

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 777 (Second Edition)

SHORT TITLE: Affiliate Liability for OTP Excise Tax.

SPONSOR(S): Senator Garrou

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES:					
	See Assumptions and Methodology				
EXPENDITURES:					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	North Carolina Department of Revenue				
EFFECTIVE DATE:	July 1, 2009				

BILL SUMMARY: Effective July 1, 2009, SB 777 clarifies when the excise taxes on other tobacco products are payable. Under current law, the wholesale dealer or retail dealer who first acquires or otherwise handles other tobacco products (OTP) pays the excise tax. The law defines wholesale dealers under G.S. 105-113.4(a) as persons who make OTP or who acquire OTP for sale to a wholesale dealer or a retailer. A manufacturer who is not a retail dealer and who ships other tobacco products to either a wholesale or a retail dealer may apply to the Secretary to be relieved of paying the tax. Once granted permission, a manufacturer may choose to not pay the tax, which would result in the tax being paid by the receiving wholesale or retail dealer.

The bill changes the law so that sales between affiliates that are not retail dealers do not trigger payment of the OTP excise tax. It does this by:

- Eliminating the requirement in the definition of integrated wholesale dealer that the affiliate sell its entire product to its affiliate.
- Changes the definition of manufacturer to include a contract manufacturer. This is how the law is currently administered.

- Changes the definition of distributor (for cigarettes) and wholesale dealer (for OTP) to make it clear that a manufacturer who sells to a retail dealer is considered a distributor or a wholesale dealer but not a manufacturer who does not sell to retailers.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue estimates that there is \$2.5 million in uncollected assessments, penalties, and interest associated with the legislative changes in SB 777. In future years, this legislation allows for manufacturers to transfer OTP among subsidiaries and affiliate companies without incurring the excise tax. However, the tax will still be paid when the products are distributed for retail causing no net impact to the General Fund.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sandra Johnson, Fiscal Analyst
Economy and Taxation

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: August 3, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices