

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

24-2531.0

HB 1551, *relative to distinguishing between C corporations and S corporations for purposes of calculating business profits taxes.*

Ways and Means

Directs the state to distinguish C corporations and S corporations for purposes of calculating the Business Profits Tax and to exclude flow through items on the Schedule K for S corporations from corporate income for purposes of calculating the tax.

The proposed legislation amends the treatment of “S” Corporations to exclude flow-through items on the Schedule K for “S” corporations when calculating the taxable business profits of the “S” corporation for the Business Profits Tax (BPT).

The proposed legislation amends RSA 77-A:1, III(a) by deleting “except “S” corporations” from the definition of Gross Business Profits under RSA 77-A. The proposed legislation also adds language to RSA 77-A:1(b) to recognize the federal “S” corporation election for BPT purposes and to exclude the flow-through items on the Schedule K of the “S” corporation when calculating taxable business profits for BPT.

The deletion of the language “except “S” corporations” from sub-paragraph (a), therefore, provides for the gross business profits for all corporations, including “S” corporations. However, the remaining language in sub-paragraph (a) that references “taxable income before the application of any net operating loss deduction, special deductions shown on line 29 of the federal corporate income tax return, or any other special deductions allowed only to a certain class of corporate taxpayer” relates specifically to “C” corporations. Considering subparagraph (b) describes the treatment of “S” corporations, the deletion of “except “S” corporations” in subparagraph (a) may not be appropriate.

At the federal level, an “S” corporation passes its corporate income and losses through to its shareholders. In turn, the “S” corporation’s shareholders report the flow-through income and losses on their own tax returns. Certain items are federally taxed at the “S” corporation entity level.

Current BPT laws do not distinguish “S” corporations from “C” corporations in that manner as the “S” corporations are taxed at the entity level, similar to “C” corporations. The proposed legislation does not provide for the taxation of the flow-through items at the shareholder level.

The estimated fiscal impact of this proposed legislation is an indeterminable decrease to the General Fund and the Education Trust Fund starting in FY 2025.

Under current BPT law, an “S” corporation completes a Form DP-120 to report its flow-through income for the calculation of its gross business profits on its BPT return. To estimate the potential

fiscal impact, the DRA performed a static analysis of TY 2021 returns filed that had a DP-120 reporting gross business profits. Beginning with the TY 2021 total gross business profits reported in the amount of \$85.2 billion, DRA then applied each taxpayer’s apportionment factor, and multiplied that result with the BPT tax rate of 7.5%. This resulted in a tax impact of \$229.6 million. The Form DP-120 also captures on its line 1(k), “S” corporation income that is not reported on the federal Schedule K but contributes to the business organization’s NH gross business income. The DRA is unable to segregate this amount. Therefore, the \$229.6 million represents the maximum estimated fiscal impact.

The estimated \$229.6 million would be a decrease to the General and Education Trust Funds. This calculation does not include the change in the apportionment methodology that transitioned to single sales factor (SSF) apportionment after TY2021 for taxable periods ending on or after December 31, 2022, and the net operating loss deduction moving to single apportionment (apportioned only in the year the loss was generated).

The estimated reductions per tax year resulting from this proposed legislation are then applied according to the timing of revenue in the chart below to calculate an estimated yearly impact. Historically, the split breaks down to 15% attributable to two prior years, 63% attributable to the prior year, and 22% attributable to the current year. This proposed legislation would apply to revenue attributable to TY 2025 and forward and assumes no change in taxpayer behavior.

Because of the timing of when this proposed legislation may be passed and the assumption that the legislation is applicable for taxable periods ending on or after December 31, 2025, the DRA does not expect that the first two TY 2025 estimated tax payments would reflect the exclusion of the flow-through items. Therefore, DRA does not expect a fiscal impact in FY 2025.

Fiscal Year	Tax Year	% Applicable to Tax Year
Fiscal Year 2026	Tax Year 2024	15%
	Tax Year 2025	63%
	Tax Year 2026	22%
Fiscal Year 2027 and forward	Tax Year 2025 and forward	100%

Fiscal Impact by Fiscal Year

**Business Profits Tax- Static Analysis Using Tax Year 2021
Taxpayers Reporting DP-120 Gross Profits Less Than or Greater
Than \$0**

Fiscal Year	Estimated Revenue with Proposed Legislation	Cumulative Fiscal Impact
2026	(\$195,200,000)	(\$195,200,000)
2027 and forward	(\$229,600,000)	(\$424,800,000)

This proposed legislation shall take effect July 1, 2025. The DRA assumes that this proposed legislation is applicable to taxable periods ending on or after December 31, 2025. If the proposed legislation was intended to apply uniformly starting with a particular taxable period, the DRA would recommend the addition of an applicable taxable period end date of “taxable periods ending on or after December 31, 2025.”

The DRA would be responsible for updating all necessary tax return forms and electronic management systems related to this proposed legislation, which would not result in any additional administrative costs that could not be absorbed in the DRA operational budget.

The proposed legislation may result in an impermissible classification of taxpayers. The DRA recommends that the proposed legislation be reviewed by a constitutional lawyer or the Department of Justice.