APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number **2022-87** Rule Number **Rev 900**

1. Agency Name & Address:

   Department of Revenue Administration
   P.O. Box 457
   Concord, NH 03302-0457

2. RSA Authority: **RSA 21-J:13, I**
3. Federal Authority:
4. Type of Action:
   - ☐ Adopt
   - ☐ Amendment
   - ☐ Repeal
   - ☒ Readoption
   - ☒ Readoption w/amendment

5. Short Title: **Interest and Dividends Tax**

6. Contact person for copies and questions:

Name:	**Beth A. McDaniel**	Title:	**Paralegal**
Address:	**Legal Bureau** **P.O. Box 457** **Concord, NH 03302-0457**	Phone #:	**603.230.5027**

7. Yes ☐ No ☒ Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on **May 19, 2022 and again on May 26, 2022**

SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

11. Yes ☐ N/A ☒ The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

12. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

CHAPTER Rev 900 INTEREST AND DIVIDENDS TAX

REVISION NOTE:

Document #9843, effective 12-23-10, adopted Rev 901.09 defining "Usual place of business", and readopted with amendments, readopted with amendments and renumbered, or repealed various other rules in Chapter Rev 900. Document #9843 also renumbered, but did not readopt, various existing rules in Chapter Rev 900 due to the repeal of other rules. The following rules, which had been adopted by Document #9658, effective 2-24-10, were repealed by Document #9843:

Rev 901.06 defining "Debt financed by equity."
Rev 901.10 defining "Equity."
Rev 901.20 defining "Total undistributed revenues."
Rev 903.07 Guaranteed Payments for Use of Capital.
Rev 903.10 Distribution as Compensation for Services Provided.
Rev 903.11 Support for Claim on Non-Taxable Distribution.

The following rules were readopted with amendments and renumbered by Document #9843:

Former Number	New Number
Rev 901.08 defining "Dividends"	Rev 901.07 defining "Dividend".
Rev 901.21 defining "Transferable."	Rev 901.18 defining "Transferable."

The source notes for rules renumbered by Document #9843 indicate the former rule number prior to renumbering by Document #9843. The document numbers and effective dates in the source notes prior to Document #9843 for such rules apply to the rule under that former rule number. The rules which were renumbered, but not readopted, by Document #9843 do not indicate the new effective date of 12-23-10.

PART Rev 901 DEFINITIONS

Readopt Rev 901.01 effective 10-24-12 (Document #10211) to read as follows:

Rev 901.01 "Accumulated profits" means the total undistributed earnings of the organization from whatever source derived.

Readopt Rev 901.02 effective 3-11-15 (Document #10795) to read as follows:

Rev 901.02 "Association" means an unincorporated group of 2 or more persons that is not a legal entity separate from the persons who compose it.

Readopt Rev 901.03 – Rev 901.21 effective 10-24-12 (Document #10211), and renumbered effective 3-11-15 by (Document 10795), to read as follows:

Rev 901.03 A beneficial interest in which is not represented by transferable shares", as used in RSA 77:3, I(b), means an interest in an organization:

(a) Where the shares, equitable interests and all ownership rights are not transferable without obtaining prior member approval or causing a dissolution of the organization; and

(b) Which is not a:

(1) Business trust;

(2) Common law trust;

(3) Massachusetts trust;

(4) Real estate investment trust;

(5) Corporation;

(6) Joint stock company; or

(7) Homeowners or condominium association.

Rev 901.04 A "beneficial interest in which is represented by transferable shares," as used in RSA 77:4, III, means an interest in an organization:

(a) Which is a:

(1) Business trust;

(2) Common law trust;

(3) Massachusetts trust;

(4) Real estate investment trust; or

(5) Homeowners or condominium association;

(b) Where property is placed in the hands of a trustee, who:

(1) Acts apart from the beneficiaries; and

(2) Manages and deals with the property, as principal, for the use and benefit of the beneficiaries who hold equitable interests; and

(c) Where the shares, equitable interests and all ownership rights are freely transferable without the necessity of securing prior member approval or causing a dissolution of the organization.

Rev 901.05 "Capital" as used in RSA 77:7, means the amount personally invested in the organization by the shareholders or interest-holders in exchange for their interest in the organization.

Rev 901.06 "Corporation" means an artificial person or legal entity created under the laws of incorporation of any state or foreign country without recognizing the distinctions between types of corporations such as those drawn in the Internal Revenue Code of 1986 between S corporations and other corporations.

Rev 901.07 "Department" means the Department of Revenue Administration.

Rev 901.08 "Distributions" means a transfer of property from an organization to its shareholders or interest-holders solely as a result of their ownership interest in such organization.

Rev 901.09 "Dividend" means an amount of property distributed, with respect to their ownership interest, other than in liquidation of the organization, to shareholders or interest-holders of an organization from:

(a) Current year profit; or

(b) Accumulated profits of such entity.

Rev 901.10 "Earnings" means the excess income received by an organization after the payment of its expenses.

Rev 901.11 "Fair market value" means the price property would command if:

(a) Sold by a seller who is willing, but not compelled, to sell; and

(b) Purchased by a purchaser who is willing, but not compelled, to purchase.

Rev 901.12 "Federal identification number" means:

(a) Social security number;

(b) Federal employer identification number;

(c) Preparer tax identification number;

(d) Individual tax identification number; or

(e) Department identification number.

Rev 901.13 "Interest" means the amount of money or other property actually or constructively received as compensation for the use of money measured at the fair market value of the property received.

Rev 901.14 "Internal Revenue Code (IRC)" means the United States Internal Revenue Code of 1986, as amended.

