

CHAPTER Rev 2900 GENERAL PROVISIONS RELATING TO ADMINISTRATION, RETURNS AND TAXPAYER RECORDS

Readopt Rev 2901.01, effective 7-25-13 (Document #10388), to read as follows:

PART Rev 2901 SCOPE AND APPLICABILITY

Rev 2901.01 Applicability and Interpretation. The rules in this chapter have general applicability to all taxes administered by the department of revenue administration. These rules are to be construed in conjunction with any department rule relating to a specific tax administered by the department. If a department rule relating to a specific tax conflicts with the rules in this chapter, the requirements in the rule that is specific to a tax shall govern.

Readopt Rev 2902.01 and Rev 2902.02, effective 7-25-13 (Document #10388), to read as follows:

PART Rev 2902 DEFINITIONS

Rev 2902.01 “Department” means the New Hampshire department of revenue administration.

Rev 2902.02 “Department identification number” means a tax processing number issued by the department to a taxpayer, pursuant to Rev 2903.01.

Readopt Rev 2902.03, effective 7-11-15 (Document #10885), to read as follows:

Rev 2902.03 “Facsimile signature” means an authorized signature that has been prepared mechanically or reproduced photographically.

Readopt Rev 2902.04, effective 10-23-19 (Document #12907), to read as follows:

Rev 2902.04 “File” means to place a document in the actual possession of the department by one of the following:

- (a) United States postal service;
- (b) Physical delivery, as provided in Rev 2904.03; or
- (c) Electronically if authorized by statute or a department rule.

Readopt Rev 2902.05 through Rev 2902.11, effective 7-25-13 (Document #10388), and renumbered effective 7-11-15 (Document #10855), to read as follows:

Rev 2902.05 “Individual taxpayer identification number” means a tax processing number issued by the Internal Revenue Service to individual taxpayers.

Rev 2902.06 “Preparer tax identification number” means a tax processing number issued by the Internal Revenue Service to enrolled agents and tax preparers.

Rev 2902.07 “Return” means a department approved paper tax form or a department authorized electronic filing that provides sufficient information to calculate tax liability and meets the requirements of Rev 2904.08.

Rev 2902.08 “Substitute form” means a tax form or return that is not produced, issued, or published by the department, whether or not computer-generated.

Rev 2902.09 “Tax form” means any paper or electronic document prepared and issued or approved by the department to administer the tax and revenue rules and laws of New Hampshire.

Rev 2902.10 “Taxpayer” means any person, entity, or association subject to any provision of the tax and revenue rules and laws of New Hampshire.

Rev 2902.11 “Taxpayer identification number” means:

- (a) Social Security number;
- (b) Federal employer identification number;
- (c) Individual taxpayer identification number;
- (d) Preparer tax identification number; or
- (e) Department identification number.

Readopt with amendment Rev 2903.01 and Rev 2903.02, effective 7-25-13 (Document #10388), to read as follows:

PART Rev 2903 ADMINISTRATION

Rev 2903.01 Department Identification Number.

(a) The department shall require a taxpayer to obtain a department identification number prior to filing any tax form with the department if:

- (1) The taxpayer does not have a federal employer identification number;
- (2) The taxpayer shares a taxpayer identification number with another taxpayer who is subject to taxation; or
- (3) The taxpayer is not required to, *or cannot* obtain:
 - a. A federal employer identification number;
 - b. Social Security number; or
 - c. Individual taxpayer identification number.

(b) In order to obtain a department identification number, the taxpayer shall complete Form DP-200, “Request for New Hampshire Department Identification Number (DIN)” and file it with the department.

(c) Form DP-200 shall be filed at least 30 days prior to filing a tax form.

(d) The department shall be notified of any changes to the information reported on the Form DP-200 ~~thirty~~ (30) days prior to the change.

Rev 2903.02 Confidentiality of Department Records.

(a) All records and files of the department shall be confidential and privileged and shall only be disclosed in conformity with the provisions of RSA 21-J:14.

(b) The department shall only make a disclosure or allow a representative to act on behalf of the taxpayer if:

(1) A properly executed power of attorney is on file with the department; ~~or~~

(2) The taxpayer, an authorized representative of the taxpayer by a power of attorney, or an authorized employee of the taxpayer is physically present to verbally authorize such disclosure when the disclosure is occurring; *or*

(3) The department is satisfied under the totality of the circumstances that the representative is duly authorized to act on the taxpayer's behalf.

(c) For purposes of administering the tax laws of the state, as assigned by statute and pursuant to the federal social security act, 42 USCS sec. 405 (c) (2) (C) (i), taxpayers shall provide their taxpayer identification number or numbers on all tax forms.

Readopt with amendment Rev 2903.03, effective 10-24-20 (Document #13126-B) to read as follows:

Rev 2903.03 Power of Attorney.

(a) For purposes of this section, "signature" means:

(1) An original ink signature pursuant to Rev 2904.04;

(2) An electronic signature, as defined in Rev 2904.05(a); or

(3) A facsimile signature, as defined in Rev 2902.03.

(b) A power of attorney authorizing someone to act as an agent for a taxpayer shall include the following information:

(1) Name, mailing address, and taxpayer identification number of the taxpayer granting the power of attorney;

(2) The name, mailing address, and telephone number of the person to whom the power of attorney is granted;

- (3) The subject matter and scope of the authorization for which the power of attorney is granted;
- (4) Whether the person to whom the power of attorney is granted may:
- a. Have authority to receive confidential information and full power to perform all acts necessary related to the subject matter; or
 - b. Have authority to receive or inspect confidential tax information only; ~~and~~
- (5) The extent to which existing grants of powers of attorney are not revoked by the new grant of power of attorney; **and**
- (6) *Such other information as the department may reasonably require to establish to the department's satisfaction that the representative is duly authorized by the taxpayer.***
- (c) The taxpayer executing the power of attorney shall affix his or her signature and date the document.
- (d) A power of attorney ~~may~~**shall** be provided as follows:
- (1) Completing and filing the department's Form DP-2848 "Power of Attorney";
 - (2) ~~Filed~~**Filing** electronically through the Granite Tax Connect web portal **located at *www.revenue.nh.gov/gtc***; or
 - (3) **Submitting a** letter addressed to the department **that complies with the requirements of (a) through (c) above.**
- (e) A power of attorney **completed as provided in (d)(1) or (d)(3) above**, shall be filed with the department by:
- (1) Mailing **or delivering** the power of attorney to:

New Hampshire Department of Revenue Administration
Audit Division
P.O. Box 1388
Concord, NH 03302-1388;
 - (2) ~~Filing electronically through the Granite Tax Connect web portal located at *www.revenue.nh.gov/gtc*~~**Sending the power of attorney to a current employee of the department by facsimile**; or
 - (3) E-mailing the power of attorney to POA@dra.nh.gov.

Readopt Rev 2903.04 through Rev 2903.06, effective 7-25-13 (Document #10388), to read as follows:

Rev 2903.04 "Check-the-Box" Limited Power of Attorney.

(a) The “Check-the-Box” limited power of attorney shall grant the department the authority to discuss the tax form with the tax preparer identified on the tax form.

