

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department for 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.)

The purpose of this information release is to advise municipal officials of the Supreme Court's decision regarding the Excavation Activity Tax. Questions should be directed to the NH Department of Revenue Administration, Property Appraisal Division, PO Box 457, Concord, NH 03301 or by telephone at (603) 271-2687.

SUPREME COURT RULING

On November 26, 2001 the New Hampshire Supreme Court issued a ruling in the case of ***Nash Family Investments v. Town of Hudson and Ballinger Properties, et. al. v. Town of Londonderry***. In that case, the Court ruled that the method of valuing property subject to the Excavation Activity Tax as set forth in RSA 72-B:12, III was unconstitutional. Counsel for the Towns of Hudson and Londonderry has filed a motion for reconsideration of the Court's decision. The motion is for a clarification of the application of the decision to other taxpayers and the remedy to be provided by the Superior Court on remand. The New Hampshire Attorney General's Office has filed a response supporting the Towns of Hudson and Londonderry's request for reconsideration of the Court's decision. It is also expected that legislation will be proposed to correct the unconstitutional aspect of RSA 72-B:12, III.

In light of the Court's ruling, the Department offers the following recommendations to municipal officials responsible for administering the Excavation Activity Tax:

- Revised tax bills should be issued to affected taxpayers under RSA 72:6 and RSA 72:13 to tax property that was previously taxable under the Excavation Activity Tax before it was ruled unconstitutional. The revised tax bills should indicate that the property previously taxable under the Excavation Activity Tax is now subject to taxation under RSA 72:6 and RSA 72:13. Municipal officials should review the appraisals of this property to see whether they were based upon the fair market value of the properties in accordance with the Supreme Court's ruling. Appraisals that did not utilize a generally accepted method of arriving at fair market value should be revised using such a method of valuation.
- Municipal officials should advise taxpayers that the Court's decision did not affect the Excavation Tax.
- Municipal officials should advise taxpayers seeking a reduction in their assessments to use the normal abatement process.

The Department will advise municipal officials in the event of the passage of any corrective legislation or further rulings by the Court.

FAQ's for TIR 2001-015

- Can municipalities collect delinquent 2001 Excavation Activity Tax?

- No. Since the Supreme Court declared the tax unconstitutional, municipalities can not collect the tax.
- Can municipalities collect delinquent '98, '99, '00 Excavation Activity Tax?
 - We don't know at this time. We are requesting clarification from the court whether this decision is prospective only, or applies to all Excavation Activity Taxes assessed since 1998.
- The 2001 bills have gone out. What should municipalities do now?
 - Municipalities should issue a revised bill (even if the amounts are the same) under RSA 72:6 and 72:13 and abate the 2001 excavation activity tax bill assessed under RSA 72-B: 4, II and RSA 72-B: 12, III..
- What if the taxpayer has already paid the 2001 RSA 72-B:4, II and 72-B:12, III Excavation Activity Tax bill?
 - Municipalities should issue a tax bill under RSA 72:6 or 72:13 and advise taxpayers that any payments already made will be applied to the new bill.
- How do we arrive at the new values?
 - If the town is assessing in accordance with the court ruling, then the new values will be the same when assessed under RSA 72:6 and 72:13. If your assessors have further questions, have them call Guy Petell at Property Appraisal, 271-2687.
- When should revised 2001 bills under RSA 72:6 and 72:13 be issued?
 - As soon as possible, but no later than March 31, 2002.
- What is the risk if municipalities don't issue new bill under RSA 72:6 and 72:13?
 - Current unpaid Excavation Activity Tax (RSA 72-B:12, III and RSA 72-B:4, II) are uncollectible. Also, those who have already paid the tax may request a refund because the tax is unconstitutional.
- What kind of explanation should municipalities provide with the revised 2001 bills?
 - Advise the taxpayer that this is not a double tax, but rather the tax assessed under RSA 72-B has been declared unconstitutional and will be abated. This new 2001 bill is assessed under the general property tax laws. Any 2001 tax payments will be credited towards this new bill.

Individuals who need auxiliary aids for effective communications in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Property Appraisal Division.