

29<sup>th</sup> Annual Tax Forum  
New Hampshire Tax Update: DRA Panel Discussion  
November 18, 2011



### **2011 Summary of New Hampshire Taxes**

*This is only a brief summary of certain New Hampshire taxes administered by the Department of Revenue Administration. This summary is not intended to be relied upon as a full and complete text. Please refer to the applicable forms, instructions, rules and to the laws cited below to determine how this information applies to specific persons or situations.*

#### **BUSINESS PROFITS TAX - RSA CHAPTER 77-A**

The Business Profits Tax (BPT) has historically been one of the largest sources of general fund revenue. Enacted in 1970 as a replacement for the municipal property tax on stock-in-trade, farm livestock, poultry, fuel pumps, mills and machinery, the initial rate was established at 6%. The rate steadily increased to a high of 9.56% in Fiscal Year (FY) 1983. The rate then decreased to 7% beginning FY 1995, then increased to 8% for tax years ending on or after 7/1/99. The current rate of 8.5% was effective for all returns and taxes due on account of taxable periods ending on or after July 1, 2001. This tax is assessed on income from conducting business activity within the state. For multi-state businesses, income is apportioned using a weighted sales factor of two (2) and the standard payroll and property factors. Organizations operating a unitary business must use combined reporting in filing their NH return. Four annual estimate payments are required on liabilities greater than \$200, paid at 25% each. Proprietorship, partnership and fiduciary returns are due on April 15th or the 15th day of the 4th month following the end of the taxable year. Corporate returns are due on March 15th or the 15th day of the 3rd month following the end of the taxable year. Organizations with \$50,000 or less of gross business income from all their activities are not required to file a return. Organizations, however, that realize a gain or loss on the sale or exchange of an interest in the business organization shall file a return for the taxable period, regardless of whether or not the business organization's gross business income is in excess of \$50,000 during the taxable period.

#### **BUSINESS ENTERPRISE TAX - RSA CHAPTER 77-E**

In 1993, a 0.25% (.0025) tax was enacted on taxable enterprise value tax base, which is the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business enterprise after special adjustments and apportionment. Chapter 17, Laws of 1999 increased the rate from 0.25% to 0.5%. The rate was increased to 0.75% in 2001. Also in 2001, the filing threshold increased to \$150,000 (from \$100,000) of gross business receipts or \$75,000 (from \$50,000) of the enterprise value tax base. Four annual estimate payments are required on liabilities greater than \$200, paid at 25% each on the 15th day of the 4th, 6th, 9th and 12th months of the taxable year. The Business Enterprise Tax return is due at the same time the Business Profits Tax return is due. The Business Enterprise Tax may be used as a credit against the Business Profits Tax under RSA 77-A:5. Any unused portion of the credit may be carried forward and allowed against the Business Profits Tax for five (5) taxable periods from the taxable period in which the Business Enterprise Tax was paid.

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**COMMUNICATIONS SERVICES TAX - RSA CHAPTER 82-A**

First enacted in 1990 at 5.5%, this tax was assessed upon two-way communications services. Chapter 158, Laws of 2001, increased the permanent portion of the tax to 4.5% and continued the surtax of 2.5%, resulting in an overall tax rate of 7% for the period beginning July 1, 2001 and ending June 30, 2003. A permanent rate of 7% was passed effective July 1, 2003. Retailers must register with the Department and are required to collect and remit the tax. Communications Services Tax returns must be filed by the provider on the 15th day of the month for the preceding calendar month unless the average monthly liability is less than \$100. Any provider/retailer who can reasonably estimate its average monthly liability to be in excess of \$10,000 is required to make an estimated payment equal to 90% of the actual tax collected. This payment is due on or before the 15th day of the month during which the liability is incurred.

**EDUCATION PROPERTY TAX - RSA 76:3**

Under Chapter 17, Laws of 1999, the Education Property Tax was established. The tax is assessed and collected by municipalities. The rate was originally \$6.60 per thousand of equalized valuation. The tax appears on the same bill with the other property taxes administered at the local level. The effective date of this tax was April 1, 1999. Chapter 158, Laws of 2001 reduced the rate from \$6.60 per \$1,000 of value to \$4.92 per \$1,000 of value beginning with the April 1, 2003 tax year (school year 7/1/03-6/30/04). The sunset provision of the Education Property Tax was repealed, making the tax a permanent revenue source dedicated to funding education. As of April 1, 2005, the rate was \$3.33 per \$1,000. Beginning in July of 2005, and every fiscal year thereafter, the Commissioner is required to set the tax rate at a level sufficient to generate revenue of \$363,000,000.