(b) A taxpayer may indicate such authorization by:

- (1) Checking the POA box; and
- (2) Providing the information requested on the tax form.

(c) The limited power of attorney shall not:

- (1) Authorize the preparer to act as an agent for the taxpayer as provided for in Rev 2903.02; or
- (2) Constitute a revocation of any previous power of attorney granted by the taxpayer.

(d) The taxpayer, executing the power of attorney, shall sign and date the tax form.

(e) The tax preparer shall sign and date the tax form.

Rev 2903.05 Partial Payments.

(a) Notwithstanding (d) below, payments made in an amount less than the total amount due shall be applied to the taxpayer's liability for the oldest tax period first until paid in full then to any liability for subsequent tax periods until the taxpayer's liability for all tax periods is paid in full.

(b) When applying partial payments in accordance with (a) above, the department shall apply such payments in the following sequence within each tax period:

- (1) First, against the penalties assessed under RSA 21-J or RSA 78-B:7, and protested check fees assessed under the provisions of RSA 6:11-a;
- (2) Second, against interest assessed under RSA 21-J; and
- (3) Third, against tax due as assessed in accordance with the specific tax statutes administered by the department.

(c) Interest shall continue to accrue on any tax liability remaining unpaid until the total outstanding tax liability has been paid in full.

(d) A taxpayer may request in writing to apply a partial payment to a particular tax period or tax type, which the department shall apply in accordance with the taxpayer's written request and not in accordance with (a) above.

Rev 2903.06 Minimum Payment; Return to be Filed. If the amount due is less than \$1.00, the taxpayer shall file the return but may omit the payment.

Readopt with amendment Rev 2903.07, effective 10-24-20 (Document #13126-B), to read as follows:

Rev 2903.07 Offset of Refund or Credit. ~~With the exception of the tobacco tax, t~~ The following shall apply to all taxes administered by the department:

(a) Refunds or credits for taxes, penalties, or interest paid by a taxpayer shall first be applied to, and offset against, any taxes, penalties, or interest the taxpayer owes the department, ~~but shall not be applied to taxes, penalties, or interest until such time as all of the appeal rights for the taxpayer and the department have expired.~~

(b) Application and offset pursuant to (a) above shall be made as provided in Rev 2903.05(a) and (b) and the balance remaining, if any, shall be refunded.

(c) Refunds of tax shall accrue interest, pursuant to RSA 21-J:28, until the date the department applies such refund according to paragraph (a), above, or refunds any remaining balance.

(d) No interest shall accrue on any: ~~refund of penalties or interest paid by the taxpayer.~~

(1) Refund of penalties or interest paid by the taxpayer; or

(2) Credit.

(e) The department shall provide the taxpayer with a statement explaining the application of any refund or credit made according to this section.

Readopt Rev 2904.01 and Rev 2904.02, effective 7-25-13 (Document #10388), to read as follows:

PART Rev 2904 GENERAL REQUIREMENTS FOR TAX FORMS

Rev 2904.01 Applicability and Interpretation.

(a) The rules in this part shall have general applicability to all tax forms.

(b) These rules shall be construed in conjunction with any rule that sets forth the requirements of a specific form.

(c) If a department rule or statute sets forth specific requirements for a form that conflicts with the rules in this part, the requirements in the rule or statute that is specific to a form or tax shall govern.

Rev 2904.02 Department Address. The department's physical location and mailing address, unless otherwise designated for specific purposes, shall be as follows:

(a) The physical location shall be:

New Hampshire Department of Revenue Administration
Governor Hugh J. Gallen Office Park South
109 Pleasant Street
Medical and Surgical Building
Concord, New Hampshire 03301; and

(b) The mailing address shall be:

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

Readopt with amendment Rev 2904.03, effective 7-25-13 (Document #10388), to read as follows:

Rev 2904.03 Uniform Document Filing Information.

- (a) A document shall be considered filed with the department when it is:
- (1) Placed in the United States mail addressed to the department with a postmark affixed by the United States Postal Service;
 - (2) Received by a delivery service in accordance with Rev 2904.03 (d) below;
 - (3) Hand-delivered to the department; or
 - (4) Received electronically, if authorized by statute or department rule, as evidenced by the department's issuance of a confirmation number or notice.
- (b) A document, *other than a power of attorney as described in Rev 2903.03(d)(1) and (3)*, transmitted by facsimile shall not be considered filed.
- (c) Documents transmitted by means of the United States mail shall be deemed filed on the date mailed provided that at least one of the following conditions is met:
- (1) There is a legible date shown by the post office cancellation mark stamped on the envelope or wrapper containing the document;
 - (2) The person filing the document can present a United States registered mail, certified mail, or certificate of mail record indicating the date the document was mailed;
 - (3) If the document has been received by the department but the cancellation mark is illegible, erroneous, or omitted, the taxpayer presents other competent proof, such as credible, sworn witness testimony, that the document was properly addressed and timely mailed; or
 - (4) If mailed but not received by the department, the taxpayer presents:
 - a. Other competent proof, such as credible, sworn witness testimony, that the document was properly addressed and timely mailed; and
 - b. Provides the department with a copy of the document within 30 days after the department provides written notification to the taxpayer that the document has not been received.
- (d) Documents transmitted by a delivery system shall be deemed filed on the date:
- (1) They are received by a delivery service, provided the delivery service:
 - a. Is available to the general public;

b. Offers services equivalent to first class, registered and certified mail in a manner as timely and reliable as the United States Postal Service;

c. Either:

1. Affixes a date stamp to the package or envelope in which the documents or payments are placed indicating the date on which the items were received from the taxpayer and the date on which it is to be delivered to the department; or

2. Records electronically within its computer data base, the date on which the documents or payments were received from the taxpayer and the date on which the items were delivered to the department; and

d. Makes available to the taxpayer, upon request, a notarized statement indicating the date the documents or payments were received by the delivery service and the date the items were delivered to the department; or

(2) They are received by the department in instances where:

a. The postmark is affixed by a postage meter operated by the delivery business or someone other than the United States Postal Service;

b. The documents are delivered to the department by the taxpayer; or

c. The taxpayer uses a delivery service or messenger, other than one in compliance with the provisions of (d)(1) above, to deliver the documents to the department.

(e) Documents delivered by a delivery service or messenger, other than one in compliance with the provisions of Rev 2904.03(d)(1) above, documents physically delivered to the department, and documents transmitted through the United States mail which do not meet the requirements of Rev 2904.03(c), above, shall be considered filed on the date received by the department.

(f) Documents shall be timely filed when the date that they are deemed filed pursuant to this rule occurs on or before the due date for filing.

(g) Returns filed after the statutory prescribed filing date shall be subject to interest as prescribed in RSA 21-J:28 and penalties as prescribed in RSA 21-J:31 and 21-J:33.

(h) 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.

