would not be required to maintain 200 employees to take remaining credit installments if the taxpayer makes an investment equal to or greater than twice the amount of the remaining installments at the facility within two years of the employment level falling below 200.

The last section of HB 751 becomes effective retroactively on or after January 1, 2009.

ASSUMPTIONS AND METHODOLOGY:

<u>Port Facilities</u>

There are six years of outstanding sales and use tax assessments from purchases made by port facilities that qualify for Article 5F under HB 751. These assessments represent $460,000 in unremitted sales and use tax. The Department also notes $91,000 of outstanding interest associated with these assessments. Should HB 751 become law, future machinery purchases by port facilities under HB 751 would be exempt from the sales and use tax and subject to the lower 1%/$80 per item under Article 5F. Fiscal Research estimates, based on information provided by the Department, the provision for port facilities in HB 751 will reduce General Fund availability by $58,000 to $62,000 annually beginning July 1, 2013.

<u>Distribution Centers</u>

HB 751 allows purchases of specialized machinery for use in a manufacturing and distribution facility to be subject to the excise tax under Article 5F and exempt from the general sales and use tax rate of 6.75% (as of July 1, 2011). Department of Commerce representatives indicate that the applicable distribution centers annually purchase roughly $500,000 in eligible machinery. This provision in HB 751 would reduce General Fund availability by approximately $42,000 annually.

Distribution centers are also eligible for a refund of sales and use tax paid for qualified purchases made during FY 2012-13. Sales tax on machinery purchases made in FY 2012-13 is refundable in FY 2013-14, under HB 751. Allowing these companies to apply for a refund in FY 2013-14 for sales tax paid in the previous year, doubles the fiscal impact of the Article 5F provision for the first year, reducing General Fund availability by $81,848 in FY 2013-14.

Retain Article 3A Installment
Fiscal Research is aware of one taxpayer impacted by the legislation. The bill would allow the taxpayer to remain eligible to take five remaining credit installments of $424,000 each. Without the bill, the taxpayer would become ineligible for the installments and their tax liability would increase. Although the amount of timing and amount of credits taken each year will vary depending on when returns are filed and tax liability, the fiscal impact is estimated to be approximately $400,000 annually for five years beginning in FY 2010-11.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sandra Johnson

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

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