

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

23-0540.0

HB 288, *relative to taxation of sole proprietorship businesses*

House Ways and Means

The proposed legislation exempts sole proprietorships and single member limited liability companies (“SMLLCs”) from Business Enterprise Tax (“BET”) and Business Profits Tax (“BPT”) and reasons that the New Hampshire General Court recognizes sole proprietorships and SMLLCs are legally identical with their owners and as such are not subject to the aforementioned taxes.

Under the proposed legislation, a person who does business as a proprietorship and does business without formally creating a separate business organization as a legal entity, or who does business as the sole member of an LLC, shall not be characterized as a business organization.

This proposed legislation shall take effect July 1, 2024. The DRA assumes that this proposed legislation is applicable to taxable periods ending on or after December 31, 2024.

The estimated fiscal impact of this proposed legislation is an indeterminable decrease to the General Fund and the Education Trust Fund starting in FY 2024.

The DRA is unable to fully calculate the potential fiscal impact of this proposed legislation because the DRA does not currently collect information that identifies SMLLC filers. Currently, the type of BPT return to be filed by an SMLLC is dependent on its owner type. SMLLC owned by a natural person shall file a NH-1040. SMLLC owned by a partnership shall file a NH-1065, which is also filed by partnerships. SMLLC owned by a corporation shall file a NH-1120, which is also filed by corporations.

To calculate the estimated fiscal impact from the exclusion of Form NH-1040 filers, the DRA used the data from TY 2020 as the static year data and analyzed prior years to break out the split of tax year revenue to fiscal year revenue. 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 tax year 2024 and forward as shown in the table below.

Proposed Legislation Impact Timing

Fiscal Year	Tax Year	% Applicable to Tax Year
Fiscal Year 2024	Tax Year 2022	15%
	Tax Year 2023	63%
	Tax Year 2024	22%
Fiscal Year 2025	Tax Year 2023	15%
	Tax Year 2024	63%
	Tax Year 2025	22%
Fiscal Year 2026	Tax Year 2024	15%
	Tax Year 2025	63%
	Tax Year 2026	22%

Using historically reported amounts and applicable tax rates for BET and BPT, the DRA has calculated a tax base of \$2,647,628,833 and \$294,033,753 for the two tax types respectively and relied on those figures to estimate the future fiscal impact shown in the table below.

The calculations do not consider the filing threshold changes, which are adjusted for inflation biennially.

Estimated Business Tax Revenue Reduction from Excluding NH-1040 Filers

Business Tax Revenue Reduction - Static Analysis using TY2020 Revenues			
Fiscal Year	Estimated BET Revenue Reduction	Estimated BPT Revenue Reduction	Estimated Total Revenue Reduction
2024	\$3,200,000	\$4,900,000	\$8,100,000
2025	\$12,400,000	\$18,800,000	\$31,200,000
2026 and onwards	\$14,600,000	\$22,100,000	\$36,700,000

The proposed legislation states an effective date of July 1, 2024. 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, 2024.”

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.

The proposed legislation did not address the reference to SMLLC as a recipient of replacement property in like-kind property exchanges under RSA 77-A:4-b, I.

The language in section 5 of the proposed legislation excluding proprietorship from BET should be reconsidered to use the term “business enterprise” where “business organization” was used.