

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-D3

POSTPONEMENT AND RESCHEDULING OF A RULEMAKING HEARING

Notice Number 2022-85 Rule Number Rev 301.06; Rev 302.07; Rev 303.03; Rev 304.06; Rev 304.10; Rev 305.03; Rev 306.06; Rev 307.04; Rev 308.04; and Rev 2405.03

1. Agency Name & Address: New Hampshire Department of Revenue Administration, 109 Pleasant Street, PO Box 457, Concord, NH 03302-0457
2. RSA Authority: RSA 77-A:15, II; RSA 77-E:11, II;
3. Federal Authority:
4. Type of Action: Adoption [X], Amendment, Repeal, Readoption, Readoption w/amendment [X]

5. Short Title: Relative to computation of gross business profits, technical corrections on specific industry apportionment for financial institutions, single sales factor apportionment, and treatment of overpayments.

6. In accordance with RSA 541-A:11, IV, a rulemaking hearing has been postponed for this proposed rule for which notice appeared in the Rulemaking Register on 5/19/22 under Notice Number 2022-85. The public hearing has therefore been rescheduled for:

Date and Time: Thursday, June 9, 2022 @ 1pm
Place: New Hampshire Department of Revenue Administration, Medical and Surgical Building, 109 Pleasant Street, 2nd Floor Hearings Room, Concord, NH 03301

7. New deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: Thursday, June 16, 2022

[X]Fax [X]E-mail []Other format (specify):

8. Contact person for copies and questions including requests to accommodate persons with disabilities:

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

RULEMAKING NOTICE FORM

Notice Number

Rule Number

Rev 301.06; Rev 302.07; Rev 303.03; Rev 304.06; Rev 304.10; Rev 305.03; Rev 306.06; Rev 307.04; Rev 308.04; and Rev 2405.03

1. Agency Name & Address:

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

2. RSA Authority:

RSA 77-A:15, II; RSA 77-E:11, II; RSA 77-A:3, I, (b)

3. Federal Authority:

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment X

5. Short Title: **Relative to computation of gross business profits, technical corrections on specific industry apportionment for financial institutions, single sales factor apportionment, and treatment of overpayments.**

6. (a) Summary of what the rule says and of any proposed amendments:

Chapter 199 (Laws of 2021) amends RSA 77-A:6 to increase the minimum gross business income required for filing a Business Profits Tax (BPT) return from in excess of \$50,000 to in excess of \$92,000 and requires the DRA to adjust the threshold biennially for inflation. Rev 302.07 and 307.04 are being readopted with an amendment that reflects this legislative change in the rule.

Chapter 91, Sections 115-119 (Laws of 2021) amends the BPT and the Business Enterprise Tax (BET) to limit the amount of any overpayment that a taxpayer may claim as a credit to: 500% of the total tax liability for the taxable period for taxable periods ending on or after December 31, 2022; 250% of the total tax liability for the taxable period for taxable periods ending on or after December 31, 2025; and 100% of the total tax liability for the taxable period for taxable periods ending on or after December 31, 2027. The remainder of any overpayment shall be refunded to the taxpayer. Rev 305.03 and Rev 2405.03 are being readopted with an amendment that reflects this legislative change in the rule.

Chapter 346, Sections 424-425, 430 (Laws of 2019) adopted the market-based sourcing method of apportioning sales of services and intangibles for purposes of the BPT. Technical corrections are made to Rev 304.10 to align the special industry apportionment for financial institutions to market-based sourcing.

Chapter 346, Sections 426-429 (Laws of 2019) changes the BPT apportionment formula from a three-factor formula to a single sales factor apportionment formula. Rev 301.06, Rev 303.03, Rev 304.06, and Rev 306.06 are amended to reflect this legislative change in the rule. Rev

308.04 is adopted to continue the collection of payroll and property information for information purposes.

6. (b) Brief description of the groups affected:

The groups affected are taxpayers of business profits tax and business enterprise tax.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Number	State Statute Implemented
Rev 301.06	RSA 21-J:13, I; RSA 77-A:15
Rev 302.07	RSA 21-J:13, I; RSA 77-A:15; RSA 77-A:6
Rev 303.03	RSA 21-J:13; RSA 77-A:4, XIII; RSA 77-A:15, II
Rev 304.06	RSA 21-J:13, I; RSA 77
Rev 304.10	RSA 21-J:13, I; RSA 77
Rev 305.03	RSA 77-A:7, I(b); RSA 77-A:15, II; RSA 21-J:28-a
Rev 306.06	RSA 21-J:13, I; RSA 77-A:15
Rev 307.04	RSA 21-J:13, I; RSA 77-A:6
Rev 308.04	RSA 77-A:3, I, (b)
Rev 2405.03	RSA 77-E:11, II; RSA 77-E:6; RSA 21-J:28-a

