

N.H. DEPARTMENT OF REVENUE ADMINISTRATION TO ISSUE NEW REASONABLE COMPENSATION DEDUCTION SCHEDULE

By: *Justin T. Vartanian, Esq.*
Email: jvartanian@devinemillimet.com
Phone: 603.695.8635

NOVEMBER 29, 2010

The New Hampshire Department of Revenue Administration (“DRA”) recently issued Technical Information Release 2010-010 establishing a new reporting requirement for business organizations claiming the reasonable compensation deduction under RSA 77-A:4, III. [NH TIR 2010-010](#). The reasonable compensation deduction permits proprietorships and partnerships (which include limited liability companies taxed as proprietorships or partnerships) to deduct fair and reasonable compensation for the personal services of the owner(s) of the organization from the organization’s taxable business profits as determined under New Hampshire’s Business Profits Tax (“BPT”), provided such services are actually rendered. [RSA § 77-A:4, III](#).

As discussed in our previous newsletter, “[A Step in the Right Direction: Changes to the New Hampshire Reasonable Compensation Deduction](#),” several important changes were made to the reasonable compensation deduction this year, including (1) a new reliance on standards contained in Section 162(a)(1) of the Internal Revenue Code of 1986, as amended, and related regulations and court decisions for establishing the reasonableness of compensation, (2) the ability to pay compensation in excess of business profits, (3) a shift in focus from a return on business assets and the labor of non-owner employees to a return on investment, and (4) the addition of a \$50,000 recordkeeping safe-harbor. These changes are applicable to taxable periods beginning on or after January 1, 2010, with the exception of the recordkeeping safe-harbor.

The DRA’s recent guidance establishes that for taxable periods beginning on or after January 1, 2010, business organizations taking advantage of the reasonable compensation deduction must file the new NH BPT-RCD Allocation Schedule (“[RCD Schedule](#)”).

Tax Practice Group *Federal, State & Local*

**Jon Sparkman, Esq., CPA,
Chair**
603.695.8507
jsparkman@devinemillimet.com

Steven Cohen, Esq., CPA, LLM
603.695.8504
scohen@devinemillimet.com

Alexander J. Walker, Esq.
603.695.8553
awalker@devinemillimet.com

**Maurice P. Gilbert, CPA, MST
Director of State Taxation**
603.695.8612
mgilbert@devinemillimet.com

Anu R. Mullikin, Esq., LLM
603.695.8536
amullikin@devinemillimet.com

Daniel Will, Esq.
603.695.8554
dwill@devinemillimet.com

Nicholas Forgione, Esq., LLM
978.475.9100
nforgione@devinemillimet.com

Patricia M. McGrath, Esq., LLM
603.695.8537
pmcgrath@devinemillimet.com

Jason E. Cole, Esq., CPA
603.695.8566
jcole@devinemillimet.com

Harper R. Marshall, Esq.
603.695.8645
hmarshall@devinemillimet.com

Justin T. Vartanian, Esq.
603.695.8635
jvartanian@devinemillimet.com

DEVINEMILLIMET.COM

TAXENEWS@DEVINEMILLIMET.COM

The RCD Schedule requires business organizations to report the total reasonable compensation deduction claimed and set forth how the deduction is allocated among each proprietor, partner or member. Because the reasonable compensation deduction can now reduce a business organization's taxable profits below zero provided such compensation is actually paid, the RCD Schedule also requires any business organization in this position to report the amount of compensation actually paid to the proprietor, partner, or member by the business organization claiming the deduction. The new schedule replaces the former compensation schedules, **Part-Comp** and **Prop-Comp**.

For taxable periods beginning on or after January 1, 2011, the reasonable compensation deduction will include a recordkeeping safe-harbor provision under which a taxpayer is permitted a compensation deduction of \$50,000 per business organization or group of related business organizations. Keep in mind that each business or group of related businesses is only eligible for a compensation deduction of \$50,000 regardless of the number of owners who provide services to the entity or related entities. Accordingly, business organizations taking advantage of the reasonable compensation deduction safe harbor will be required to allocate the \$50,000 deduction among the group of related entities. If the group of business organizations includes a corporation, the \$50,000 must be reduced by the amount of wages paid to one or more of the owners of the related proprietorship, partnership or limited liability company.

The RCD Schedule is expected to be available on the [DRA's website](#) in December. Should you have any questions or concerns about the new schedule, please feel free to contact us.

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. Previous issues of the State Tax E-News, can be obtained at <http://www.dmb.com/news-and-events/newsletters.asp>.

Office Locations:

111 Amherst Street
Manchester, NH 03101
T 603.669.1000
F 603.669.8547

300 Brickstone Square
Andover, MA 01810
T 978.475.9100
F 978.470.0618

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