

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

**TECHNICAL INFORMATION RELEASE
TIR 2012-002 Date July 10, 2012**

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.

New Hampshire 2012 Legislative Session in Review

The purpose of this Technical Information Release (TIR) is to provide taxpayers and tax practitioners with a convenient reference guide of relevant statutory changes made during the 2012 Legislative Session by the New Hampshire General Court impacting various taxes administered by the New Hampshire Department of Revenue Administration. This TIR is for informational purposes only and is intended to provide a summary or synopsis of enacted legislation. It is not intended to be relied upon as full and complete text or as a substitute for the actual state law. Please refer to the applicable statute and rules to determine how this information applies to specific persons or situations.

BUSINESS TAX:

Senate Bill 372 (Chapter 287, Laws of 2012) establishes an Education Tax Credit against the Business Profits Tax (RSA Chp. 77-A) and/or the Business Enterprise Tax (RSA 77-E) for business organizations and business enterprises that contribute to scholarship organizations, which award scholarships to be used by students to defray educational expenses. For each contribution made to a scholarship organization, a business organization or business enterprise may claim a tax credit equal to 85% of the contribution against the Business Profits Tax or against the Business Enterprise Tax, or apportioned against both, provided the total tax credit granted against both shall not exceed the maximum Education Tax Credit allowed. The Education Tax Credit is not deemed taxes paid for the purposes of RSA 77-A:5, X. The Department of Revenue Administration shall not grant an Education Tax Credit without a Scholarship Receipt.

The aggregate amount of Education Tax Credits to be issued in the first year is capped at \$3,400,000 (for total contributions of \$4,000,000). The aggregate amount of Education Tax Credits to be issued in the second year is capped at \$5,100,000 (for total contributions of \$6,000,000). The aggregate amount of Education Tax Credits to be issued in the third year (and beyond) is contingent upon whether or not the total amount of donations used for scholarships exceeds 80% of the tax credits allowed in the prior year and if the Community Development Finance Authority (CDFA) provides confirmation to the Department of Revenue Administration that the CDFAs have received sufficient contributions. If the 80% threshold is exceeded and the

CDFA has received sufficient contributions, then the Education Tax Credits aggregate amount of credits available would increase by 25%. For the third year this could result in an increase of the Education Tax Credits available to \$6,375,000 (for total contributions of \$7,500,000).

Effective: June 27, 2012. The first program year of the Education Tax Credit pursuant to RSA 77-G shall begin on January 1, 2013.

Amended: new paragraph RSA 77-A:5, XV; new section RSA 77-E:3-d and new chapter RSA 77-G.

House Bill 242 (Chapter 71, Laws of 2012) changes the applicability date for which the increase in the amount of Net Operating Loss (NOL) that may be generated in a tax year would increase from \$1,000,000 to \$10,000,000. Currently, the NOL statute reads, “On or after July 1, 2013, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$10,000,000.” (emphasis added) HB 242 changes the date to “On or after January 1, 2013...” (emphasis added).

Effective: May 23, 2012

Amended: new paragraph RSA 77-A:4, XIII(e)

House Bill 518 (Chapter 116, Laws of 2012) changes the prospective repeal date for the Research and Development Tax Credit from July 1, 2013 to July 1, 2015.

Effective: August 4, 2012

Amended: Chapter 271:7, Laws of 2007 (referring to RSA 77-A:5, XIII)

House Bill 1221 (Chapter 253, Laws of 2012) puts into statute the current practice of allowing a taxpayer to apply the Business Enterprise Tax credit against the Business Profits Tax on a quarterly basis when making estimated tax payments.

Effective: July 1, 2012

Amended: RSA 77-A:7, I(a)

House Bill 1418 (Chapter 279:1 and 279:10, Laws of 2012) Section 1 increases the Business Enterprise Tax filing thresholds under RSA 77-E:5. Under the new law, every business enterprise having gross business receipts in excess of \$200,000 during the taxable period or the enterprise value tax base greater than \$100,000 shall, on or before the 15th day of the 3rd month in the case of enterprises required to file a United States corporation tax return, and the 15th day of the 4th month in the case of all other business enterprises, following expiration of its taxable period, make a return to the Commissioner. The thresholds of gross business receipts in excess of \$200,000 and enterprise value tax base greater than \$100,000 shall be adjusted biennially for inflation and rounded to the nearest \$1,000 by the Commissioner of the Department of Revenue Administration using the Consumer Price Index, Northeast Region as defined by RSA 77-E:1, X.

Section 1 also amends the Business Enterprise Tax threshold providing that if the estimated tax is less than \$260, a declaration need not be filed and further provides that a declaration shall be filed at the end of any quarter thereafter in which estimated tax exceeds \$260.

Section 10 creates a new section, RSA 77-A:3-a “Expense Deductions,” under the Business Profits Tax that allows an expense in determining gross business profits before net operating loss and special deductions, wherein a business organization shall calculate expense deductions not to exceed \$25,000 as permitted under Internal Revenue Code Section 179 using the version of the Internal Revenue Code in effect as of January 1, 2012. Current law allows a \$20,000 deduction.

Section 10 will apply to any qualifying Section 179 property as that term is defined in the Internal Revenue Code with respect to property placed into service on or after January 1, 2012.