Readopt with amendment Rev 2904.04, effective 7-25-13 (Document #10388), to read as follows:

Rev 2904.04 Signatures. With the exception of electronic signatures pursuant to Rev 2904.05, all tax forms requiring a signature shall be:

(a) Signed in blue or black ink by:

(1) The taxpayer, and if applicable, the taxpayer's spouse;

- (2) A corporate officer;
 - (3) A *court appointed* receiver;
 - (4) A trustee in bankruptcy;
 - (5) An assignee *for the benefit of creditors, duly appointed in accordance with state law and* in control of property of the business organization;
 - (6) The executor or administrator *of the estate of the deceased taxpayer*;
 - (7) A trustee *of an irrevocable trust acting in accordance with the terms of the trust*;
 - (8) Joint tenants;
 - (9) A guardian or individual acting as the taxpayer's attorney-in-fact pursuant to a power of attorney; or
 - (10) If the form was prepared by someone other than the taxpayer, the preparer of the form; and
- (b) Dated.

Readopt with amendment Rev 2904.05, effective 10-23-19 (Document #12907), to read as follows:

Rev 2904.05 Electronic Signatures.

- (a) "Electronic signature" means:
- (1) the name and taxpayer identification number of the taxpayer when transmitted as part of a tax form filed electronically either by the taxpayer or at the taxpayer's direction, pursuant to Rev 2904.03-; or**
 - (2) an electronic symbol or process attached to, or logically associated with, a document and executed or adopted by a person, or other signatory identified in Rev 2904.04(a)(1) – (10), with the intent to sign the document. This shall include, but not limited to, signatures processed through DocuSign or DotLoop.**
- (b) "Electronic" means relating to technology having electrical, digital, wireless, or similar capabilities, including but not limited to the use of the Internet and the filing of tax forms by computer technology.
- ~~(c) An electronic signature shall be attached to or logically associated with a record and executed or adopted by the taxpayer, or other signatory identified in Rev 2904.04(a)(1) – (10), with intent to sign the record.~~
- ~~(d) The use of an electronic signature pursuant to this rule shall have the same legal effect as a signature in blue or black ink, pursuant to Rev 2904.04(a), on a paper tax form.~~

~~(e)~~(d) An electronic signature shall be attributed to a taxpayer if the record or signature was the certified and declared act of the taxpayer or other signatory identified in Rev 2904.04(a)(1)-(10). A certified and declared act shall occur when the taxpayer or other signatory identified in Rev 2904.04(a)(1)-(10) certifies and declares that the electronic signature was actually signed by the taxpayer or other signatory identified in Rev 2904.04(a)(1)-(10) and that the electronic signature is valid.

~~(f)~~(e) The department shall reject any tax forms *or documents* submitted with an electronic signature in violation of this rule.

~~(g)~~(f) A tax form *or document* submitted to the department with an electronic signature shall be retained by the taxpayer in its original form in accordance with the time period for record retention provisions in Rev 2906.12.

Readopt Rev 2904.06 and Rev 2904.07, effective 7-25-13 (Document #10388), to read as follows:

Rev 2904.06 Alternative Methods of Signatures for Preparers.

(a) Preparers may sign original returns, amended returns, and requests for filing extensions by means of a:

- (1) Rubber stamp;
- (2) Mechanical device; or
- (3) Computer software program.

(b) The alternative methods in (a) above shall include either:

- (1) A facsimile of the signer's signature; or
- (2) The signer's printed name.

(c) Signers shall not affix a facsimile signature other than their own.

(d) Returns, amended returns, and request for extensions shall be filed in accordance with Rev. 2904.03.

(e) Signatures shall otherwise comply with Rev 2904.04 or Rev 2904.05.

(f) The use of an alternative method of signing shall have the same legal effect as a handwritten signature.

(g) The department shall reject any returns, amended returns, or requests for extensions utilizing an alternative method of signature that is in violation of this rule.

Rev 2904.07 Alternative Methods of Signatures for Authorized Agents.

(a) In order to be permitted to use an alternative method of signature, the authorized agent shall file a written request for approval of the use of an alternative method for signing 30 days prior to the date of filing the return, amended return or request for extension.

(b) Written requests for approval of the use of an alternative method for signing shall include the following:

- (1) Taxpayer name, address and taxpayer identification number;
- (2) Authorized agent's name, address and taxpayer identification number; and
- (3) A copy of a power of attorney authorizing the agent to file the return or extension on behalf of the taxpayer.

(c) The department shall deny approval if the agent fails to provide the information in accordance with (a) and (b) above.

(d) Upon receipt of approval from the department, authorized agents may sign original returns, amended returns, and requests for filing extensions by means of a:

- (1) Rubber stamp;
- (2) Mechanical device; or
- (3) Computer software program.

(e) The alternative methods in (d) above shall include either:

- (1) A facsimile of the signer's signature; or
- (2) The signer's printed name.

(f) Signers shall not affix a facsimile signature other than their own.

(g) Returns, amended returns, and request for extensions shall be filed in accordance with Rev. 2904.03.

(h) Signatures shall otherwise comply with Rev 2904.04 or Rev 2904.05.

(i) The use of an alternative method of signing shall have the same legal effect as a handwritten signature.

(j) The department shall reject any returns, amended returns, or requests for extensions utilizing an alternative method of signature that is in violation of this rule.

Readopt with amendment Rev 2904.08, effective 7-25-13 (Document #10388), to read as follows:

Rev 2904.08 Uniform Standards for Tax Forms.

(a) Taxpayers and tax preparers shall use the tax forms prescribed and provided by the department, except as provided in Rev 2904.09.

(b) Unless pre-printed on the tax form by the department or submitted electronically, the taxpayer shall provide the following information on all tax forms submitted to the department:

- (1) The taxpayer's name, address, and taxpayer identification number;
 - (2) Spouse's name, if applicable, and taxpayer identification number;
 - (3) The tax preparer's name and preparer tax identification number, if other than the taxpayer;
 - (4) A mark indicating whether any of the following are applicable:
 - a. An initial return, when the return is the first return that has ever been filed with New Hampshire;
 - b. An amended return, when the return is the second or additional return that has been filed for any one tax period; or
 - c. A final return when the taxpayer is no longer subject to taxation in New Hampshire and should be removed from the department's mailing list; and
 - (5) When the tax form is for other than a calendar year, the beginning and ending dates for the period for which the form is filed.
- (c) All white spaces marked "for office use only" shall be left blank.
- (d) Checks, bank checks, or money orders shall be made payable to the "State of New Hampshire."
- (e) Tax returns shall include all information necessary to support the taxpayer's calculation of:
- (1) Tax liability;
 - (2) Payments made;
 - (3) Credits applied;
 - (4) Applicable penalties;
 - (5) Balance due; and
 - (6) Credit or refund.

(f) Pertinent documentation to support the taxpayer's calculations shall be submitted with the applicable tax form, unless the taxpayer is requested to submit it separately, such as in response to an audit or department request for additional information.

