

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department for the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.)

The purpose of this information release is to clarify certain provisions of the law pertaining to SB2 towns and districts which have also adopted a budget committee under RSA 32:14. Questions should be directed to NH Department of Revenue Administration, Municipal Services Division, 45 Chenell Drive, Concord, NH 03301 or by calling (603) 271-3397.

QUESTIONS REGARDING SB2

The Department has recently received several inquiries regarding the application of the 10% rule under the municipal budget law in towns and districts that have also adopted official ballot voting procedures under RSA 40:13, commonly referred to as SB2. The statutes governing SB2 procedures do not explicitly address budget committee action, but make reference to the Municipal Budget Law. Since the inception of SB2, the Department has offered the following advice regarding budget committee interaction under the official ballot voting process:

Similar to the traditional meeting process, the budget committee must prepare its budget and state its recommendation/non-recommendation on special articles. The budget form (MS 7, MS 27 or MS 37) and the warrant for the annual meeting, both of which state the budget committee's positions, are required to be posted prior to the annual meeting. In the case of SB2, this posting is prior to the first session of the annual meeting, known as the "deliberative session".

Per RSA 32:18, the "10% rule" calculation is based upon "the total amount recommended by the budget committee for such meeting" adjusted for fixed charges. The Department has interpreted this statute to require that the 10% limit on appropriations is based upon the total amount recommended by the budget committee prior to the deliberative session. Similar again to the traditional meeting process, action by the deliberative session (i.e. amending the budget and/or special articles up or down) does not change the 10% rule calculation. This calculation is still based upon the budget committee's recommendations as indicated on the posted budget and warrant. The Department has advised SB2 towns and districts to make the voters at the deliberative session aware of the dollar amount of the 10% limitation, and to discourage the session from amending articles to a point where the 10% limit may be exceeded if all articles were to pass at the second session of the annual meeting.

The Department has also been questioned whether the budget committee can change their recommendations based upon the actions of the deliberative session. Neither the Municipal Budget Law nor the official ballot law specifically address this question. RSA 40:13, VI refers to a recommendation on special warrant article appropriations "as amended". However, there is no statute authorizing action by the budget committee between the first and second sessions. Again, even if the budget committee did change its recommendations, the 10% limit would still be calculated

based upon the budget committee's original recommendations as posted for the deliberative session.

If, after the official ballot vote, municipal officials are concerned that the total appropriations voted exceed the 10% limit based upon the budget committee's original recommendations after adjustment for fixed charges, please contact the Municipal Services Division at 271-3397 for further guidance.