



# **NH Department of Revenue Administration**

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NH Small Business Forum - September 28, 2012  
Business Tax Update



# DRA Legislative Group

- Tax Policy Analyst (Attorney), Financial Analyst (Economist) and Statistical Analyst (Statistician);
- Work with legislators in analyzing tax policy and fiscal impact;
- Prepare Fiscal Note Worksheets for legislation;
- Attend hearings to assist House and Senate committees deliberate on fiscal impact of legislation;
- Testify before House and Senate committees regarding tax policy and fiscal impact; and
- Assist in DRA rule and form changes as a result of any new law(s).



# DRA Fiscal Note Worksheets

- The law requires that when a bill before the Legislature affects the finances of New Hampshire state, county, and/or municipal government, there must be an objective estimate of that bill's fiscal impact.
- The actual Fiscal Note is a document which indicates the dollar effect (positive or negative) of a bill, the assumptions and methodology used in arriving at that dollar estimate, and any other comments relevant to the estimate, or its development.
- The Office of Legislative Budget Assistant (LBA) is responsible for preparing fiscal notes for all legislative bills with a fiscal impact.
- But, the LBA looks to the state agencies to draft "Fiscal Note Worksheets," which are the basis for the LBA's fiscal note and detail the fiscal impact of a bill.

# DRA Fiscal Note Worksheets (continued)

STATE OF NEW HAMPSHIRE  
OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
FISCAL NOTE WORKSHEET

Date Sent to Agency: 04/20/2012 LSR #: 12-2119  
 Agency: Department of Revenue Administration Bill #: HB 1221  
 Due to LBAC: 4/27/12 Amendment #(s): 12-1712s  
 Correction to a prior response? (Y/N): \_\_\_\_\_

State Fund(s) Affected  
*(1) Indicate here what state funds will be affected by the bill: general funds, federal funds, or any special fund. If it is a special fund, please specify.*  
 General: XXX Federal: \_\_\_\_\_ Other: \_\_\_\_\_

	FIRST BIENNIUM			SECOND BIENNIUM	
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
State Revenue	See Section C	See Section C	Not Estimated	Not Estimated	Not Estimated
State Expenditure					
Net State Impact	See Section C	See Section C	Not Estimated	Not Estimated	Not Estimated
County Revenue	Not Applicable				
County Expenditure					
Net County Impact	Not Applicable				
Local Revenue	Not Applicable				
Local Expenditure					
Net Local Impact	Not Applicable				

NOTE: (1) List only the amount of change in the appropriate column.  
 (2) Place all negative numbers in parenthesis.  
 (3) You may replicate this worksheet.  
 (4) Refer to [Guidelines for Fiscal Note Worksheets](#) for further information.

# DRA Fiscal Note Worksheets (continued)

## New Hampshire Department of Revenue Administration

### Fiscal Impact Quick Guide\*

12-2119.0

**HB 1221**, relative to the credit for *BET* against the *BPT*.

House Ways & Means Committee

This bill states that taxpayers may apply the credit for Business Enterprise Tax (*BET*) against the Business Profits Tax (*BPT*) on a quarterly basis when making estimated tax payments.

There is no fiscal impact from this bill as this option is currently available to taxpayers.

For Tax Year 2011 and Tax Year 2012 the New Hampshire form used to calculate estimated business tax payments has a line for credits available under 77-A:5, including the *BET* credit. (See Line 3(f) on the 2011 and 2012 Estimated Business Tax Worksheets). Thus, the *BET* credit is indirectly applied against *BPT*, via the estimation of *BET* due and *BPT* net of statutory credits due, during the calculation of the estimated tax due. The amount of *BET* credit applied can be the amount that will be paid in estimate payments during the year, as well as any carry forward amount from prior years (*BET* credits can be carried forward for a period of five years).

When the business tax return is ultimately filed, *BET* net of statutory credits is calculated based on actual amounts for the year. *BPT* net of statutory credits (including *BET*) is also calculated based on actual amounts for the year. The amount of *BET* paid during the year, either through estimates or with the return, or carried forward from prior years can be used as a credit against *BPT* on the *BPT* return. Once the *BET* and *BPT* liability is determined, any estimate payments made are subtracted to determine the amount due with the final return. The filing of the *BPT* return is when the *BET* credit is directly applied, as opposed to indirectly with estimate payments.

