

**In The Matter of the Petition of "Q" Company  
for a Declaratory Ruling**

**DOC #2035, Effective May 14, 1982**

Pursuant to RSA 541-A:8 and Rev 104.04, New Hampshire Code of Administrative Rules, the "Q" Company (hereinafter referred to as "The Fund"), a self-funded trust established to provide unemployment compensation benefits for employees of municipalities and other political subdivisions of the State of New Hampshire, has petitioned the Department of Revenue Administration for a declaratory ruling with respect to the taxability of income received by the Fund under Chapter 77, Taxation of Income and the determination of The Fund as a business organization under Chapter 77-A, the Business Profits Tax and its requirement to file tax returns under that Chapter. Through its counsel, the Petitioner represents the following:

1. The Fund is established to provide unemployment compensation benefits for employees of municipalities and other political subdivisions of the State of New Hampshire.
2. All contributions to the Fund and income of the Fund not needed to pay claims, excess insurance premiums and administrative expenses are returned to the participating employees.
3. The Internal Revenue Service has ruled (a copy of the ruling accompanied the petition) that the Fund is an instrumentality of the participating municipalities and political subdivisions and is exempt from FICA and FUTA taxes. Further, the ruling holds that, pursuant to Section 115 of the Internal Revenue Code, the income of the Fund is excludable from gross income for Federal Income Tax purposes.

In view of the foregoing representations, and specifically based upon them, the Department of Revenue Administration states the following:

1. Section 8 of RSA 77 provides, in part, that income or profits which is received by any trustee for the use of the state or any of its political subdivisions shall not be taxed directly or indirectly under RSA 77.
2. Section 1, subsection I of RSA 77-A, as amended by Ch. 445:1, Laws of 1981 defines a "business organization" as any enterprise, whether corporation, partnership, proprietorship, association, business trust, real estate trust or other form of organization, organized for gain or profit, carrying on any business activity within the state except such enterprises as are expressly made exempt from income taxation under The United States Internal Revenue Code (1954) as amended.
3. Under Rev 301.03 (a) New Hampshire Code of Administrative Rules, effective May 5, 1982, an exempt business organization is one which is made exempt from taxation under Internal Revenue Code Section 501. Rev 301.03 (b) provides that a business organization whose income is partially exempt from tax under various Internal Revenue Code Sections, shall be exempt from tax only to the extent of such income unless otherwise provided by New Hampshire statutes.
4. Section 1, subsection VI of RSA 77-A provides that "gross business income" means all income for federal income tax purposes from whatever source derived in the conduct of business activity. Section 6, subsection I of RSA 77-A provides that every business organization having "gross business income" in excess of \$12,000 as defined by RSA 77-A:1, VI during the taxable period, shall as of a prescribed filing date, make a return to the commissioner.
5. As stated in the Internal Revenue Service ruling of March 8, 1982 the Fund is classified as a corporation subject to federal income taxation under subtitle A (except charitable and other

organizations with unrelated business income and certain foreign corporations) and is required to file a federal income tax return regardless of whether it has taxable income or regardless of the amount of its gross income.

Wherefore, under the specific circumstances represented and in conformity with the statutes, rules and regulations cited herein, the Department of Revenue Administration hereby rules that:

(a) the income of the Fund will not be subject to tax under Chapter 77 of the Revised Statutes Annotated inasmuch as the income is received by a trustee for the benefit of a municipality or a political subdivision of the State of New Hampshire and as such is non-taxable income within the meaning of Section 8 of RSA 77.

(b) the Fund is deemed to be a "business organization" within the meaning of section 1, subsection I of RSA 77-A inasmuch as it is engaged in business activity within the state for gain or profit and is not expressly exempt from tax under Section 501 of the U.S. Internal Revenue Code.

(c) the Fund's gross business income, as defined in RSA 77-A:1, VI is to be determined net of any gross income excludable under Internal Revenue Code Sec. 115 and if the amount so determined is not in excess of \$12,000, there will be no requirement to file a New Hampshire Business Profits Tax return as provided in RSA 77-A:6, I.

Lloyd M. Price, Commissioner