(g) Pertinent documentation shall include, but not be limited to the following:

- (1) All numeric data required to calculate the taxpayer's tax liability;
- (2) U.S. federal income tax returns and schedules when the *New Hampshire* tax return utilizes federal taxable income as a component in calculating taxable income;

- (3) All *New Hampshire* schedules or facsimiles thereof that are required to support any element on a tax return;
 - (4) Case citations for any court decision that supports the taxpayer's position when not specifically supported by *New Hampshire* statute, rule or court decision *and copies of any unpublished decisions*;
 - (5) Supporting documents for any adjustments made that are not specifically included in *New Hampshire* statutes, rules or tax returns; and
 - (6) Any additional documentation that the taxpayer wishes to provide regarding the tax calculation or positions taken on the return.
- (h) If a return, the taxpayer shall sign a statement declaring:
- “Under penalties of perjury, I declare that I have examined this return and to the best of my belief it is true, correct and complete.”
- (i) If prepared by a person other than the taxpayer, the preparer shall sign a statement declaring:
- “Based on all information of which I have knowledge, under penalties of perjury, I declare that I have examined this return and to the best of my belief it is true, correct and complete.”
- (j) The department shall reject forms that are in violation of this rule.

Readopt Rev 2904.09, effective 7-25-13 (Document #10388), to read as follows:

Rev 2904.09 Substitute Form Standards and Approvals.

- (a) The department shall approve for filing substitute forms, other than 2D barcode forms, if they:
- (1) Have a paper size of 8 ½ inches by 11 inches;
 - (2) Have a paper color of white;
 - (3) Have a paper orientation of portrait;
 - (4) Display all font type in Courier or Courier New with a font size of 12 point 10 pitch;
 - (5) Contain all of the information, general and line-by-line instructions appearing on the forms provided by the department;
 - (6) Display the vendor's ID number as a human-readable number half-embedded within a 1D barcode at the top of each form;
 - (7) Include a “For DRA Use Only” box 1 inch high by 2 inches wide in the top right corner, if it appears on the forms provided by the department;

- (8) Include a “For DRA Use Only” box 2 inches high by 1 ½ inches wide in the bottom left corner, if it appears on the forms provided by the department;
 - (9) Display the form number in the top center and bottom left corners of the form, if it appears on the forms provided by the department;
 - (10) Display the tax year in the top center of the form, if it appears on the forms provided by the department;
 - (11) Clearly spell out “New Hampshire Department of Revenue Administration” in the upper left corner of the form and the form title in the top center of the form;
 - (12) Display the New Hampshire state seal in the upper left corner of the form; and
 - (13) Contain the correct mail to and check payable information appearing on the forms provided by the department.
- (b) The department shall approve for filing substitute forms with 2D barcodes if they:
- (1) Meet all of the specifications in (a) above;
 - (2) Meet the following additional specifications:
 - a. Anchor placements shall be ½ inch from the edge of the paper to the center of the anchor;
 - b. 2D barcode data shall be formatted as provided by the department;
 - c. Numeric fields shall only contain the characters 0-9 with the exception of using a dash (-) to indicate a negative number;
 - d. 2D barcode shall be placed on the form in the same location as on the forms provided by the department; and
 - e. Field placement shall be the same as on the forms provided by the department; and
 - (3) Are submitted with the following filing scenarios:
 - a. A scenario with all data fields maximized by either alpha, such as “X,” or numeric, such as “9,” characters for each character space with no leading or trailing spaces; and
 - b. A scenario with sample data entered from each applicable test case provided by the department.
- (c) To obtain department approval of substitute forms, other than 2D barcode forms, vendors shall file with the department by e-mail to eformsdevelopment@dra.nh.gov prior to distribution or release of the substitute forms the following:
- (1) No later than November 15th annually:

a. A list of all substitute tax forms for the following year that the vendor intends to produce; and

b. The expected release date of each substitute form; and

(2) After filing the information in (1) above, an electronic copy of the substitute tax forms and instructions that the vendor intends to produce.

(d) To obtain department approval of substitute forms with 2D barcodes vendors shall file with the department by e-mail to eformsdevelopment@dra.nh.gov prior to distribution or release of the substitute forms the following:

(1) No later than November 15th annually, a completed Form LOI, Letter of Intent, which can be found by accessing the department's website at www.revenue.nh.gov/forms; and

(2) After filing the information in (1) above, an electronic copy of the substitute tax forms that the vendor intends to produce.

(e) Substitute form inquiries shall be addressed to E-Forms Development:

(1) In writing at:

New Hampshire Department of Revenue Administration
E-Forms Development
P.O. Box 457
Concord, NH 03302-0457; or

(2) By e-mail at eformsdevelopment@dra.nh.gov.

(f) The department shall review all substitute form submittals and notify the vendor within 15 business days of receiving the electronic copy of the substitute tax form or forms whether the submittal has been approved or requires further information or changes before an approval can be issued, including a detailed notification of the further information or changes required for approval.

(g) A vendor who receives notice from the department pursuant to (f) above that certain further information or changes are required before an approval can be issued shall have 15 business days to provide the department with the requested information or changes.

(h) A substitute form, including a 2D barcode form and non-2D barcode form, that has not been approved by the department, but is included in the release of a product, shall have a prominent notice on the form stating that it has not been approved by the department for filing and shall not be filed.

Readopt Rev 2905.01 and Rev 2905.02, effective 7-25-13 (Document #10388), to read as follows:

PART Rev 2905 MISCELLANEOUS FORMS

Rev 2905.01 Form DP-9, Small Business Corporations ("S" Corp) Information Report. "S" corporations, shall complete and file annually by May 1, Form DP-9, small business corporations ("S" Corp) information report, to report all dividends distributed to New Hampshire residents.

Rev 2905.02 Form DP 2210/2220, Exceptions and Penalty for the Underpayment of Estimated Tax.

(a) Form DP 2210/2220, exceptions and penalties for the underpayment of estimated tax shall be completed and filed by taxpayers who have underpaid estimated taxes due to determine the penalty, or the application of the exceptions.

(b) Form DP 2210/2220 shall be attached to the tax return if there is an underpayment of estimated taxes.

Readopt Rev 2906.01 through Rev 2906.12, effective 7-25-13 (Document #10388), to read as follows:

PART Rev 2906 RECORDKEEPING AND RETENTION REQUIREMENTS

Rev 2906.01 Applicability and Interpretation. The rules in this Part shall have specific applicability to all recordkeeping and retention requirements with respect to all taxes administered by the department. The applicability of these rules is limited to the subjects of recordkeeping and retention requirements.

Rev 2906.02 Definitions. For purposes of this Part, the following definitions shall apply:

(a) “Database management system” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database;

(b) “Electronic data interchange” means the computer to computer exchange of business transactions in a standardized structured electronic format;

(c) “Hardcopy” means any documents, records, reports or other data printed on paper;

(d) “Legibility” means the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals;

(e) “Machine sensible record” means a collection of related information in an electronic format intended for use by a computer. The term does not include hardcopy records that are created or recorded on paper or stored in or by an imaging;

(f) “Readability” means the quality of a group of letters or numerals being recognizable as words or complete numbers;

(g) “Storage-only imaging system” means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. The term does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image; and

(h) “Taxpayer” means any person required to maintain records under the provisions of the taxes administered by the department where such person receives or creates records which are maintained or generated through various computer, electronic and imaging processes and systems.

