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Summary of New Hampshire Taxes

**PROVIDED BY THE
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Although the State of New Hampshire has neither a broad-based income tax nor a general sales & use tax, the State does have a number of taxes that do impact both businesses and individuals. We are going to outline the New Hampshire taxes that have the greatest potential impact on businesses and individuals. The taxes discussed in this document are administered by the New Hampshire Department of Revenue Administration (“DRA”). New Hampshire also may impose other taxes that are administered by other New Hampshire State Agencies that generally may be administered in other states by that State’s Department of Revenue, therefore, you may need to review taxing statutes in New Hampshire that are outside the jurisdiction of the DRA.

The New Hampshire Constitution places significant restriction on the State’s ability to tax and as a result some of the provisions within the taxing statutes are not similar to what may be found in other states resulting in numerous pitfalls for the unwary. For example, the New Hampshire Legislature is required to impose taxes based on classes of property and not on classes of taxpayer, therefore, a tax on business activity within New Hampshire must be applied consistently whether the taxpayer is a corporation, a partnership, a limited liability company, a trust or a sole proprietorship. Unlike most states that have a corporate tax to tax corporate activity and a personal income tax to tax individuals on their income whether from a sole proprietorship, a disregarded entity or the pro-rate share of the income from a flow-through entity such as a partnership or a Subchapter S corporation, the State of New Hampshire is required to tax all of the business income in the same manner under a single statute. The flow-through concept of income taxation does not exist under New Hampshire tax law.

The following taxes as imposed on various kinds of business activity:

- Business Profits Tax**
- Business Enterprise Tax**
- Meals, Rooms and Rentals Tax (DRA license is required under this tax)**
- Tobacco Tax (DRA license is required under this tax)**

The following taxes are imposed on various kinds of non-business activity:

- Interest and Dividends Tax**
- Real Estate Transfer Tax**

These taxes are summarized in the sections that follow. There are additional taxes that are very specific in nature that may also apply and we will merely identify these taxes at the end of this document.

I. Business Profits Tax (Statute - RSA 77-A & Administrative Rules – Rev. 300):

a. The Business Profits Tax (the “BPT”) is an entity level apportioned 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. The State uses an *economic presence standard* rather than a physical presence to determine if the organization has nexus with New Hampshire and is subject to the tax.

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. The BPT does not permit the use of a federal consolidated return concept, however, the statute mandates the use of combined reporting on a water’s edge basis for unitary businesses. Unlike most states, the combined reporting approach applies to all types of business entities as well as proprietorships. The ownership requirement for New Hampshire purposes is not based on a set percentage of ownership but rather it is based on whether an economic entity or group of economic entity has the ability to control the operation by whatever means. Combined reporting only applies to unitary businesses that operate both within and without New Hampshire.

d. 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) adjustments made to federal taxable income are:

(1) A deduction for reasonable compensation for the personal services of a proprietor, a partner or member of a limited liability company. Although proprietors, members and partners do not deduct 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. The deduction is available only if the owner of the business rendering the services is a natural person. The business organization is not required to actually pay the compensation to the owner.

(2) In instances where an interest or beneficial interest in certain business organizations have been sold or exchanged, an addition to gross business profits of an amount equal to the net increase in the basis of all underlying assets transferred or sold through the sale or exchange of the interest. The increase in the basis of the assets shall be determined in accordance with the provisions of the Internal Revenue Code as defined by RSA 77-A:1, XX. The adjustment appears on the final return of the party selling or exchanging the interest.

- (3) The BPT does provide for a limited use of net operating losses to be carried forward. The loss carryforward is currently limited to \$10,000,000, is carried forward for 10 years and is subject to apportionment in the year the loss is incurred and again in the year in which the carryforward is used.
- e. 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 net 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. The BPT does not use market-based sourcing rules for purposes of the receipts from sales, other than the sales of tangible personal property. The State uses an income producing activity concept based on the cost of performance to source such receipts.
- f. The current BPT rate is 8.5% of taxable business profits.
- g. 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.
- h. 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.
- i. Quarterly estimated tax payments must be made if the business organization's annual estimated BPT liability is greater than \$200.

II. Business Enterprise Tax (Statute - RSA 77-E & Administrative Rules - Rev. 2400):

- a. The Business Enterprise Tax (the "BET") is an apportioned 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. Unlike the BPT, the BET statute does not provide for an *economic presence standard* and a physical presence may be applicable to determine if the organization has nexus with New Hampshire.
- b. A BET return must be filed if a business enterprise's gross business receipts exceed \$207,000 or if its enterprise value tax base is greater than \$103,000. Gross business receipts is from all sources and not limited to New Hampshire sourced receipts.

c. Unlike the BPT, the BET does not permit either the use of a federal consolidated return concept or the use of combined reporting on water's edge basis for unitary businesses.

d. The enterprise value tax base for the BET is the total amount of interest paid or accrued, dividends paid or accrued, and wages paid or accrued (each component is broadly defined).

e. Activity of a business enterprise outside of New Hampshire is accounted for by apportioning the elements of the BET base. Each element of the enterprise value tax base has a separate apportionment formula that is applied to that component to determine the New Hampshire value.

f. The BET is imposed at a rate of .75% on the enterprise value tax base.

g. A credit is allowed against the BPT for the amount of BET paid.

h. The BET return is required to be filed at the same time the BPT return is filed.

i. Quarterly estimated tax payments must be made if the business enterprises' estimated annual BET liability is greater than \$200.