Rev 901.15 "Organization" means:

(a) A corporation;

(b) A business trust;

(c) An estate;

(d) A trust;

(e) A partnership;

(f) An association;

(g) Two or more persons having a joint or common business interest;

(h) Limited liability company; or

(i) Any other legal or commercial form of business other than a sole proprietorship not organized as a single member limited liability company.

Rev 901.16 "Part year resident" means a person who has permanently:

(a) Established residency in New Hampshire during the year; or

(b) Abandoned residency in New Hampshire during the year.

Rev 901.17 "Part year return" means a return filed by a part year resident.

Rev 901.18 "Stock dividend" as used in RSA 77:4, II and III means a distribution paid to shareholders in newly issued stock of the same organization.

Rev 901.19 "Tax year" means the calendar year, the fiscal year or that portion of a year for which the taxpayer's federal income tax return is filed.

Rev 901.20 "Transferable", as used in RSA 77:3, I(b), means the ability of a shareholder or interest holder in an organization to dispose of all rights incidental to his or her equitable interest without a required approval of the disposition by another beneficiary, and without dissolution of the organization itse

Rev 901.21 "Usual place of business", as used in RSA 77:14-a and 14-c, means the primary place of business or a regularly used place of business of an organization.

PART Rev 902 RESIDENCY AND TAXABILITY OF SPECIAL ENTITIES

Readopt Rev 902.01 – Rev 902.05 effective 10-24-12 (Document #10211) to read as follows:

Rev 902.01 Residency, Establishment of Intent. An individual's intent to establish residency by an ongoing physical presence within New Hampshire which is not transitory in nature, shall be evidenced by:

(a) Maintaining a home or other living quarters in New Hampshire;

(b) Spending a greater percentage of time in New Hampshire than in any other state;

(c) Having family living with them in New Hampshire;

(d) Advising any federal, state, or local agency that the individual considers herself or himself a resident of New Hampshire;

(e) Being employed or conducting business activity within New Hampshire or at a place to which the individual can readily commute from New Hampshire; or

(f) Registering to vote in New Hampshire.

Rev 902.02 Part Year Residency. A person claiming to be a New Hampshire part year resident shall provide documentation using the same criteria in Rev 902.01, above, showing an intent to reside in another state for a portion of the year.

Rev 902.03 Absence From State.

(a) A person being temporarily absent from his or her state of residence shall not be considered a part year resident.

(b) A temporary absence from the state of residence shall exist when a person is in another state or country on:

(1) An employment assignment of limited duration after which the person returns to his or her regular place of employment or another temporary assignment;

(2) Seasonal trips resulting from a desire to be in a different climate from his or her state of residence;

(3) Trips of varied duration visiting friends, relatives or various parts of the country or world; or

(4) Other similar absences where the person does not effect an establishment of intent to be a New Hampshire resident.

Rev 902.04 New Hampshire Resident Or Inhabitant. Any individual claiming to be an inhabitant or resident of New Hampshire to any state agency or political subdivision of New Hampshire, shall be deemed an inhabitant or resident of New Hampshire for purposes of taxation of income unless the individual can prove, by a preponderance of evidence, that he or she is an actual resident of another jurisdiction.

Rev 902.05 Treatment of Mutual Funds and Their Investors. The taxation of mutual funds and their investors under RSA 77, except such funds that are qualified investment companies under RSA 77-A:1, XXI, and their holders, shall be determined by the status of the investor's shares or interests as either:

(a) Shares which are transferable, in which case:

(1) The mutual fund shall not be subject to the tax; and

(2) The individual investors shall be taxable and required to file tax returns; or

(b) Shares which are not transferable, in which case:

(1) The mutual fund shall be taxable and required to file tax returns; and

(2) The individual investors shall not be subject to the tax as to the interest and dividend income received by the fund until distributed.

Readopt Rev 902.06 effective 10-24-12 (Document #10211), as amended effective 3-11-15 (Document 10795), to read as follows:

Rev 902.06 Mutual Funds.

(a) Mutual funds shall be presumed:

(1) To be organizations incorporated under the laws of New Hampshire or some other state of the United States; and

(2) Comprised of ownership interests that are represented by transferable shares.

(b) Mutual funds not taxable under the provisions of (a) above shall not be required to:

(1) File a return;

(2) Pay a tax; or

(3) Use the allocation of income provisions of RSA 77:12 or RSA 77:14-c.

(c) Investors in mutual funds shall be taxable if they are:

(1) New Hampshire residents;

(2) Executors, deriving their appointment from a court of this state within the scope of RSA 77:3, I(c).

(d) Amounts received from mutual funds by investors, which are reported and taxed federally as dividends, shall be taxable dividends except for:

(1) New Hampshire direct or municipal obligations;

(2) Direct obligations of the United States Government; and

(3) Capital gains realized by the investor through the sale of his or her interest in a mutual fund.

(e) Amounts received from mutual funds by investors on all investments in New Hampshire direct or municipal obligations and direct obligations of the United States Government shall be deemed to be an investment by the investor in such New Hampshire direct or municipal obligations and United States Government obligations and shall not be considered taxable dividends.

(f) Investors receiving distributions from mutual funds that invest in New Hampshire direct or municipal obligations and direct United States obligations and other types of investments shall not include as taxable dividends any amount:

(1) Reported to the investor by the mutual fund as interest from New Hampshire direct or municipal obligations and direct obligations of the United States Government;

(2) Determined by multiplying the total amount received by a fraction:

a. The numerator of which shall be the amount of interest on New Hampshire direct or municipal obligations and direct obligations of the United States Government received by the mutual fund; and

b. The denominator of which shall be the total amount of income received by the mutual fund from all activities; or

(3) Determined by multiplying the total amount received by the mutual fund's percentage of assets invested in New Hampshire direct or municipal obligations and direct obligations of the United States Government.