Rev 2906.03 General Recordkeeping Requirements.

(a) A taxpayer shall maintain all records necessary to make a determination of the correct tax liability with respect to all taxes administered by the department.

(b) If required records are retained in both machine-sensible and hardcopy formats, the taxpayer shall, upon request of the department, make the records available to the department in machine-sensible format.

(c) Nothing in this rule shall:

(1) Be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hardcopy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule; or

(2) Relieve the taxpayer of the obligation to comply with (b), above.

Rev 2906.04 Recordkeeping Requirements For Machine-Sensible Records.

(a) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

(b) A taxpayer may discard duplicated records and redundant information provided its responsibilities under (a) above are met.

(c) At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard electronic record format.

(d) Taxpayers shall not be required to construct machine-sensible records other than those created in the ordinary course of business.

(e) The following specific documentation shall be required for retained machine-sensible records:

(1) Record formats or layouts;

(2) Field definitions including the meaning of all codes used to represent information;

(3) File descriptions such as, but not limited to, the data set name;

(4) Detailed charts of accounts and account descriptions;

(5) Flowcharts for the system and its programs;

(6) Source listings of programs including those which provide formulas and account deviations from which the retained files were created; and

(7) Evidence that the retained records reconcile to the accounting records and to the tax returns.

Rev 2906.05 Access To Machine-Sensible Records.

(a) When the taxpayer maintains machine-sensible records, the taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(b) For taxpayers who maintain machine sensible records, the department shall consult with the taxpayer and access records by one or more of the following methods:

(1) The taxpayer provides the department with the hardware, software and personnel resources to access the machine sensible records;

(2) The taxpayer arranges for a third party to provide the hardware, software and personnel resources necessary to access the machine sensible records;

(3) The taxpayer converts the machine sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreeable to the taxpayer and department; or

(4) The taxpayer and the department agree on other means of providing access to the machine sensible records.

Rev 2906.06 Recordkeeping Requirements For Electronic Data Interchange.

(a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions shall:

(1) Be equivalent to that contained in an acceptable paper record as described in Rev 2906.03; and

(2) Contain the following information:

a. Vendor name;

b. Invoice date;

c. Product description;

d. Quantity purchased;

e. Price;

f. Amount of tax and indication of tax status;

g. Shipping detail; and

h. Information material to the transaction.

(b) Codes may be used to identify some or all of the data elements, provided that the taxpayer shall provide a method which allows the department to interpret the coded information.

(c) The taxpayer may capture the information necessary to satisfy the provisions of (a) and (b) above at any level within the accounting system.

(d) The taxpayer shall not be required to retain the original electronic data interchange transaction records provided the audit trail, authenticity, and integrity of the retained records can be established in accordance with Rev 2906.08.

Rev 2906.07 Requirements for Electronic Data Processing Systems. The requirements for an electronic data processing accounting system shall be the same as that of a manual accounting system, in that an adequately designed accounting system incorporates methods and records that satisfy the requirements of this Part.

Rev 2906.08 Business Process Information.

(a) The taxpayer shall provide a description of the business process that created the retained records upon the request of the department.

(b) The business process description shall include the relationship between:

- (1) The records and the tax documents prepared by the taxpayer; and
- (2) The measures employed to ensure the integrity of the records.

(c) The taxpayer shall be capable of demonstrating:

- (1) The functions being performed as they relate to the flow of data through the system;
- (2) The internal controls used to ensure accurate and reliable processing; and
- (3) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

Rev 2906.09 Data Base Management Systems and Taxpayer Responsibility.

(a) A taxpayer with a data base management system shall comply with Rev 2906.04 through Rev 2906.08 if:

- (1) The taxpayer creates a file solely for the use of the department;
- (2) The taxpayer creates and retains a file that contains the transaction-level detail from the data base management system that meets the requirements of Rev 2906.04 through Rev 2906.08; and
- (3) The taxpayer documents the process that created the separate file to show the relationship between the file and the original record.

(b) A taxpayer who contracts with a third party to provide custodial or management services of the records shall not relieve the taxpayer of its responsibilities under this rule.

Rev 2906.10 Alternative Storage Media.

(a) Taxpayers may store and retain records by:

- (1) Converting hardcopy documents received or produced in the normal course of business and required to be retained under this rule to other storage-only imaging systems; and
 - (2) Discard the original hard copy documents, provided the conditions of this section are met.
- (b) Documents which may be stored on storage-only imaging systems shall include, but not be limited to:
- (1) General books of account;
 - (2) Journals;
 - (3) Voucher registers;
 - (4) General and subsidiary ledgers; and
 - (5) Supporting records of details such as:
 - a. Sales invoices;
 - b. Purchase invoices;
 - c. Exemption certificates; and
 - d. Credit memoranda.
- (c) Taxpayers converting hardcopy documents to storage-only imaging systems shall:
- (1) Document procedures for converting the hardcopy documents to the storage-only imaging system to be maintained and made available on request by the department;
 - (2) Contain sufficient description to allow an original document to be followed through the conversion system as well as establish internal procedures for inspection and quality assurance;
 - (3) Establish procedures for:
 - a. The effective identification, processing, storage, and preservation of the stored documents; and
 - b. Making them available for the period they are required to be retained under Rev 2906.12;
 - (4) Provide personnel and facilities and equipment for reading, locating, and reproducing any documents maintained on the storage-only imaging system upon request of the department;
 - (5) Provide legible images so that a person with normal vision can discern the content of the documents when displayed on such equipment or reproduced on paper;
 - (6) Maintain and arrange all data in a manner that permits the location of any particular record; and

(7) Have no substantial evidence that the storage-only imaging system lacks authenticity or integrity.

Rev 2906.11 Hardcopy Recordkeeping Requirements.

(a) Except as otherwise provided in this section, the provisions of this Part shall not relieve taxpayers of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing statute and rule.

(b) Hardcopy records may be retained on a recordkeeping medium as provided in Rev 2906.10.

(c) The taxpayer shall not be required to create hardcopy records if such records are not produced or received in the ordinary course of transacting business such as when the taxpayer uses electronic data interchange technology.

(d) Hardcopy records generated at the time of a transaction using a credit or debit card shall be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

(e) Computer printouts that are created for validation, control, or other temporary purposes shall not need to be retained.

(f) Nothing in this section shall prevent the department from requesting hardcopy printouts in lieu of retained machine-sensible records at the time of examination.

Rev 2906.12 Time Period For Record Retention. The records and information to be retained under this Part shall be retained for:

(a) A period of 3 years from the due date of the return or date filed, whichever is later, unless the retention of the data is required for a longer period of time as a result of:

- (1) An extension of the statute of limitations on the assessment of taxes;
- (2) The commencement of an adjudicative proceeding involving the parties; or
- (3) The completion of any litigation in which the data may be relevant; and

(b) The specific period required under the statute or rule pertaining to a tax administered by the department, if longer than the period specified in (a) above.

Readopt with amendment Rev 2907.01, effective 10-23-19 (Document #12907), to be read as follows:

PART Rev 2907 LIEN PROCEDURES

Rev 2907.01 Definitions.