***Effective:** Section 1 is effective for taxable periods ending on or after December 31, 2013. Section 10 is effective June 21, 2012 for any qualifying Section 179 property as that term is defined in the Internal Revenue Code with respect to property placed into service on or after January 1, 2012.*

***Amended:** RSA 77-E:5 and new section RSA 77-A:3-a*

INTEREST & DIVIDENDS TAX:

Senate Bill 326 (Chapter 286:3 through 286:8, Laws of 2012) Sections 3 through 8 eliminate the taxation of trusts under the Interest and Dividends Tax, RSA Chp. 77. Under the new law, interest and dividend income received by estates held by trustees treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their grantor, to the extent that the grantor is an inhabitant or resident of New Hampshire. Income reported by, and taxed federally as interest or dividends to, a trust beneficiary who is an individual inhabitant or resident of New Hampshire with respect to distributions from a trust that is not treated as a grantor trust under section 671 of the United States Internal Revenue Code shall be included as interest or dividends in the return of such beneficiary and subject to taxation in accordance with the provisions of RSA Chp. 77.

***Effective:** Sections 3 through 8 are effective June 27, 2012 and apply to taxable periods ending on or after December 31, 2013.*

***Amended:** RSA 77:3, I(b) and (c), RSA 77:4, III, RSA 77:10, RSA 77:13, RSA 77-14-d and repeals RSA 77:12.*

COMMUNICATIONS SERVICES TAX:

House Bill 1418 (Chapter 279:4 through 279:8, Laws of 2012) Section 5 excludes “Internet access” from the definition of “communications services” under RSA 82-A:2, III. Section 6 adds the definition of “Internet” and “Internet access” to RSA 82-A:2. The definition of Internet access includes both services or features that are considered to be part of Internet access, as well as services or features which are not included under the definition of Internet access.

Section 7 excludes charges for Internet access from the definition of “gross charge” under RSA 82-A:2. The definition of “gross charge” is used to determine the basis for which the Communications Services Tax (CST) rate is applied. This section excludes Internet access from the CST. Currently, Internet access is only taxed when providers do not disaggregate or unbundle their charges in order to only include the taxable two-way communication portion.

Section 8 instructs the Department of Revenue Administration not to enforce any existing assessments, to promptly withdraw any pending assessments and prohibits the Department from issuing any additional assessments with respect to Internet access and CST.

Effective: June 21, 2012

Amended: RSA 82-A:1, RSA 82-A:2, III(b) and (c), RSA 82-A:2, V and new paragraphs RSA 82-A:2, XXV and XXVI.

MEALS & RENTALS TAX:

House Bill 1204 (Chapter 73:3 through 73:6, Laws of 2012) Section 3 clarifies that a Meals and Rentals Operator's License shall remain valid during the pendency of an appeal of a refusal to renew the Meals and Rentals Operator's License.

Sections 4 and 5 clarify in all applicable sections of RSA Chp. 78-A that the Meals and Rentals Tax rate is 9%.

Section 6 simply clarifies the timing of filing a surety bond to be *after* a hearing, not before.

Effective: May 23, 2012

Amended: RSA 78-A:5, II, RSA 78-A:7, I(a), RSA 78-A:7, IV and RSA 78-A:8-b, I.

RSA CHAPTER 21-J ADMINISTRATIVE:

Senate Bill 307 (Chapter 154, Laws of 2012) addresses taxpayers who have been, or may be in the future, affected by fraudulent investment schemes (Ponzi Schemes). The new law provides mechanisms for a taxpayer to request a refund for taxes paid on fictitious income, particularly when that request may be outside the statute of limitations.

Under the new law, any taxpayer may petition the Department of Revenue Administration for a refund of overpayment of taxes resulting from a fraudulent investment scheme for which an amended federal tax return has been filed claiming a theft loss for the fraudulent investment scheme under Internal Revenue Code section 165. The petition for refund of overpayment of taxes shall be made within 180 days of the taxpayer filing the amended federal tax return.

“Fraudulent investment scheme” is defined to mean “. . . a transaction in which the party perpetrating the fraud receives cash or property from investors, purports to earn income for the investors, and reports to the investors income amounts that are wholly or partially fictitious. In a fraudulent investment scheme the party perpetrating the fraud criminally appropriates some or all of the investors' cash or property.”

If, after review, the Department issues a notice of denial, the taxpayer may file an appeal with the Department's Hearings Bureau as provided in RSA 21-J:28-b.

Effective: June 7, 2012

Amended: new section RSA 21-J:28-e and new subparagraph RSA 21-J:29, I(e).

House Bill 1302 (Chapter 14:1, Laws of 2012) Section 1 amends RSA 21-J:32, the Penalty for Underpayment of Estimated Taxes, by changing the term “taxable year” to “taxable period” and including a definition of the term “taxable period” for that section of the statute. The changes to RSA 21-J:32 clarify the statute with respect to the penalty for underpayment of estimated tax for tax periods that are less than a full calendar or fiscal year (short period).

Effective: December 31, 2012 and applicable to taxable periods ending on or after December 31, 2012.

Amended: RSA 21-J:32, I and II and new paragraph RSA 21-J:32, II-a.

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.