

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____ Rule Number Rev 3200

<p>1. Agency Name & Address:</p> <p>New Hampshire Department of Revenue Administration 109 Pleasant Street P.O. Box 457 Concord, NH 03302-0457</p>	<p>2. RSA Authority: <u>RSA 77-G:6, I (f)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption <u>X</u></p> <p style="padding-left: 20px;">Repeal <u>X</u></p> <p style="padding-left: 20px;">Readoption <u>X</u></p> <p style="padding-left: 20px;">Readoption w/amendment <u>X</u></p>
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5. Short Title: **Education Tax Credit Program**

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

Chapter Rev 3200 is being readopted in its entirety with editorial and housekeeping amendments to comply with the provisions of RSA 541-A, as the rules are scheduled to expire on November 28, 2022, but are subject to extension pursuant to RSA 541-A:14-a. Chapter Rev 3200 sets forth the Department’s rules for the application procedure for a scholarship organization applying to accept scholarship donations, the application procedure for a business organization or business enterprise applying for a tax credit, complaint procedures, and the design and content of forms and applications required to be filed with or issued by the Department. Rev 3207.01 is being adopted to consolidate all filing procedures for the various forms into one location.

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

Business organizations and business enterprises seeking to make a donation to an approved scholarship organization and receive a tax credit against their business profits or business enterprise tax liability, organizations seeking approval as a scholarship organization, schools or parents (if home schooled) that intend to accept donations from scholarship organizations, and students that may have expenses paid by donations from scholarship organizations.

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

APPENDIX

Rule	Specific State Statute the Rule Implements
Rev 3201.01	RSA 77-G:4
Rev 3201.02	RSA 77-G:1, IV
Rev 3201.03	RSA 77-G:1, III
Rev 3201.04	RSA 77-G:6
Rev 3201.05	RSA 77-G:1, XII
Rev 3201.06	RSA 77-G:1, XIV
Rev 3201.07	RSA 77-G:1, XVII
Rev 3201.08	RSA 77-G:5, II (b)
Rev 3202.01(a)	RSA 77-G:1, XVIII; 77-G:5, II (a)
Rev 3202.01(b)	RSA 77-G:1, XVIII; RSA 77-G:5, II(a)
Rev 3202.01(c)	RSA 77-G:1, XVIII; RSA 77-G:5, II(g)
Rev 3202.02	RSA 77-G:5, II (a)
Rev 3202.02(a), (b) intro., and (b)(1)	RSA 77-G:1, XVIII; RSA 77-G:5, II(a)
Rev 3202.03	RSA 77-G:5, II (a)
Rev 3202.03(a)	RSA 77-G:1, XVIII; RSA 77-G:5, II(a)
Rev 3203.01	RSA 77-G:1, VII; 77-G:5, II (b)
Rev 3203.01(a) intro. and (a)(1), (2), and (6), and (b)	RSA 77-G:1, VII; RSA 77-G:5, II(b)
Rev 3203.02	RSA 77-G:1, VII; RSA 77-G:5, II(b)
Rev 3203.03	RSA 77-G:1, VII; 77-G:5, II (b)
Rev 3203.03(g) intro. and (g)(2), (h), and (i)	RSA 77-G:1, VII; RSA 77-G:5, II(b)-(c)
Rev 3204	RSA 77-G:1, XX; RSA 77-G:5, II(d)
Rev 3204.01	RSA 77-G:1, V; 77-G:5, II (d)
Rev 3204.02 (Repeal)	RSA 77-G:1, XX; 77-G:5, II (f)
Rev 3205.01	RSA 77-G:1, XIX; 77-G:5, II (g)
Rev 3205.01(a) intro. and (a)(1) and (2), and (b)	RSA 77-G:1, XIX; RSA 77-G:5, II(g)
Rev 3206.01 – Rev 3206.02	RSA 77-G:6, I (c)
Rev 3206.01(a) intro. and (a)(3), and (c) intro. and (c)(1)	RSA 77-G:6, I(c)
Rev 3207.01	RSA 77-G:6