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Beth A. McDaniel** Title: **Paralegal**
 Address: **Legal Bureau** Phone #: **603.230.5027**
P.O. Box 457 Fax#: **603-230-5932**
Concord, NH 03302-0457 E-mail: **beth.a.mcdaniel@dra.nh.gov**
 TTY/TDD Access: Relay NH 1-800-735-2964
 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, June 15, 2022**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, June 7, 2022 @ 1pm**
New Hampshire Department of Revenue Administration
Medical and Surgical Building
109 Pleasant Street, 2nd Floor Hearings Room
Concord, NH 03301

Place:

*****The security procedures at the Department of Revenue Administration require all visitors to sign-in and present photo identification. If you plan on attending the public hearing, please bring photo identification with you.*****

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 22:096 , dated 5/11/2022

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules. Not applicable to Rev 308.04 is a new section.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

2. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rule does not mandate fees or additional local expenditures on a political subdivision of the state, and, therefore, does not violate Part I, Article 28-a of the N.H. Constitution.

CHAPTER Rev 300 BUSINESS PROFITS TAX

PART Rev 301 DEFINITIONS

Readopt with amendment Rev 301.06, effective 1-16-15 (Document# 10758), to read as follows:

Rev 301.06 “Combined apportionment factors,” as used in RSA 77-A:3, III, means:

(a) For tax periods ending before December 31, 2022, the summation of the separately calculated sales, payroll and property apportionment factors of each business organization within a combined group; and

(b) For tax periods ending on or after December 31, 2022, the summation of the separately calculated sales apportionment factors of each business organization within a combined group.

PART Rev 302 COMPUTATION OF GROSS BUSINESS PROFITS

Readopt with amendment Rev 302.07, eff. 1-16-15 (Doc# 10758), to read as follows:

Rev 302.07 Installment Method of Reporting Income.

(a) Business organizations reporting their income under the installment method, for federal income tax purposes, shall report their income for business profits tax purposes using the same method except as provided in (f) and (g) below.

(b) Business organizations selling property on an installment basis shall be considered a business organization until all the installments have been reported and the total tax paid.

(c) The gross sales price of the property shall be considered and not the amount received in a particular year for purposes of the gross business income test.

(d) Neither the gross selling price nor the installment proceeds shall be included in gross business income except for the year of sale for purposes of the gross business income test.

(e) A return reporting the installment income shall be completed and filed every year, regardless of the amount of each installment, if the gross sales price exceeded *the applicable filing threshold pursuant to RSA 77-A:6* ~~\$50,000 for tax years ending after June 30, 1993.~~

(f) The reported installment gain income shall not be increased or decreased by income from the other business activity if the filing of a return is due to the reporting of installment income, and the statutory minimum income level other than for the installment sale has not been met.

(g) A business organization may elect to report the entire gain or loss in a single year for business profits tax purposes although it has not elected, pursuant to section 453(d) of the IRC, by attaching a completed Form DP-95, “Election to Report Net Gain in a Year of Sale”, to the business profits tax return if the filing requirement for subsequent years is solely the result of reporting the gain or loss from the installment sale to New Hampshire.

(h) The sale, exchange or other disposition of an installment obligation by a business organization shall require the inclusion of:

- (1) The unreported gain or loss in the business organization's business profits tax return covering the year the sale, exchange or other disposition took place; and
- (2) The computation of the gain or loss and the basis of the obligation in accordance with IRC section 453B.

PART Rev 303 ADDITIONS AND DEDUCTIONS MADE TO GROSS BUSINESS PROFITS

Readopt with amendment Rev 303.03, effective 10-23-19 (Document# 12906), to read as follows:

Rev 303.03 Net Operating Loss Deduction.

(a) Section 172 of the IRC ~~in effect December 31, 1996~~, for purposes of calculating the amount of any net operating loss deduction allowed under RSA 77-A:4, XIII, shall be followed, except:

- (1) The carryback of loss required by IRC section 172 (b)(1) is not required for New Hampshire's purposes; and
- (2) The amount is limited as provided in (c), (d), and (e), below.

(b) Net operating losses may be carried forward for 10 years following the loss year.

(c) Business organizations, subject to RSA 77-A:3, regarding the apportionment of income shall apportion any net operating loss carried forward using the formula provided in RSA 77-A:3 and Rev 304.

