NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 400 (House Finance Committee Substitute)

SHORT TITLE: No Sales Tax on Certain Publications

SPONSOR(S):

FISCAL IMPACT

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

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
General Fund					
Vending Machines	* See Assumptions and Methodology *				
Free Publications	($3,070,000)	($4,600,000)	($1,530,000)		
Local Governments					
Vending Machines	* See Assumptions and Methodology *				
Free Publications	($1,530,000)	($2,300,000)	($770,000)		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, Local Governments.

EFFECTIVE DATE: This act becomes effective October 1, 2001, and applies to sales made on or after that date. The exemptions in section 1 and 2 of the bill expire on October 1, 2003.

BILL SUMMARY: Under current law newspapers sold by street vendors and newspaper carriers making door-to-door deliveries are exempt from sales tax. The bill extends that exemption specifically to newspapers sold through all vending machines. This bill also exempts the paper, ink, and other ingredients used to produce free circulation publications from the state and local sales and use tax. Both exemptions expire on October 1, 2003. The Revenue Laws Study Committee is directed to study the sales and use tax exemptions that apply to publications and report to the 2002 Session of the General Assembly.

ASSUMPTIONS AND METHODOLOGY:

<u>Newspapers in Vending Machines</u>

Currently the 6% state and local sales tax is due on newspapers sold over the counter. Newspapers sold by traditional street vendors and door-to-door carriers are exempt from the

tax. All taxable vending machine sales are subject to only 50% of the existing tax rate for that item.
In the past few years confusion has arisen about the tax status of newspapers sold through vending machines at convenience stores, shopping areas, and malls. The Department of Revenue's interpretation of the law is that newspapers sold through vending machines in public areas are a form of "street vendor" and are exempt.

"Newspapers sold in or near a stand-alone convenience store are not considered a street vendor sale, and are subject to tax. Sales through newspaper vending racks located inside or on the premises of a store or business are taxable whether such sales are made by the owner of the business or another vendor. Such sales are not considered to be sales made by street vendors. Sales through newspaper vending racks which are not located on the street but are in public areas such as shopping centers and malls, airport terminals, train stations, bus stations and other similar locations or facilities, but not inside or on the premises of a store or business, are considered to be sales by street vendors and are exempt from sales tax". (Technical Bulletins, Section 7-16-B.10 & 11).

Because of the confusion over this provision, the Department of Revenue agreed to not pursue any of these taxes before April 1, 2001, and to not attempt to collect back taxes previous to this date. The Department has indicated, however, that they consider these non-vendor sales to be taxable, and believe these taxes are now due. They also plan to include these taxes in audit considerations (after the April 1, 2001 date).

Because this item is not recorded separately on the sales tax returns, and since this item has not been considered in most recent audits, no estimate is available from the Department. The Press Association believes that most independent carriers are not currently collecting or remitting the tax. Because there is no good data available, no fiscal estimate is possible. However, it is expected the impact of this bill will be relatively small given the limited number of papers sold through stand alone machines, and the fact that all vending machine sales that are taxable are only subject to 50% of the current tax rate (6%) or 3%.

Free Publications

Prior law granted a sales tax exemption for sales of paper, ink, and other tangible personal property to commercial printers and publishers for use as component parts in free circulation publications that contained advertising of a general nature. The exemption applied to general shoppers guides but not to more specialized publications such as real estate guides. The First Amendment of the United States Constitution does not allow a state to discriminate between publications based on their content. The prior law exemption clearly violated this rule by exempting guides with general content but not those with narrower content. Section 10 of Senate Bill 1112 (S.L. 1999-438) repealed the exemption, effective October 1, 1999, so that supplies sold for all free publications are now subject to tax on a uniform basis.

Prior to the 2000 Session of the General Assembly, Department of Revenue field auditors were asked to collect free publications from their regions and forward them by courier mail to the central office in Raleigh. These documents were used to estimate the annual statewide sales volumes of free publications. The Tax Research Division of the Department of Revenue used the estimated sales data for free publications, as well as sales and use tax collections data and information from the North Carolina Press Association to estimate the fiscal impact of this proposed tax exemption. In a memo dated June 6, 2000, the Tax Research Division estimated that the exemption proposed in this bill will reduce General Fund revenues by $4.6 million per year and will reduce local sales tax revenues by $2.3 million per year. No growth rate was assumed for future years due to the lack of market information for free publications. The first year impact is adjusted for the October 1, 2001 effective date (9 months minus 1 month lag). The third year estimate is adjusted for the October 1, 2003 expiration date. (3 months plus 1 month lag)

NOTE: To exempt just those free publications that were exempt prior to October 1, 1999 would cost $2.1 million in state revenues and $1.05 million in local revenues. However, returning to the prior law revives the constitutionality question.

TECHNICAL CONSIDERATIONS:

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DATE: September 4, 2001

Official Fiscal Research Division Publication

Signed Copy Located in the NCGA Principal Clerk's Offices