**ELECTRICITY CONSUMPTION TAX - RSA CHAPTER 83-E**

Effective May 1, 2001, the Electricity Consumption Tax is imposed at a rate of \$ .00055 per kilowatt hour on persons, including government units, distributing, redistributing or transmitting electrical energy for consumption in this state. The tax is paid by the consumer, collected and submitted by distribution companies, except in the case of consumers who generate their own power. These self-generating companies or individuals must submit tax returns on their own behalf. Returns (Form DP-133) must be filed on the 15th day of the second month following the month in which the electrical energy was provided to a consumer and for which tax is due.

**GAMBLING WINNINGS TAX - RSA 77:38 through RSA 77:50**

**In 2011, House Bill 229 (Chapter 47, Laws of 2011) repealed the 10% New Hampshire Gambling Winnings Tax set forth in RSA 77:38 through RSA 77:50. *The repeal is effective for gambling winnings received on or after May 23, 2011.* Therefore, any gambling winnings taxable under RSA 77:38 through :50 and received before May 23, 2011 are still taxable and are required to be reported and paid on or before April 15, 2012.**

New Hampshire's Gambling Winnings Tax was a 10% tax on any and all gambling winnings, except gambling winnings which were received and used by any educational, religious, charitable, or temperance organization incorporated or organized in this state, for the purposes for which it is established; or gambling winnings won prior to January 1, 1999 and distributed in annuity payments. RSA 77:38, III defines "gambling winnings" as winnings from lotteries and games of chance including, but not limited to bingo, slot machines, keno, poker tournaments, and any other gambling winnings subject to federal income tax withholding. New Hampshire residents must report gambling winnings received from any source, whether from a New Hampshire entity or an entity outside the state. Residents of other states and residents of other countries must report gambling winnings received from a New Hampshire entity. Gambling winnings include all proceeds, in money or the fair market value of property, received during

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that calendar year. Taxpayers must file a Gambling Winnings Tax return and pay tax due on or before April 15th following the expiration of the tax year in which any gambling winnings are received.

The 2011 repeal of the Gambling Tax was not retroactively applied and, therefore, those taxpayers who reported and paid New Hampshire Gambling Winnings Tax for gambling winnings received between July 1, 2009 and December 31, 2010 are not entitled to a refund based upon the repeal. Taxable gambling winnings received between January 1, 2011 and May 22, 2011 must be reported and the tax due paid in April of 2012.

#### **INTEREST & DIVIDENDS TAX - RSA CHAPTER 77**

The Interest & Dividends (I&D) Tax, which was first enacted in 1923, applied a tax based on the “average rate of property taxation” upon the income and dividend income received by NH residents from sources other than NH and Vermont banks. The tax was changed significantly in FY 1995 to eliminate the exemption on income from NH and Vermont banks. In conjunction with this change, the personal exemption was increased from \$1,200 to \$2,400. The exemption for joint filers increased from \$2,400 to \$4,800. Chapter 144, Laws of 2009 changed the law to make all distributions from limited liability companies, partnerships and associations subject to the I&D Tax to the same extent that distributions from corporations were subject to the tax. In 2010, Chapter 1:50-54, Laws of 2010 repealed Chapter 144, Laws of 2009. The repeal is effective for taxable periods ending on or after December 31, 2010. Estimated tax payments are due April 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup> and January 15<sup>th</sup> on tax liabilities greater than \$500. The I&D Tax return is due on April 15th. Additional exemptions are available for residents who are 65 years of age, who are blind, and who are handicapped and unable to work, provided they have not reached their 65th birthday. The current tax rate of 5% has remained the same since FY 1977.

#### **LOCAL PROPERTY TAX - RSA CHAPTER 76**

Property taxes, based upon local assessed valuations, are administered and collected by the individual cities and towns. The majority of property taxes collected are based on the market value of the property at its highest and best use. Some property taxes, however, are based on the market value of a property's actual use, such as:

- Current Use assessments under RSA chapter 79-A are available for certain Farm Land, Forrest Land, and Unproductive Land. The program is for the properties dedicated to remain as open space. A Land Use Change tax of 10% of the market value of the property is charged upon the occurrence of a disqualifying event (usually a development, use or sale of a portion of a property). Typically ten acres or more of dedicated land is required. Application to local officials on or before April 15<sup>th</sup> is required.
- Taxes on the value of standing timber are assessed under RSA chapter 79. These are assessed by local officials, at a rate of 10% of the value of the standing timber. The annual filing of an intent to cut and the subsequent report of timber cut are required.
- Taxes on the value of gravel and excavated materials are assessed under RSA chapter 72-B. These are assessed at a rate of at the rate of \$.02 per cubic yard of earth excavated.