(d) Combined groups with more than one member subject to RSA 77-A shall:

- (1) Calculate separate apportionment percentages for each business organization as follows:
 - a. The denominators used to calculate these percentages shall be the sales, payroll and property denominators of the combined group *for tax periods ending before December 31, 2022, and shall be the sales denominator of the combined group for tax periods ending on or after December 31, 2022*; and
 - b. The numerators shall be the New Hampshire sales, payroll and property of each respective business organization subject to RSA 77-A *for tax periods ending before December 31, 2022, and shall be the sales numerators of each respective business organization subject to RSA 77-A for tax periods ending on or after December 31, 2022*;
- (2) Treat each business organization's apportioned share of the combined loss amount as a tax attribute which remains with that business organization;
- (3) Total the apportioned loss carry forward amounts of each business organization in the combined group possessing such tax attributes; and
- (4) Apply the result in (3) above as a deduction from the gross business profits of the combined group before apportionment under RSA 77-A:3 in the taxable period in which the deduction is to be used.

(e) The net operating loss carry forward calculated in either (a), (c) or (d) above, shall be limited as provided in RSA 77-A:4, XIII, (a), (b), (c), (d) and (e) for each business organization.

(f) The resulting net operating loss shall be applied to the gross business profits before apportionment under RSA 77-A:3.

(g) Business organizations availing themselves of the net operating loss deduction shall:

(1) Maintain detailed records that confirm each step in the calculation of the:

- a. Net operating loss;
- b. Net operating loss carry forward; and
- c. Net operating loss deduction amounts; and

(2) Retain the federal and state tax returns and the detailed records relating to a net operating loss for all taxable periods to which the net operating loss relates.

(h) During a department audit of a taxable period where a New Hampshire net operating loss deduction is taken on a return, within the statute of limitations, the business organization shall:

(1) Provide the department with all state and federal tax returns and detailed records with an impact on the proper calculation of the deduction taken by the business organization;

(2) Not receive a refund for a prior year overpayment nor be assessed additional tax liability for prior year deficiencies resulting from an inquiry that reveals adjustments to prior taxable period net operating loss calculations would be appropriate in the liability of the business organization in any of the prior taxable periods outside the statute of limitations;

(3) Deduct the appropriate New Hampshire net operating loss deduction in the audit years as if the extra-statutory year adjustments had been made; and

(4) Adjust the carry forward amount in the years subsequent to the audit year.

PART Rev 304 APPORTIONMENT OF ADJUSTED GROSS BUSINESS PROFITS

Readopt with amendment Rev 304.06, effective 3-6-21 (Document# 13177), to read as follows:

Rev 304.06 Use of Special Industry Apportionment Provisions. Paragraphs (a) through (e) shall apply to taxable periods ending before December 31, 2021 and paragraph (f) shall apply to taxable periods ending on or after December 31, 2021 as follows:

(a) A business organization, which is not a member of a combined group, may elect to use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11, provided more than 50% of the business organization's:

(1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and

(2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(b) A business organization, which is a member of a combined group, may elect to use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11 provided more than 50% of the combined group's:

- (1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and
- (2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(c) The business organization or group of business organizations electing to use the industry specific apportionment provisions contained in Rev 304.07 through Rev 304.11 shall continue to use the apportionment provisions until:

- (1) The department grants, in writing, a request made to the department to change the method used; and
- (2) The department approves of a change in the apportionment method upon a showing that the business organizations:
 - a. No longer meets the requirements to use special industry apportionment provisions; or
 - b. Circumstances have changed so that the use of special industry apportionment provisions no longer accurately reflects the business organization's business activity in New Hampshire.

(d) Unless otherwise indicated, the industry specific apportionment provision elected by the business organization shall apply in its entirety.

(e) If further adjustments to the formula are necessary to accurately reflect the business organization's business activity in New Hampshire, the business organization may petition pursuant to Rev 304.05 for, or the commissioner may require, modification under RSA 77-A:3, II.

(f) A business organization or combined group shall use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11, provided more than 50% of the business organization's or combined group's:

- (1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and
- (2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(g) For taxable periods ending on or after December 31, 2022, a business organization or combined group shall exclusively use the sales factor when utilizing one of the industry specific apportionment provisions described in paragraph (f) above, without regard to the property or payroll factor provisions.

Readopt with amendment Rev 304.10, effective 3-6-21 (Document #13177), to read as follows:

Rev 304.10 Adjustments Required to Apportionment Factors For Financial Institutions.

