

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** SB 236 (3rd Edition, Pending Amendment #3)

**SHORT TITLE:** Revenue Administrative Changes

**SPONSOR(S):** Senator Kerr

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>
<b>REVENUES</b>					
<b>EXPENDITURES</b>	Refer to Assumptions and Methodology Section				
<b>POSITIONS: (cumulative)</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	NC Department of Revenue				
<b>EFFECTIVE DATE:</b>	September 1, 2003.				

**BILL SUMMARY:** The pending amendment would add a new section to G.S.105-241.2 directing the Tax Review Board to award costs, including reasonable attorneys', accountants', and tax advisors' fees, to a taxpayer if the Board finds that the taxpayer is the prevailing party and the Secretary of Revenue was not substantially justified in the position asserted against the taxpayer. Defined a prevailing taxpayer as one who substantially prevailed with respect to the amount in controversy or with respect to the most significant issues or set of issues presented. Also, would rewrite G.S. 105-267 to direct the Court to award costs, including reasonable attorneys', accountants', and tax advisors' fees, to a taxpayer if the court finds that the taxpayer is the prevailing party and the Secretary of Revenue was not substantially justified in the position asserted against the taxpayer. Again, defined a prevailing taxpayer as one who substantially prevailed with respect to the amount in controversy or with respect to the most significant issues or set of issues presented.

**ASSUMPTIONS AND METHODOLOGY:** The fiscal note addresses the costs associated with the pending amendment offered on the House floor that would award costs to the prevailing taxpayer, either resulting from either a decision of the Tax Review Board based upon administrative appeal or from the court based upon a lawsuit. Under current law, taxpayers who prevail in the case before the Tax Review Board are reimbursed for costs incurred in pursuing the administrative appeal process.

During the period of February 1999 through May 2003, the Tax Review Board decided 39 cases. The Board made the following rulings:

- Ruled in favor of the Department of Revenue in 32 cases.
- Ruled against the Department of Revenue in 4 cases.
- The Board remanded 3 cases to the Secretary.

Cases before the Board involve corporate, sales, and gift tax issues. According to the Department, there are cases in the “Ruled in Favor of the Department” category that have appealed the Board’s ruling and final court rulings are pending. In the “ruled Against the Department” category, one was appealed and the court overturned the Board’s decision. The remanded cases will receive further review, as taxpayers in these cases presented significant additional information at the hearings to warrant continued before the Board reaches final decisions.

It is not possible to determine the amount of expense incurred by taxpayers in bringing a case forward. Cases run the gamut in terms of complexity. The Department is aware that in pursuing a corporate tax case, a taxpayer was represented by three (3) out-of-state attorneys, one (1) in-state attorney, and a company vice-president. Expert witnesses prepare six reports and the six witnesses testified at the hearing. The hearing lasted three days and the attorneys, vice president, and expert witnesses remained for the duration of the hearing. Additionally, this did not account for the time spent by the attorneys and taxpayer in preparation of the hearing. The Board ruled in favor of the Department, and the taxpayer has proceeded with judicial appeal with the case awaiting review in the Court of Appeals. It is anticipated the taxpayer will continue through the judicial process until appeals are exhausted.

The use of multiple attorneys, expert witnesses, and reports is becoming more commonplace in corporate cases. According to the department, even sales tax cases employ at least one attorney and have two (2) taxpayer representatives in attendance. It appears that the time and expense spent in preparation could be greater than the time assigned to the hearing. However, taxpayers are not required to report the expense incurred in pursuing either an administrative appeal or a lawsuit.

Although an estimate of the amount of payout is not currently available, an award by either the Board or court could be substantial in view of the resources that may be expended by the taxpayer.

In addition to the taxpayer’s costs, the State also realizes cost relative to an appeal. When a taxpayer appeals a decision in an administrative tax hearing to the Tax Review Board, the Department provides four copies of the official record to the Board. This includes copies of the following:

- The Brief for Tax Hearing prepared by the Department.
- The exhibits (evidence) introduced at the hearing by the Department and the taxpayer.
- The Final Decision issued by the Department’s Hearings Officer.
- The letter from the Hearings Officer to the taxpayer transmitting the Final Decision.

The Department of Revenue's staff also serves in a support role to the Attorney General's Office staff that represents the State at the Tax Review Board hearing. In addition to representing the State at the hearing, the Attorney General's staff must prepare a brief and submit it to the Board and taxpayer prior to the hearing. If the Department of Revenue's decision is upheld by the Tax Review Board and the taxpayer appeals to the court, the Tax Review Board provides the record to the court, which is another expense to the State. This is not added costs to the departments, as salaried staff and resources in operating budgets support the State's responsibilities.

**SOURCES OF DATA:** NC Department of Revenue

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**DATE:** June 30, 2003



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