

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

**TECHNICAL INFORMATION RELEASE
TIR 2010-007 Date June 28, 2010**

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 Taxpayer Services at (603) 271-2191.

**Constitutional Challenges to Extension of Interest and Dividends Tax Law
to Distributions from Limited Liability Companies**

The purpose of this Technical Information Release is to explain the process by which a taxpayer may request a refund of 2009 Interest and Dividends Tax based upon a claim of unconstitutionality.

Ordinarily, to obtain a refund of any tax, a taxpayer must submit a request for a refund in writing to the New Hampshire Department of Revenue Administration, stating the specific grounds upon which the request is made. See RSA 21-J:28-a. The request for refund must be made within three (3) years from the due date of the tax or within two (2) years from the date the tax was paid, whichever is later. See RSA 21-J:29, I (b). *However*, where a request for refund is based upon a claim that the tax or any provision thereof is unconstitutional under the federal or state constitution **the request must be made within 120 days of the due date of the tax** upon which the refund is claimed. See RSA 21-J:29, I (d).

For Tax Year 2009, the Interest and Dividends Tax was due April 15, 2010. Therefore, the 120-day deadline to file a request for refund based upon a constitutional challenge is August 13, 2010. A request for refund based upon a constitutionality claim must be made in one of two ways:

- 1) The taxpayer files a letter with the Department requesting a refund of the amount reported as taxable distributions from a limited liability company, partnership or association, indicating that the reason for the request is based on a claim that the tax is unconstitutional; or
- 2) The taxpayer files an Amended Interest and Dividends Tax return requesting a refund with the words "Unconstitutional Claim" clearly printed on the top of the return. Any letters or amended returns should be mailed to the N.H. Department of Revenue Administration, Document Processing Division, PO Box 1004, Concord, NH 03302-1004. Any such claim for refund for the 2009 Tax Year must be postmarked no later than August 13, 2010.

Typically, after a request for refund is filed, the Department will examine it and either issue a Notice of Refund or issue a Notice of Denial. If the taxpayer's request for a refund is denied, the taxpayer may appeal the denial by filing a written Petition for Reconsideration with the Department's Hearings Bureau as provided in RSA 21-J:28-b and N.H. Code of Admin. Rules, Rev. Chapter 200.

Please note, there is a constitutional challenge already pending in the Hillsborough County (North) Superior Court (Wennin, LLC v. State of New Hampshire, Dept. of Revenue Admin. Docket No. 10-E-0048) with respect to Chapter 144, Laws of 2009, which made distributions from limited liability companies, partnerships and associations with non-transferable shares subject to the Interest and Dividends Tax. In light of that pending court case, and in the interest of efficient tax administration, the Department and the taxpayer can agree, in writing, to hold action upon the taxpayer's request for refund pending the outcome of the court case. If a taxpayer agrees to hold action on its request for refund pending the outcome of the court case, the taxpayer should clearly indicate the same, in writing, to the Department. Agreeing to hold action upon the request for refund pending the outcome of litigation does not affect a taxpayer's rights. At any time, the taxpayer may request that its request for refund be removed from this held status and processed according to regulations.

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) 271-2191.