(a) For purposes of this section, the following definitions shall apply:

(1) “Billing address” means the location indicated in the books and records of the business organization on the first day of the taxable year, or on such later date in the taxable period when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed to the customer;

(2) “Borrower or credit cardholder located in New Hampshire” means:

a. An individual or business organization engaged in a trade or business which maintains its commercial domicile in New Hampshire; or

b. An individual who is not engaged in a trade or business but whose billing address is in New Hampshire;

(3) “Commercial domicile” means, for businesses organized under the laws of:

a. The United States, the place from which the trade or business is principally managed and directed; or

b. A foreign country, the Commonwealth of Puerto Rico, any territory or possession of the United States, the state of the United States, or the District of Columbia to which the greatest number of employees, as defined in Rev 301.14, are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;

(4) “Credit card” means a card or other medium entitling its holder to credit by virtue of its use to purchase goods or services from businesses;

(5) “Credit card issuer's reimbursement fee” means the fee a business organization receives from a merchant's bank because one of the persons to whom the business organization has issued a credit card has charged merchandise or services to the credit card;

(6) “Finance lease” means any lease transaction, including any that are classified as a direct financing lease or leverage lease under generally accepted accounting principles or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property to the lessee;

(7) “Financial institution” means:

a. Any corporation or other business entity registered under:

1. State law as a bank holding company;

2. The Federal Bank Holding Company Act of 1956, as amended; or
 3. The Federal National Housing Act, as amended, as a savings and loan holding company;
- b. A national bank organized and existing as a national bank association pursuant to the National Bank Act, 12 U.S.C. 21 et seq.;
 - c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1);
 - d. Any bank or thrift institution incorporated or organized under the laws of any state;
 - e. Any corporation organized under the provisions of 12 U.S.C. 611 to 631;
 - f. Any agency or branch of a foreign depository as defined in 12 U.S.C. 3101;
 - g. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;
 - h. Any corporation, other than an insurance company, whose voting stock is more than 50% owned, directly or indirectly, by any person or business entity described in subsections a. through g. above;
 - i. A corporation or other business entity which during the current taxable period and the previous 2 taxable periods derived an average of 50% of its total gross income for financial accounting purposes from finance leases;
 - j. Any other person or business entity, other than an insurance company, a real estate broker, a securities dealer, or other similar business entities, which derive more than 50% of their gross income excluding non-recurring and extraordinary items from activities that a person described in subsections a. through i. above is authorized to transact; and
 - k. Any person or business entity having more than 50% of its total gross business income derived from or attributable to the issuance and maintenance of credit cards to consumers provided that such credit card can be used by the consumer to purchase goods and services from organizations other than the card issuer;
- (8) “Gross rents” means:
- a. The actual sum of money or other consideration payable for the use or possession of property except:
 1. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
 2. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

3. Reasonable amounts payable for storage, provided such amounts are payable for space not designated for use by and not under the control of the taxpayer; and

4. That portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer;

b. Any amount payable for the use or possession of real property and tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise; and

c. Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement, including the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year of any improvement to real property made by or on behalf of the business organization which reverts to the owner or lessor upon termination of a lease or other arrangement;

(9) "Loan" means any extension of credit resulting from direct negotiations between the business organization and its customers and:

a. Includes:

1. Participation;

2. Syndications;

3. Leases treated as loans for federal income tax purposes; and

4. The purchase, in whole or in part, of such extension of credit from another business organization; and

b. Excludes:

1. Properties treated as loans under section 595 of the IRC;

2. Futures or forward contracts;

3. Options;

4. Notional principal contracts such as swaps;

5. Credit card receivables, including purchased credit card relationships;

6. Non-interest bearing balances due from depository institutions;

7. Cash items in the process of collection;

8. Federal funds sold;

9. Securities purchased under agreements to resell;
10. Assets held in a trading account;
11. Securities; and
12. Interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security;

(10) “Loan secured by real property” means 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(11) “Merchant discount” means the fee, or negotiated discount, charged to a merchant by the business organization for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder;

(12) “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and the related collateral by the credit originator and any other lenders who have purchased a portion of such loan or pool of loans whether or not known to the borrower;

(13) “Person” means an individual, estate, trust, partnership, corporation, and any other business entity;

(14) “Real and tangible property” means assets:

- a. On which the taxpayer may claim depreciation for federal income tax purposes;
- b. To which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income taxation; or
- c. That have not been acquired in lieu of, or pursuant to, a foreclosure;

(15) “Regular place of business” means an office where the business organization conducts business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the business organization;

(16) “Syndication” means an extension of credit in which 2 or more persons fund the credit extension and each person is at risk at a specified:

- a. Percentage of the total extension of credit; or
- b. Dollar amount;

(17) “Taxable” means:

- a. A business organization, as defined in RSA 77-A:1, I., subject in another state to:

1. A net income tax, a franchise tax measured by net income;
 2. A franchise tax for the privilege of doing business; or
 3. A corporate stock tax including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or
- b. Another state has jurisdiction to subject the business organization to any of such taxes regardless of whether, the state does or does not impose such taxes; and

(18) "Transportation property" means:

- a. Vehicles and vessels capable of moving under their own power; and
- b. Equipment or containers attached to the vehicle or vessel.

(b) Financial institutions shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041, subject to the adjustments in paragraphs (c), (d), and (e), below.

