

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1252

SHORT TITLE: Criminal Tax Penalty to Home County

SPONSOR(S): Representative McCombs

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
REVENUES	<u>Redistribution of some fines among counties- approximately \$93,833 per year</u>				
EXPENDITURES					
Per Diem & Mileage	\$14,647	\$15,042	\$15,463	15,881	16,310
Salary*					
Equipment, etc.*					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Criminal Investigations Unit; Judicial Department; County Finance Offices (School Funds); Wake County.					
EFFECTIVE DATE: December 1, 1998.					
*See Technical Considerations					

BILL SUMMARY: CRIMINAL TAX PENALTY TO HOME COUNTY. AN ACT TO PROVIDE THAT CRIMINAL PENALTIES IN TAX CASES SHALL BE REMITTED TO THE SCHOOL FUND OF THE COUNTY WHERE THE OFFENSE OCCURRED. Amends GS 115C-452 to direct the proceeds of fines, penalties and forfeitures in criminal tax cases to go to the county where the offense was committed.

ASSUMPTIONS AND METHODOLOGY: Judicial Department, Fiscal Research, Criminal Investigations.

Overview of Legislation

Currently, if a defendant is charged and convicted with a criminal tax penalty in Wake County, his or her fines and forfeitures are remitted to the Wake County finance officer for distribution to the school fund. This legislation amends this provision by requiring these fines and forfeitures to be distributed to the county where the offense occurred.

Redistribution of Fines and Forfeitures to County School Funds

Judicial Department data for calendar year 1997 shows 1,105 cases involving convictions for criminal tax offenses. The vast majority of these cases were for failure to file/pay sales tax (633 cases under G.S. 105-236, a misdemeanor) or failure to file/pay income tax (331 cases under G.S. 105-236, a misdemeanor). These misdemeanor cases are prosecuted by local revenue officers in counties throughout the state. According to the Department of Revenue's Criminal Division, approximately 25 to 30 of the "more serious" cases (e.g., evasion, aid and assistance, forgery, schemes) a year are prosecuted specifically in Wake County and would be subject to this legislation. Criminal Division data shows that an average of **\$93,833** in fines were collected and distributed to the Wake County finance officer over the last 3 years, even though the defendant's business is located in another county (\$95,300 in 1995, \$122,300 in 1996, and \$63,900 in 1997). Thus, it is estimated that this amount of money would be redistributed to other counties each year. Because there is no pattern to the distribution of the "more serious" cases, it is not possible to determine which counties would gain financially from this legislation.

IMPLEMENTATION ISSUES: If Wake County continued to prosecute the cases, the AOC anticipates implementing this legislation would not have a major fiscal impact on the Judicial Department. There may be a small amount of additional court time involved in determining the specific county where the offense occurred. The judge's finding would be noted by the courtroom clerk and then transferred to the clerk who enters this information into the AOC automated fiscal system. Additional clerk time in Wake County would be devoted to properly identifying the criminal tax codes to ensure that the fines and forfeitures are remitted to the proper county. Finally, the automated financial system in the Wake County Clerks Office would have to be modified to accommodate these transfers. The AOC believes it could handle these additional responsibilities within existing resources. Also, if the Wake County District Attorney continues to try the non-Wake cases, there would be no Department of Revenue expenditures associated with the bill.

There is a concern that if the criminal penalties were no longer forwarded to the Wake County Schools, the Wake County District Attorney may no longer prosecute the cases. If this were the case, the Department of Revenue would be forced to move those cases to what is generally termed the "home county." The additional travel time is likely to have an impact on productivity. As such, the Department may have to either decrease the number of cases they advance, or hire additional staff. The estimates for per diem expenses and mileage given above reflect the average annual expense the Criminal Division estimates they would have incurred in 1995-1997 (\$14,332), had their cases been prosecuted in the "home county." The per diem and mileage figures were then adjusted for inflation. These numbers assume that each case requires an average of six court appearances, and that an overnight stay would be required for all locations more than 100 miles from Raleigh.

TECHNICAL CONSIDERATIONS: All of the per diem and mileage expenses associated with the bill assume that these cases would no longer be tried in Wake County. Also, the Department anticipates that it may have to hire additional staff and/or reduce the division's caseload if the cases are tried in the field. However, there is still discussion about the staff level

needed. The Department estimates that salary and benefits cost associated with hiring a Tax Fraud Investigator will be \$47,799. They also estimate the salary and benefits cost of a new Associate Attorney General at \$45,934. Additional equipment, training, telephone and transportation costs associated with each new hire could increase these estimates dramatically.

FISCAL RESEARCH DIVISION

733-4910

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