III. Meals, Rooms and Rentals Tax (Statute - RSA 78-A & Administrative Rules - Rev. 700):

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, restaurants and vehicle rental agencies are required to register with and obtain a license from the DRA 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 on a monthly return due by the 15th day of the following month. Electronic filing and payment is required to be used (with limited exceptions) and the 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.

IV. Tobacco Tax (Statute - RSA 78 & Administrative Rules - Rev. 1000):

a. The Tobacco Tax is a direct tax upon the consumer at retail. However, it is presumed to be pre-collected by the wholesaler for the purpose of convenience and facility. It is presumed the Tobacco Tax has been pre-collected and paid by the wholesaler by the affixing of a Tobacco Tax Stamp on the tobacco product.

b. The Tobacco Tax requires that manufacturers, wholesalers and retailers obtain a manufacturer or wholesaler license from the DRA. A license to sell tobacco products at retail is obtained from the New Hampshire Liquor Commission. Consumers who purchase unstamped tobacco products will be taxed directly for the Tobacco Tax on such products.

c. As of August 1, 2013 the Tobacco Tax rate increased from \$1.68 to \$1.78 for each package containing 20 cigarettes and a proportional amount is applied to packages of more or less than 20 cigarettes. There is also a tax on tobacco products other than cigarettes (OTP Tax) at the rate proportional to the cigarette tax. As of August 1, 2013, the OTP Tax rate increased from 48% to 65.03% of the wholesale sales price.

d. Wholesalers are required to report their tax liability for the collection of the OTP Tax on a monthly basis. The return is due on or before the 15th day of the month following the end of the reporting period.

V. Interest and Dividends Tax (Statute - RSA 77 & Administrative Rules - Rev. 900):

a. The Interest and Dividends Tax (the “**I&D**”) is a gross income tax imposed upon New Hampshire resident individuals, partnerships and limited liability companies *represented by non-transferable* ownership interests and executors deriving their appointments from a New Hampshire Court.

b. Corporations, partnerships and limited liability companies *represented by transferable* ownership interests are not subject to the tax. Distributions from these entities to their owners are defined as dividends under the I&D.

c. The I&D Tax is imposed at a rate of 5% on all interest and dividends *received* by a taxpayer. There is no credit against the tax available for any taxes paid to another taxing jurisdiction.

d. Distributions from S corporations, partnerships and limited liability companies *represented by transferable* ownership interests are dividends for purposes of the I&D and subject to the tax. Distributions from a single member limited liability company are subject to the tax as well.

e. 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 direct 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. For purposes of the I&D, a married couple is permitted to file a joint I&D return provided that the couple files a joint Federal Income Tax return.

e. Estimated tax payments are required if the estimated I&D Tax is \$500 or greater.

VI. Real Estate Transfer Tax and Recordation Fees (Statute - RSA 78-B & Administrative Rules - Rev. 800):

- 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 statutory exemptions from the real estate transfer tax exist including non-contractual transfers (i.e. gifts). The law presumes that all transfers are taxable unless specifically exempted un RSA 78-B:2.**
- c. Transfers of real estate to or from an entity connected with formation or liquidation of the entity are taxable.**
- d. Transfers of interests in real estate holding companies (“REHC”) are taxable. Generally, an entity is a real estate holding company if it engaged principally in owning, holding, selling, or leasing real estate and which owns real estate or an interest in real estate within New Hampshire. The tax also applies to indirect transfers thereby subjecting transfers of upstream multi-tier entities with a REHC in their structure to tax.**
- e. 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.**

VII. Other Taxes Administered by the DRA that may apply depending on the taxpayer’s activities in New Hampshire.

- a. Electricity Consumption Tax (RSA 83-E)**
- b. Forest Yield Tax (RSA 79)**
- c. Current Use Tax (RSA 79-A)**
- d. Railroad Tax (RSA 82)**
- e. Communication Services Tax (RSA 82-A)**
- f. Medicaid Enhancement Tax (RSA 84-A)**
- g. Nursing Facility Quality Assessment Tax (RSA 84-C).**

If you have any questions on these New Hampshire taxes or need assistance with any state tax matters, our team of state tax professionals are available to assist with planning, compliance and representation regarding state tax issues. Please visit our web site at <https://www.devinemillimet.com/> or call a member of our State Tax Team at 603.669.1000.