(c) The property factor's components shall be calculated utilizing the following provision:

- (1) The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, in the computation of the apportionable income tax base for the taxable period;
- (2) The property factor shall be the sum of the value of the real and tangible property and the intangible property components;
- (3) The real and tangible property component shall be calculated using the provision of Rev 304.02;
- (4) The intangible property component shall include the average value of the business organization's loans and credit card receivables;
- (5) Intangible property shall be determined to be located in New Hampshire when it is properly assigned to a regular place of business of the business organization within New Hampshire, based upon the preponderance of substantive contacts relating to the loans having occurred in New Hampshire;
- (6) Substantive contacts shall occur when one or more of the following activities are conducted by employees connected with, or working out of the business organization's regular place of business in New Hampshire, regardless of where the services of such employee were actually performed:
 - a. Solicitation of the customer by an employee or the customer initiation of contact with the business organization at its regular place of business;

b. Investigation of the customer's credit-worthiness and the degree of risk involved in making the particular loan;

c. Negotiation between the employee of the business organization and the customer regarding the terms of the loan such as the:

1. Amount;
2. Duration;
3. Interest rate;
4. Frequency of repayment;
5. Currency denomination; and
6. Security requirements;

d. Approval of the agreement by the employees or directors of the business organization; and

e. Administering the account by performing services such as:

1. Bookkeeping;
2. Collecting payments;
3. Corresponding with the customer; or
4. Proceeding against the customer in the case of default;

(7) The intangible property included under paragraph (4) above shall be valued in the following manner:

a. Loans shall be valued at their outstanding principal balance, without regard to any reserve for bad debts;

b. Credit card receivables shall be valued at their outstanding principal balance, without regard to any reserve for bad debts, with the exception that credit card receivables which are written-off in whole or in part for federal income tax purposes shall not be included in the principal balance to the extent of the portion that is written-off; and

c. Loans, when written off in whole or in part, shall not be included in the total to the extent of the portion that is written off for:

1. Federal income tax purposes; or
2. Regulatory purposes through a specifically allocated reserve pursuant to regulatory or financial accounting guidelines;

(8) Loans properly assigned to New Hampshire shall, absent any change of material fact, remain assigned to New Hampshire for the length of the original term of the loan;

(9) Upon completion of the original term of loans referenced in (8), above, they may be properly assigned to another state if said loans have a preponderance of substantive contact to a regular place of business there; and

(10) Credit card receivables shall be treated as loans and subject to the provisions of (c)(6) above, for purposes of determining the location of credit card receivables.

(d) The payroll factor shall be calculated in accordance with Rev 304.03.

(e) The sales factor shall be calculated utilizing the following provisions in lieu of the provisions contained in Rev 304.04 and Rev 304.041:

(1) The sales factor shall be a fraction, as follows:

a. The numerator shall be the receipts from the lease, sublease, rental, or sub-rental of real property located in New Hampshire, and the lease or rental of tangible personal property, other than transportation equipment, located in New Hampshire when it is first placed in service by the lessee owned by the business organization in New Hampshire during the taxable year; and

b. The denominator shall be the receipts of the business organization within and without New Hampshire during the taxable period.

(2) The sales factor numerator and denominator shall be calculated in a consistent manner from year-to-year, and include those receipts described herein which constitute income and are included in the computation of the apportionable income base for the taxable period;

(3) Receipts from the lease or rental of transportation property owned by the business organization shall be:

a. Included in the numerator to the extent that the property is used in New Hampshire; and

b. Calculated in the following manner:

1. The amount of receipts from aircraft to be included in the numerator of New Hampshire's sales factor shall be determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, as follows:

(i) The numerator shall be the number of landings of the aircraft in New Hampshire; and

(ii) The denominator shall be the total number of landings of the aircraft;

2. Motor vehicles shall be included in the numerator of the state in which they are registered and deemed to be used wholly within such state; and

3. If the extent of the use of any transportation property within New Hampshire cannot be determined, the property shall be deemed to be used wholly in the state in which the property has its principal base of operations;

(4) The numerator shall include interest and fees, or penalties in the nature of interest, from loans secured by real property if, at the time the original agreement is made, the following shall apply:

- a. The property is entirely located within New Hampshire;
- b. The property is located both within New Hampshire and one or more other states, and more than 50% of the fair market value of the real property is located within New Hampshire; or
- c. More than 50% of the fair market value of the real property is not located within any one state, and the borrower is located in New Hampshire;

(5) Interest and fees or penalties in the nature of interest from loans not secured by real property shall be included in the numerator if the borrower is located in New Hampshire;

(6) Net gains from the sale of loans, including income recorded under the coupon stripping rules of section 1286 of the internal revenue code, shall be included in the numerator utilizing the following provisions:

a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:

1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (4) above; and
2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property;

b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:

1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (5) above; and
2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property;