For Tax Year 2011 taxpayers have to file two estimate forms each quarter, one for *BET* and one for *BPT*; however the worksheet to calculate the *BPT* estimate allows for the use of *BET* credits, as specified above.

For Tax Year 2012 taxpayers will file one estimate form each quarter, and will specify what amount they are paying for *BET* and what amount they are paying for *BPT*. Again, the worksheet to calculate estimated business tax will allow for the use of *BET* credits, as specified above.

This bill would take effect July 1, 2012, at which point Tax Year 2012 estimate forms would be in use.



# 2012 Legislative Session

- At the beginning of the last session the DRA Legislative Group was monitoring over 100 different bills.
- Of these, 38 contained fiscal notes prepared by the DRA.
- By the end of the session:
  - 50 were voted Inexpedient to Legislate (didn't pass);
  - 15 were either Retained in Committee or Laid on the Table (didn't pass);
  - 27 were signed into law (passed); and
  - The remaining bills didn't pass as a result of non-concurrence in Committee of Conference.

# 2012 Legislative Session (continued)

- Business Tax bills that became law include:
  - **SB 372 (Chp. 287, Laws of 2012)** – establishes an Education Tax Credit against BET and BPT;
  - **HB 242 (Chp. 71, Laws of 2012)** – changes the applicability date for the increase in the NOL carryforward;
  - **HB 518 (Chp. 116, laws of 2012)** – changes the repeal date of the R&D tax credit to July 1, 2015;
  - **HB 1221 (Chp. 253, Laws of 2012)** – clarifies that a taxpayer may apply BET credits against BPT on a quarterly basis when making estimated payments; and
  - **HB 1418 (Chp. 279:1 & :10, Laws of 2012)** – which:
    - Increases the BET thresholds from \$150,000 to \$200,000 of gross business receipts and from \$75,000 to \$100,000 of enterprise value tax base; to be adjusted biennially for inflation
    - Creates a new section (RSA 77-A:3-a) that allows a Section 179 deduction up to \$25,000 for property placed into service on or after January 1, 2012.





# Business Tax Update

**SB 372** established an Education Tax Credit (ETC) against the BPT and/or the BET for business organizations and business enterprises that contribute to approved Scholarship Organizations, which award scholarships to be used by students to defray educational expenses.

- For each contribution made to an approved Scholarship Organization, a business organization or business enterprise may claim a tax credit equal to 85% of the contribution against the BPT or against the BET, or apportioned against both, provided the total tax credit granted against both shall not exceed the maximum ETC allowed.
- The ETC is not deemed taxes paid for the purposes of RSA 77-A:5, X.
- The DRA shall not grant an ETC without a Scholarship Receipt.
- The ETC program is set to begin January 1, 2013.





# Business Tax Update (SB 372 continued)

The aggregate amount of ETCs to be issued in the first year of the program is capped at \$3,400,000 (for total contributions of \$4,000,000).

- The second year is capped at \$5,100,000 (for total contributions of \$6,000,000).
- The third year (and beyond) is contingent upon whether or not the total amount of donations used for scholarships exceeds 80% of the tax credits allowed in the prior year and if the Community Development Finance Authority (CDFA) provides confirmation to the DRA that the CDFAs have received sufficient contributions.
  - If the 80% threshold is exceeded and the CDFAs have received sufficient contributions, then the ETCs aggregate amount of credits available would increase by 25%.
  - For the third year this could result in an increase of the ETCs available to \$6,375,000 (for total contributions of \$7,500,000).



# Business Tax Update (SB 372 continued)

Beginning January 1, 2013 (and no later than June 15, 2013), organizations may apply to the DRA for approval as a “Scholarship Organization” by filing a Scholarship Organization Application (proposed Form ED-01).

- This is an annual approval process.
- For the next program year, however, an approved Scholarship Organization may submit its application for approval in December when it files the Scholarship Organization Report (see below).
- In order to be eligible to apply, among other things, the organization:
  - Must be a non-profit (Sec. 501(c)(3)) charitable organization; and
  - Must not have an owner or operator who also owns or operates a non-public school that participates in the ETC program.



# Business Tax Update

## (SB 372 continued)

Beginning January 1, 2013 (and no later than June 15, 2013), business organizations and business enterprises may apply to the DRA for approval to make a money donation(s) to an approved Scholarship Organization(s) for a tax credit by filing an Education Tax Credit Application (proposed Form ED-02).

