

UPDATE OF NEW HAMPSHIRE TAX LEGISLATION FOR 2012 SESSION

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In our **February 6, 2012 edition** of the Tax E-News, we discussed the various bills that had been introduced for consideration by both the House of Representatives and the Senate. This newsletter reviews the result of tax legislation from the 2012 Session of the New Hampshire General Court. We also included some bills that were not of a tax nature but that we thought may be of interest to our tax practitioners.

As will become apparent from the titles of the various laws enacted, some of the tax provisions were moved from their original bills to different bills before finally being enacted into law as an amendment to a totally unrelated bill. Several of the bills that were included in our February newsletter passed either the House or the Senate and were subsequently amended by the other body with non-germane provisions. In a number of these cases, the originating body, whether the House or the Senate, did not concur with the amendments so they took the tax provisions and moved them or killed the bill for the biennium. Finally, there were a number of bills that were tabled or sent to interim study by either the House of Representatives or the Senate and did not become law. If you wish to review the legislative history for any of the bills that we included within our February edition, you can locate the information on the **Legislative Web Site** by entering the House or Senate bill number under the State Legislation Dash Board section. The bill status document will provide a listing of all the actions taken related to the bill.

LEGISLATION ENACTED DURING THE 2012 SESSION

(1) Business Profits & Business Enterprise Tax Provisions

Chapter 71 (HB 242) An Act relative to the net operating loss under the Business Profits Tax.

The legislation changes the effective date of last year's increase in the amount of operating loss that can be carried forward (\$10,000,000) from July 1, 2013 to January 1, 2013. This change took effect **on May 23, 2012.**

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Chapter 116 (HB 518) An Act changing the prospective repeal date for the research and development tax credit.

The legislation changed the prospective repeal date of the research and development credit under the Business Profits Tax from July 1, 2013 to July 1, 2015. This change will take effect **on August 4, 2012.**

Chapter 253 (HB 1221) An Act relative to the credit for the Business Enterprise Tax against the Business Profits Tax.

The legislation amends RSA 77-A:7, I(a) to allow the use of any Business Enterprise Tax credit to be applied against the quarterly estimated Business Profits Tax payments owed. This change took effect **on July 1, 2012.**

Chapter 14 (HB 1302) An Act relative to the underpayment of estimated taxes and equalization of valuations administered by the Department of Revenue Administration.

The portion of the legislation relating to underpayment of estimated taxes under RSA 21-J:32 changes the term **taxable year** to **taxable period** in subparagraphs I and II and adds a new subparagraph II-a that defines taxable period as the calendar year or fiscal year which the taxpayer uses for federal income tax purposes or that part of a year for which a return is made. This change will take effect **on December 31, 2012.**

Chapter 279 (HB 1418) An Act increasing the threshold amounts for taxation under the Business Enterprise Tax and extending the commission to study business taxes; excluding charges for internet access from the Communication Services Tax and requiring the transfer of insurance premium tax revenue to the Department of Health and Human Services; and relative to section 179 expense deductions under the Business Profits Tax.

- (a) The legislation increases the filing threshold for the Business Enterprise Tax from \$150,000 to \$200,000 of gross business receipts and from \$75,000 to \$100,000 of enterprise value tax base. Both of the thresholds are to be adjusted biennially using the Consumer Price Index for the Northeast Region rounded to the nearest \$1,000. These changes are effective for **taxable periods ending on or after December 31, 2013.**
- (b) It also increases the requirement for estimated taxes under the business enterprise tax from \$200 to \$260 dollars of estimated tax liability. This change is effective **on June 21, 2012.**
- (c) Also included in the legislation is the addition of a new RSA 77-A:3-a that allows an Internal Revenue Code Section 179 deduction **not to exceed \$25,000** using the version of the Internal Revenue Code in effect on or after January 1, 2012. This change is effective **on June 21, 2012.**
- (d) Finally, the legislation includes a provision that removes the taxation of internet access charges from the Communications Services Tax. This change is effective on **June 21, 2012.**

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Chapter 287 (SB 372) An Act establishing an education tax credit.

The legislation establishes an education tax credit against the Business Profits Tax and/or the Business Enterprise Tax for business organizations and business enterprises that contribute to scholarship organizations which award scholarships to be used by students to defray educational expenses. The new credit and its requirements are contained in a new RSA 77-G entitled Education Tax Credit.

The credit that may be claimed by the business is equal to 85% of the contribution but shall not exceed the maximum education tax credit allowed under RSA 77-G and no one entity may receive more than 10% of the aggregate amounts of tax credits permitted under the statute. **The first program year of the education tax credit shall begin on January 1, 2013.**

(2) Interest & Dividends Tax Provisions

Chapter 286 (SB 326) An Act relative to state reimbursements of towns and relative to the taxation of trusts under the Interest & Dividends Tax

The tax sections of the bill:

- (a) Remove trusts from who is taxable under RSA 77:3(b) and (c).
- (b) Amend RSA 77:4, III to remove distributions from trusts from inclusion as a dividend where the beneficial interest is represented by transferable shares.
- (c) Amend RSA 77:10, Income From Trusts, so that the interest and dividends received by a grantor trust is included on the return of the grantor.
- (d) Indicate that income taxed federally as interest or dividends to a trust beneficiary who is a resident of New Hampshire shall be included as interest or dividends of such beneficiary and taxed in accordance with the provisions of RSA 77.
- (e) Eliminate trusts from the application of RSA 77:13 and 14-d.