(g) To rebut the presumption of its organizational status, under (a) above, a mutual fund shall present documentary evidence in a majority of the categories listed in (h) below, with respect to its organizational and operational structure.

(h) The categories evidencing non-corporate structure shall be the absence of:

(1) Limited liability where an investor may lose more than his or her investment in that organization;

(2) Continuity of life, where the organization holding the funds shall not survive after:

a. The sale of shares by interest holders; or

b. The death of interest holders;

(3) The right of the mutual fund to sue and be sued as an entity;

(4) Property ownership, where assets are held in the name of all investors rather than in the fund name; or

(5) Dividends, where profits of the fund are not divided ratably among investors.

(i) In instances where mutual funds are taxable under the provisions of (g) above, the distributions to investors in the mutual fund shall not be taxable dividends and the mutual fund shall:

(1) File a return; and

(2) Apportion the income.

Readopt Rev 902.07 effective 3-11-15 (Document #10795) to read as follows:

Rev 902.07 Partnerships, LLCs, Associations and Trust Beneficiaries.

(a) The interest and dividends tax shall be applied at the:

(1) Entity level for partnerships, LLCs or associations when:

a. The entity has a usual place of business within New Hampshire;

b. Any partner, member or owner is an inhabitant or resident of New Hampshire; and

c. The ownership interest is not represented by transferable shares;

(2) Owner level for partnerships, LLCs or associations when:

a. The entity does not have a usual place of business within New Hampshire;

b. One or more of the partners, members or owners are inhabitants or residents of New Hampshire; and

c. The ownership interest is not represented by transferable shares;

(3) Beneficiary level for trusts not treated as grantor trusts under section 671 of the United States Internal Revenue Code when:

a. The income received by the trust is reported by, and taxed federally as interest and dividends to, trust beneficiaries; and

b. One or more of the trust beneficiaries are inhabitants or residents of New Hampshire; or

(4) Grantor level for trusts treated as grantor trusts under section 671 of the United States Internal Revenue Code when the grantor is an inhabitant or resident of New Hampshire.

(b) The amount of taxable interest and dividend income shall be determined as follows:

(1) All interest and dividends received, which would be taxable if received by a resident individual, shall be taxable to a partnership, LLC or association if:

a. The beneficial interest of the partnership, LLC or association is composed of non-transferable shares;

b. The partnership's, LLC's or association's usual place of business is in New Hampshire; and

c. All of the partnership's, LLC's or association's interest holders are residents or inhabitants of New Hampshire;

(2) A pro-rata portion of the interest and dividends received, which would be taxable if received by a resident individual, shall be taxable to a partnership, LLC or association if:

a. The beneficial interest of the partnership, LLC or association is composed of non-transferable shares;

b. The partnership's, LLC's or association's usual place of business is in New Hampshire; and

c. Some of the partnership's, LLC's or association's interest holders are residents or inhabitants of New Hampshire;

(3) When a partnership, LLC or association is not taxable as an entity and it has beneficial interests composed of non-transferable shares with some interest holders being residents or inhabitants of New Hampshire, then:

a. The interest and dividend income subject to tax shall be:

1. Reported by the resident interest holders; and

2. Imposed on the portion of the distribution which represents interest or dividends received by the entity; and

b. The portion of the distribution that represents interest and dividends shall be determined by multiplying the amount of the actual distribution received by a fraction:

1. The numerator of which shall be the total interest and dividend income received by the entity; and

2. The denominator of which shall be the total amount of gross income received by the entity; or

(4) For trusts not treated as grantor trusts under section 671 of the United States Internal Revenue Code where income received by the trust is reported by, and taxed federally as interest and dividends to, trust beneficiaries when one or more of the trust beneficiaries are residents or inhabitants of New Hampshire, then:

a. The interest and dividend income subject to tax shall be:

1. Reported by the resident beneficiaries; and

2. Imposed on the portion of the distribution which represents interest or dividends received by the trust excluding any deductions used in the computation of the distributive gross income; and

b. The portion of the distribution that represents interest and dividends shall be determined by multiplying the amount of the actual distribution received by a fraction:

1. The numerator of which shall be the total interest and dividend income received by the beneficiary; and

2. The denominator of which shall be the total amount of gross income received by the beneficiary.

Readopt Rev 902.08 effective 10-24-12 (Document #10211) to read as follows:

Rev 902.08 Accounting Method For Determination of Accumulated Profits.

(a) Corporate organizations, including S corporations, shall compute the amount of their accumulated profits in conformity with the provisions of the Internal Revenue Code of 1986, as amended, for the calculation of earnings and profits.

(b) Partnerships, limited liability companies, associations or trusts composed of transferable shares may elect to continuously calculate their accumulated profits in a manner:

(1) Consistent with the calculation of corporate earnings and profits under the Internal Revenue Code of 1986, as amended; or

(2) Which conforms in all respects to generally accepted accounting principles.

(c) The partnership, limited liability company, association or trust shall maintain records showing:

(1) The method selected in (b) above; and

(2) The calculation of the current year and accumulated profits.

(d) If an organization does not maintain records showing the calculation of accumulated profits and a distribution is made to the shareholders or interest holders, the department shall presume there are adequate accumulated profits to treat the distribution as a dividend.

(e) The accumulated profits of a partnership shall be reduced by the amount of compensation paid to the partners and deducted under RSA 77-A:4 if the partnership's accounting records provide evidence as to:

(1) The amount of such compensation deducted; and

(2) The partnership's filing of a business profits tax return for all years in which the partnership's profits are reduced by such deduction.

