

CHAPTER Rev 300 BUSINESS PROFITS TAX

PART Rev 303 ADDITIONS AND DEDUCTIONS MADE TO GROSS BUSINESS PROFITS

Adopt Rev 303.06 to read as follows:

Rev 303.06 Deduction under IRC 163(j). A business organization with a fiscal tax period that begins before, and ends on or after, January 1, 2024 and has a carry forward of disallowed business interest under section 163(j) of the IRC at the end of such fiscal tax period, shall be allowed as a deduction of such disallowed business interest expense, under RSA 77-A:4, XX, in 3 equal parts over 3 consecutive years, beginning with the first taxable period commencing on or after the end of said fiscal period.

PART Rev 304 APPORTIONMENT OF ADJUSTED GROSS BUSINESS PROFITS

Readopt with amendment Rev 304.10, effective 9-23-22 (Document #13450), to read as follows:Rev 304.10 Adjustments Required to Apportionment Factors For Financial Institutions.

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

- (1) "Billing address" means the location indicated in the books and records of the business organization on the first day of the taxable year, or on such later date in the taxable period when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed to the customer;
- (2) "Borrower or credit cardholder located in New Hampshire" means:
 - a. An individual or business organization engaged in a trade or business which maintains its commercial domicile in New Hampshire; or
 - b. An individual who is not engaged in a trade or business but whose billing address is in New Hampshire;
- (3) "Commercial domicile" means, for businesses organized under the laws of:
 - a. The United States, the place from which the trade or business is principally managed and directed; or
 - b. A foreign country, the Commonwealth of Puerto Rico, any territory or possession of the United States, the state of the United States, or the District of Columbia to which the greatest number of employees, as defined in Rev 301.14, are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;
- (4) "Credit card" means a card or other medium entitling its holder to credit by virtue of its use to purchase goods or services from businesses;
- (5) "Credit card issuer's reimbursement fee" means the fee a business organization receives from a merchant's bank because one of the persons to whom the business organization has issued a credit card has charged merchandise or services to the credit card;

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

(7) “Financial institution” means:

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

(8) “Gross rents” means:

a. The actual sum of money or other consideration payable for the use or possession of property except:

1. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
2. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
3. Reasonable amounts payable for storage, provided such amounts are payable for space not designated for use by and not under the control of the taxpayer; and
4. That portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer;

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

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

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

a. Includes:

1. Participation;
2. Syndications;
3. Leases treated as loans for federal income tax purposes; and
4. The purchase, in whole or in part, of such extension of credit from another business organization; and

b. Excludes:

1. Properties treated as loans under section 595 of the IRC;
2. Futures or forward contracts;
3. Options;
4. Notional principal contracts such as swaps;
5. Credit card receivables, including purchased credit card relationships;

6. Non-interest bearing balances due from depository institutions;
7. Cash items in the process of collection;
8. Federal funds sold;
9. Securities purchased under agreements to resell;
10. Assets held in a trading account;
11. Securities; and
12. Interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security;

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

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

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

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

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

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

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

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

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

(17) "Taxable" means:

- a. A business organization, as defined in RSA 77-A:1, I., subject in another state to:
 1. A net income tax, a franchise tax measured by net income;
 2. A franchise tax for the privilege of doing business; or
 3. A corporate stock tax including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or
- b. Another state has jurisdiction to subject the business organization to any of such taxes regardless of whether, the state does or does not impose such taxes; and

(18) "Transportation property" means:

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

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

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

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

- a. Solicitation of the customer by an employee or the customer initiation of contact with the business organization at its regular place of business;
- b. Investigation of the customer's credit-worthiness and the degree of risk involved in making the particular loan;
- c. Negotiation between the employee of the business organization and the customer regarding the terms of the loan such as the:
 1. Amount;
 2. Duration;
 3. Interest rate;
 4. Frequency of repayment;
 5. Currency denomination; and
 6. Security requirements;
- d. Approval of the agreement by the employees or directors of the business organization; and
- e. Administering the account by performing services such as:
 1. Bookkeeping;
 2. Collecting payments;
 3. Corresponding with the customer; or
 4. Proceeding against the customer in the case of default;

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

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

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

- (8) Loans properly assigned to New Hampshire shall, absent any change of material fact, remain assigned to New Hampshire for the length of the original term of the loan;
- (9) Upon completion of the original term of loans referenced in (8), above, they may be properly assigned to another state if said loans have a preponderance of substantive contact to a regular place of business there; and
- (10) Credit card receivables shall be treated as loans and subject to the provisions of (c)(6) above, for purposes of determining the location of credit card receivables.
- (d) The payroll factor shall be calculated in accordance with Rev 304.03.
- (e) The sales factor shall be calculated utilizing the following provisions in lieu of the provisions contained in Rev 304.04 and Rev 304.041:
- (1) The sales factor shall be a fraction, as follows:
- a. The numerator shall be the receipts from the lease, sublease, rental, or sub-rental of real property located in New Hampshire, and the lease or rental of tangible personal property, other than transportation equipment, located in New Hampshire when it is first placed in service by the lessee owned by the business organization in New Hampshire during the taxable year; and
 - b. The denominator shall be the receipts of the business organization within and without New Hampshire during the taxable period;
- (2) The sales factor numerator and denominator shall be calculated in a consistent manner from year-to-year, and include those receipts described herein which constitute income and are included in the computation of the apportionable income base for the taxable period;
- (3) Receipts from the lease or rental of transportation property owned by the business organization shall be:
- a. Included in the numerator to the extent that the property is used in New Hampshire; and
 - b. Calculated in the following manner:
 - 1. The amount of receipts from the lease or rental of aircraft to be included in the numerator of New Hampshire's sales factor shall be determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, as follows:
 - (i) The numerator shall be the number of landings of the aircraft in New Hampshire; and
 - (ii) The denominator shall be the total number of landings of the aircraft;

