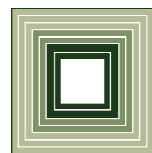


LEA Sales and Use Tax Refund: History and Current Fiscal Issues

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Overview

- Brief History
- Eligibility for Other Notable Entities
- Fiscal Trends and Impacts

Refund History: 1998 and Prior

- 1961-1998: LEAs were not eligible for the state or local sales and use tax refund afforded to other entities
- S.L. 1998-212 extended the refund to include LEAs
 - State and local refund allowed
- Provision applied to taxes paid on or after July 1, 1998

How Did the Refund Work?

- LEAs request refunds from Department of Revenue
 - Claims must be made within 6 months after the close of the fiscal year purchases were made
 - No claims are allowed after 3 years of purchases
- Department of Revenue responsibility
 - Assess LEA claim within six months of receipt
 - Four options:
 - Provide refund as claimed
 - Adjust claim and reimburse adjusted amount
 - Deny claim
 - Request more information
 - DoR denials may be appealed within 45 days of notice

What Could be Claimed?

- Eligible purchases for refund claims
 - G.S. 105-116.14(c): “Certain Governmental Entities. -- ...allowed an annual refund of sales and use taxes paid...**on direct purchases of tangible personal property and services**, other than electricity and telecommunications service”
 - Con’t: “Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment...is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection.”

2005 Changes to LEA Refund Eligibility

- Current Operations Appropriations Act of 2005: S.L 2005-276 (section 7.51)
 - Repealed both the state and local sales and use tax refund for LEAs
 - Effective for all purchases made after July 1, 2005
 - Local refund was reinstated in S.L. 2006-66 to reflect original legislative intent to repeal only the state tax refund
 - Instituted transfer from Department of Revenue to the State Public School Fund (SPSF) in its place
 - Transfer started in Fiscal Year 2006-07
 - Transfers made quarterly in the amount of:
 - $\frac{1}{4}$ the prior year total adjusted by the percentage change in total state tax collections

Eligibility for Other Education Providers

- Community Colleges
 - Ineligible for sales and use tax refund
- UNC System
 - Not eligible for full refund prior to 2003
 - S.L. 2003-431 changed the refund process to an exemption for “state agencies”
 - State agency defined for sales and use tax purposes as a unit of the executive, legislative or judicial branch of State government, including UNC
 - Local boards of education or local boards of trustees for the Community College System were not included as a state agency

Entities Eligible for the Refund

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| <p>(1) A county.</p> <p>(2) A city as defined in G.S. 160A-1.</p> <p>(2a) A consolidated city-county as defined in G.S. 160B-2.</p> <p><i>(2b), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.</i></p> <p>(3) A metropolitan sewerage district or a metropolitan water district in this State.</p> <p>(4) A water and sewer authority created under Chapter 162A of the General Statutes.</p> | <p>(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.</p> <p>(6) A sanitary district.</p> <p>(7) A regional solid waste management authority created pursuant to G.S. 153A-421.</p> <p>(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.</p> |
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Eligible Entities Part II

(9)A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.

(10)A regional council of governments created pursuant to G.S. 160A-470.

(11)A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12)A regional planning commission created pursuant to G.S. 153A-391.

(13)A regional sports authority created pursuant to G.S. 160A-479.

(14)A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a)A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the Gen. Statutes.

(15)A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

Eligible Entities Part III

(16)A local airport authority that was created pursuant to a local act of the General Assembly.

(17)A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18)Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.

(19)Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.

(20)A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.

(21)The University of North Carolina Health Care System.

(22)A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes.

Fiscal Trends after Repeal

- LEAs are transferring capital expenditures to counties to make items subject to refund
 - In school districts with a good relationship between school board and county commission
 - Reports of significant costs related to transfer of property and contracts between school board and county
- Diminishing claims for local refunds as more activity is moved to the county level

Fiscal Year	Local Refund (35.71%)	State Tax Amount (64.29%)
2005-06	\$23,691,622	\$42,652,881
2006-07	\$20,978,909	\$37,769,086
2007-08	Available mid to late Oct.	N/A

Fiscal Trends after Repeal, Part II

- Department of Revenue transfers to State Public School Fund were much greater than 2006-07 Budgeted amount (\$33,300,000)

Fiscal Year	SPSF Transfer
2006-07	\$45,741,277
2007-08	\$46,860,032
2008-09**	\$46,300,000

** 2008-09 amount reflects certified budget

- DoR transfer designed to redirect forgone refund amount back through SPSF to public schools
 - Diminished LEA local refund claims suggest the transfer is greater than the foregone refund

Potential Fiscal Impact of Reinstating Refund

- FRD published a fiscal note for H. 2137 v1 (School Construction Optimization Act)
 - Bill would provide a sales and use tax exemption to LEAs beginning on January 1, 2009
 - It would also repeal the Revenue transfer

	(\$ In Millions)				
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>
REVENUES					
End Transfer to Public School Fund	24.7	54.4	57.8	61.2	64.7
LEA State Sales and Use Tax Exemption	(21.5)	(46.3)	(47.6)	(49.2)	(51.2)
Net General Fund Impact	3.2	8.2	10.2	11.9	13.5

Issues to Consider

- Phase-In
 - An FRD analysis suggests that county sales and use tax refunds grew by 11% from FY 2005-06 to FY 2006-07 while LEA refunds went down 9%
 - Considering that State and local public school funding was stable in 2006-07, significant transfer likely took place
 - There will likely be a lag in moving eligible purchases back from the county level to LEA
- Potential LEA savings
 - Fiscal note only examines General Fund impact, but there would likely be some local savings associated with ending transfers from school boards to counties
 - No estimate of potential local savings at this time

Issues to Consider, Part II

- Comparison of refund and exemption
 - Would have a similar overall fiscal impact, with timing exceptions
 - Qualifying purchases would be made in the fiscal year prior to an initial refund, so State would not pay claims until the next fiscal year
 - Roughly speaking, an exemption would “come online” one year before a refund, but total claims should not vary greatly
- Rescinding the DoR transfer would create a hole in the State Public School Fund
 - If the transfer was rescinded, an additional \$46.3 million (in FY 2008-09) of General Fund monies or reductions to SPSF expenditures would be needed