(f) The accumulated profits of a limited liability company taxed as a partnership or proprietorship shall be:

(1) Reduced by the amount of compensation paid to any member who is a natural person; and

(2) Deducted under RSA 77-A:4 if the limited liability company's accounting records provide evidence as to:

a. The amount of such compensation deducted; and

b. The limited liability company's filing of a business profits tax return for all years in which the limited liability company's profits are reduced by such a deduction.

Readopt Rev 902.09 effective 10-24-12 (Document #10211) to read as follows:

Rev 902.09 Mixed-Share Organizations. With respect to organizations composed of a mixture of share types, the tax status of such organizations and the holders of equity interests in such organizations, shall be determined as follows:

(a) When the majority of the outstanding equity interest in the organization is composed of transferable shares:

(1) Each share shall be deemed a transferable share;

(2) The organization shall not be subject to tax under RSA 77; and

(3) The distributions of profits to any equity interest holder shall be considered a dividend subject to the interest and dividends tax; or

(b) When the majority of the outstanding equity interest in the organization is composed of non-transferable shares:

(1) Each share shall be deemed a non-transferable share;

(2) The organization shall be subject to tax under RSA 77; and

(3) The distribution of profits to any equity interest holder shall not be considered a dividend subject to the interest and dividends tax.

PART Rev 903 INCLUSIONS AND EXCLUSIONS TO INCOME

Readopt Rev 903.01 – Rev 903.08 effective 10-24-12 (Document #10211) to read as follows:

Rev 903.01 Forgiveness of Debt. Forgiveness, in whole or in part, of a shareholder's or interest-holder's debt by the organization shall be a dividend to the shareholder or interest-holder for purposes of the interest and dividends tax to the extent of that organization's accumulated profits.

Rev 903.02 Mutual Fund Dividends. The automatic reinvestment of mutual fund dividends shall:

(a) Not be considered a stock dividend; and

(b) Be fully taxable in the year credited to the shareholder's account.

Rev 903.03 Measurement of Non-Cash Distributions. In instances where property, other than cash, is distributed as a dividend, the computation of the dividend amount received by the shareholder shall be:

(a) Determined by the property's fair market value as of the date of the distribution;

(b) Limited to the amount of the organization's accumulated profits; and

(c) Reduced by the amount of any of the organization's liabilities assumed by the shareholder in connection with such distribution.

Rev 903.04 Deemed Interest.

(a) When an amount of property is actually received by a taxpayer and is not classified as interest, but the nature of the transaction, the relatedness of the parties, or both, indicates that the payment of interest was actually intended and was paid, then an amount of interest shall be:

(1) Deemed by the department to have been paid; and

(2) Calculated at the fair market value, for the money that was loaned based on the facts and circumstances of the specific taxpayer.

(b) Interest deemed paid shall include:

(1) The difference between the amount received at maturity and the actual purchase price of a discounted bond less any amount previously reported on such bond by the taxpayer;

(2) The difference between the discount price paid for a non-interest bearing bond and either:

a. The bond's face value if sold at maturity; or

b. The amount received upon its sale prior to maturity; and

(3) The unpaid interest on bonds paying periodic interest when the bond is sold by the taxpayer between interest payment dates since the selling price includes the earned but unpaid interest.

Rev 903.05 Deemed Dividends. With the exception of distributions in liquidation, the following transactions between an organization and its shareholders or interest-holders shall be considered a dividend:

(a) All property transferred from an organization to a shareholder or interest-holder with respect to the shareholder's or interest-holder's ownership interest from the accumulated profits of the organization;

(b) All personal expenditures made by an organization on behalf of a shareholder or interest-holder which have not been properly reported as compensation or loans for federal income tax purposes;

(c) Forgiveness of a shareholder or interest-holder's indebtedness to the organization; and

(d) The automatic re-investment of property distributed from current year's or accumulated profits into additional stock.

Rev 903.06 Sequence of Distributions. All actual distributions shall be presumed to be sequentially made from:

(a) The current year profit of the organization;

(b) The organization's accumulated profits; and

(c) The capital of the organization.

Rev 903.07 Post-Termination Distributions of Federally Recognized S Corporations.

(a) Distributions made by S corporations from the accumulated adjustment account, or the previously taxed income categories shall be a dividend.

(b) Distributions made by S corporations from the earnings and profits of the corporation accumulated prior to the S corporation election being made shall follow the provision in Rev 902.08(a).

(c) Upon termination of S corporation status, distributions to shareholders shall be taxable dividends upon receipt by the shareholder, either directly or indirectly.

(d) In instances of indirect receipt of distributions, the department shall deem amounts to have been received by the shareholder at the time when evidence of the transfer is acknowledged by a reduction in the accumulated adjustments account.

(e) Decreases in the amount of loans to a shareholder of an S corporation with a corresponding reduction in the S corporation accumulated adjustment account shall be considered a dividend as if:

(1) The S corporation had distributed money as a dividend to the shareholder; and

(2) The shareholder had returned the money to the corporation in a full or partial payment of an outstanding loan.

(f) Increases in the amount of loans from a shareholder of an S corporation with a corresponding reduction in the accumulated adjustment account shall be considered a dividend as if:

(1) The corporation had distributed money as a dividend to the shareholder; and

(2) The shareholder had returned the money to the corporation as a loan from the shareholder to the corporation.

Rev 903.08 Liability For Part-Year Residency.

(a) Part-year residents shall be liable for the tax upon that portion of income earned when they were a resident of New Hampshire.

(b) The taxable portion of such income in (a) above which shall be:

(1) Determined by multiplying the annual taxable income received by a fraction:

a. The numerator of which shall be the number of days during which the person was a resident of New Hampshire; and

b. The denominator of which shall be 365 days of the year; or

(2) Determined by providing convincing evidence such as:

a. A document indicating the date of record for a dividend received;

b. A dated check stub or remittance advice when the income was actually received by the resident; or

c. A copy of a bank statement or passbook showing the date the amount was posted.