APPENDIX II-C (Continued)

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

Name: **Beth A. McDaniel** Title: **Paralegal**
Address: **109 Pleasant Street** Phone #: **603-230-5027**
PO Box 457 Fax#: **603-230-5932**
Concord New Hampshire 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: **Monday, July 18, 2022**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, July 7, 2022 at 10:00 am**

Place: **New Hampshire Department of Revenue Administration
Medical and Surgical Building
109 Pleasant Street, 2nd Floor Hearings Room
Concord, NH 03301**

*****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 # 22:109, dated 6/3/2022

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

CHAPTER Rev 3200 EDUCATION TAX CREDIT PROGRAM

PART Rev 3201 DEFINITIONS

Readopt Rev 3201.01 – Rev 3201.04 effective 11-28-12 (Document #10236) to read as follows:

Rev 3201.01 “Aggregate tax credit amount” means the aggregate of tax credits calculated in accordance with RSA 77-G:4.

Rev 3201.02 “Business enterprise” means “business enterprise” as defined in RSA 77-E:1, III.

Rev 3201.03 “Business organization” means “business organization” as defined in RSA 77-A:1, I.

Rev 3201.04 “Department” means the New Hampshire Department of Revenue Administration.

Readopt Rev 3201.05 effective 9-27-19 (Document # 12881) to read as follows:

Rev 3201.05 “Program year” means “program year” as defined in RSA 77-G:1, XII, namely “the year beginning July 1 and ending June 30.”

Readopt Rev 3201.06 – Rev 3201.08 effective 11-28-12 (Document #10236) to read as follows:

Rev 3201.06 “Receiving school” means “receiving school” as defined in RSA 77-G:1, XIV.

Rev 3201.07 “Scholarship Organization” means “scholarship organization” as defined in RSA 77-G:1, XVII.

Rev 3201.08 “First come-first served basis” means the method by which the department processes education tax credit applications by the day submitted, where more than one application received on a specific day will be processed on a random basis before moving on to the next day’s applications.

Readopt Part Rev 3202 effective 11-28-12 (Document # 10236), as amended effective 9-27-19 (Document #12881) to read as follows:

PART Rev 3202 PROCEDURE FOR SCHOLARSHIP ORGANIZATION APPLICATION

Rev 3202.01 Form ED-01, Scholarship Organization Application.

(a) An organization seeking approval as a scholarship organization to accept scholarship donations pursuant to RSA 77-G shall complete and file Form ED-01, scholarship organization application, with the department each program year by providing:

- (1) The organization’s name, address, and federal taxpayer identification number;
- (2) The name, title, phone number and email address of the organization’s contact person;

- (3) A signed statement that the organization has met the eligibility requirements of RSA 77-G:1, XVII, and will comply with the provisions of RSA 77-G;
- (4) The organization's Exemption Determination Letter from the Internal Revenue Service showing the effective exemption date as a Section 501(c)(3) tax exempt organization;
- (5) A copy of the Certificate of Registration from the New Hampshire Charitable Trusts Division; and
- (6) The dated signature in ink and printed name of an authorized signatory, certifying to the following:

"Under penalties of perjury, I declare that I have examined this document and to the best of my belief the information herein is true, correct and complete. Further, I attest to the eligibility requirements listed in Step 2 above."

(b) With the exception of (c) below, Form ED-01 shall be filed in accordance with Rev 3202.02 *and Rev 3207.01* each program year no later than June 15.

(c) If a scholarship organization intends to issue scholarships in the next program year, the scholarship organization shall complete and file Form ED-01 within 30 days following the end of the most recently completed program year, with the scholarship organization report required by Rev 3205.01.

~~(d) Form ED-01 shall be available by:-~~

~~(1) Written request to the department;-~~

~~(2) Calling (603) 230-5001; or~~

~~(3) On the department's web site at <http://www.revenue.nh.gov/>.~~

Rev 3202.02 Filing Procedure for ED-01, Scholarship Organization Application.

