

## NEW HAMPSHIRE LEGISLATIVE UPDATE PROPOSED TAX BILLS – 2012 SESSION

By: MAURICE P. GILBERT, CPA, MST  
DIRECTOR OF STATE TAXATION  
Email: [mgilbert@devinemillimet.com](mailto:mgilbert@devinemillimet.com)  
Phone: 603.695.8612

FEBRUARY 6, 2012

In this newsletter we discuss a few of the bills being considered by the 2012 Session of the New Hampshire General Court. We have selected the proposed tax legislation which may have the greatest impact on our readers and their clients. To stay current, you should also periodically review the list of introduced bills on the [Legislature's Web Page](#) for new legislation that may be introduced or amendments to some of the bills we discuss in this newsletter. As of January 30th, the House of Representatives and the Senate had introduced in excess of 1,000 bills. We plan to provide an update on all of the tax bills by the middle of April or sooner, if the circumstances warrant.

The legislative changes included in this edition of the Tax E-News are the following:

### LEGISLATION BEING CONSIDERED BY THE HOUSE OF REPRESENTATIVES

*Amending the net operating loss carry forward under the business profits tax;*

*Changing the prospective repeal date for the research and development tax credit;*

*Relative to the adoption of forms by the Department of Revenue Administration for filing of taxes;*

*Relative to the determination of the reasonable compensation deduction under the business profits tax;*

*Establishing a committee to study administration of the business profits and the business enterprise taxes;*

*Relative to the credit for the business enterprise tax against the business profits tax;*

*Relative to the underpayment of estimated taxes and equalization of valuations administered by the Department of Revenue Administration;*

*Increasing the threshold amounts for taxation under the business enterprise tax;*

*Establishing an education credit against the business profits tax;*

*Requiring the carry forward of certain net operating loss deductions to relate to creation of new jobs;*

*Relative to the enforcement of interstate compacts;*

*Prohibiting the enforcement of out-of-state laws, rules, codes and fees not approved by the New Hampshire Legislature;*

### Tax Practice Group Federal, State & Local

**Jon Sparkman, Esq., CPA,  
Chair**  
603.695.8507  
[jsparkman@devinemillimet.com](mailto:jsparkman@devinemillimet.com)

**Steven Cohen, Esq., CPA, LLM**  
603.695.8504  
[scohen@devinemillimet.com](mailto:scohen@devinemillimet.com)

**Maurice P. Gilbert, CPA, MST  
Director of State Taxation**  
603.695.8612  
[mgilbert@devinemillimet.com](mailto:mgilbert@devinemillimet.com)

**Anu R. Mullikin, Esq., LLM**  
603.695.8536  
[amullikin@devinemillimet.com](mailto:amullikin@devinemillimet.com)

**Daniel Will, Esq.**  
603.695.8554  
[dwill@devinemillimet.com](mailto:dwill@devinemillimet.com)

**Patricia M. McGrath, Esq., LLM**  
603.695.8537  
[pmcgrath@devinemillimet.com](mailto:pmcgrath@devinemillimet.com)

**Jason E. Cole, Esq., CPA**  
603.695.8566  
[jcole@devinemillimet.com](mailto:jcole@devinemillimet.com)

**Harper R. Marshall, Esq., LLM**  
603.695.8645  
[hmarshall@devinemillimet.com](mailto:hmarshall@devinemillimet.com)

**Justin T. Vartanian, Esq.**  
603.695.8635  
[jvartanian@devinemillimet.com](mailto:jvartanian@devinemillimet.com)

DEVINEMILLIMET.COM

TAXENEWS@DEVINEMILLIMET.COM

*Requiring public access to any document and Internet content which is incorporated by reference in administrative rules;*  
*Prohibiting New Hampshire from entering into or enforcing reciprocal agreements with other states to deny rights and privileges for nonpayment of taxes owed to another state;*  
*and*  
*Conforming the interest and dividends tax to federal tax definitions.*

## **LEGISLATION BEING CONSIDERED BY THE SENATE**

*Relative to Internal Revenue Code Section 179 expense deduction under the business profits tax;*  
*Establishing a production jobs creation credit under the business enterprise tax and making changes affecting small business to the business profits tax, the business enterprise tax and the meals and rooms tax;*  
*Relative to notice requirements and payment of interest by the Department of Revenue Administration for overpayments and underpayments of tax;*  
*Increasing the research and development tax credit against the business profits tax;*  
*Relative to the exclusion of certain interest under the business enterprise tax;*  
*Relative to the refund of the overpayment related to a fraudulent investment scheme;*  
*Relative to the enforcement of the timber tax and excavation tax by the Department of Revenue Administration;*  
*Relative to limited liability companies;*  
*Revising the New Hampshire business corporations act;*  
*Relative to the status of members of the Board of Tax & Land Appeals; and*  
*Establishing an education credit against the business profits tax.*

## **LEGISLATIVE SUMMARIES (AS OF JANUARY 26, 2012)**

**HB 242** An Act relative to the net operating loss carryover under the business profits tax  
The bill, as amended by the House, changes the effective date from July 1, 2013 to January 1, 2013 for increasing the amount of an operating loss that may be carried forward to \$10,000,000.