Readopt Rev 903.09 effective 3-11-15 (Document #10795) to read as follows:

Rev 903.09 Deductions for Trust Beneficiary Income. Deductions used in the computation of distributive gross income to trust beneficiaries shall not be added back when calculating the portion of the distribution subject to tax under RSA Chapter 77.

PART Rev 904 EXEMPTIONS

Readopt Rev 904.01 – Rev 904.04 effective 10-24-12 (Document #10211) to read as follows:

Rev 904.01 Part-Year Returns. When a taxpayer is a resident of New Hampshire for less than a full 12 month period, the taxpayer shall:

(a) Determine their taxable income, based on the total amount of interest and dividend income received for the entire tax year; and

(b) Be entitled to full exemption amounts provided by RSA 77:5.

Rev 904.02 Blind Taxpayers.

(a) Persons claiming an exemption under the provisions of RSA 77:5, III shall be considered qualified if they have written certification that they are legally blind from the department of education.

(b) Taxpayers claiming this status shall have the certification available for review by department personnel upon audit of their tax return.

Rev 904.03 Persons with Disabilities.

(a) Persons claiming an exemption under the provisions of RSA 77:5, IV shall be considered qualified if they:

(1) Have secured social security or veterans affairs certification that they are disabled;

(2) Provide a doctor's affidavit they are unable to work; and

(3) Provide a birth certificate as proof of age.

(b) Taxpayers claiming this status shall have the documents available for review by department personnel upon audit of their tax return.

Rev 904.04 Exemption For Trust Income Designated For Contribution to Charities. The portion of a trust's income required to be donated by the trust document to a charity which is exempt from taxation pursuant to RSA 77:8, shall be exempt from taxation to the donor trust, provided that the funds donated are actually used in the charitable function of the done.

Readopt Rev 904.05 effective 9-27-19 (Document #12883) to read as follows:

Rev 904.05 Education Tax Credit.

(a) A taxpayer granted an education tax credit under RSA 77-G may use the amount approved against its interest and dividends tax liability for the tax year during which the corresponding donation was made, after receiving a Form ED-03, "Education Tax Credit Scholarship Receipt."

(b) No portion of the education tax credit which is not used to offset the taxpayer's liability under the interest and dividends tax, the business profits tax, or the business enterprise tax, for the tax year during which the corresponding donation was made, shall be carried forward against the interest and dividends tax.

(c) Every taxpayer using an education tax credit against its interest and dividends tax liability shall attach a copy of the Form ED-03 to its interest and dividends tax return, in accordance with Rev 3204.01(e).

PART Rev 905 ESTIMATED TAX, PAYMENTS AND OVERPAYMENTS

Readopt Rev 905.01 – Rev 905.02 effective 10-24-12 (Document #10211) to read as follows:

Rev 905.01 Payments of Liabilities.

(a) When a taxpayer has a payment due with any document, such payment shall be filed with the document unless the tax liability is under one dollar.

(b) Taxpayers may make payments using any of the following methods:

(1) Electronic payment using internet e-file;

(2) Check made payable to the state of New Hampshire; or

(3) Cash.

Rev 905.02 Estimated Taxes.

(a) In accordance with RSA 77:18 II and III(a), every taxpayer having an annual projected tax liability in excess of $500 shall make 4 payments of, estimated interest and dividends tax.

(b) The filing dates shall be:

(1) For calendar year filers:

a. On or before the fifteenth day of the fourth, sixth, and ninth months for the tax year; and

b. On or before the fifteenth day of the first month of the subsequent calendar year; and

(2) For fiscal year filers on or before the fifteenth day of the fourth, sixth, ninth and twelfth months for the tax year.

(c) When an annually projected tax liability in excess of $500 is determined in a quarter subsequent to the first quarter, the initial estimated tax payment shall equal the cumulative amount payable as of that quarter as if the liability had been determined in the first quarter.

Readopt with amendment Rev 905.03 effective 10-24-12 (Document #10211) to read as follows:

Rev 905.03 Application of An Overpayment.

(a) An overpayment of tax, verified by the department, shall be treated in the following sequence:

(1) Applied to offset any other tax liability of the taxpayer;

(2) Credited to the estimated tax for the following year, if indicated by the taxpayer;

(3) Refunded to the taxpayer, or such other individual or organization that the department may determine has a demonstrated legal or equitable interest in such refund as evidenced by satisfactory documentation that the department may request in accordance with subsection (b), below; or

(4) A combination of (2) and (3), above, if indicated by the taxpayer.

(b) When a refund is requested by an individual or organization other than the taxpayer, the individual or organization requesting the refund shall submit such documents and evidence that the

department may request substantiating the reason the taxpayer is not able to request the refund directly, and establish to the department's satisfaction the requesting individual or organization's right to the refund.

(c) If the taxpayer incorrectly files and makes payment of estimated taxes, but is not required to file a tax return, a written request for refund shall be mailed to:

New Hampshire Department of Revenue Administration
P.O. Box 2072
Concord, NH 03302-2072; and

(d) A request for refund in this section shall include:

(1) Taxpayer name and mailing address;

(2) Federal identification number; and

(3) Type of filer, if applicable;

(4) The reason why the estimated tax payment was not required;

(5) The tax year the estimated tax payment was made;

(6) The amount of the estimated tax payment; and

(7) Taxpayer's dated signature in ink or in subsection (b), above, the requesting individual or organization's dated signature in ink.

Readopt Rev 905.04 effective 10-24-12 (Document #10211) to read as follows:

Rev 905.04 Uniform Filing Information.