~~(a)~~ Except as provided in Rev 3202.01(c), Form ED-01 shall be considered timely if filed with the department no later than June 15 of each program year.

~~(b) The application shall be:~~

~~(1) Mailed to:~~

~~New Hampshire Department of Revenue Administration
Education Tax Credit
PO Box 457
Concord, NH 03302-0457; or~~

~~(c) Form ED-01 transmitted to the department by facsimile or electronic mail shall not be considered filed.~~

Rev 3202.03 Approval or Denial of Scholarship Organization Application.

(a) The department shall review each Form ED-01 and notify each applicant in writing whether the application is approved or denied within 30 days of the department's receipt of the application or the scholarship organization report required by Rev 3205.01, whichever is later.

(b) An application shall be denied if it:

(1) Fails to provide the information required by Rev 3202.01(a);

(2) Is not timely filed pursuant to Rev 3202.02(a); or

(3) Is submitted by an applicant that fails to meet the statutory requirements of RSA 77-G:5, I or RSA 77-G:5, II(g).

(c) An organization shall not accept donations as provided in RSA 77-G unless their Form ED-01 is approved by the department.

PART Rev 3203 PROCEDURE FOR EDUCATION TAX CREDIT APPLICATION

Readopt with amendment Rev 3203.01 – Rev 3203.02 effective 9-27-19, (Document #12881) to read as follows:

Rev 3203.01 Form ED-02, Education Tax Credit Application.

(a) A business organization, business enterprise, or individual seeking to apply for an education tax credit pursuant to RSA 77-G shall complete and file Form ED-02, "Education Tax Credit Application," with the department by providing:

(1) The business organization's, business enterprise's, or individual's name, address, and federal taxpayer identification number, such as the individual's Social Security number;

(2) The name, title, phone number and email address of the business organization's or business enterprise's contact person, or of the individual;

(3) The name of all scholarship organizations to which a donation will be made and the amount of each requested donation (if known);

(4) The total requested donation amount;

(5) The tax credit amount by calculating eighty-five percent of the total requested donation amount; and

(6) The dated signature in ink and printed name of an authorized signatory, certifying:

that the business organization/enterprise or individual shall make the requested donations no later than 60 days after the date of approval of the application in accordance with RSA 77-G, but no later than June 30 of the program year, and declaring, under penalties of perjury, that the signatory has examined the document and to the best of the signatory's belief the information is true, correct and complete.

(b) Form ED-02 shall be filed no later than May 31 of each program year in accordance with Rev 3203.02 *and Rev 3207.01*.

~~(e) Form ED-02 shall be available by:-~~

- ~~(1) Written request to the department;~~
- ~~(2) Calling (603) 230-5001; or~~
- ~~(3) On the department's web site at <http://www.revenue.nh.gov/>.~~

Rev 3203.02 Filing Procedure for Education Tax Credit Application.

(a) Form ED-02 shall be considered timely if filed with the department no later than May 31 of each program year.

(b) Applications received after May 31 of the program year shall be denied for such program year but processed for the following program year.

~~(c) The application shall be:~~ *The application may be filed electronically through Granite Tax Connect web portal located at www.revenue.nh.gov/gtc.*

~~(1) Mailed to:~~

~~New Hampshire Department of Revenue Administration
Education Tax Credit
PO Box 457
Concord, NH 03302-0457; or~~

~~(2) Hand delivered to the department at:~~

~~Governor Hugh J. Gallen Office Park South
109 Pleasant Street
Medical and Surgical Building
Concord, NH.~~

~~(d) Form ED-02 transmitted to the department by facsimile or electronic mail shall not be considered filed.~~

Readopt Rev 3203.03 effective 11-28-12 (Document # 10236), as amended effective 9-27-19 (Document #12881) to read as follows:

Rev 3203.03 Approval or Denial of Education Tax Credit Application.

(a) The department shall review each Form ED-02, education tax credit application, on a first come-first served basis.