**HB 518** An Act changing the prospective repeal date for the research and development tax credits  
The bill changes the date that the research and development tax credit, under the business profits and business enterprise taxes, would be repealed from July 1, 2013 to July 1, 2015.

**HB 564** An Act relative to the adoption of forms by the Department of Revenue Administration for the filing of taxes and removing the requirement for electronic tax payments  
The bill, as amended, requires that the Department adopt administrative rules regarding the requirements of the business profits, the business enterprise and the interest and dividends tax forms. The bill also repeals the authority for the commissioner to require electronic payment of taxes under RSA 21-J:3, XXI and the penalty for failure to comply with the electronic payment requirement under RSA 21-J:33. III. The bill would become effective 60 days after its passage.

### **Office Locations:**

111 Amherst Street  
Manchester, NH 03101  
T 603.669.1000  
F 603.669.8547

43 North Main Street  
Concord, NH 03301  
T 603.226.1000  
F 603.226.1001

**HB 611** An Act relative to the determination of the reasonable compensation deduction under the business profits tax

The bill is one of the reasonable compensation deduction revisions proposed during the 2011 Legislative Session that was retained by the House Ways & Means Committee at the end of the last session. The bill was referred to interim study at the beginning of the 2012 Legislative Session. It is unclear at this time whether any further action will be taken on this bill during the 2012 Legislative Session.

**HB 1209** An Act establishing a committee to study the administration of the business profits and the business enterprise tax

The bill establishes a legislative committee to study the following specific issues:

- (a) The step-up in basis required under RSA 77-A:4, XIV;
- (b) Updating the statutory reference to the Internal Revenue Code;
- (c) The apportionment of receipts based on the cost of performance;
- (d) Revising the definition of overseas business organization for purposes of the business profits tax; and
- (e) Establishing a uniform filing schedule for returns under the business profits and business enterprise taxes.

A public hearing was held on January 19th and the House Ways & Means Committee was scheduled to hold an executive session on January 31st to discuss the matter. The committee report would be due to the Legislature on or before November 1, 2012.

**HB 1221** An Act relative to the credit for the business enterprise tax against the business profits tax

The bill allows a business to apply the business enterprise tax credits on a quarterly basis rather than once a year. This would allow a business to apply the credit to its estimated quarterly tax liability. The bill appeared on the Consent Calendar for a vote by the House on February 1st. The effective date of the change would be July 1, 2012.

**HB 1302** An Act relative to underpayment of estimated taxes and equalization of valuations administered by the Department of Revenue Administration

The bill provides a definition for the term taxable period for purposes of the penalty for underpayment of estimates. The bill also requires that the Department consider property that is subject to tax relief under RSA 79-E:4 when equalizing the valuation of property in the various cities, towns and unincorporated places. The House Ways & Means Committee held a public hearing on January 17th and had scheduled an executive session on January 31st to discuss the bill. The effective date of the legislation would be July 1, 2012.

**HB 1418** An Act increasing the threshold amounts for taxation under the business enterprise tax

The bill increases the filing thresholds under the business enterprise tax from the greater of \$150,000 of gross receipts or \$75,000 of enterprise value tax base to the greater of \$200,000 of gross receipts or \$100,000 of enterprise value tax base. The bill also increases the level at which estimated taxes would be due from \$200 to \$260. The effective date for the legislation would be July 1, 2012. The Ways & Means Committee held a hearing on January 19th.

**HB 1607** An Act establishing an education credit against the business profits tax

The bill, similar to SB 372 discussed below, establishes an education credit against the business profits tax for business organizations that contribute to scholarship organizations which award scholarships to be used by students to defray educational expenses of attending an independent school. The amount of the credit would be equal to 75% of the contribution. The aggregate of tax credits available for all business organizations shall not exceed \$15,000,000 for the fiscal year ending June 30, 2013 and for each subsequent fiscal year in which the total scholarship receipts exceed 90% of the previous year's receipts, the aggregate amount of tax credits will be increased by 25%. The effective date of the legislation would be July 1, 2012. The House Ways & Means Committee held a public hearing on the bill on January 23rd.

