

The purpose of this information release is to provide advice to taxpayers who have placed capital assets in service during 2001, and have not elected out of the special federal provisions. Questions should be directed to the New Hampshire Department of Revenue Administration, Audit Division, 45 Chenell Drive, Concord, NH 03301 or by contacting them at (603) 271-3400.

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 (ie., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.)

2001 New Hampshire Business Tax Filings and the IRS Depreciation & Section 179 Special Bonus Expenses

President George W. Bush recently signed PL 107-147, the "Job Creation and Worker Assistance Act," also known as the Economic Stimulus package. Under the new law, there is a change to federal corporate filing for 2001 calendar year returns. For federal tax purposes, businesses will be able to deduct 30 percent of the cost of capital assets placed in service between September 10, 2001 and September 11, 2004.

At this time, the New Hampshire Legislature has not changed the current business tax law to conform with the federal tax law changes. The Internal Revenue Code [IRC] reference remains the Code in effect on December 31, 2000. Therefore, if these changes are used on your 2001 federal filing, business taxpayers must recalculate their New Hampshire gross business profits. Since, under current New Hampshire law, the 30 percent special depreciation bonus expense and the additional IRC Section 179 expense is not allowable, business taxpayers will have to adjust the taxable income reported on their federal return before reporting their gross business profits on their New Hampshire business tax return. The adjustment will require:

- (a) the removal of the federal depreciation and IRC section 179 expense authorized under the "Job Creation and Worker Assistance Act of 2002"; and
- (b) the allowance of the depreciation and IRC section 179 expense as provided under the IRC in effect on December 31, 2000.

Therefore, unless the New Hampshire Legislature passes legislation to adopt the federal provisions, taxpayers must file their 2001 New Hampshire Business Tax returns using the provisions of the IRC in effect on December 31, 2000. If the legislation passes, the Department will issue a new Technical Information Release advising taxpayers. Taxpayers would then need to file an amended return for 2001.

The Department is providing additional information on the changes required to convert the current federal taxable income to the federal taxable income under the IRC in effect on December 31, 2000. Instructions and a form will be provided on our Web site. Taxpayers have the following options to file their 2001 return:

- File their 2001 business tax return now by adding back the difference between the depreciation and IRC section 179 expense allowed under the Internal Revenue Code of 1986, in effect on December 31, 2000, and the depreciation and IRC section 179 expense claimed on the 2001 federal return attaching a schedule which supports your calculation.
- File an extension of time to file your 2001 New Hampshire return and complete your return within the period of extension using the instructions and forms to be added to our Web Site in the next week or two.
- Download a copy of the updated 2001 Business Tax Return with the adjustment schedule and instructions from our web site prior to reporting your gross business profits on the NH return.
- If you have already filed your 2001 New Hampshire Business Tax return and used the 30% additional depreciation or the additional IRC section 179 expense deduction, you must file an amended return following the provisions of 1 or 3 above.

Please visit our web site for new developments as we will publish updates should the NH Legislature adopt or change any statutes as a result of the federal changes.

Individuals who need auxiliary aids for effective communications in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Audit Division at (603) 271-3400.