(b) An application shall be approved for only a portion of the requested credit if:

- (1) The requested credit is for more than 10 percent of the aggregate tax credit amount;

(2) The requested credit approved by the department in its entirety would exceed the aggregate tax credit amount; or

(3) The requested credit meets the conditions of both (1) and (2).

(c) If an application meets the conditions set forth in Rev 3203.03(b)(1), the department shall approve the portion of the education tax credit requested that does not exceed 10 percent of the aggregate tax credit amount.

(d) If an application meets the conditions set forth in Rev 3203.03(b)(2), the department shall approve the portion of the education tax credit requested that does not exceed the aggregate tax credit amount.

(e) If an application meets the conditions set forth in Rev 3203.03(b)(3), the department shall approve the portion of the education tax credit requested that does not exceed 10 percent of the aggregate tax credit amount and does not exceed the aggregate tax credit amount.

(f) An application shall be approved for the entire requested credit amount if the requested amount does not exceed 10 percent of the aggregate tax credit amount and the requested amount would not cause the aggregate tax credit to be over the allowed amount for the program year.

(g) An application shall be denied for the current program year if it:

(1) Fails to provide the information required by Rev 3203.01(a); or

(2) Is not timely filed pursuant to Rev 3203.02(a).

(h) The department shall notify in writing each applicant whether the application is approved or denied within 30 days of the department's receipt of the application or approval of the scholarship organization(s), whichever is later, by stating the amount of the education tax credit allowed and the date of approval, if the application is approved, or by stating the reasons for denial, if the application is denied.

(i) The business organization, business enterprise, or individual shall donate the amount allowed no later than 60 days after the date of the department's approval, and no later than June 30 of the program year during which it was approved, or the request shall expire.

PART Rev 3204 SCHOLARSHIP RECEIPTS

Readopt with amendment Rev 3204.01 effective 9-27-19 (Document #12881) to read as follows:

Rev 3204.01 Form ED-03, Education Tax Credit Scholarship Receipt.

(a) Scholarship organizations shall complete and file Form ED-03, "Education Tax Credit Scholarship Receipt", with the department, and send a copy to the donating business organization, business enterprise, or individual within 15 days of receiving the donation to acknowledge the contribution made by the business organization, business enterprise, or individual.

(b) Form ED-03 shall contain:

- (1) The receiving scholarship organization's name, address, and federal taxpayer identification number;
- (2) The donating business organization's, business enterprise's, or individual's name, address, and federal taxpayer identification number, such as the individual's Social Security number;
- (3) The donation amount;
- (4) The date the donation was received or postmarked; and
- (5) The dated signature in ink and printed name of an authorized signatory, certifying to the following:

"I certify that the scholarship organization received the donation listed from the business organization/enterprise or individual on the date shown above."

~~(e) Form ED-03 shall be:~~

~~(1) Mailed to:~~

~~New Hampshire Department of Revenue Administration
Education Tax Credit
PO Box 457
Concord, NH 03302-0457; or~~

~~(2) Hand delivered to the department at:~~

~~Governor Hugh J. Gallen Office Park South
109 Pleasant Street
Medical and Surgical Building
Concord, NH.~~

~~(d) Form ED-03 transmitted to the department by facsimile or electronic mail shall not be considered filed.~~

~~(e)(c)~~ A copy of Form ED-03 shall be attached to the New Hampshire business tax or interest and dividends tax return, or both, of the business organization, business enterprise, or individual, to use the education tax credit allowed against the:

- (1) Business profits tax due pursuant to RSA 77-A;
- (2) Business enterprise tax due pursuant to RSA 77-E; or
- (3) Interest and dividends tax due pursuant to RSA 77.