**HB 1641** An Act requiring the carry forward of certain net operating loss deductions to relate to creation of new jobs

The bill would restrict the increase of net operating loss deductions from \$1,000,000 to \$10,000,000 which was previously passed. This bill would allow an additional \$10,000 of net operating loss deduction for each new job created by the business organization in the taxable period. The bill would be effective 60 days after its passage. The House Ways & Means Committee held a hearing on the bill on January 17th.

**HB 1475** An Act relative to the enforcement of interstate compacts

The bill prohibits state officials from enforcing any provision of an interstate compact which is based on another state's laws or rules if they have not been specifically approved by the New Hampshire Legislature. The law would be effective on January 1, 2013. The House Constitutional Review and Statutory Recodification Committee held a hearing January 31st.

**HB 1476** An Act prohibiting the enforcement of out-of-state laws, rules, codes, and fees not approved by the New Hampshire legislature

The bill prohibits New Hampshire courts, departments, political subdivisions and state or local officials from enforcing any law, rule, code, or fee of another state if the law, rule, code or fee of the other state has not been approved by the New Hampshire Legislature. The law would take effect on January 1, 2013. The House Executive Departments and Administration Committee held a hearing on January 24th.

**HB 1448** An Act requiring public access to any document and internet content which is incorporated by reference in administrative rules

The bill requires that each agency provide, upon request, for inspection or copying any document or internet content that is incorporated within the agency's rule. The agency is permitted to charge a fee equal to the actual cost of providing the information. The bill would take effect 60 days after its passage. The House Executive Departments and Administration Committee held a hearing on the bill on February 2nd.

**HB 1701** An Act prohibiting New Hampshire from entering into or enforcing reciprocal agreements with other states to deny rights and privileges for nonpayment of taxes owed to another state

The bill prohibits New Hampshire from entering into or enforcing any reciprocal agreement with other states that deny rights and privileges for the non-payment of

taxes owed to another state. The bill also prohibits the Director of Motor Vehicles from suspending, revoking or failing to renew a driver's license for failure to pay taxes to a state other than New Hampshire. The bill would be effective on January 1, 2013. The State-Federal Relations & Veterans Affairs Committee scheduled a hearing for February 2nd.

**SB 155 An Act relative to section 179 expense deductions under the business profits tax**

The bill provides a new section, RSA 77-A:3-a, under the business profits tax which allows a business organization to deduct IRC Section 179 expenses based on the IRC Code in effect when the property was placed into service. The legislation would take effect for property placed into service on or after January 1, 2014. The Senate has passed the legislation and it will move to the House for their consideration.

**SB 167 An Act establishing a production jobs creation credit under the business enterprise tax and making changes affecting small business to the business profits tax, the business enterprise tax, and the meals and rooms tax**

The bill provides a credit against the business enterprise tax of 0.75% of the qualified compensation paid, to a maximum credit of \$50,000, for compensation paid for newly created production jobs. The filing threshold for the business profits tax would be increased from \$50,000 to \$75,000. The filing threshold for the business enterprise tax would be increased from the greater of \$150,000 of gross receipts or \$75,000 of enterprise value tax base to the greater of \$175,000 of gross receipts or \$125,000 of enterprise value tax base. Interest paid on floor plan financing for inventory would be excluded from the definition of interest for purposes of the business enterprise tax. For meals & rooms operators with gross receipts of less than \$200,000, the operator would be allowed to retain 5% of the tax as compensation for maintaining records, effective for taxable periods beginning after June 30, 2011 and before July 1, 2013. The proposed legislation provides a business profits tax deduction for certain actual distributions made from a business organization to its parent organization in order to prevent double taxation. Also included in the legislation is a revised calculation for determining the adjustment to gross business profits under RSA 77-A:4, XIV. The adjustment would be equal to the amount of depreciation attributable to the increase in basis of the assets and any gain or loss on the actual disposition of the asset would not use the increased federal basis to calculate the state gain or loss. Finally, the income and expenses of a disregarded entity for federal tax purposes would be reported on the return of the single owner. The bill was referred to interim study by the Senate on January 18th.

**SB 168 An Act conforming the interest and dividends tax to the federal tax definitions**

The bill would simplify the interest and dividends tax so that any interest or dividend income received by an individual taxpayer and taxable for federal income tax purposes would be subject to the New Hampshire Interest & Dividends tax as well. The bill would be effective for taxable periods ending on or after December 31, 2011. The bill had been passed by the Senate during the last session and retained by the House at the end of the 2011 Legislative Session. The House took up the bill at the beginning of the 2012 Legislative Session and it was tabled on January 11, 2012.