#### **Local Property tax exemptions, credits and deferrals:**

**Elderly Exemption:** Effective July 23, 1996, RSA 72:39-a replaced the Standard, Expanded, Adjusted and Optional Adjusted Elderly Exemptions. The statute sets the minimum exemptions, and the cities and towns may modify them. The statutory exemption levels for all municipalities are adopted by each individual municipality.

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- Amount of exemption from value of residential real estate: Ages 65-74; 75-79; and 80+
- Net Income Limits, including Social Security Income or pension payment Net Asset Limits

**Blind Exemption - RSA 72:37**

The exemption for the legally blind must be adopted by the municipality. The exemption is a minimum \$15,000 reduction of the assessed value of the residential real estate (RSA 72:29) and could be higher if amended through referendum vote.

**Deferral for the Elderly or Disabled - RSA 72:38-a**

The assessing officials "... may annually grant a person qualified under this paragraph a tax deferral..." Property taxes are deferred and accrue interest at the rate of 5% per annum. The deferred property tax may not exceed more than 85% of the equity value of the residence. If granted by the assessing officials, the deferral is available to any resident property owner who is 65 years or older, or eligible for benefits for the totally and permanently disabled under the federal social security act, has owned the home for at least five years, and is currently residing there.

**Veterans Tax Credit - RSA 72:28**

Qualifying residents shall receive the following amounts deducted from their tax bills:

- \$ 50:Basic credit available to all veterans.
- \$700:For the surviving spouse of a veteran, pursuant to RSA 72:29-a, and veterans having a total and permanent service-connected disability pursuant to RSA 72:35

*Towns may adopt a local option to increase the above dollar amounts to \$100 and \$1,400.*

**Disability Exemption** - Residents who qualify under RSA 72:36-a as totally and permanently disabled from service connection, and is paraplegic or having double amputation from military service connected disability or blind (5/200 vision or less) as a result of service connection, and owning a specially adapted home acquired with V.A. assistance are exempt from all taxation on that home.

**Tax Exemption for Improvements to Assist Persons with Disabilities - RSA 72:37-a**

This exemption is limited to a physically handicapped person who resides at the residential real estate, and is applicable only upon the value of any special aids required by the resident to enable them to propel themselves.

**Tax Exemption for Wind-Powered, Solar and Wood Heating Energy System - RSAs 72:66, 72:62, 72:70**

These exemptions are optional to the cities and towns, and must be voted upon locally. If further information is required, contact the assessing officials of the municipality.

**Tax Exemption for the Disabled - RSA 72:37-b**

Available to persons eligible under the Social Security Act for benefits to the Totally & Permanently Disabled. Applicable only on the applicant's principal place of abode. The exemption is optional and must be voted on by the municipality, which also determines the amount of the exemption and the income/asset limitations.

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**MEALS & RENTALS TAX - RSA CHAPTER 78-A**

The Meals and Rentals (M&R) Tax was enacted in 1967 at a rate of 5%. The tax is assessed upon patrons of hotels and restaurants, on certain rentals, and upon meals costing \$.36 or more. Chapter 144, Laws of 2009, increased the rate from 8% to the current rate of 9% and added campsites to the definition of hotel. In 2010, campsites were removed from the definition of hotel, Chapter 6, Laws of 2010. An M&R Tax Operators License is required. An Operator is required to maintain books and records showing the amount of tax collected and to remit the tax monthly to the State, less a 3% commission. The M&R Tax is required to be remitted to the State on the 15th day of the month following the collection of tax.

**MEDICAID ENHANCEMENT TAX – RSA CHAPTER 84-A**

The Medicaid Enhancement Tax (MET) was enacted in 1991 at a rate of 8% of gross patient services revenue of every hospital. In 1993 the rate was changed to be established by legislation each biennium upon the gross patient services revenue of every hospital for the hospital's fiscal year ending during the first full calendar year preceding the taxable period. If the Legislature failed to set the rate of tax on or before April 1, preceding the first fiscal year of the biennium, the tax rate was to be zero for that biennium. In no event was the rate of the tax be greater than 6 percent for any biennium. In 1998, the law was amended to require the Legislature to set the tax rate on or before May 1. In 2003, the tax rate was changed to 6% of gross patient services revenue. In 2004, the 6% tax on gross patient services revenue was changed to a 6% tax upon the “net” patient services revenue of every hospital. In 2007, the tax rate was reduced to the current rate of 5.5% of net patient services revenue. Hospitals are required to pay 100% of the tax due for the taxable period no later than the 15<sup>th</sup> day of the fourth month of the taxable period. Hospitals are required to file a tax return with the Department on or before the 10<sup>th</sup> day of the month following the expiration of the taxable period.

