

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 Taxpayer Services at (603) 271-2191.

Summary of Changes to the Personal Compensation Deduction RSA 77-A:4, III

The New Hampshire Department of Revenue Administration is providing the following summary of the changes to RSA 77-A:4, III in response to feedback obtained from both tax preparers and tax forms software developers in preparation of the 2010 Tax Year filing.

House Bill 1607 (Chapter 324, Laws of 2010 – effective July 20, 2010) amended the personal compensation deduction statute, RSA 77-A:4, III, to more closely follow the Internal Revenue Code (IRC) §162(a)(1) as follows:

- Whether a deduction is “reasonable” is now specifically linked to the “ordinary and necessary” provisions of IRC §162(a)(1);
- The \$6,000 minimum deduction allowance under RSA 77-A:4, III (b) was eliminated;
- A deduction for prior period compensation is now allowable, assuming it meets the standards established under the federal statute;
- A personal compensation deduction can create or increase a net operating loss, but only to the extent the compensation is actually paid out;
- A personal compensation deduction of up to 15% of the gross selling price of a business asset may be taken as a commission on the sale of the asset; and
- All of the aforementioned changes are effective for tax periods beginning on or after January 1, 2010, which applies to calendar year 2010 filers.

Although not available for the 2010 tax year, HB 1607 also created a “record-keeping” safe harbor provision. The safe harbor is available beginning with the 2011 tax year. It provides that as long as the business organization demonstrates that at least one owner has provided services to the business organization, a compensation deduction of up to \$50,000 may be taken without a challenge to the deduction’s reasonableness. A personal compensation deduction in excess of \$50,000 must be supported by adequate records.

NOTE: Neither the \$50,000 record-keeping safe harbor, nor the \$6,000 minimum deduction allowance is available for tax year 2010.

HB 1607 also added a new subparagraph RSA 77-A:4, III (e), which *requires* a schedule (NH BPT-RCD Allocation Schedule) to be attached to the tax return of any partnership or proprietorship claiming a personal compensation deduction. Therefore, any taxpayer who claims a compensation deduction for tax year 2010 must file the NH BPT-RCD with their New Hampshire business tax return. If the form is not attached, or is incomplete, the return is not complete or timely filed.

Visit the Department’s web site at www.nh.gov/revenue/forms to obtain forms and information or call our forms line at (603) 271-2192. Questions regarding any new tax form may be directed to the following email: formscmte@rev.state.nh.us.

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.