(a) Returns and payment forms shall be considered timely filed when postmarked by the United States Postal Service on or before the due date.

(b) The date indicated on a postmark affixed by a postage meter operated by the taxpayer or someone other than the United States Postal Service shall not meet the requirements of RSA 80:55.

(c) Returns filed after the prescribed filing date shall be subject to interest and penalties.

(d) Taxpayers who fail to receive tax forms from the department shall not be relieved of their obligation to prepare and file a timely return, declaration, or extension request.

(e) Forms may be obtained by contacting the department by:

(1) Accessing the department's web site at www.revenue.nh.gov;

(2) Telephoning the Forms Line at (603) 230-5001; or

(3) Writing to:

New Hampshire Department of Revenue Administration
P.O. Box 3306
Concord, NH 03302- 3306.

(f) All returns, declarations or other documents containing monetary values filed with the department may be prepared by rounding off to the nearest whole dollar.

(g) Returns filed electronically using internet e-file shall be considered timely filed if received on or before the due date of the return.

(h) Returns or payments made by e-file and subsequently cancelled by e-file prior to the due date of the return shall not be considered timely filed.

PART Rev 906 RETURNS, DECLARATIONS, AND EXTENSIONS

Readopt Part Rev 906 effective 10-24-12 (Document #10211) to read as follows:

Rev 906.01 Estimated Tax Payments.

(a) Calendar year filers required to pay estimated taxes, shall complete and file Form DP-10-ES, estimated interest and dividends tax, with the department, and payment, on or before April 15, June 15 and September 15 of the calendar year and the final estimated payment on or before January 15 of the subsequent calendar year.

(b) Fiscal year filers required to pay estimated taxes, shall complete and file Form DP-10-ES estimated interest and dividends tax, with the department, and payment, on or before the fifteenth day of the fourth, sixth, ninth, and twelfth months of the taxable period.

Rev 906.02 Form DP-10, Interest and Dividends Tax Return.

(a) Form DP-10, interest and dividends tax return, shall be completed and filed by taxpayers subject to the interest and dividends tax to report their income to the department on the 15th day of the 4th month following the end of the taxable period.

(b) Form DP-10 shall be filed if the taxpayer has received interest and dividend income exceeding the provisions of RSA 77:18, IV even though there is no tax due because of the additional exemptions provided under RSA 77:5.

(c) A joint interest and dividends tax return shall be filed if the taxpayer and spouse are both residents and file a joint federal return with the Internal Revenue Service.

(d) If one spouse is not a resident, the resident spouse shall file a return alone and report his or her interest and dividend income, and 50% of the interest and/or dividends from jointly held investments.

Rev 906.03 Form DP-10-ES, Estimated Interest and Dividends Tax. Form DP-10 ES, shall be completed and filed by taxpayers subject to the interest and dividends tax to make quarterly payments of the estimated tax due for the current taxable year.

Rev 906.04 Form DP-59-A, Payment Form and Application for 7 Month Extension of Time to File Interest and Dividends Tax Return.

(a) Form DP-59-A shall be filed by any individual or joint filer, partnership, fiduciary or limited liability company, to make payment and apply for an extension of time for filing an interest and dividends tax return when 100% of the tax liability has not been paid by the due date through estimated payments or a credit from a previous year.

(b) Taxpayers shall file form DP-59-A with the department on or before the due date of the return when:

(1) The previously filed estimates did not meet or exceed 100% of the tax determined to be due; or

(2) The taxpayer does not wish to file the payment using the department's internet e-file payment option.

(c) An extension shall be rejected if:

(1) The amount submitted was not 100% of the balance due; or

(2) The application was submitted after the due date for filing the return.

(d) The commissioner or authorized representative shall terminate an extension if the payment received with the extension was returned by the financial institution.

Rev 906.05 Form DP-87 ID, Interest and Dividend Tax Report of Change for IRS Adjustment Only.

(a) Any individual or joint filer, partnership, limited liability company or fiduciary liable for the interest and dividend tax shall report on Form DP-87 ID all federal audit changes within 6 months after such changes have been finally determined by the Internal Revenue Service.

(b) Federal audit changes shall have finally been determined when:

(1) The taxpayer has:

a. Made payment on any additional income tax liability resulting from the federal audit; and

b. Not filed a petition for redetermination or claim for refund for the portions of the audit on which payment was made;

(2) The taxpayer has signed any Internal Revenue Service form consenting to the deficiency or accepting any over-assessment;

(3) The time period for filing a federal petition for redetermination to the United States Tax Court has expired;

(4) The taxpayer enters into a closing agreement with the Internal Revenue Service; or

(5) There is a final decision from:

a. United States Tax Court;

b. United States District Court;

c. United States Court of Appeals;

d. United States Court of Claims; or

e. United States Supreme Court.

(c) A copy of the federal change report shall be attached to Form DP-87 ID.

(d) A separate report of change shall be prepared for each taxpayer and for each year affected by the federal audit.

(e) Form DP-87 ID shall be submitted under separate cover.

(f) Payment of any additional liability shall accompany Form DP-87 ID.

(g) A taxpayer shall complete and file Form DP-87 ID by providing the same information requested in Form DP-10 with the new numbers due to the IRS changes.

Rev 906.06 Amended Tax Returns and Claims For Refund.

(a) Any individual, joint filer, partnership, limited liability company or fiduciary amending an original interest and dividends tax return or claiming a refund of taxes previously paid shall:

(1) File Form DP-10, interest and dividends tax return, for the particular tax year; and

(2) Check off the box entitled "Amended Return".

(b) Claims for a refund or amended interest and dividends tax returns, other than those filed on constitutional grounds, shall be filed:

(1) Within 3 years of the original due date of the tax; or

(2) Within 2 years from the date the tax was paid, whichever is later.