Repeal Rev 3204.02 effective 11-28-12 (Document #10236) to read as follows:

~~Rev 3204.02 Form ED-04, Education Tax Credit Scholarship Receipt.~~

~~(a) Scholarship organizations shall complete Form ED-04, education tax credit scholarship receipt, send it to the business organization or business enterprise, and file a copy with the department, on or before December 1 of the program year.~~

~~(b) Form ED-04, education tax credit scholarship receipt, shall contain:~~

- ~~(1) The scholarship organization's name, address, and federal taxpayer identification number;~~
- ~~(2) The donating business organization's or business enterprise's name, address, and federal taxpayer identification number;~~
- ~~(3) The donation amount used;~~
- ~~(4) The donation amount carried forward;~~
- ~~(5) The 85% education tax credit based upon the donation amount used;~~
- ~~(6) The donation amount not used; and~~
- ~~(7) The dated signature in ink and printed name of an authorized signatory, certifying to the following:~~

~~"I certify that the above named scholarship organization awarded the "donation amount used" in Line 9 and has returned the "donation amount not used" in Line 12 to the donating business organization/enterprise."~~

~~(c) The department shall review each Form ED-04 to ensure that the average scholarship size does not exceed the amount allowed under RSA 77-G:2, I(b).~~

~~(d) The scholarship receipt shall be attached to the business organization's or business enterprise's New Hampshire business tax return to apply the Education Tax Credit against either the business profits tax liability, pursuant to Rev 306.07, or the business enterprise tax liability, pursuant to Rev 2406.06.~~

~~(e) A copy of Form ED-04 shall be:~~

~~(1) Mailed to:~~

~~New Hampshire Department of Revenue Administration
Education Tax Credit
PO Box 488
Concord, NH 03302-0488; or~~

~~(2) Hand delivered to the department at:~~

~~Governor Hugh J. Gallen Office Park South
109 Pleasant Street
Medical and Surgical Building
Concord, NH.~~

Readopt with amendment Rev 3205.01 effective 11-28-12 (Document # 10236) as amended effective 9-27-19 (Document #12881) to read as follows:

Rev 3205.01 Form ED-05, Scholarship Organization Report.

(a) The scholarship organization shall complete and submit Form ED-05, "Scholarship Organization Report," to the department within 30 days following the end of each program year by providing:

(1) The number of scholarships granted under RSA 77-G:1, VIII(a)(1), and the percentage of these students who were eligible for the federal free and reduced-price meal program in the prior year;

(2) The number of scholarships granted under RSA 77-G:1, VIII(a)(2), and the percentage of these students who were eligible for the federal free and reduced-price meal program in the prior year;

(3) The number of scholarships granted under RSA 77-G:1, VIII(a)(3), and the percentage of these students who were eligible for the federal free and reduced-price meal program in the prior year;

(4) The total dollar amount of:

a. Donations received;

b. Donations carried forward from prior program years;

~~c.~~ Donations used for scholarships;

~~d.~~ Donations spend on administrative expenses pursuant to RSA 77-G:5, I(f); and

~~e.~~ Donations not used for scholarships;

(5) The total dollar amount of all scholarships granted;

(6) The number of scholarships granted;

(7) The number of scholarships granted to homeschool students;

(8) The total dollar amount of scholarships granted to homeschool students;

~~(7)~~**(9)** The number of scholarships distributed by the scholarship organization, per school, and the dollar range of those scholarships. All home educated students shall be totaled together as a single school;

~~(8)~~**(10)** The number of students receiving a scholarship under RSA 77-G by zip code;

~~(9)~~**(11)** The aggregated results from the NH Education Tax Credit Survey designed by the department under RSA 77-G:1, XIX(k);

~~(10)~~(12) The aggregated results from the survey designed by the department of education under RSA 77-G:1, XIX(1);

~~(11)~~(13) The number of participating students who graduated from high school in the previous year, and the number that dropped out of school;

~~(12)~~(14) An explanation of information omitted from the report because it would reveal private data about an individual student;

~~(13)~~(15) The name of any other scholarship organizations who have agreed to combine their data with the scholarship organization data for the purposes set forth in RSA 77-G:2, II. The agreement shall only be considered valid if each scholarship organization lists the other scholarship organizations in the agreement. If the scholarship organization has an agreement to combine data with another scholarship organization, an indication whether this report reflects the combined data or just the data for the scholarship organization that prepared this report; and

~~(14)~~(16) The dated signature in ink and printed name of an authorized signatory, certifying to the following:

“Under penalties of perjury, I declare that I have examined this document and to the best of my belief the information herein is true, correct and complete. I do hereby attest that the scholarship organization is in full compliance with the provisions of RSA 77-G, the Education Tax Credit statute.”

