New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

17-0229

HB 415-FN-LOCAL, *reducing business taxes, repealing certain taxes, establishing an income tax, and requiring payment by the state of a portion of retirement system contributions of political subdivision employers.*

House Ways & Means

This proposed bill reduces the rate of the RSA 77-A Business Profits Tax (BPT) from 8.2% to 4%; repeals the RSA 77-E Business Enterprise Tax (BET), RSA 77 Interest and Dividends (I&D) Tax, RSA 76:3 State Wide Education Property Tax (SWEPT), and the RSA 198:58 Low and Moderate Income Homeowners Property Tax Relief program; and establishes a new RSA 77-H Income Tax, all applicable to taxable periods ending on or after January 1, 2020.

The Income Tax will be imposed at a rate of 3.95% on every resident, nonresident individual and resident fiduciary with New Hampshire taxable income. New Hampshire taxable income will be based upon the taxpayer's adjusted gross income for federal income tax purposes with certain adjustments and less a $5,000 exemption for every personal exemption claimed federally.

The proposed legislation contains necessary provisions to fully implement a new Income Tax including due dates consistent with the due date of the federal Income Tax, credits against taxes due, return filing, employer withholding provisions, quarterly estimate payments, extensions, and tax enforcement and collection procedures.

The Commissioner shall pay 59% of the revenues collected to the state treasurer for deposit into the Education Trust Fund.

The proposed legislation establishes initial funding for the Department for start-up costs including consultants, facilities, equipment and computer purchases, and other administrative and enforcement costs and appropriates $30,000,000 for the fiscal year ending June 30, 2018.

The fiscal impact of reducing the BPT tax rate from 8.2% to 4% for taxable periods ending on or after January 1, 2020 using a year-over-year growth of 2.5% from FY16 unaudited revenue to FY20 would reduce the BPT revenue by an estimated $217,383,834.

The fiscal impact of repealing the BET using a 2.5% growth from FY16 unaudited revenue to FY20 would be a reduction in BET revenue of $283,128,006. Eliminating the BET may also increase the BPT as there will be no BET to offset the BPT. Also, an indeterminable increase to the BPT may occur because numerous other credits are currently applied against the BET first, prior to being used to offset BPT liability. With no BET to offset those tax credits, a larger amount will be used to offset the BPT.

The Insurance Premium Tax (IPT) would increase by an indeterminable amount because it may currently be offset by BET paid. Removing the BET offset would increase the amount of IPT paid and thus decrease the BPT because IPT paid may be used as a credit against the BPT.
The fiscal impact of repealing the I&D Tax using a 2% growth from FY16 unaudited revenue to FY20 would be a reduction in I&D revenue of $95,145,787.

The fiscal impact of repealing the UPT using the FY16 unaudited revenue would be a reduction in UPT revenue of $43,300,000.

The fiscal impact of repealing the SWEPT would be $363,100,000.

The fiscal impact of implementing an Income Tax would be an indeterminable increase in revenue to the General and Education Trust Fund. The estimate calculation is based on New Hampshire federal 1040 data reported by the IRS and trended out to tax year 2020 with adjustments made as required by the proposed legislation. Once the calculation was completed for each tax bracket the new income tax rate of 3.95% was applied with the result being estimated income tax revenue of $1,315,222,317. This figure was then netted against the reduction of the BPT rate; and the repeal of the BET, UPT, I&D Tax and SWEPT.

Following the initial appropriation of $30,000,000 to cover the administrative costs associated with the initial preparation to implement a new state Income Tax, the Department would have an ongoing increase in expenditures associated with the staffing and other costs associated with administering the new Income Tax. Although the Department believes that the ongoing staffing and other costs associated with administering a new Income Tax would be substantial, the Department is unable to reasonably estimate that cost without more extensively studying the proposed Income Tax program.

The fiscal impact of repealing the Low and Moderate Homeowners Property Tax Relief program would decrease expenditures to the Education Trust Fund by $1,935,000 (the amount appropriated in the FY19 budget).

The SWEPT is collected by municipalities and locally retained and applied to education funding. The proposed legislation repeals the SWEPT and then directs that 59% of revenue collected from the new Income Tax be transferred to the Education Trust Fund. However, there is no mechanism to transfer money from the Education Trust Fund back to municipalities. If the intent is that the Income Tax replace the state's portion of education funding currently raised through the SWEPT, then there needs to be some mechanism in place to transfer money from the Education Trust Fund back to the cities and towns.

Section 20 of the proposed legislation amends RSA 277-B:17-a to eliminate the reference to the BET credit against the BPT due to the repeal of the BET and thus the elimination of the need for an election to make the client company solely responsible for paying the BET on leased employees. The remainder of RSA 77-E:13-a allows client companies to enjoy the benefit of leased employee wages for a number of tax credits that can be used against the BPT. However, because the client company will no longer be responsible for paying BET on leased employee wages if an election is made pursuant to RSA 77-E:13-a, there may no longer be a continued need to provide that the client company may take advantage of certain BPT credits. In which case, RSA 277-B:17-a would be repealed in its entirety.

At the inception of the BET, it was intended to act in concert with the BPT to ensure that all NH businesses are fairly taxed by the State's Business Tax system. In litigation, it was argued that the BPT alone was unconstitutional because it failed to capture a large portion of taxpayers who had no BPT liability because they pay their profits out entirely as compensation, dividends, or interest on loans. The BET was enacted as a resolution to the potential unconstitutionality of the BPT. The proposed legislation would repeal the BET, however, the owners of those businesses who pay their profits out entirely as compensation, dividends, or interest on loans will now be subject to the new state Income Tax. It is unclear whether the repeal of the BET in concert with the institution of a state personal Income Tax will remedy to constitutional issues that existed when the BET was originally enacted. Further analysis is advised.