(7) The numerator shall include interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees, such as annual fees, charged to cardholders if the billing address of the cardholder is in New Hampshire;

(8) The amount of net gains, but not less than zero, from the sale of credit card receivables included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:

- a. The numerator shall be the amount included in the numerator of the sales factor pursuant to (7) above; and
- b. The denominator shall be the business organization's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders;

(9) The numerator shall include all credit card issuer's reimbursement fees multiplied by a fraction, as follows:

- a. The numerator shall be the amount included in the numerator of the sales factor pursuant to (7) above; and
- b. The denominator shall be the business organization's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders;

(10) The numerator shall include receipts from merchant discount if the commercial domicile of the merchant is in New Hampshire;

(11) Receipts from merchant discount, referenced in (10), above, shall:

- a. Be computed net of any cardholder charge backs; and
- b. Not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders;

(12) The numerator shall include receipts from loan servicing fees utilizing the following provisions:

- a. For loan servicing fees derived from loans secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:
 1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (4) above; and
 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property;
- b. For loan servicing fees derived from loans not secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:
 1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (9) above; and

2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property; and

c. For circumstances in which the business organization receives loan servicing fees for servicing either the secured or the unsecured loans of another business organization, the numerator shall include such fees if the borrower is located in New Hampshire;

(13) The numerator shall include ~~receipts from services~~ **all sales** not otherwise apportioned under this section **utilizing the provisions of Rev 304.04 and Rev 304.041**; ~~if the service is performed:~~

~~a. In New Hampshire; or~~

~~b. Everywhere and a greater proportion of the income-producing activity is performed in New Hampshire based on cost of performance;~~

(14) The sales factor shall include interest, dividends, net gains not less than zero, and other income from investment assets and activities and trading assets and activities in accordance with the following provisions:

a. Investment assets and activities and trading assets and activities shall include, but are not limited to the following:

1. Investment securities;
2. Trading account assets;
3. Federal funds;
4. Securities purchased and sold under agreements to resell or repurchase;
5. Options;
6. Future contracts;
7. Forward contracts;
8. Notional principal contracts such as swaps;
9. Equities; and
10. Foreign currency transactions;

b. The sales factor shall include the amount by which:

1. Interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and

2. Interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities;

c. The sales factor:

1. Numerator shall include interest, dividends, net gains, but not less than zero, and other income utilizing the following provisions for:

(i) Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by a fraction, as follows:

i. The numerator shall be the average value of such assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and

ii. The denominator shall be the average value of all such assets;

(ii) Federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements described in b. above, the amount of excess interest shall be multiplied by a fraction, as follows:

i. The numerator shall be the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the business organization within New Hampshire; and

ii. The denominator shall be the average value of all such funds and such securities; and

(iii) Trading assets and activities described in c. above, excluding amounts described in (i) or (ii), above, the amount of the excess income shall be multiplied by a fraction, as follows:

i. The numerator shall be the average value of such trading assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and

ii. The denominator shall be the average value of all such assets; and

2. Average value shall be determined using the provisions of Rev 304.02(j);

d. If the provisions of ~~c.(e)~~ above do not equitably reflect the business organization for business done in this state a modified procedure shall be:

1. Required by the commissioner in lieu of using the provisions enumerated in c. above, in accordance with RSA 77-A:3, II (a); or
 2. Requested by the business organization for all subsequent returns utilizing the provisions of Rev 304.05;
- e. If using a modified procedure pursuant to ~~d.~~(4) above, the modified procedure shall be calculated as follows:
1. The numerator shall include interest, dividends, net gains not less than zero and other income utilizing the following provisions for:
 - (i) Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by the following fraction:
 - i. A numerator consisting of the gross income from such assets and activities assigned to a regular place of business of the taxpayer within New Hampshire; and
 - ii. A denominator consisting of the gross income from all assets and activities;
 - (ii) Federal funds sold and purchased from securities purchased under resale agreements, and securities sold under repurchase agreements described in b., above, the amount of excess interest shall be multiplied by the following fraction:
 - i. A numerator consisting of the gross income from funds and securities assigned to a regular place of business of the business organization within New Hampshire; and
 - ii. A denominator consisting of the gross income from all such funds and such securities; and
 - (iii) Trading assets and activities described in c. above, excluding amounts described in (i) or (ii) above, the amount of the excess income shall be multiplied by the following:
 - i. A numerator consisting of the gross income from trading assets and activities assigned to a regular place of business of the business organization within New Hampshire; and
 - ii. A denominator consisting of the gross income from all such assets and activities;
- f. Investment asset or activity, or trading asset or activity, shall be presumed to occur at the commercial domicile of the business organization;

g. The business organization may rebut the presumption in f. above, by demonstrating that:

1. The day-to-day decisions regarding the asset or activity occurred at a regular place of business outside New Hampshire; and
2. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business, one of which is in New Hampshire, that the investment or trading policies or guidelines concerning such decisions were made outside New Hampshire; and

h. All receipts assigned under this *paragraph (14)*~~section~~ to a state where the taxpayer is not taxable shall be included in the numerator of the sales factor, if the business organization's commercial domicile is in New Hampshire; ~~and~~

(15) The numerator shall include receipts from the sales of tangible personal property not otherwise apportioned under this section utilizing the provisions of Rev 304.04 and Rev 304.041.

