

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.

### **Meals & Rentals Operator's Tax Responsibilities**

The Department is issuing this Technical Information Release as a reminder to all operators of their responsibilities under the Department's various taxes, to which they may be subject. Enforcement activities conducted by the Department which may result in civil and criminal penalties are a required part of a self-assessment tax system, to ensure that law abiding businesses are not required to pay more than their fair share of taxes. An operator should keep in mind that their selection for audit or other administrative activity does not mean that the Department believes they have done something wrong; nor does an additional assessment automatically result in the imposition of civil or criminal penalties. When audits are completed, the auditor frequently finds no changes are required and others result in a refund to the taxpayer.

The New Hampshire Legislature has previously authorized two amnesty periods so that businesses that had failed to comply with the State's tax laws could file any non-filed return or amend returns without the imposition of penalties where the proper amount of tax had not been reported and paid. It has come to the attention of the Department of Revenue Administration that a number of operators are underpaying or failing to pay their state taxes, most notably the Meals and Rentals Tax, the Business Profits and Business Enterprise Taxes. This illegal practice has an adverse effect on the competitiveness of all the businesses that do comply with their legal obligations to properly and accurately account for and pay over taxes. The Department is working closely with the Office of the Attorney General to increase compliance with New Hampshire's tax laws and level the playing field for operators across the lodging and restaurant industries.

As part of our campaign to maximize tax law compliance, the Department would like to ensure that you are aware of your tax obligations as the holder of a Meals and Rentals license. At the same time, we would also encourage operators who may be aware of illegal behavior by businesses to advise the Department so that we may address the problem. You have the right to expect that everyone complies with the State's tax laws.

The most common taxes encountered by holders of Meals and Rentals licenses are the Meals and Rentals Tax, the Business Profits and Business Enterprise Taxes. The following information regarding these taxes is meant to provide only a broad overview of these specific taxes, and is not intended to detail all of your obligations as a taxpayer. For example, in addition to these taxes, some operators may be subject to the Interest and Dividends Tax or the Communications Services Tax, which are not discussed here. It should also be noted that the obligations and

penalties described here apply only to operators who are natural persons; corporate entities may face more significant penalties for tax law violations. The Department strongly encourages all operators to seek out additional information regarding their tax obligations. General tax information and forms can be obtained from the Department's website, [www.nh.gov/revenue](http://www.nh.gov/revenue). Operators may also find it helpful to obtain the advice of a tax professional. The Department's personnel are also available to answer your questions.

#### The Meals and Rentals Tax - RSA 78-A

The Meals and Rentals tax is an 8% tax assessed upon patrons of hotels and restaurants, and upon renters of motor vehicles. The tax is paid by the consumer, and is collected by the operator of the business providing the food, room, or motor vehicle to the consumer. You, as an operator, are legally obligated to collect the appropriate tax from your patrons. It is a Class B Felony to willfully fail to collect the appropriate tax. The penalties for a Class B Felony can be quite severe, and may include a criminal fine of up to \$4,000 and a maximum sentence of imprisonment of 7 years, in addition to civil monetary penalties that may be imposed by the Department.

Operators are further obligated to file a Meals and Rentals tax return and pay over the collected tax to the Department on a *monthly* basis. There are provisions for seasonal filings with the approval of the Commissioner of Revenue or his designee. The tax and the return must be filed with the Department on or before the 15<sup>th</sup> day of the month following the taxable period. For most operators, this means that for taxes you collected during the month of April, you must file a return and pay over those taxes to the Department by May 15. Operators who comply with the tax laws are permitted to retain 3% of the taxes due and to be remitted, as compensation for their efforts. Those who fail to comply with the tax laws, however, are not entitled to retain any portion of the taxes collected, and face stiff penalties for their non-compliance. As with failing to collect the tax, it is a Class B Felony to fail to truthfully account for and pay over the appropriate tax to the Department. Additionally, as an operator, you represent only the conduit between the consumer and the state with regard to the Meals and Rentals tax. The money that you collect as Meals and Rentals tax does not lawfully belong to you. Accordingly, should you fail to pay over the collected tax to the state, you could also be charged with theft. Depending on the amount of money at issue, you could be convicted of a Class A Felony, which carries a maximum penalty of 7 2 to 15 years in the New Hampshire State Prison, in addition to various criminal and civil monetary penalties.