(a) "Delinquent taxpayer" means a taxpayer who fails to pay any taxes administered by the department which are outstanding, in an aggregate amount of 500 dollars or more including any associated interest, penalties, or costs.

(1) An operator, as defined in RSA 78-A:3, IV, who has failed to ~~pay over~~*remit* to the department meals and rentals tax collected pursuant to RSA 78-A:8, in an amount of 500 dollars or more, including associated interest and penalties; or

(2) Any taxpayer, other than as specified in (1) above, who has failed to pay any tax administered by the department, in an amount of 1,000 dollars or more, including associated interest and penalties.

Readopt Rev 2907.02 and Rev 2907.03, effective 10-2-14 (Document #10680), to read as follows:

Rev 2907.02 Real Property Liens. The department shall cause a lien to be recorded in the registry of deeds of the county in which any real property is situated, against the real property of a delinquent taxpayer when:

(a) The delinquent taxpayer is 90 days past due in his or her payment obligation;

(b) The delinquent taxpayer is a business organization, as defined in RSA 77-A:1, I, that has ceased to carry on a business activity within the state; or

(c) There is evidence that the delinquent taxpayer has or intends to liquidate assets or move property out of the state in order to avoid becoming subject to the lien procedures outlined in RSA 21-J:28-c and RSA 21-J:8, II.

Rev 2907.03 Personal Property Liens.

(a) When the department records a lien pursuant to Rev 2907.02, the department shall also record a lien against the tangible and intangible personal property of the delinquent taxpayer with the office of the secretary of state in accordance with RSA 454-B.

(b) If a lien has been filed pursuant to (a) above, the department shall distraint the personal property of the delinquent taxpayer pursuant to RSA 21-J:28-d and RSA 80.

Readopt with amendment Rev 2907.04, effective 10-23-19 (Document #12907), to read as follows:

Rev 2907.04 Lien Renewal. Pursuant to RSA 21-J:28-c, IV, the department shall renew a lien prior to the lien's expiration to determine if the taxpayer continues to owe the original liability and any associated interest, penalties, and costs, including, but not limited to, lien and attorney's fees. *Notwithstanding an expiration, the department may refile a lien for which the statute of limitations has not expired.*

Readopt Rev 2907.05, effective 10-2-14 (Document #10680), to read as follows:

Rev 2907.05 Lien Priority. Pursuant to RSA 21-J:8, II, the department's liens shall take first priority over all other liens except first and second mortgages.

Readopt Rev 2907.06 and Rev 2907.07, effective 10-23-19 (Document #12907), to read as follows:

Rev 2907.06 Lien Release.

(a) The department shall release a lien when the taxpayer is no longer delinquent in his or her payment of the original liability and any associated interest, penalties and costs, including, but not limited to, lien and attorney's fees.

(b) The department shall release the lien by completing a lien release and mailing it to the taxpayer.

(c) The taxpayer shall be responsible for recording the lien release with the appropriate county registry(s) and at the office of the secretary of state, and paying all associated recording fees.

Rev 2907.07 Lien Fees. There shall be added to the liability to which a lien relates an amount equal to \$25 per taxpayer per lien recording, both at the time of the original filing and renewal, if applicable, of such lien.

Readopt Rev 2908.01, effective 10-2-14 (Document #10680), to read as follows:

PART Rev 2908 WRITTEN INSTALLMENT PAYMENT AGREEMENTS WITH THE COLLECTIONS DIVISION

Rev 2908.01 Definitions.

(a) "Installment payment agreement" means a written agreement between a taxpayer and the department pursuant to which the department agrees to allow the taxpayer to pay taxes, interest, and penalties owed by the taxpayer to the department over a period of time greater than 30 days.

Readopt with amendment Rev 2908.02, effective 10-24-20 (Document #13126-B), to read as follows:

Rev 2908.02 Requesting an Installment Payment Agreement.

(a) A taxpayer who owes unpaid taxes, interest, and penalties to the department may request an installment payment agreement by completing a "Request for Installment Payment Agreement" electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or by completing and mailing Form CD-400, "Request for Installment Payment Agreement" and delivering the agreement to the department.

(b) A "Request for Installment Payment Agreement" shall be accompanied by the first proposed installment payment, which shall be immediately applied to the taxpayer's tax obligation in accordance with Rev 2903.05(a) and (b).

(c) A taxpayer shall continue to make the proposed regular installment payments as specified by the taxpayer on the "Request for Installment Payment Agreement" while his or her request is pending before the department. Automatic debits shall not commence until the request is approved by the department and therefore, prior to approval of the request, proposed regular installment payments shall be made electronically or by mail to the department until such time as approval is received.

(d) A "Request for Installment Payment Agreement" shall contain the dated signature of the taxpayer as provided in Rev 2904.04 or the electronic signature of the taxpayer as provided in Rev 2904.05

to confirm that the submission is a declaration of the inability to pay taxes owed to the department in full within the next 30 days and to declare that the signatory is authorized to submit the request on behalf of the taxpayer, if signed by an individual other than the taxpayer.
~~ther than the taxpayer.~~

Readopt Rev 2908.03, effective 10-2-14 (Document #10680), to read as follows:

Rev 2908.03 Evaluating an Installment Payment Agreement Request. A taxpayer's installment payment agreement request shall be granted if the department determines, after considering the following factors, that the agreement meets the criteria in RSA 21-J:43:

- (a) The taxpayer's inability to pay taxes owed to the department in full within the next 30 days;
- (b) The taxpayer's income and creditworthiness as it relates to the terms of the installment payment agreement requested;
- (c) Whether the taxpayer is compliant with their return filing obligation for all taxes administered by the department;
- (d) Whether an installment payment agreement facilitates the collection of owed taxes, interest, and penalties by the department; and
- (e) Whether the installment payment agreement suggested by the taxpayer represents a genuine attempt to satisfy the tax obligation owed to the department in a timely and reasonable manner, taking into consideration the resources of the taxpayer and the total amount owed.

Readopt with amendment Rev 2908.04, effective 10-24-20 (Document #13126-B), to read as follows:

Rev 2908.04 Response to ~~Aa~~ Request for an Installment Payment Agreement.

- (a) Within 30 days of the department's receipt of a "Request for Installment Payment Agreement", the department shall request from the taxpayer any additional information required to evaluate the request.
- (b) Within 60 days of the department's receipt of a "Request for Installment Payment Agreement", or the receipt of the additional information requested in accordance with (a) above, whichever is later, the department shall, pursuant to Rev 2908.03:
 - (1) Grant the request; or
 - (2) Deny the installment payment agreement request by setting forth the reasons for such denial.

Readopt Rev 2908.05 and Rev 2908.06, effective 10-24-20 (Document #13126-B), to read as follows:

Rev 2908.05 Installment Payment Agreement.

- (a) When the department grants a "Request for Installment Payment Agreement", the department shall deliver an installment payment agreement to the taxpayer.