(c) The 2-year provision in (b)(2), above, shall not apply if the payment was the result of an assessment or demand for payment initiated by the department.

(d) Claims for a refund or amended returns that are filed based on a claim that the statute is unconstitutional shall be filed, pursuant to RSA 21-J:29, within 120 days of the due date of the tax and not the due date of the return.

PART Rev 907 ADMINISTRATION

Readopt Part Rev 907 effective 10-24-12 (Document #10211) to read as follows:

Rev 907.01 Pre-Assessment Conference.

(a) The purpose of an informal pre-assessment conference shall be for the taxpayer to discuss audit findings with audit management personnel in an effort to reach an agreement on the issues of fact or audit results.

(b) At the conclusion of an audit, if the facts and circumstances indicate to the department that an informal pre-assessment conference would benefit both the state and the taxpayer, the audit division shall provide an informal pre-assessment conference for the taxpayer, or his authorized representative.

(c) The department shall notify the taxpayer or authorized representative by mail of:

(1) The date, time and location for the conference; and

(2) The advance information that the taxpayer or authorized representative shall be required to provide the division.

(d) The information required by (c), above, shall include:

(1) The name, address and identification number of the taxpayer;

(2) An outline of the areas of agreement and disagreement;

(3) Documentation in support of taxpayer's position such as:

a. Citations of supporting case law;

b. Statutory or regulatory provisions;

c. Documents or correspondence from unrelated parties;

(4) Responses to any outstanding questions raised by the auditor during the audit; and

(5) The names of the individuals who shall participate in the conference on behalf of the taxpayer.

(e) Upon completing the review of material provided during the pre-assessment conference, the audit division shall issue a tax notice, notice of refund or no change letter which shall begin the period for formal appeal to the commissioner under RSA 21-J:28-b and Rev 200.

PART Rev 908 PENALTIES

Readopt Part Rev 908 effective 10-24-12 (Document #10211) to read as follows:

Rev 908.01 Substantial Understatement of Tax.

(a) The department shall assess the penalty for understatement of tax provided by RSA 21-J:33-a on returns where the understatement exceeds the greater of 10% of the correct tax liability or $5,000 unless the taxpayer

(1) Adequately disclosed the relevant facts regarding the tax treatment of the item generating the understatement; or

(2) Had substantial authority for its tax treatment of such item.

(b) A taxpayer shall have adequately disclosed the tax treatment of an item on the return or in a statement attached to the front of the return if the following criteria are met:

(1) The statement contains a prominent caption identifying the statement as a disclosure of the tax treatment for the substantial underpayment penalty;

(2) The item for which the disclosure is made is clearly identified;

(3) The dollar amount of the item is disclosed; and

(4) The statement contains those facts affecting the tax treatment of the item that will apprise the department of the nature of the potential controversy or a concise description of the legal issues presented by the facts in question.

(c) In determining whether a taxpayer has substantial authority, the department shall consider the following as being authoritative sources:

(1) For items applying specifically to the interest and dividends tax:

a. Interest and dividends tax law and any other New Hampshire statutes that have a bearing on the tax statutes;

b. Rules adopted by the department;

c. Declaratory rulings requested by and issued to the taxpayer;

d. Technical information releases issued by the department;

e. Decisions of New Hampshire superior court and board of tax and land appeals;

f. Federal District Court and First Circuit Court of Appeals decisions;

g. United States and New Hampshire supreme court decisions;

h. Legislative committee reports specifying legislative intent; and

i. Written advice from the department issued to the taxpayer about the tax treatment of the item in question;

(2) For items that are considered corporate dividends, distributions in liquidation of corporation or returns of capital from corporations for federal income tax purposes:

a. Internal Revenue Code and other statutory provisions;

b. Temporary and final United States Treasury regulations;

c. Federal district, appeals or tax court cases;

d. Internal Revenue Service or United States Department of the Treasury administrative pronouncements including revenue rulings and revenue procedures;

e. Tax treaties and related regulations, as well as the United States Department of the Treasury or other official explanation of such treaties;

f. Congressional intent as reflected in Committee Reports, joint explanatory statements of managers included in the conference committee reports and floor statements made by the bill's managers prior to enactment;

g. Controlling precedent of the United States Court of Appeals to which the taxpayer has a right of appeal;

h. Technical advice memoranda, ruling or determination letter issued to the taxpayer or in which the taxpayer is named;

i. An affirmative statement in a revenue agent's report with respect to the taxpayer's prior taxable periods; and

j. Any other source which was accepted by the Internal Revenue Service as substantial authority;

(d) A taxpayer shall have substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment of the item by the taxpayer is substantial in relation to the weight of the authorities supporting the position of the department;

(e) The following shall not be considered authoritative sources:

(1) Opinions reached by tax professionals;

(2) Tax publication opinions or narrative statements; and

(3) Articles contained in any professional or tax periodicals;

(f) The existence of substantial authority for a particular item shall be determined as of the date the return containing the item was filed or as of the last day of the taxable period to which the return relates; and

(g) The penalty shall be applied to the net understatement determined by reducing the understatement by the portion of the understatement for which the taxpayer had substantial authority or had adequately disclosed the position taken on the return.

Rev 908.02 Understatement of Taxpayer's Liability by Tax Preparer.

(a) For the purposes of RSA 21-J:33, b, I, "Substantial portion" means any instance where the efforts of the tax preparer have affected more than 25% of the taxpayer tax liability.

(b) An individual or company providing more than typing, reproducing or other mechanical assistance shall be deemed to be a tax preparer when the individual or company uses computer software which makes determinations about the applicability of tax laws or the characterization of income and the allowability of deductions or credits.