2. Motor vehicles shall be included in the numerator of the state in which they are registered and deemed to be used wholly within such state; and
 3. If the extent of the use of any transportation property within New Hampshire cannot be determined, the property shall be deemed to be used wholly in the state in which the property has its principal base of operations;
- (4) The numerator shall include interest and fees, or penalties in the nature of interest, from loans secured by real property if, at the time the original agreement is made, the following shall apply:
- a. The property is entirely located within New Hampshire;
 - b. The property is located both within New Hampshire and one or more other states, and more than 50% of the fair market value of the real property is located within New Hampshire; or
 - c. More than 50% of the fair market value of the real property is not located within any one state, and the borrower is located in New Hampshire;
- (5) Interest and fees or penalties in the nature of interest from loans not secured by real property shall be included in the numerator if the borrower is located in New Hampshire;
- (6) Net gains from the sale of loans, including income recorded under the coupon stripping rules of section 1286 of the IRC, shall be included in the numerator utilizing the following provisions:
- a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
 1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (4) above; and
 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property; and
 - b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
 1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (5) above; and
 2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property;
- (7) The numerator shall include interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees, such as annual fees, charged to cardholders if the billing address of the cardholder is in New Hampshire;

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

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

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

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

(10) Receipts from merchant discount:

a. If the business organization can readily determine the location of the merchant and if the merchant is in this state, the numerator of the sales factor includes receipts from merchant discount;

b. If the business organization cannot readily determine the location of the merchant, the numerator of the sales factor includes receipts from merchant discount multiplied by a fraction:

1. In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders if the billing address of the credit card holder is in this state, and the denominator of which is the business organization's total amount of fees, interest, and penalties charged to credit card holders;

2. In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders if the billing address of the debit card holder is in this state, and the denominator of which is the business organization's total amount of fees, interest, and penalties charged to debit card holders; and

3. In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders if the billing address of the other card holder is in this state, and the denominator of which is the business organization's total amount of fees, interest, and penalties charged to all other card holders;

c. The business organization's method for sourcing each receipt from a merchant discount must be consistently applied to such receipts in all states that have adopted sourcing

methods substantially similar to (10)a. and (10)b. above and must be used on all subsequent returns for sourcing receipts from such merchant unless the business organization petitions the commissioner for the employment of any other method to effect an equitable apportionment as allowed according to RSA 77-A:3, II(a).

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

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

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

a. For loan servicing fees derived from loans secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:

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

b. For loan servicing fees derived from loans not secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:

1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (9) above; and
2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property; and

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

(13) The numerator shall include all sales not otherwise apportioned under this section utilizing the provisions of Rev 304.04 and Rev 304.041;

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

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

1. Investment securities;
2. Trading account assets;

3. Federal funds;
 4. Securities purchased and sold under agreements to resell or repurchase;
 5. Options;
 6. Future contracts;
 7. Forward contracts;
 8. Notional principal contracts such as swaps;
 9. Equities; and
 10. Foreign currency transactions;
- b. The sales factor shall include the amount by which:
1. Interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and
 2. Interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities;
- c. The sales factor:
1. Numerator shall include interest, dividends, net gains, but not less than zero, and other income utilizing the following provisions for:
 - (i) Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by a fraction, as follows:
 - i. The numerator shall be the average value of such assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and
 - ii. The denominator shall be the average value of all such assets;
 - (ii) Federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements described in b. above, the amount of excess interest shall be multiplied by a fraction, as follows:
 - i. The numerator shall be the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the business organization within New Hampshire; and

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

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

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

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

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

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

1. Required by the commissioner in lieu of using the provisions enumerated in c. above, in accordance with RSA 77-A:3, II (a); or

2. Requested by the business organization for all subsequent returns utilizing the provisions of Rev 304.05;

e. If using a modified procedure pursuant to d. above, the modified procedure shall be calculated as follows:

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

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

i. A numerator consisting of the gross income from such assets and activities assigned to a regular place of business of the taxpayer within New Hampshire; and

ii. A denominator consisting of the gross income from all assets and activities;

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

i. A numerator consisting of the gross income from funds and securities assigned to a regular place of business of the business organization within New Hampshire; and

ii. A denominator consisting of the gross income from all such funds and such securities; and

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

i. A numerator consisting of the gross income from trading assets and activities assigned to a regular place of business of the business organization within New Hampshire; and

ii. A denominator consisting of the gross income from all such assets and activities;

f. Investment asset or activity, or trading asset or activity, shall be presumed to occur at the commercial domicile of the business organization;

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

1. The day-to-day decisions regarding the asset or activity occurred at a regular place of business outside New Hampshire; and

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

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

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

APPENDIX

Rule	Statute
Rev 303.06	RSA 77-A:4, XX
Rev 304.10	RSA 77-A:3