GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 575 (Third Edition)

SHORT TITLE: Modify Corporate Apportionment Formula.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2009-10	**FY 2010-11**	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
REVENUES:					
General Fund	***Potential loss of $3 million annually beginning in FY 2011-12, increasing over time to $12.5 million annually beginning in FY 2018-19. See Assumptions and Methodology***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; NC Department of Commerce

EFFECTIVE DATE: Effective for taxable years beginning on January 1, 2010.

BILL SUMMARY:
SB 575 modifies the formula for apportioning all apportionable income of a capital intensive corporation. The bill defines a capital intensive corporation as a corporation whose property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of GS 105-130.4, including the doubling of the sales factor, exceeds 75%. It requires a corporation subject to subsection (s1) to list on its return the property, payroll, and sales factors it used in determining whether it is a capital intensive corporation.

To qualify for the modified apportionment benefit, a corporation must receive a written determination from the Secretary of Commerce stating that the corporation has invested or is expected to invest at least $1 billion in private funds to construct a facility in the state within nine years after the time construction begins. The bill provides that if a corporation fails to invest $1 billion in private funds to construct a facility within nine years, the modified apportionment benefit expires and the corporation must apportion income as otherwise required. An eligible corporation must also satisfy a wage standard as established under G.S. 105-129.83 (c) and provide health insurance for all of its full-time jobs at the facility. The facility must be located in a county designated as tier one or two at the time construction begins. The bill also specifies that the corporation is not eligible for grants with respect to the facility under the Job Development Investments Grant or One North Carolina Fund, or tax credits under the Article 3J Tax Credits for Growing Businesses.

ASSUMPTIONS AND METHODOLOGY:
Under current law, corporate income tax liability for multi-state taxpayers is apportioned using a three-factor apportionment formula. The formula is a composite of three factors: a property factor, a payroll factor, and a sales factor. The property factor represents the ratio of the taxpayer's real and tangible personal property in North Carolina to its real and tangible personal property everywhere. Likewise, the payroll factor and the sales factor represent a ratio of the taxpayer's payroll and sales in North Carolina to its payroll and sales everywhere. Under North Carolina's current apportionment formula, the payroll and property factors are each weighted 25% and the sales factor is weighted at 50%.

SB 575 would change the apportionment formula for eligible taxpayers so that only the sales factor would be considered in apportioning income. Under this method, income is apportioned by applying a fraction, the numerator of which is the total sales of the corporation in the State and the denominator is the total sales of the corporation everywhere. This method of apportionment would provide a tax reduction to a corporation with relatively large shares of its nationwide property and payroll in North Carolina but a relatively small share of its nationwide sales in North Carolina.

According to the NC Department of Revenue, no taxpayers currently meet the criteria established in the bill for a capital intensive corporation. The Department of Commerce is aware of one prospective company that would potentially qualify and invest up to $1 billion over a period of nine years. According to estimates from the Department of Commerce, the tax benefits for the company would result in a General Fund revenue loss of approximately $3 million per year beginning in FY 2011-12 assuming an initial investment of $250 million in 2011 (some impact could occur in FY 2010-11 if first or second quarter estimated payments are lowered to reflect the modified apportionment formula). If the total property investment reaches $1 billion, the annual loss would be approximately $12.5 million annually beginning in FY 2018-19.

SOURCES OF DATA: NC Department of Revenue; NC Department of Commerce

TECHNICAL CONSIDERATIONS: None

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