

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

24-2675.1

HB 1674, *relative to establishing the New Hampshire legal tender act and establishing a state bullion depository.*

House Commerce and Consumer Affairs

Establishing the New Hampshire legal tender act and establishing a state bullion depository.

This proposed legislation creates a new law, New Hampshire Legal Tender Act, that establishes gold and silver as legal tender, establishes a state depository, and enables digital use of gold and silver.

Proposed RSA 5-D:2, II states that bullion shall not be characterized as personal property for taxation or regulatory purposes.

Proposed RSAs 5-D:2, III and IV states that the exchange of one type or form of legal tender for another shall not give rise to any tax liability and the purchase or sale of any type or form of bullion shall not give rise to any tax liability. DRA assumes that a taxpayer may be allowed to exchange from one type or form of legal tender or bullion to another type and then be allowed to exchange back the original legal tender or bullion at a different date. Multiple conversions back and forth from one legal tender or bullion to another could potentially give rise to exchange gains or losses that would be recognized federally but are exempted in NH under this bill. These gains or losses would generally be included in the Business Profits Tax return. The DRA is unable determine the magnitude or frequency of such conversions to provide an estimate of potential fiscal impact.

Paragraph RSA 5-D:2, VIII states that legal tender specie may be recognized to pay taxes and fees levied by the state or any local subdivisions of the state.

Proposed RSA 5-D:2, IX provides that a taxpayer maintaining a qualified business unit, defined in proposed RSA 5-D:1, XI as any unit of trade or business of a taxpayer that maintains separate books and records in a particular functional currency, with a single functional currency may elect to pay the tax liability of the qualified business unit in such functional currency if authorized by the treasurer. The taxpayer shall translate the income or loss of the qualified business unit at the appropriate exchange rate. The DRA is not clear on the scenarios that are contemplated by this arrangement. Allowing the taxpayer to elect to pay its tax and its business unit's tax in different currencies may require additional legislative guidance on how this is achieved, especially in situations where the taxpayer and its business unit are to file a combined tax return for Business Profits Tax purposes. The keeping of separate accounting might not allow for an accurate reflection of the performance of the business activities of the taxpayer.

Allowing for the qualified business unit to convert its functional currency to US Dollars (USD) only at the time of paying taxes might not allow for an accurate reflection of the movements of values of trade unit or business unit through a standard uniform currency with its taxpayer throughout the taxable period of the business. The practice of keeping separate accounting in separate functional currencies could allow for profit shifting or inappropriate tax planning. The DRA suggests that additional language or guidance be included to provide for uniformity in reporting that accounts for fluctuations in currency values and also to safeguard against potential profit shifting.

The DRA would be responsible for updating all necessary tax return forms and electronic management system related to this proposed legislation. To handle specie legal tender in the form of gold and silver, the DRA estimates that additional costs would be incurred for essential security items such as armored car transportation for deposits of tax and updates to secure rooms holding gold and silver.

The proposed legislation shall be effective July 1, 2024.

The DRA expects to incur additional expense to handle specie legal tender in the form of gold and silver, such as for essential security items like armored car transportation for deposits of tax and updates to secure rooms holding gold and silver. The DRA is unable to predict the prevalence of future tax payments that will be paid in gold and silver. As such, the DRA is unable to determine the cost of installing such added security measures. The DRA expects that these added security measures shall be needed to be in place before the effective date of the proposed legislation. Such indeterminable expense shall be incurred in FY 2024.