(b) The department shall review each Report ED-05 to ensure that:

- (1) The administrative expenses requirement set forth in RSA 77-G:5, I(f) is not exceeded;
- (2) The number of scholarships issued under RSA 77-G:1, VIII(a)(1) and (2) meets the requirements of RSA 77-G; and
- (3) The average scholarship size does not exceed the amount allowed.

PART Rev 3206 COMPLAINT PROCEDURES

Readopt with amendment Rev 3206.01 effective 11-28-12 (Document # 10236) and as amended effective 9-27-19 (Document #12881) to read as follows:

Rev 3206.01 Filing a Complaint.

(a) Any alleged violations of the provisions of RSA 77-G and Rev 3200 shall be made to the department by filing a completed Form ED-06, complaint form, or by writing to the department and providing:

- (1) The name, address, home phone number, work phone number and email address of the complainant;
- (2) The name, address, and phone number of the party against whom the complaint is alleged;

(3) A concise statement that a parent, business organization, business enterprise, individual, scholarship organization, or receiving school has violated any provision of RSA 77-G or Rev 3200, including citation of the specific statute or rule provision;

(4) A statement of the facts on which the complaint is based;

(5) Any and all documentation to support the complaint;

(6) The names and phone numbers of any witnesses; and

(7) The dated signature in ink and printed name of the complainant, certifying to the following:

“Under penalties of perjury, I declare that I have examined this document and to the best of my belief the information herein is true, correct and complete.”

(b) Any written communication satisfying the requirements set forth in (a) above shall constitute a complaint for the purposes of Rev 3206.01.

(c) ~~Complaints shall be:~~

~~(1) Mailed to:~~

~~-~~

~~New Hampshire Department of Revenue Administration
Education Tax Credit
PO Box 457
Concord, NH 03302-0457; or~~

~~(2) Hand delivered to the department at:~~

~~Governor Hugh J. Gallen Office Park South
109 Pleasant Street
Medical and Surgical Building
Concord, NH.~~

~~(d) Complaints shall be considered filed on the date that they are received by the department.~~

Readopt Rev 3206.02 effective 11-28-12 (Document #10236) to read as follows:

Rev 3206.02 Investigation of Complaints.

(a) If the complaint alleges a violation of RSA 77-G or Rev 3200, the department shall either conduct an inquiry or refer the complaint to another agency for investigation.

(b) If the complaint does not state a violation of RSA 77-G or Rev 3200, the department shall notify the complainant in writing.

(c) If the complaint is about a scholarship organization, the department may require an independent audit of the scholarship organization to be paid by the scholarship organization as set forth in RSA 77-G:6, I(b).

Adopt PART Rev 3207 to read as follows:

PART Rev 3207 ADMINISTRATION

Rev 3207.01 Filing Procedure.

(a) The forms used in this chapter shall be available by:

- (1) Written request to the department;**
- (2) Calling (603) 230-2001; or**
- (3) On the department's website at <http://www.revenue.nh.gov/>.**

(b) Except as specifically provided, all the forms to be filed to the department under this chapter and RSA 77-G shall be:

(1) Mailed to:

**New Hampshire Department of Revenue Administration
Education Tax Credit
PO Box 637
Concord, NH 03302-0637; or**

(2) Hand-delivered to the department at:

**Governor Hugh J. Gallen Office Park South
109 Pleasant Street
Medical and Surgical Building
Concord, NH.**

(c) Forms transmitted to the department by facsimile or electronic mail shall not be considered filed.

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