PART Rev 305 COMPUTATION OF TAX, ESTIMATED TAX, PAYMENTS AND REFUNDS

Readopt with amendment Rev 305.03, eff. 10-24-2020 (Doc# 13126-B), to read as follows:

Rev 305.03 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 business organization or the water's edge combined group, as defined in RSA 77-A:1, XV, in accordance with RSA 21-J:28-a, IV;
- (2) Refunded to the taxpayer if requested by the taxpayer;
- (3) Credited to subsequent tax liability *in accordance with RSA 77-A:7, I(b)*; or
- (4) A combination of (a)(2) and (a)(3), above, if indicated by the business organization or water's edge the combined group.

(b) A business organization not required to file a tax return, which incorrectly files and make a payment of estimated taxes, shall request a refund by:

- (1) Completing and filing Form BT-SUMMARY with the department to request a refund pursuant to RSA 21-J:29, I(b); or
- (2) Submitting a written request:

a. To the department at:

New Hampshire Department of Revenue Administration
Taxpayer Services Division

109 Pleasant Street
 PO Box 3306
 Concord, NH 03302-3306; and

- b. Which includes the following:
1. Name and mailing address;
 2. Taxpayer identification number; and
 3. The type of entity for the business organization;
 4. The reason the estimated tax payment was not required to be made;
 5. The tax year for which the estimated tax payment was made;
 6. The amount of the estimated tax payment; and
 7. Preparer's dated signature.

PART Rev 306 CREDITS ALLOWABLE AGAINST TAX LIABILITY

Readopt with amendment Rev 306.06, effective 1-16-15 (Document # 10758), to read as follows:

Rev 306.06 Application of Credits to Business Organizations Included in a Combined Group.

(a) The credits enumerated in RSA 77-A:5 and this section shall apply against the business profits tax liability of the individual member of the combined group, as calculated in (b) *and* (c) below.

(b) To determine its business profits tax liability *for tax periods ending before December 31, 2022*, the individual member of the combined group shall:

- (1) Determine a combined nexus group denominator for the property, payroll, and sales factors by adding the property, payroll and sales factor numerators of the individual members of the combined group subject to tax under RSA 77-A;
- (2) Determine an individual apportionment percentage for each member of the combined group subject to tax under RSA 77-A by dividing such member's individual New Hampshire property, payroll and sales factor numerators by the combined nexus group denominators determined in (1) above, dividing the total by 3; and
- (3) Apply the individual apportionment percentage, determined in (b)(2), above, to the business profits tax liability of the combined group as determined in accordance with the provisions of RSA 77-A.

(c) *To determine its business profits tax liability for tax periods ending on or after December 31, 2022, the individual member of the combined group shall:*

- (1) *Determine a combined nexus group denominator for the sales factor by adding the sales factor numerators of the individual members of the combined group subject to tax under RSA 77-A;*

(2) Determine an individual apportionment percentage for each member of the combined group subject to tax under RSA 77-A by dividing such member's individual New Hampshire sales factor numerator by the combined nexus group sales factor denominator determined in (1) above; and

(3) Apply the individual apportionment percentage, determined in (c)(2), above, to the business profits tax liability of the combined group as determined in accordance with the provisions of RSA 77-A.

PART Rev 307 RETURNS, DECLARATIONS, AND EXTENSIONS

Readopt with amendment Rev 307.04, eff. 1-16-15 (Doc# 10758), to read as follows:

Rev 307.04 Proprietorship Returns and Declarations.

(a) Proprietors, except members of a combined group conducting a unitary business, shall:

- (1) Report their business activity by completing and filing Form NH-1040; and
- (2) Attach a clear and legible copy of the following applicable schedules or forms as filed with the United States Internal Revenue Service with federal Form 1040:
 - a. Schedule C, Profit or Loss From Business;
 - b. Schedule D, Capital Gains and Losses;
 - c. Schedule E, Supplemental Income and Loss;
 - d. Federal Form 4797, Sales of Business Property;
 - e. Federal Form 6252, Installment Sale Income; and
 - f. Any other federal form required by the United States Internal Revenue Service.

