

**New Hampshire Department of Revenue Administration
109 Pleasant Street, Concord, NH 03301**

**TECHNICAL INFORMATION RELEASE
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A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Central Tax Services at (603) 230-5920.

**Reporting the Sale or Exchange of an Interest in a Business Organization In Accordance with
RSA 77-A:4, XIV**

Senate Bill 342 (Chapter 300, Laws of 2016) repeals and reenacts RSA 77-A:4, XIV relative to how a business organization treats the sale or exchange of an ownership interest which results in an increase in basis of assets under Federal law.

Under current law, when an interest or beneficial interest in a business organization is sold or exchanged, the business organization must make an addition to gross business profits of an amount equal to the net increase in the basis of all underlying assets transferred or sold.

SB 342 eliminates the requirement that a business organization make an addition to gross business profits when an interest or beneficial interest in the business organization is sold or exchanged in an amount equal to the net increase in the basis of all underlying assets. Accordingly, SB 342 amends RSA 77-A:4, XIV to require that any portion of the annual depreciation or amortization attributable to the increase in basis from the sale of an ownership interest federally shall be added back to the gross business profits of the business organization and that the gain or loss on the sale or disposition of the asset shall be calculated without regard to the basis increase recognized federally.

However, SB 342 further amends RSA 77-A:4, XIV to provide that the business organization may make an irrevocable election to recognize the basis increase for any particular sale or exchange. If the irrevocable election is made, the business organization must make an addition to gross business profits in an amount equal to the net increase in the basis of its assets in the tax period when the sale or exchange of the ownership interest occurs. The business organization may then deduct against gross business profits any annual depreciation or amortization attributable to the increased basis. If this election is made, the gain or loss on the sale or disposition of an asset shall be calculated taking into consideration the basis increase.

SB 342 is applicable to the sale or exchange of an interest in a business organization occurring on or after January 1, 2016.

For taxpayers utilizing the Department's 2016 Business Profits Tax Forms, all forms will be updated to accommodate reporting the information necessary to administer RSA 77-A:4, XIV for both electing and non-electing taxpayers.

For taxpayers utilizing the Department's 2015 Business Profits Tax Forms to report a sale or exchange transaction occurring on or after January 1, 2016 (such as taxpayers required to file a short period return or taxpayers with a fiscal year), the forms reflect the law as it existed prior to SB 342 being signed into law. Taxpayers needing to report a sale or exchange transaction occurring on or after January 1, 2016 utilizing the Department's 2015 Business Tax Forms shall file an addendum to their return as follows:

Electing Taxpayers

Taxpayers making an election to recognize the basis increase associated with the sale or exchange of an interest in the business organization pursuant to RSA 77-A:4, XIV (b) shall file a signed statement indicating that they are making an irrevocable election to recognize the basis increase for a sale or exchange occurring on or after January 1, 2016. The taxpayer shall make the addition to gross business profits required by RSA 77-A:4, XIV (b)(1) on the following line on the appropriate Business Profits Tax return: NH-1041, Line 6(h); NH-1065, Line 6(i); NH-1120, Line 6(i); NH-1120-WE, Line 12(j).

Non-Electing Taxpayers

Taxpayers not making an election to recognize the basis increase associated with the sale or exchange of an interest in the business organization pursuant to RSA 77-A:4, XIV (b) shall file a schedule reporting the following information:

1. The amount of the increase in the basis of assets federally due to the sale or exchange of an interest in the business organization;
2. The amount required to be added to gross business profits equal to the annual depreciation or amortization attributable to the increase in the basis of the assets for federal income tax purposes pursuant to RSA 77-A:4, XIV (a)(1), if applicable; and
3. The amount required to be added to gross business profits upon the sale or exchange of assets require to account for the basis recognized federally but not for New Hampshire purposes pursuant to RSA 77-A:4, XIV (a)(2), if applicable.

Non-electing taxpayers shall report items two and three above as an adjustment to gross business profits on the following lines of the taxpayer's Business Profits Tax return: NH-1041, Line 6(h); NH-1065, Line 6(i); NH-1120, Line 6(i); NH-1120-WE, Line 12(j).

If you have questions about properly reporting the sale or exchange of an interest in a business organization in accordance with RSA 77-A:4, XIV, please contact Central Tax Services at (603) 230-5920.

Additional information about the BPT can be obtained by referencing RSA 77-A and N.H. Code of Admin. Rules Rev 300, which can be accessed through the Department's [website](#).

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301 or by contacting them at (603) 230-5000.