Please note that in addition to the penalties noted above, it can be a Class A Misdemeanor to fail to file a return when one is due. This carries a maximum penalty of one year of incarceration and a \$2,000 criminal monetary penalty, in addition to civil monetary penalties. You should also know that most operators must file a return *every month*, regardless of whether they have had any activity during the previous month, and it can be a Class A misdemeanor to fail to file a return *even when no tax is due*. Returns must be filed electronically, via touch-tone telephone or personal computer. You are only permitted to file via a paper return if your taxable revenue for the previous calendar year was less than \$25,000. Each time an operator fails to collect taxes, fails to file a return and/or fails to pay over taxes to the Department, it is a separate violation of the law. Therefore, if an operator fails to pay over to the Department the collected Meals and Rentals tax for 12 consecutive months, he faces

12 separate felony charges. If the operator has also failed to file returns for those same 12 months, the operator could also face 12 separate misdemeanor charges.

#### The Business Profits Tax - RSA 77-A

The Business Profits Tax is a tax assessed on income that is derived from conducting business activity within the state. For taxable periods ending on or after July 1, 2001, the tax is assessed at a rate of 8.5% upon all of an organization's income that is derived from activity within New Hampshire. The tax applies to organizations that have more than \$50,000 in gross receipts from all of their activities. In other words, in determining whether an organization has met the \$50,000 threshold, the Department will take into account all of the business activity that an organization conducts worldwide, and not just the business that is conducted in New Hampshire. The tax is then apportioned, such that it is owed and paid only on the New Hampshire receipts. Organizations that have \$50,000 or less in gross receipts worldwide are not required to file a Business Profits tax return.

For businesses which are organized as corporations, business profits tax returns are due on the 15th day of the 3rd month following the end of the taxable period. Entities organized as sole proprietorships or partnerships must file their business profits tax returns by the 15th day of the 4th month following the end of the taxable period. Non-profit organizations must file their returns by the 15th day of the 5th month following the end of the taxable period. As with the Meals and Rentals tax, it can be a Class A misdemeanor to fail to file a return when one is due, and a Class B felony to fail to pay over taxes which are due. The penalties for each crime are detailed above, in the section on the Meals and Rentals tax.

#### The Business Enterprise Tax - RSA 77-E

A 0.75% tax, for taxable periods ending on or after July 1, 2001, is assessed on the enterprise value tax base, which is the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business, after special adjustments and apportionment. Businesses with more than \$150,000 of gross receipts, for taxable periods ending on or after July 1, 2001, from all their activities or an enterprise value tax base more than \$75,000, for taxable periods on or after July 1, 2001, are required to file a return. (The filing thresholds for taxable periods ending on or before June 30, 2001, are \$100,000 and \$50,000, respectively.)

Proprietorship, partnership and fiduciary returns are due on the 15th day of the 4th month following the end of the taxable period. Corporate returns are due on the 15th day of the 3rd month following the end of the taxable period. Non-profit returns are due on the 15th day of the 5th month following the end of the taxable period. As with the Meals and Rentals tax, it can be a Class A misdemeanor to fail to file a return when one is due, and a Class B felony to fail to pay over taxes which are due. The penalties for each crime are detailed above, in the section on the Meals and Rentals tax.

#### Increased Enforcement

It is the intention of both the Department of Revenue Administration and the Office of the Attorney General to actively and aggressively prosecute those operators who are not meeting their state tax obligations. In prosecuting such offenders, we will be

seeking sentences that include terms of incarceration, in addition to maximum civil and criminal monetary penalties. Such offenders also stand to lose their Meals and Rentals licenses permanently. It is our hope that these efforts will lead to greater compliance with our tax laws. This enhanced compliance effort is also a way to demonstrate respect and support for the vast majority of businesses which regularly and faithfully honor their tax reporting and tax paying obligations.

**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.**