

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

22-2720.2

HB 1541-FN, *establishing a deferral from the business profits tax and the business enterprise tax for qualified limited liability startups.*

House Ways & Means

The proposed legislation creates a five year Business Profits Tax (BPT) and Business Enterprise Tax (BET) tax deferral for “qualified LLC startups” that make an election to utilize the deferral. A “qualified LLC startup” is a limited liability company that was formed to develop a service or innovative product and bring it to market, with a payroll of no more than \$100,000 per year for employees. A qualified LLC startup that makes a tax deferral election can defer the payment of taxes for up to five years, but must pay interest on such deferral.

The DRA anticipates that the proposed legislation would initially result in an indeterminable decrease in BPT and BET revenue beginning in FY 2023 for taxpayers making such election. The DRA does not have sufficient data to determine how many existing or future BPT and BET taxpayers would be eligible to take such election and therefore cannot estimate the gravity of the fiscal impact.

Ultimately, for many electing qualified LLC startups, the proposed legislation would only effectuate the deferral of their tax liability for up to five years, with the total tax liability plus interest being due after the five year deferral expires. In theory the tax deferral provided by the proposed legislation could be characterized as only a timing provision because tax is simply being deferred to a later year (with the addition of interest that might not otherwise be paid). However, in some instances, those businesses making the qualified LLC startup election will cease operation with inadequate resources to pay their deferred tax obligation and therefore the proposed legislation could still ultimately result in lost revenue.

The proposed legislation would not result in any additional administrative costs that could not be absorbed in the DRA operating budget.

The proposed legislation requires that an electing qualified LLC startup file annual reports with the DRA, either on forms provided by the DRA or by providing a copy of the taxpayer’s federal return. If the taxpayer chooses to meet this requirement by filing a copy of their federal return, the DRA would not have adequate information to calculate the taxpayer’s tax liability for the years that the deferral is being elected and would ultimately need the taxpayer to file returns to calculate the total deferred liability with interest. The DRA would recommend that the taxpayer be required to file an actual return in each of the five years when the tax is being deferred so that the taxpayer and the DRA have a complete and accurate picture of the taxpayer’s deferred liability and can accurately calculate the accrual of interest in real time for the taxpayer during the deferral period.

The proposed legislation indicates that an electing qualified LLC startup will accrue interest on the deferred tax liability during the deferral period. It is unclear whether the intent is that interest will be paid at the annual underpayment rate as provided in RSA 21-J:28 or some other rate. If the intent is that interest be paid at the rate provided in RSA 21-J:28, the DRA would recommend adding a cross-reference.

The proposed legislation does not specifically address whether an electing qualified LLC startup is subject to penalties. The DRA believes that the intent is that an electing qualified LLC startup would remain subject to the failure to file penalty in RSA 21-J:31 for the failure to file the required annual report and the substantial understatement penalty in RSA 21-J:33-a but would not be subject to the failure to make estimated payments penalty in RSA 21-J:31 and the failure to pay penalty in RSA 21-J:33. The DRA would recommend that the proposed legislation specifically address the intended applicability of these penalties.

The definition of qualified LLC startup does not include a requirement that the business be a new business, although including “startup” in the relevant verbiage of the program seems to imply that it is intended to assist new businesses. This may or may not be a defect depending on the intent of the bill sponsor.

The proposed legislation does not indicate an applicability date, however the election in question must be filed by the 15th day of the third month following the end of the taxpayer’s taxable period. As a result, depending on the taxable period end day of the electing taxpayer, the proposed legislation could apply for the first time to a taxpayer’s tax year 2021 or 2022 tax liability. If the sponsor intends that the proposed legislation apply uniformly starting with a particular tax year, the DRA would recommend the addition of an applicability date of “taxable periods ending on or after December 31, 2022,” which will result in the proposed legislation apply only to tax year 2022 and forward. Additionally, the proposed legislation is effective 60 days after passage and the addition of an applicability date will help clarify how the effective date is intended to apply to in-progress or recently completed tax years.