The sections of the legislation impacting the Interest & Dividends Tax are effective for taxable periods ending **on or after December 31, 2013.**

(3) Meals & Rooms Tax Provisions

Chapter 73 (HB 1204) An Act relative to matching funds of highway projects, and relative to the administration of the Meals and Rooms Tax.

Sections 3 through 6 of the legislation make changes to the Meals & Rooms Tax in the area of licensing and surety bond requirements. The law also makes a technical change by correcting the reference to the rate of tax in cases where the operator includes the tax in the price of a meal or room. These changes took effect **on May 23, 2012.**

(4) **General Provisions**

Chapter 62 (HB 1448) An Act requiring public access to any document and Internet content which is incorporated by reference in administrative rules.

State agencies are now required to provide public access to any document and Internet content which they incorporate by reference within their administrative rules. The change is incorporated within RSA 541-A, the Administrative Procedures Act, and became effective **on July 13, 2012.**

Chapter 154 (SB 307) An Act relative to the refund of tax overpayment related to a fraudulent investment scheme.

The legislation adds a new subparagraph e under RSA 21-J:28 that allows any taxpayer aggrieved by a fraudulent investment scheme to petition the Department of Revenue Administration for a refund of overpaid taxes resulting from the scheme. The statute requires that the taxpayer must have filed an amended federal tax return claiming a theft loss under Internal Revenue Code Section 165 and *the petition to the Department must be filed within 180 days* of filing the amended federal tax return.

The legislation also extends the New Hampshire statute of limitations under RSA 21-J:29 by adding a new subparagraph (e) to reflect the 180 day provision identified in RSA 21-J:28-e.

The legislation became effective **on June 7, 2012.**

Chapter 232 (SB 203) An Act relative to limited liability companies and relative to meetings of certain legislative study commissions by open blogging.

The legislation made significant changes to the statute governing limited liability companies (“LLC”), RSA 304-C. Section 1 of the law identifies the legislative intent and the various changes being made as follows:

(a) This revised law retains most of the provisions that are contained within the current law, but it adds numerous important new features that will make the LLC statute significantly more user-friendly for small New Hampshire businesses. At the same time, the revised statute fully preserves and increases the usefulness of the law for larger businesses.

(b) The features in the new statute include:

- (i) a new overall structure that will make it substantially easier for LLC members and managers and their attorneys to find provisions relevant to their concerns;
- (ii) new provisions comprehensively defining the fiduciary duties of members and managers;
- (iii) revisions of numerous provisions of the current act to eliminate possible ambiguities;

- (iv) maximum use of plain English and the elimination of numerous legalisms that were in the current act; and
- (v) definitions of several key technical terms, such as “allocation,” “distribution,” “dissociation,” and “dissolution” whose meaning is not self-evident but which are not defined within the current law.

(c) The new LLC statute also contains a number of new provisions that will increase the flexibility of the law and thus will enhance the ability of both small and large New Hampshire businesses to tailor their LLCs to meet members’ and managers’ needs and interests. These include provisions validating oral and implied operating agreements of LLCs that lack written agreements.

The effective date of this act **will be January 1, 2013** but the law *does include some transitional provisions* as follows:

- (a) This legislation will govern domestic limited liability companies formed on and after January 1, 2013 and all foreign limited liability companies as of the effective date of this act.
- (b) Domestic limited liability companies formed on or before December 31, 2012 shall be governed by the New Hampshire limited liability company law currently in effect until January 1, 2014. On and after January 1, 2014, the new LLC law will govern all limited liability companies.
- (c) However, if all of the members of any domestic limited liability company formed on or before December 31, 2012 elect, in writing, to be governed by the new law as in effect on January 1, 2013, the domestic limited liability company will be governed by the new statute as in effect on the effective date of the election.
- (d) Notwithstanding any other provision of this section, a domestic limited liability company formed on or before December 31, 2012 shall be governed by its operating agreement, whether written, oral, or implied, to the extent that this operating agreement overrides any non-mandatory provision of the New Hampshire limited liability company act or of this act.

Chapter 268 (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.

Newly enacted RSA 12-N prohibits state agencies from entering into reciprocal agreements with other states that deny rights or privileges for non-payment of another state’s taxes. The law exempts the following agreements from the prohibition:

- (a) International Fuel Tax Agreement (RSA 260:65-b)
- (b) International Registration Plan (RSA 260:73)
- (c) Uniform Carrier Registration System (RSA 21-P:4, XIV)
- (d) Toll Violation Enforcement Reciprocity Agreement

The effective date of the law is **January 1, 2013**.

Our Tax Practice Group can assist you or your clients in reviewing these statutory provisions to determine how they may be applicable to businesses operating in New Hampshire. Members of our group can assist practitioners and their clients with tax planning or tax representation matters before the Internal Revenue Services or the various States' Departments of Revenue.

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