

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department and 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.). Questions specific to this Technical Information Release should be directed to the NH Dept. of Revenue Administration Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400.

### **2002 Statutory Changes For Business Profits, Communications Services, Electricity Consumption, Estate, Interest & Dividends and Meals & Rentals Taxes and Appeal Procedures**

During the 2002 Session of the General Court, several pieces of legislation were enacted into law making changes to the Business Profits Tax [RSA 77-A] , Communications Services Tax [RSA 82-A] , Electricity Consumption Tax [RSA 83-E] , Estate Taxes [RSA 87 & 89] , Interest & Dividends Tax [RSA 77] and the Meals & Rentals Tax [RSA 78-A] . The changes are summarized in the following paragraphs.

#### **Business Profits Tax**

Chapter 211 made changes to the net operating loss deduction [RSA 77-A:4, XIII] . The changes increase the amounts that may be carried forward over a four-year period for losses that were incurred after July 1, 1997 and extend the carry forward period to 10 taxable periods following the year of the loss. The maximum amount that can be carried forward remains at \$250,000 for all taxable periods that end on or before June 30, 2003. The maximum amount then increases by \$250,000 for each of the following three taxable periods. For all taxable periods that end after June 30, 2005, the maximum amount will be \$1,000,000. The calculation of the operating loss carry forward continues to be determined under Section 172 of the Internal Revenue Code in effect on December 31, 1996. More detailed information regarding this change is contained on Technical Information Release [\[TIR\] 2002-009](#) . The TIR may be found on the [department's web site](#) .

#### **Communications Services Tax**

Chapter 219 changed the sourcing rule for mobile telecommunications. The change was required so that New Hampshire's tax law would be in conformity with the provisions enacted by Congress in July 2000. The federal law is the Mobile Telecommunication Sourcing Act [P.L. 106-252] . The Communications Services Tax will now apply to all charges for mobile telecommunication services provided to a customer having its place of primary use in New Hampshire regardless of whether individual transmissions originate or terminate in the licensed service area [RSA 82-A:2, XIX] of the home service provider [RSA 82-A:2, XVIII] . The new sourcing rule for mobile telecommunications will apply to invoices sent to customers after August 1, 2002. More detailed information regarding this change is contained on Technical Information Release [\[TIR\] 2002-008](#) . The TIR may be found on the [department's web site](#) .

## **Electricity Consumption Tax**

Chapter 247 removed the prospective repeal of the Electricity Consumption Tax which had been included in the original legislation [Chapter 347, Laws of 1997] . Effective June 29, 2002, the Electricity Consumption Tax becomes permanent. No other changes were made to the tax.

## **Estate Tax & Transfer Tax Upon The Personal Property Of Non-Resident Decedents**

Chapter 232 transferred many of the provisions required to effectively administer the state's Estate Tax from the Legacy & Succession Tax [RSA 86] which was repealed during the 2001 session of the General Court effective for deaths occurring on or after January 1, 2003. Under prior law, many of the administrative provisions for both taxes were located within RSA 86. The provisions required to administer the Estate Tax are now located within RSA 87.

The legislation also repealed the Transfer Tax Upon the Personal Property of Non-Resident Decedents [RSA 89] effective January 1, 2003. This tax was imposed on any personal property located within New Hampshire of a non-resident decedent.

## **Interest And Dividends Tax**

Chapter 45 increased the threshold amount required for the quarterly payment of estimated interest and dividend taxes. **Effective January 1, 2004** , taxpayers will be required to file a declaration of estimated tax and make quarterly payments when their annual estimated tax liability exceeds \$500.

The new requirement will be applicable to all taxable periods beginning on or after January 1, 2004. For calendar year filers it will apply to their 2004 interest and dividends tax return. The first declaration of estimated tax must be filed by April 15, 2004 or any subsequent quarter when their annual estimated tax liability reaches the \$500 threshold. For fiscal year filers, the first declaration of estimated tax must be filed on the original due date of their 2004 interest and dividends tax return or any subsequent quarter when their estimated tax liability reaches the \$500 threshold.

## **Meals And Rentals Tax**

Chapter 232 modified the requirements under which mandatory gratuities would not be subject to the Meals & Rentals Tax [RSA 78-A] effective May 1, 2002. The legislation also added a new exception to the tax [RSA 78-A:6-a, VI] to address the taxability and non-taxability of individual components contained in a single aggregate charge, frequently referred to as a package deal, offered by an operator.

## **Mandatory Gratuities**

1. To be non-taxable the amount of the gratuity must:
2. Not be used as a supplement to or in lieu of wages or as a pool from which bonuses are paid to managerial personnel;
3. Be paid to the service personnel providing the service for which it was charged;

4. Be separately stated on the purchaser's or consumer's contract or receipt;
5. Be usual and customary; and
6. Be substantiated by the payroll or other business records of the operator.

Failure to **meet all** of the requirements causes the gratuity, or a portion of the gratuity, to become taxable.

### **Package Deal**

A new paragraph was added to the exception to tax paragraph under RSA 78-A:6-a. Paragraph VI provides the allocation between taxable and non-taxable components for single aggregate charges. The allocation is permitted only when one or more of the package deal items included are **not customarily associated with the purchase of a taxable meal or taxable room**. If the package item or service is part of the standard room rental or meal, the entire cost to the consumer is subject to the tax.

The portion of the cost that would not be subject to tax would be equal to the amount paid by the operator to the outside vendor for the item. If no amount is paid to an outside vendor, the non-taxable portion of the allocated cost is the amount over and above the amount which a consumer would be ordinarily charged for the room or meal outside of the package deal. In instances where part of the package involves gratuities, the amount allocated to gratuities will be non-taxable provided it meets the requirements contained in RSA 78-A:6-a, II(a), (b), (d) and (e).

The operator is required to maintain the documentation such as, vendor invoices, contracts and other documents necessary for the department to determine the allocation of costs and the proper application of tax. Such records must be retained in accordance with the statute of limitations and Rev 223.11.

Operators and consumers may obtain more information on these changes by reviewing Technical Information Release [TIR] 2002-004 dated May 20, 2002. The TIR may be found on the [department's web site](#).

### **Appeals For Redetermination Or Reconsideration**

Chapter 232, effective January 1, 2003, modified the procedures for appeals [RSA 21-J:28-b, IV] to the Board of Tax & Land Appeals or Superior Court from the department's final orders issued by the Hearings Officer. The appeal will now be heard anew and each party will be permitted to introduce whatever evidence it deems necessary subject only to the evidentiary rules of the particular forum. Legal issues, however, will be limited to those raised before the department unless it relates to a constitutional question or there is a showing of good cause for the introduction of additional legal claims.

***Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400.***