

New Hampshire Department of Revenue Administration
45 Chenell Drive, Concord, NH 03301

TECHNICAL INFORMATION RELEASE
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A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or 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 should be directed to Customer Service at (603) 271-2191.

ISSUES TO KEEP IN MIND DURING TAX TIME

Civil Unions and New Hampshire Taxes

Effective January 1, 2008, recognition of civil unions became law in New Hampshire, under RSA Chapter 457-A. For the purposes of state tax administration, partners to a civil union will be taxed in the same manner as married persons, for tax periods beginning on and after January 1, 2008. Since the effective date of the civil unions law is January 1, 2008, civil union partners may not file joint state returns for the 2007 tax year due April 15, 2008.

The Department is currently revising relevant state tax forms for the 2008 tax year. The Department will issue further Technical Information Releases over the next several months regarding the specifics of joint and separate filings for civil union partners for Interest and Dividends Taxes and Business Taxes. Because the federal government and the State of New Hampshire treat same-sex relationships differently for tax purposes, the Department will also address the interrelationship between federal and state filings.

Partners to civil unions are also entitled to the same property tax credits and exemptions that pertain to married persons, so long as all the other eligibility requirements are met, such as age, length of union, and residency requirements and income asset limitations.

Repeal of the Dividends Received Deduction

There are concerns among practitioners regarding the impact of the repeal of RSA 77-A:4, IV, V, and VI, in the 2007 Legislative Session. The concern is that certain dividends and distributions will be subject to double taxation under the business profits tax. Double taxation is prohibited by the New Hampshire Constitution, as such taxation would not be proportional or reasonable. NH Const. Part I, art. 12 and Part II, art. 5. "It is a fundamental principle in taxation that the same property shall not be subject to a double tax, payable by the same party either directly or indirectly." *Opinion of the Justices*, 76 N.H. 588, 590 (1911)(quotation omitted). A statute prohibiting it is not necessary, especially a statute of limited application. The New Hampshire Supreme Court has clearly stated that "when a wholly-owned subsidiary pays a business profits tax and then passes those post-tax profits through to its parent in the form of dividends, the parent will not be required to pay a business profits tax on the dividends. This is so not only because RSA 77-A:4 precludes such a result, **but, more importantly**, because "[t]he incidence of the two taxes would be so nearly identical as to result in double taxation of a sort which is not

permitted under our Constitution.”’ *First Financial Group of New Hampshire, Inc. v. State*, 121 N.H. 381, 386 (1981)(citations omitted)(emphasis added).

The Department requested that RSA 77-A:4, IV, V, and VI be repealed because they were redundant, unnecessary, and confusing to practitioners and taxpayers. The Department anticipates that the prevention of double taxation of dividends and distributions will be accomplished through inter-company eliminations and separate entity adjustments.

Processing Issues Regarding Single Member Limited Liability Companies

Every year the Department returns a number of tax returns filed by single member limited liability companies (SMLLC) because they cannot be processed due to various errors. This often results in the assessment of late filing penalties once a corrected return is filed. To avoid this ordeal and expense, owners of SMLLCs are advised to keep the following in mind.

If the SMLLC does not have a unique Federal Employer Identification Number (FEIN), the SMLLC must apply for a Department Identification Number (DIN) using form DP-200. The unique FEIN or DIN must be used on all correspondences, returns, and forms regarding the SMLLC submitted to the Department.

The SMLLC must file NH returns, which correspond with the type of return filed with IRS. For example, if the SMLLC files a federal form 1040 to report its business income, it must file a NH business tax return for Proprietorships (forms BT-Summary, BET, and NH-1040).

The SMLLC is a separate legal entity and is required to file its own return. It cannot include income from other entities on its return or file a joint return.

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 N.H. Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301 or by contacting them at (603) 271-2318.