- This is an annual approval process.
- Within 60 days of being approved by the DRA to make a donation(s) (but no later than July 15<sup>th</sup>), the business organization or business enterprise must make the donation(s) to the approved Scholarship Organization(s).
- Within 15 days of receiving a donation from a business organization or business enterprise, the Scholarship Organization must issue a Donation Receipt (proposed Form ED-03) to the donor business organization or business enterprise AND to the DRA, acknowledging receipt of the donation and the actual donation amount.



# Business Tax Update

## (SB 372 continued)

- On or before December 1, 2013, the Scholarship Organization must issue a Scholarship Receipt (proposed Form ED-04) to the donor-business organization or donor-business enterprise AND to the DRA, reporting how much of the donation was actually used by the Scholarship Organization and how much is available to the business organization or business enterprise as a tax credit.
- Immediately upon receipt of a scholarship (but no later than December 1, 2013), a receiving school or home school parent must file a Receipt with the Scholarship Organization identifying expenses.



# Business Tax Update

## (SB 372 continued)

- On or before December 1, 2013, the Scholarship Organization is required to file a Scholarship Organization Report (proposed Form ED-05) with the DRA.
  - This report includes aggregate information gathered from the Education Tax Credit Survey administered by the Scholarship Organization to recipients of scholarships.
  - The scholarship organization may file the Scholarship Organization Application (proposed Form ED-01) with the Scholarship Organization Report in December, requesting approval as a scholarship organization for the next program year.
- Anyone alleging a violation of the Education Tax Credit Program may file a Complaint (proposed Form ED-06) with the DRA.



# Business Tax Update (Continued)

**House Bill 242** changes the applicability date for which the increase in the amount of Net Operating Loss (NOL) that may be generated in a tax year would increase from \$1,000,000 to \$10,000,000.

- Currently, the NOL statute reads, “On or after July 1, 2013, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$10,000,000.” (emphasis added)
- HB 242 changes the date to “On or after January 1, 2013...” (emphasis added).



# Business Tax Update (Continued)

**House Bill 518** changes the prospective repeal date for the Research and Development (R&D) tax credit from July 1, 2013 to July 1, 2015.

**House Bill 1221** puts into statute the current practice of allowing a taxpayer to apply the BET credit against the BPT on a quarterly basis when making estimated tax payments.





# Business Tax Update (Continued)

## House Bill 1418:

- Increases the BET filing thresholds under RSA 77-E:5 (effective for taxable periods ending on or after December 31, 2013)
  - Every business enterprise having gross business receipts in excess of \$200,000 during the taxable period or the enterprise value tax base greater than \$100,000;
  - The thresholds of gross business receipts in excess of \$200,000 and enterprise value tax base greater than \$100,000 shall be adjusted biennially for inflation and rounded to the nearest \$1,000 by the Commissioner of the DRA using the Consumer Price Index, Northeast Region as defined by RSA 77-E:1, X.
  - Also amends the BET threshold providing that if the estimated tax is less than \$260, a declaration need not be filed and further provides that a declaration shall be filed at the end of any quarter thereafter in which estimated tax exceeds \$260.



# Business Tax Update (HB 1418 continued)

## House Bill 1418:

- Creates a new section, RSA 77-A:3-a “Expense Deductions,” under the BPT that allows an expense in determining gross business profits before net operating loss and special deductions, wherein a business organization shall calculate expense deductions not to exceed \$25,000 as permitted under Internal Revenue Code Section 179 using the version of the Internal Revenue Code in effect as of January 1, 2012.
  - Applies to any qualifying Section 179 property as that term is defined in the Internal Revenue Code with respect to property placed into service on or after January 1, 2012.



# Annual Legislative Updates

- Issue Technical Information Releases (TIRs)
  - Let taxpayers and tax practitioners know what the NH Legislature passed
- Rule(s) Changes
  - Amend the DRA administrative rules to reflect what the Legislature passed
- Form(s) Changes
  - Amend the DRA forms to reflect what the Legislature passed



# General Information

- DRA Web Site: [www.nh.gov/revenue](http://www.nh.gov/revenue)
- DRA Telephone Assistance:  
(603) 230-5000 from 8 to 4:30 pm
- DRA Tax Forms:  
Web [www.nh.gov/revenue/forms](http://www.nh.gov/revenue/forms)  
Telephone (603) 230-5001