(b) Married proprietors filing a federal individual income tax return jointly shall:

- (1) Not file a New Hampshire individual business profits tax return jointly or offset the profit and losses of each proprietor;
- (2) Report their respective gross business profits, additions and deductions, and taxable business profits using Form NH-1040;
- (3) Not divide the income, expenses, additions and deductions of a single proprietorship between the 2 spouses;
- (4) Calculate their respective:
 - a. Apportionment factors; and

b. Business profits tax; and

(5) Make all estimated payments using the names and social security numbers as shown on the business profits tax return as filed.

(c) Individuals who, for federal income tax purposes, report a pro-rata share of partnership income and expenses shall:

(1) Not include such items in their business profits tax returns; and

(2) Follow the provisions of Rev 307.03(b) in reporting such income for state tax purposes.

(d) Proprietorship business organizations required to pay estimated taxes, as provided in RSA 77-A:6, II, shall complete and file Form NH-1040-ES “Estimated Proprietorship Business Tax” quarterly payment form with payment on or before the 15th day of the fourth, sixth, ninth, and twelfth months of the taxable period to which they relate.

(e) Spouses jointly owning rental property shall:

(1) Be presumed to be a single proprietorship subject to the ~~\$50,000~~ minimum filing requirement provided in RSA 77-A:6, I; and

(2) Divide the income derived from such property among more than one proprietorship for purposes of determining the filing requirements if they can demonstrate to the department, by a preponderance of the evidence, that more than one separate and distinct proprietorship exists.

(f) Single member limited liability companies required to file a proprietorship business profits tax return under Rev 307.01(g)(2) shall attach a clear and legible copy of the individual federal income tax schedules referred to in (a)(2) above, relating to the single member limited liability company and detailed schedules supporting totals included on any specific line of such federal schedule.

(g) When a taxpayer dies during the tax year, or during the filing period following the end of the tax year but before the tax return has been filed, a return shall be completed and filed:

(1) By the executor, administrator, or the person who succeeds to ownership of the entity filing the proprietorship return; and

(2) Accompanied by a completed Form NH-1310, “Statement of Claimant to Refund Due a Deceased Taxpayer” if a refund is due a deceased taxpayer.

PART Rev 308 ADMINISTRATION

Adopt Rev 308.04 to read as follows:

Rev 308.04 Payroll and Property Information. For taxable periods ending on or after December 31, 2022, business organizations and combined groups shall continue to report payroll and property factors to the department for informational purposes.

CHAPTER Rev 2400 BUSINESS ENTERPRISE TAX

PART Rev 2405 COMPUTATION OF TAX, PAYMENTS, REFUNDS AND CARRYOVER OF CREDIT

Readopt with amendment Rev 2405.03, effective 10-24-20 (Document# 13126-B), to read as follows:Rev 2405.03 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 business enterprise or the water's edge combined group, in accordance with RSA 21-J:28-a, IV;
 - (2) Refunded to the taxpayer if requested by the taxpayer;
 - (3) Credited to subsequent tax liability *in accordance with RSA 77-E:6, II*; or,
 - (4) A combination of (2) and (3), above, if indicated on Form BT-Summary, "Business Tax Summary" by the business enterprise or the water's edge combined group.
- (b) A business enterprise, which is not required to file a tax return, but incorrectly files and makes a payment of estimated taxes, shall request a refund by:
- (1) Completing and filing Form BT-SUMMARY with the department to request a refund pursuant to RSA 21-J:29, I(b); or
 - (2) Submitted a written request:
 - a. To the department at:

New Hampshire Department of Revenue Administration
Taxpayer Services Division
109 Pleasant Street
PO Box 3306
Concord, NH 03302-3306; and
 - b. Which includes the following:
 1. Name and mailing address;
 2. Taxpayer identification number;
 3. The type of entity for the business organization;
 4. The reason the estimated tax payment was not required to be made;
 5. The tax year for which the estimated tax payment was made;

- 6. The amount of the estimated tax payment; and
- 7. Preparer's dated signature.

APPENDIX

Rule Number	State Statute Implemented

Rev 301.06	RSA 21-J:13, I; RSA 77-A:15
Rev 302.07	RSA 21-J:13, I; RSA 77-A:15; RSA 77-A:6
Rev 303.03	RSA 21-J:13; RSA 77-A:4, XIII; RSA 77-A:15, II
Rev 304.06	RSA 21-J:13, I; RSA 77
Rev 304.10	RSA 21-J:13, I; RSA 77
Rev 305.03	RSA 77-A:7, I(b); RSA 77-A:15, II; RSA 21-J:28-a
Rev 306.06	RSA 21-J:13, I; RSA 77-A:15
Rev 307.04	RSA 21-J:13, I; RSA 77-A:6
Rev 308.04	RSA 77-A:3, I, (b)
Rev 2405.03	RSA 77-E:11, II; RSA 77-E:6; RSA 21-J:28-a