(b) If the taxpayer wishes to enter into the installment payment agreement the taxpayer shall sign and date the agreement taxpayer as provided in Rev 2904.04 and return the original to the department or electronically sign and date the agreement as provided in Rev 2904.05

Rev 2908.06 Making Installment Payments. When a taxpayer remits an installment payment pursuant to an installment payment agreement, the taxpayer shall:

- (a) Remit the installment payment electronically pursuant to Rev 2500; or
- (b) Remit the installment payment to the department accompanied by the Payment Voucher form.

Readopt with amendment Rev 2908.07, effective 10-2-14 (Document #10680), to read as follows:

Rev 2908.07 Modification or Termination of an Agreement.

- (a) The department shall modify or terminate an installment payment agreement if it determines:
 - (1) ~~That~~ the financial condition of the taxpayer has sufficiently changed;
 - (2) ~~or That~~ the taxpayer has not complied with the terms of the installment payment agreement;
 - (3) *That the installment payment agreement was not made in accordance with these rules;*
or
 - (4) *That the taxpayer made material misrepresentations or falsifications of information in the Request for the Installment Payment Agreement.*

(b) The department shall give written notice to the taxpayer at least 30 days before the action terminating or modifying the installment payment agreement.

Readopt Rev 2909.01 through Rev 2909.03, effective 10-2-14 (Document #10680), to read as follows:

PART Rev 2909 SETTLEMENT AGREEMENTS WITH THE COLLECTIONS DIVISION

Rev 2909.01 Definitions.

(a) “Settlement agreement” means a written agreement between a taxpayer and the department’s collection’s division where the department agrees to accept some amount less than the full amount of taxes, interest, and penalties owed by the taxpayer to the department in full settlement of the taxpayer’s tax obligation to the department.

(b) “Settlement agreement offer” means a taxpayer’s submission of a completed Form CD-410, “Settlement Agreement Offer”, to the department’s collection’s division in order to obtain a settlement agreement.

Rev 2909.02 Form CD-410, “Settlement Agreement Offer”.

(a) A taxpayer who owes unpaid taxes, interest, and penalties to the department may offer to settle the unpaid obligation with the department's collections division for an amount less than the full amount of taxes, interest and penalties owed, by completing Form CD-410, and delivering the form to the department accompanied by copies of any outstanding tax notices, copies of the two most recent monthly bank statements for each bank account identified on Form CD-410, a copy of the most recent financial statement, if the taxpayer is a business, and a copy of the most recent Federal 1040 tax return, if the taxpayer is an individual.

(b) When evaluating a taxpayer's settlement agreement offer pursuant to RSA 21-J:3, XVI, the collections division shall consider the following:

- (1) The taxpayer's unwillingness and/or inability to pay taxes, interest, and penalties owed to the department in full within a reasonable time period;
- (2) Whether the settlement agreement offer represents the maximum recovery the department is likely to achieve from the taxpayer;
- (3) The administrative costs to collect payment from the taxpayer;
- (4) Whether the taxpayer is compliant with their return filing obligation for all taxes administered by the department;
- (5) The taxpayer's history of settlement agreements and abatement requests with the department; and
- (6) Whether the settlement agreement offer represents a genuine attempt to settle the unpaid tax obligation in a fair and reasonable manner, taking into consideration the resources of the taxpayer and the total amount owed.

Rev 2909.03 Response to Form CD-410, "Settlement Agreement Offer".

(a) Within 60 days of the department's receipt of a completed Form CD-410, the department shall request from the taxpayer any additional information required to evaluate the settlement agreement offer.

(b) Within 60 days of the department's receipt of a completed Form CD-410, or the receipt of the additional information requested in accordance with (a) above, whichever is later, the department shall, pursuant to Rev 2909.02 (b):

- (1) Accept the settlement agreement offer; or
- (2) Reject the settlement agreement offer by setting forth the reasons for such rejection.

Readopt Rev 2910.01 through Rev 2910.06, effective 7-26-16 (Document #11142), to read as follows:

PART Rev 2910 VOLUNTARY DISCLOSURE PROGRAM

Rev 2910.01 Definitions. For purposes of this part, the following definitions shall apply:

(a) "Look-back period" means the 3 most recently completed full tax years and the incomplete current tax year;

(b) “MTC disclosure program” means the voluntary disclosure program administered by the Multistate Tax Commission;

(c) “Program” means the voluntary disclosure program administered by the department pursuant to RSA 21-J:3, XXXII;

(d) “Taxpayer” means a corporation, estate, individual, limited liability company, partnership, trust or any other entity, which is required to pay or collect any tax administered by the department, and includes an affiliate of the entity, or a member of a unitary business, of which the entity is a member; and

(e) “Tax year” means a calendar year, a fiscal year, or that portion of a year for which the taxpayer files its federal income tax return.

Rev 2910.02 Anonymity.

(a) A taxpayer may remain anonymous to the department while requesting to participate in the program by coming forward through a representative.

(b) A taxpayer coming forward through a representative to request to participate in the program shall remain anonymous until the time when the taxpayer signs the voluntary disclosure agreement.

Rev 2910.03 Confidentiality. The department shall not disclose the existence or terms of a voluntary disclosure agreement to any other state or the United States Internal Revenue Service, notwithstanding compacts for the exchange of information.

Rev 2910.04 Request to Participate.

(a) A taxpayer shall request in writing that the department allow the taxpayer to participate in the program.

(b) The written request to participate in the program shall include the following information:

- (1) The name and contact information of the taxpayer or the taxpayer’s representative, if applicable;
- (2) A description of the taxpayer’s activities in New Hampshire, including whether the taxpayer is an affiliate of another entity or a member of a unitary business;
- (3) The taxpayer’s tax year end;
- (4) The tax type(s) the taxpayer is requesting to voluntarily disclose;
- (5) The reason(s) the taxpayer failed to pay its tax liability;
- (6) The taxpayer’s estimated tax liability for each tax type for the look-back period; and
- (7) A statement declaring that the taxpayer is not ineligible to participate in the program pursuant to Rev 2910.05.

(c) The taxpayer shall submit the written request to participate in the program by mail to the attention of the audit division at:

New Hampshire Department of Revenue Administration
Audit Division
PO Box 1388
Concord, NH 03302-1388.

(d) As an alternative to (c) above, a taxpayer may request to participate in the program through the MTC disclosure program at <http://www.mtc.gov/Nexus-Program/Multistate-Voluntary-Disclosure-Program>.

Rev 2910.05 Ineligibility.

(a) The department shall deny a taxpayer's written request to participate in the program if the taxpayer is ineligible pursuant to this section.

(b) A taxpayer shall not be eligible to participate in the program if:

- (1) The department has contacted the taxpayer regarding a liability for any tax administered by the department;
- (2) The department has contacted the taxpayer regarding whether the taxpayer is subject to any tax administered by the department;
- (3) The department has contacted the taxpayer regarding whether the taxpayer is subject to tax collection responsibilities for any tax administered by the department; or
- (4) The taxpayer collected, but failed to remit, any tax administered by the department.

(c) A taxpayer shall not be eligible to participate in the program regarding a specific tax administered by the department if:

- (1) The taxpayer has filed a return in a previous taxable period for the specific tax; or
- (2) The taxpayer's estimated tax liability for the specific tax, for the look-back period, is less than \$500.