**SB 293 An Act relative to notice requirements and payments of interest by the Department of Revenue Administration for overpayments and underpayments of tax**

The bill changes the interest rate on overpayments of tax so that it is the same as the

interest assessed by the Department on underpayments. The bill also requires that the Department issue a notice of decision on hearings within 60 days of the hearing. The legislation also places a 30-day requirement on communications with taxpayers as follows:

“The right to an explanation provided within 30 days of the date the tax payment is made by the taxpayer, in any initial notice or other initial communication of a deficiency, delinquency or other writing that is communicating an underpayment of tax, of the basis for the underpayment, interest and penalties.”

The bill would be effective July 1, 2012. The Senate Ways & Means Committee held a hearing on the measure on January 24th.

**SB 295** An Act increasing the research and development tax credit against the business profits tax

The bill increases the aggregate amount of credits that could be issued from \$1,000,000 to \$2,000,000 and eliminates the July 1, 2013 prospective repeal of the statute that currently exists. The effective date of the increase would be July 1, 2013. The Senate Ways & Means Committee held a hearing on the bill on January 31st.

**SB 299** An Act relative to the exemption of certain interest under the business enterprise tax

The bill excludes interest that is paid or accrued under a mortgage held by a nonprofit enterprise from the definition of interest under RSA 77-E:1, XI. The law would take effect July 1, 2012. The Senate Ways & Means Committee held a hearing on January 10th.

**SB 307** An Act relative to the refund of tax overpayment related to a fraudulent investment scheme

The bill adds a new section to RSA 21-J, the Department's authorization statute, that establishes a refund procedure for taxpayers who have been aggrieved by a fraudulent investment scheme and have filed amended Federal Income Tax returns to claim a loss under Internal Revenue Code Section 165. The New Hampshire Claim for Refund must be filed within 180 days of filing the Amended Federal Tax Return. The bill also adjusts the statute of limitations on refunds accordingly. The law would be effective July 1, 2012. The Senate Ways & Means Committee held a hearing for this bill on January 17th.

**SB 41** An Act relative to the enforcement of the timber tax and excavation tax by the Department of Revenue Administration

The bill would grant authority for the Commissioner of Revenue Administration to enter upon private property without the consent of the owner when enforcing the timber and excavation taxes without being guilty of trespass. The authority would not include the right to enter into living quarters situated on private property. The legislation would become effective sixty (60) days after passage. The Senate has initially passed the legislation. Upon final passage, the bill will go to the House of Representatives for consideration.

**SB 203** An Act relative to limited liability companies

The bill is a detailed revision to the statute authorizing and governing limited liability companies in New Hampshire, RSA 304-C. The legislation would take effect on January 1, 2013. The Senate Commerce Committee held a hearing for the legislation on January 17th.

**SB 205** An Act relative to the New Hampshire business corporations act

The bill is a detailed revision to the statute authorizing and governing business corporations in New Hampshire, RSA 293-A. The legislation would take effect on January 1, 2013. The Senate Commerce Committee held a hearing for the legislation on January 17th.

**SB 227** An Act relative to the status of members of the Board of Tax and Land Appeals

The bill would convert the positions of the chairman and board members from full-time employees to positions that receive a \$25 daily stipend plus mileage to perform the necessary duties. The statute would still prevent the members of the board from engaging in any employment that is in conflict with the duties of the board. The law would take effect 60 days after its passage. The Senate Executive Departments & Administration Committee held a hearing for this bill on February 2nd.

**SB 372** An Act establishing an education credit against the business profits tax

The bill, similar to HB 1607 discussed above, establishes an education credit against the business profits tax for business organizations that contribute to scholarship organizations which award scholarships to be used by students to defray the educational expenses of attending an independent school. The amount of the credit would be equal to 75% of the contribution. The aggregate of tax credits available for all business organizations would not exceed \$15,000,000 for the fiscal year ending June 30, 2013 and for each subsequent fiscal year in which the total scholarship receipts exceed 90% of the previous year's receipts, the aggregate amount of tax credits would be increased by 25%. The effective date of the legislation would be July 1, 2012. The Senate Education Committee held a public hearing on the bill on January 24th.

**The Devine, Millimet & Branch State & Local Tax Practice offers this free periodic E-Mail Alert service to provide information on recent tax developments in statutory, regulatory and case law, and decisions. If you have any questions about this e-mail, or if you know of anyone else who may be interested in receiving these alerts, please send us an e-mail at [taxenews@devinemillimet.com](mailto:taxenews@devinemillimet.com). Previous issues of the State Tax E-News, can be obtained at <http://www.dmb.com/news-and-events/newsletters.asp>.**