

Summary of New Hampshire Taxation of Businesses

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New Hampshire's motto is "Live Free or Die" and its citizens have carried that thought into their system of taxation as well. New Hampshire is one of the few states which has neither a general income tax on individuals' wages nor a general sales tax on purchases made in the State. The State does, however, have a number of taxes that affect businesses and individuals. The following is a brief summary of New Hampshire's taxes. Need more information on a particular tax? Feel free to give us a call.

1. **Business Profits Tax (RSA 77-A):**

- a. The Business Profits Tax (the "BPT") is an entity level net income tax imposed upon all business organizations which carry on any business activity in New Hampshire including corporations, limited liability companies, partnerships and sole proprietorships. Federally disregarded entities such as single member limited liability companies are taxable entities for New Hampshire purposes.
- b. A BPT return must be filed if a business organization's gross business income exceeds \$50,000. Gross business income is from all sources and not limited to New Hampshire sourced income.
- c. Federal taxable income of the business organization is the starting point for calculating taxable business profits, to which various adjustments must be made. The most significant (and controversial) adjustment is a "phantom" deduction for reasonable compensation for proprietorships and partnerships. Although proprietors and partners do not deduct for their own compensation on their federal return, in order to put them on an even playing field with corporations, they are allowed to deduct a reasonable compensation

amount for actual services rendered by owners who are natural persons.

- d. Taxable business profits are apportioned among the states in which the business organization does business in accordance with a three factor apportionment formula. The three factors are sales, compensation and property, and the sales factor is weighted by 2. Each factor is a percentage of New Hampshire activity to activity everywhere. The property factor is computed at original cost for owned property and 8 times annual rent for rented property. Mechanically, the percentages are added together and divided by 4. The apportionment is determined using combined reporting for unitary business groups and is mandatory.
- e. The current BPT rate is 8.5% of taxable business profits.
- f. Various credits (dollar for dollar reductions in tax) against the BPT are available and tend to be changed by the Legislature often. The credit for Business Enterprise Taxes paid is the most significant BPT credit.
- g. BPT returns are due on the 15th day of the third month following the end of a corporation's tax year and the 15th day of the fourth month following the end of a proprietorship's or partnership's tax year.
- h. Quarterly estimated tax payments must be made if the business organization's annual BPT liability is greater than \$200.

2. Business Enterprise Tax (RSA 77-E):

- a. The Business Enterprise Tax (the "BET") is an entity level tax imposed upon all business enterprises (slightly different than "business organizations" for the BPT) which carry on any business activity in New Hampshire including corporations, limited liability companies, partnerships, sole proprietorships and certain non-profit organizations.
- b. A BET return must be filed if a business enterprise's gross business receipts exceed \$150,000 or if its enterprise value tax base is greater than \$75,000. Gross business receipts is from all sources and not limited to New Hampshire sourced receipts.

- c. The enterprise value tax base for the BET is the total amount of interest paid, dividends paid or accrued, and wages paid or accrued (each component is broadly defined).
- d. Activity of a business enterprise outside of New Hampshire is accounted for by apportioning the elements of the BET base.
- e. The BET is imposed at a rate of .75% on the enterprise value tax base.
- f. A credit is allowed against the BPT for the amount of BET paid.
- g. The BET return is required to be filed at the same time the BPT return is filed.
- h. Quarterly estimated tax payments must be made if the business enterprises' annual BET liability is greater than \$200.

3. Interest and Dividends Tax (RSA 77):

- a. The Interest and Dividends Tax (the "I&D") is a gross income tax imposed upon New Hampshire residents and certain trusts. Corporations are not subject to the tax. Prior to January 1, 2009, partnerships, limited liability companies, certain trusts and fiduciaries were subject to the tax if the ownership interests were not represented by "transferable shares." Under the new law, the concept of "transferable shares" only applies to trusts in determining whether the trust is subject to the tax. Accordingly, partnerships, limited liability companies and associations are no longer subject to the New Hampshire Interest and Dividends Tax, however, any non-liquidating, non-compensation distribution that an entity makes to a New Hampshire resident could be subject to the tax, to the extent that the entity has current earnings and profits, accumulated profits, or "debt financed by the entity".
- b. The I&D Tax is imposed at a rate of 5% on all interest and dividends received by a taxpayer. Distributions from S corporations are taxable, as are distributions from LLCs and partnerships.