(d) For purposes of the program, the business profits tax and the business enterprise tax together shall constitute a single tax type.

(e) A taxpayer who is ineligible pursuant to (c)(1) above, may request to participate in the program for good cause shown.

(f) A taxpayer who is ineligible to participate in the program may voluntarily disclose the taxpayer's tax liability to the department, anonymously through a representative or otherwise, and request that the department settle and compromise the taxes, interest, and penalties due for good cause shown.

(g) In determining whether a taxpayer has shown good cause, the department shall consider the factors in Rev 2910.06(b).

Rev 2910.06 Acceptance.

- (a) The department shall determine whether to allow a taxpayer to participate in the program.
- (b) The department shall allow a taxpayer to participate in the program, subject to Rev 2910.05, if the department determines, after considering the following factors, that the taxpayer's participation in the program will protect the public interest and promote compliance with New Hampshire's tax laws:
- (1) The nature and magnitude of the taxpayer's activities in New Hampshire;
 - (2) The reason(s) the taxpayer has failed to pay its tax liability, including, but not limited to, whether the taxpayer was acting in good faith;
 - (3) The benefits to the State of New Hampshire; and
 - (4) Any other relevant factor bearing on whether the department should settle and compromise the taxpayer's tax liability.
- (c) The department shall require a taxpayer to submit further information as necessary to determine whether to allow the taxpayer to participate in the program.
- (d) If the department denies a taxpayer's request to participate in the program, the department shall notify the taxpayer in writing with reasons.

Readopt with amendment Rev 2910.07, effective 7-26-16 (Document #11142), to read as follows:Rev 2910.07 Voluntary Disclosure Agreement.

- (a) If the department determines that a taxpayer ~~may~~ **meets all the requirements in RSA 21-J: 3, XXXII and Rev 2910.06, and subject to Rev 2910.05 to** participate in the program, the department shall prepare a voluntary disclosure agreement to settle and compromise the taxes and interest due for the look-back period.
- (b) The voluntary disclosure agreement shall include the following terms:
- (1) The taxpayer shall file the returns for the look-back period;
 - (2) The taxpayer shall pay the taxes shown to be due by the returns for the look-back period, and interest calculated through the date of payment, at the time the taxpayer files the returns;
 - (3) Unless otherwise agreed, the taxpayer shall complete and file the returns and at the same time pay the taxes and interest due for the look-back period within 30 days from the date of the voluntary disclosure agreement;
 - (4) In determining the taxes and interest due for the look-back period, the taxpayer shall not carry forward any net operating losses generated in a tax year preceding the look-back period;
 - (5) Once the taxpayer pays the taxes and interest due for the look-back period, the department shall waive applicable penalties;

(6) The department shall not, for any tax year preceding the look-back period, assess, audit, or otherwise investigate the taxpayer regarding the tax type(s) settled and compromised through the voluntary disclosure agreement; and

(7) The voluntary disclosure agreement shall be rendered null and void pursuant to (f) below.

(c) To participate in the program, the taxpayer shall sign and return the voluntary disclosure agreement to the department within 30 days from the date the department sent the voluntary disclosure agreement to the taxpayer.

(d) The voluntary disclosure agreement shall not preclude the department from auditing or otherwise investigating the taxpayer's liability for the look-back period, or from assessing further taxes, interest and penalties shown to be due by such an audit or investigation.

(e) The taxpayer shall be precluded from pursuing all statutory remedies, including the right to appeal, with respect to the taxes and interest settled and compromised through the voluntary disclosure agreement, except in the case of a further assessment pursuant to (d) above, or a federal audit change.

(f) A taxpayer shall be disqualified from the program, and the voluntary disclosure agreement rendered null and void, if the department finds any of the following:

- (1) The taxpayer was ineligible to participate in the program pursuant to Rev 2910.05;
- (2) The taxpayer materially misrepresented *or falsified* information relevant to the voluntary disclosure agreement;
- (3) The taxpayer attempted to avoid, defeat, or evade any of the taxes and interest due for the look-back period; or
- (4) The taxpayer failed to comply with any terms of the voluntary disclosure agreement.

(g) If the voluntary disclosure agreement is rendered null and void, the department ~~may~~**shall be allowed to** use any information ascertained through the program to assess taxes, interest, and penalties against the taxpayer not only for the look-back period, but for all tax years.

APPENDIX

Rule	Specific State Statute the Rule Implements
Rev 2901.01	RSA 21-J:13, I; RSA 21-J:1, II (a)
Rev 2902.01 – Rev 2902.11	RSA 21-J:13, I; RSA 21-J:1, II (a)
Rev 2903.01	RSA 21-J:13, I; RSA 21-J:1, II (a)
Rev 2903.02	RSA 21-J:14
Rev 2903.03 – Rev 2903.06	RSA 21-J:13, I; RSA 21-J:1, II (a)
Rev 2903.07	RSA 21-J:13, I; RSA 21-J:28-a, IV
Rev 2904.01 – Rev 2904.09	RSA 21-J:13, I; RSA 21-J:1, II (a); RSA 21-J:33
Rev 2905.01 – Rev 2905.02	RSA 21-J:13, I; RSA 21-J:1, II (a); RSA 21-J:33

Rev 2906.01 – Rev 2906.12	RSA 21-J:13, I; RSA 21-J:1, II (a); RSA 21-J:33
Rev 2907.01	RSA 21-J:13, I; RSA 21-J:28-c
Rev 2907.02	RSA 21-J:8, II; RSA 21-J:13, I; RSA 21-J:28-c; RSA 77-A:1, I; RSA 78-A:2, II; RSA 78-A:8; RSA 78-A:20
Rev 2907.03	RSA 21-J:28-c, II; RSA 21-J:28-d
Rev 2907.04	RSA 21-J:13, I; RSA 21-J:28-c
Rev 2907.05	RSA 21-J:8, II; RSA 80
Rev 2907.06	RSA 21-J:1, II(a); RSA 21-J:28-c
Rev 2907.07	RSA 21-J:13, I; RSA 21-J:28-c
Rev 2908.01	RSA 21-J:43; RSA 21-J:1, II(a)
Rev 2908.02	RSA 21-J:13, I; RSA 21-J:43
Rev 2908.03	RSA 21-J:43; RSA 21-J:1, II(a)
Rev 2908.04	RSA 21-J:13, I; RSA 21-J:43
Rev 2908.05	RSA 21-J:13, I; RSA 21-J:43
Rev 2908.06	RSA 21-J:13, I; RSA 21-J:43
Rev 2908.07	RSA 21-J:43
Rev 2909.01	RSA 21-J:1, II(a); RSA 21-J:3, XVI
Rev 2909.02	RSA 21-J:1, II(a); RSA 21-J:3, XVI
Rev 2909.03	RSA 21-J:1, II(a); RSA 21-J:3, XVI; RSA 541-A:29
Rev 2910.01 – Rev 2910.07	RSA 21-J:3, XXXII; RSA 21-J:13, XIV