(c) The penalty provided in RSA 21-J:33-b, III shall be assessed when any part of an understatement of tax is the result of a tax preparer's willful neglect or intentional disregard of the statute or departmental rules unless the taxpayer shall have adequately disclosed the tax treatment of an item on the return or in a statement attached to the front of the return.

(d) The penalty provided in RSA 21-J:33-b, IV shall be applied when any part of an understatement of tax is the result of a preparer's willful attempt to understate the taxpayer's tax liability; or

(e) A tax preparer shall have willfully attempted to understate a tax liability of a taxpayer in the following instances:

(1) The preparer disregards or misstates information furnished by the taxpayer or other person in an attempt to wrongfully reduce the tax liability; or

(2) The preparer does not make inquiries of the taxpayer or other person when the information provided is incorrect or incomplete, and the preparer knows or should have known that the information was incorrect or incomplete.

(f) If, in an adjudicative proceeding or a judicial decision, it is established there was no understatement of liability and, if previously paid by the preparer, the penalty imposed by RSA 21-J:33-b shall be abated and refunded.

(g) The refund of the penalty shall be made without any consideration of any period of limitation for the issuance of a refund.

Rev 908.03 Aiding and Abetting an Understatement of Tax Liability.

(a) An individual or company providing more than typing, reproducing or other mechanical assistance shall be deemed to be a tax preparer when the individual or company uses computer software

which makes determinations about the applicability of tax laws or the characterization of income and the allowability of deductions or credits.

(b) The penalty provided in RSA 21-J:33-c shall be assessed against any person who aids, assists in, procures or advises in the preparation of any return or other document in connection with the interest and dividends tax law or departmental rules if:

(1) The person knows that the information provided will be used in the preparation of any material document; and

(2) The person knows that if used, the information will result in an understatement of tax liability.

(c) The penalty shall not be assessed in instances where the taxpayer adequately disclosed the relevant facts regarding the tax treatment of the item in the manner provided in Rev 908.01(b).

(d) If, in an adjudicative proceeding or a judicial decision, it is established that there was no understatement of liability and if previously paid by the preparer, then the penalty imposed by RSA 21-J:33-c shall be abated and refunded.

(e) The refund of the penalty shall be made without any consideration of any period of limitation for the issuance of a refund.

APPENDIX

RULE	STATUTE
Rev 901.01	RSA 77:4
Rev 901.02	RSA 77:3, I(b)
Rev 901.03	RSA 77:4, III
Rev 901.04	RSA 21-J:13, RSA 77:7
Rev 901.05	RSA 21-J:13, I
Rev 901.06	RSA 21-J:13, I
Rev 901.07	RSA 77-A:4, RSA 77:1-a, II(c)
Rev 901.08	RSA 77:4
Rev 901.01	RSA 77:4
Rev 901.12	RSA 21-J:13, I
Rev 901.13	RSA 21-J:13, I
Rev 901.14 - 901.17	RSA 21-J:13, I, RSA 77:5
Rev 901.18	RSA 21-J:13, I
Rev 901.19	RSA 21-J:13, I
Rev 901.20	RSA 77:14-a; RSA 77:14-c
Rev 902.01 – 902.04	RSA 21-J:13, I
Rev 902.05	RSA 21-J:13, I, RSA 77:12, RSA 77:16, RSA 77:3, I-II, RSA 77:4, II; RSA 77:17
Rev 902.06	RSA 21-J:13, I, RSA 77:12
Rev 902.06(c)	RSA 21-J:13, I, RSA 77:3
Rev 902.07	RSA 21-J:13, I, RSA 77:10; RSA 77:14a-d
Rev 902.08	RSA 21-J:13, I
Rev 902.09	RSA 21-J:13, I
Rev 903.01	RSA 21-J:13, I
Rev 903.02	RSA 21-J:13, I
Rev 903.03	RSA 21-J:13, I
Rev 903.04	RSA 21-J:13, I
Rev 903.05	RSA 21-J:13, I
Rev 903.06	RSA 21-J:13, I
Rev 903.07	RSA 21-J:13, I
Rev 903.08	RSA 21-J:13, I
Rev 903.09	RSA 21-J:13, I; RSA 77:10
Rev 904.01	RSA 21-J:13, I, RSA 77:3, I, RSA 77:18, IV, RSA 77:5
Rev 904.02	RSA 21-J:13, I, RSA 77:5, III
Rev 904.03	RSA 21-J:13, I
Rev 904.04	RSA 21-J:13 ,I, RSA 77:8
Rev 904.05	RSA 77:18, V; RSA 77-G:3; RSA 77-G:6, I(f)
Rev 904.05	RSA 77:18, V; RSA 77-G:3; RSA 77-G:6, I(f)
Rev 905.01	RSA 21-J:13, I

Rev 905.02	RSA 21-J:13, I, RSA 77:18, II & III
Rev 905.03	RSA 21-J:13, I, RSA 21-J:28-a,IV
Rev 905.04	RSA 21-J:13, I
Rev 906.01	RSA 21-J:13, I, RSA 77:1, RSA 21-J:28, 31 and 33
Rev 906.02 – 906.03	RSA 21-J:13, I
Rev 906.04	RSA 21-J:13, I, RSA 77:18, II
Rev 906.05	RSA 21-J:13, I, RSA 77:5
Rev 906.06	RSA 21-J:13, I, RSA 77:18
Rev 907.01	RSA 21-J:13, I
Rev 908.01	RSA 21-J:13, I, RSA 21-J:33-a
Rev 908.02	RSA 21-J:13, I, RSA 21-J:33-b, I III & IV
Rev 908.03	RSA 21-J:13, I, RSA 21-J:33-c