

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 242 (Fifth Edition)

**SHORT TITLE:** Reform Tax Appeals.

**SPONSOR(S):** Senator Clodfelter

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<u><b>FY 2007-08</b></u>	<u><b>FY 2008-09</b></u>	<u><b>FY 2009-10</b></u>	<u><b>FY 2010-11</b></u>	<u><b>FY 2011-12</b></u>
<b>REVENUES:</b>	<b>**See Assumptions and Methodology**</b>				
<b>EXPENDITURES:</b>					
<b>Department of Revenue</b>	<b>No impact anticipated</b>				
<b>Office of Administrative Hearings</b>	<b>No impact anticipated</b>				
<b>Department of Justice</b>	\$64,765	\$294,761	\$294,761	\$294,761	\$294,761
<b>Judicial</b>	-	\$74,211	\$69,912	\$69,912	\$69,912
<b>POSITIONS (cumulative):</b>	2	5	5	5	5
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Revenue, Department of Justice, Office of Administrative Hearings, Administrative Office of the Courts					
<b>EFFECTIVE DATE:</b> for taxable years beginning on January 1, 2007					

**BILL SUMMARY:** Senate Bill 242 substantially revises the process for the review of disputed tax matters to provide taxpayers with the opportunity for an independent hearing outside the Department prior to paying the tax. These revisions include administrative review by the Office of Administrative Hearings, elimination of the Tax Review Board, and expansion of the Business Court to include tax cases.

This bill addresses two distinct yet related issues. First, the bill substantially revises the overall procedure for disputing tax matters. Second, the bill provides statutory guidance with regard to class actions involving a constitutional challenge to a tax statute. The second issue is a subset of the first, but it specifically relates to recent judicial interpretations of the 'payment under protest' rule.

The bill directs the Revenue Laws Study Commission to study the use of class action lawsuits under *Dunn v. State of North Carolina*.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Revenue**

This bill changes the manner in which tax cases are heard and appealed. Under this bill, a uniform procedure would exist within the Department of Revenue for handling contested assessments **which would require no additional resources**, and the process after the Secretary's final determination would change, as would the destination for final appeals.

### **Office of Administrative Hearings**

Currently, appeals of the Secretary's final determination in a tax case are heard by the Assistant Secretary for Administrative Services, an employee of the Department of Revenue hired by the Secretary acting as a Hearings Officer. This bill would transfer that responsibility to the Office of Administrative Hearings. OAH has ten Administrative Law Judges who conduct hearings in a broad array of administrative law matters, but none in taxation work. Based on an estimate of 30 cases per year, the Chief Judge of the Office of Administrative Hearings anticipates no need for additional staffing from this bill.

### **Administrative Office of the Courts**

S 242 makes a change to the process of appeal tax decisions beyond the administrative hearings level. Under current law, these cases are appealed to Superior Court, but under this bill, these cases could be designated as complex business cases and referred to the Business Court in Wake County. The Business Court is a specialized court process for complex cases designated by the Chief Justice. The judges who hear these complex cases are Special Superior Court Judges appointed by the Governor; they are not resident judges within any district.

Since this bill would establish a new process for handling appeals, AOC does not project how many cases may be appealed from the Office of Administrative Hearings to the Business Court. The increased formalization of the process through the administrative hearings statutes should reduce the number of appeals to the court, and it is likely that the current Business Court operation could handle all appeals with no expansion.

The senior Business Court Judge believes the court could handle the changes in SB 242 with the current number of judges, but would need an additional staff attorney position since their current law clerks turn over each year, and a tax caseload would require specialized knowledge and experience, especially since the cases likely to be appealed and assigned to Business Court would be the most complex cases. A staff attorney's position cost would be \$74,211 in the first year.

### **Department of Justice**

The Attorney General's Office provides legal counsel to the Department of Revenue in tax appeals upon request. In recent years, the DOJ has become involved in only two cases per year. DOJ expects to receive cases on pending tax matters as soon as this bill becomes effective in January 2008, and the volume to increase over time. For the purposes of this note, Fiscal Research assumes a need for one Attorney III and one paralegal on January 1, 2008, and two Attorney IIs effective July 1, 2008.

**SOURCES OF DATA:** Department of Revenue, Department of Justice, Administrative Office of the Courts.

**TECHNICAL CONSIDERATIONS:** The conference report on HB 1473, the 2007 budget bill, moves the Revenue Hearings Officer and a support position from the Department of Revenue to the Department of Administration in a Type I transfer. Based on the changes made in this bill, the position transfer would be unnecessary. As the Office of Administrative Hearings has expressed no need for an additional Administrative Law Judge, the positions could remain at Revenue.

**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:** Douglas Holbrook

**APPROVED BY:** Lynn Muchmore, Director  
Fiscal Research Division

**DATE:** June 27, 2007



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