- c. Exclusions are available for certain types of interest and dividends including interest earned on obligations of the State of New Hampshire and its subdivisions and obligations of the United States Government.
- d. Exemptions are available in the amount of \$2,400 per taxpayer with additional exemptions of \$1,200 for elderly, blind and disabled (but under 65) taxpayers.
- e. Estimated tax payments are required if the estimated I&D Tax is \$500 or greater.

4. Meals, Rooms and Rentals Tax (RSA 78-A):

- a. The Meals and Rentals Tax is a tax imposed at a rate of 9% on taxable meals, occupancies and rentals of vehicles.
- b. Hotels, seasonal home rentals, campsites, restaurants and vehicle rental agencies are required to register with and obtain a license from the Department of Revenue Administration prior to serving taxable meals, renting rooms or vehicles.
- c. Hotels, restaurants and vehicle rental agencies collect the tax from their customers and pay the tax with the return by the 15th day of the following month. Electronic filing and payment is generally used since failure to do so results in a forfeiture of the 3% commission that the operators are allowed to retain for collecting and remitting the tax to the state.

5. Real Estate Transfer Tax and Recordation Fees (RSA 78-B):

- a. A real estate transfer tax is imposed on the consideration for all non-donative real estate transfers at a rate of \$15 per \$1,000 (i.e., 1.5%), to be paid one-half by the seller and one-half by the buyer. Consideration includes cash paid as well as the value of non-cash items exchanged.
- b. Various exemptions from the real estate transfer tax exist including non-contractual transfers (i.e. gifts).
- c. For two brief windows of time prior to 7/1/01, transfers of real estate pursuant to a conversion from one entity form to another entity form were exempt, provided that the entities

were identically owned and had the same assets and liabilities. E.g., conversion of partnership to LLC is now taxable.

- d. Transfers to or from an entity connected with formation or liquidation of the entity are taxable.
- e. Transfers of interests in real estate holding companies (“REHC”) are taxable. Generally, an entity is a real estate holding company if it owns real estate in New Hampshire and is principally engaged in the real estate business (pre 7/1/06 a mechanical 50% of assets or 50% of revenue test applied). As of 7/1/06, indirect transfers are also taxed, thereby subjecting transfers of up stream multi-tier entities with a REHC in their structure to tax.
- f. Recordation fees for mortgages, deeds and other real property documents are assessed at a rate of \$10 per first page (\$15 in some instances) and \$4 for each succeeding page. In addition, some counties have imposed surcharges on recordation.

6. Estate Taxes:

- a. **The Legacy and Succession Tax was repealed for deaths occurring on or after 1/1/03.** Previously, the Legacy and Succession Tax (RSA 86) was imposed at a rate of 18% on the fair market value of property of a New Hampshire resident that was transferred at death or in contemplation of death to persons or entities other than the decedent’s spouse, lineal heirs and certain charitable and other organizations.
- b. For deaths occurring on or after 1/1/05, the Federal repeal of the estate death tax credit effectively eliminated the NH Estate Tax. Previously, an Estate Tax (RSA 87) was imposed on estates of New Hampshire residents to the extent of the state death tax credit allowed on the decedent’s federal estate tax return.
- c. The Non-resident Personal Property Transfer Tax was repealed for deaths occurring on or after 1/1/03. Previously, the Transfer Tax (RSA 89) was imposed at a rate of 2% of the fair market value of personal property located in New Hampshire and owned by a non-New Hampshire resident at the time of his or her death.

7. Local Real Estate Taxes:

- a. The real estate property tax assessed by each town varies in rate from town to town and is assessed as of April 1 of each year.
- b. Taxpayers may apply for an abatement of tax within two months after notice of the tax assessment.
- c. Negotiation with a town regarding a firm's real estate tax is possible with respect to the methodology and assumptions used by the town to value the real estate.
- d. Various exemptions are available, but no credits against the real estate tax are allowed. Exemptions for charitable and religious uses of real estate exist and have been the subject of recent Supreme Court cases.

8. Other Taxes:

The State of New Hampshire also imposes other taxes such as the Tobacco Tax (RSA 78), the Gasoline Tax, the Electricity Consumption Tax (RSA 83-E), the Forest Yield Tax (RSA 79), the Current Use Tax (RSA 79-A), the Railroad Tax (RSA 82), the Communication Services Tax (RSA 82-A), the Medicaid Enhancement Tax (RSA 84-A), and the Nursing Facility Quality Assessment Tax (RSA 84-C).