**REAL ESTATE TRANSFER TAX - RSA CHAPTER 78-B**

The Real Estate Transfer Tax (RETT) was first enacted in 1967. Chapter 17, Laws of 1999, increased the permanent tax rate assessed on the sale, granting, and transfer of real estate and any interest in real estate to \$.75 per \$100, or fractional part thereof, of the price or consideration. This rate is assessed on both the buyer and seller for a combined tax rate of \$1.50 per \$100. Where the price or consideration is \$4,000 or less, there is a minimum tax of \$20 assessed on both the buyer and seller. Chapter 158, Laws of 2001, removed the exception from the tax on transfer of real property for transfers of title pursuant to a merger, consolidation or other reorganization qualifying as a tax-free reorganization. It also removed the exception of the transfer of title from one business entity to another, the ownership interest of which may be the same. These changes were effective for transfers occurring on or after July 1, 2001. The tax is paid at the Registry of Deeds office in the county where the property is located. A Declaration of Consideration (Form CD-57-P and Form CD-57-S) must be filed with the Department of Revenue Administration by both the purchaser and seller no later than 30 days from the recording of the deed at the Registry of Deeds or transfer of real estate, whichever is later.

**RAILROAD TAX - RSA CHAPTER 82**

Every railroad, railway, express, and every parlor, sleeping or dining car company, or other company not a railroad company owning any cars operated for profit on any railroad in the State of New Hampshire shall pay an annual Railroad Tax as of April 1 of each year. The Railroad Tax is on the market value of the property's full and true value as defined in RSA 75:1. The tax is imposed at the average rate of taxation at that time upon other property throughout the State. Railroad “property” applies to both railroad companies (an enterprise, corporation, partnership, etc.) and private rail cars operated for profit on any railroad in the State of New Hampshire.

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**TOBACCO TAX - RSA CHAPTER 78**

The Tobacco Tax is a direct tax upon the consumer at retail. However, it is pre-collected and paid 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. Consumers who purchase unstamped tobacco products will be taxed directly for the Tobacco Tax on such product. The Tobacco Tax was first enacted in 1939. Originally the tax was based upon the value at the usual selling price of all tobacco products. In 1975, the tax was changed to a flat rate of \$0.12 per package of 20 cigarettes. At that time, there was no tax on other tobacco products. Over the next 34 years the tax was increased from \$0.12 to \$1.78 per package. In 2011, the Tobacco Tax rate was decreased from \$1.78 to \$1.68 for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes. In 1991, the Legislature enacted a tax on tobacco products other than cigarettes (Smokeless Tobacco Tax) at the rate “proportional to the cigarette tax, having such ratio to the usual wholesale price of the tobacco product other than cigarettes as the cigarette tax bears to the usual wholesale price of the cigarettes.” In 2003, the Smokeless Tobacco Tax was changed to 19% of the wholesale sales price. The Smokeless Tobacco Tax rate was changed again in 2009 to 48.59% of the wholesale sales price, and then in 2010 to a rate of 65.03% of the wholesale sales price. In 2011, the Smokeless Tobacco Tax rate was decreased to its current rate of 48% of the wholesale sales price. Wholesalers are required to report their tax liability for the collection of the Smokeless Tobacco Tax on a monthly basis. The return is due on or before the fifteenth day of the month following the end of the reporting period. Wholesalers may file quarterly, but permission to file quarterly must be pre-approved by the Department in writing.

**UTILITY PROPERTY TAX - RSA CHAPTER 83-F**

Utility property is defined as “all real estate, buildings, and structures, machinery, dynamos, apparatus, poles, wires, fixtures of all kinds and descriptions, and pipe lines located within New Hampshire employed in the generation, production, supply, distribution, transmission, or transportation of electric powered or natural gas, crude petroleum and refined petroleum products or combination thereof, water, or sewage.” In 2011, “utility property” was amended to exclude: the electrical generation, production, and supply equipment of an “eligible customer-generator” as defined in RSA 362-A:1-a, II-b; property used for the retail distribution of fuel for personal, non-commercial use, use as a fuel in a motorized vehicle, home cooking, or heating; and that portion of a manufacturing establishment’s generation, production, supply, distribution, transmission, or transportation of electric power or natural gas, crude petroleum and refined petroleum products or combinations thereof, water, or sewage subject to tax under RSA 72:6, 72:7, and 72:8, but not exempt under RSA 72:23, that is expended, used, or consumed on-site primarily for the operation of the manufacturing establishment and that does not otherwise enter the stream of commerce. The Utility Property Tax rate is \$6.60 per \$1,000 of value of utility property. On December 1 of each year the Department determines the value of utility property as of the previous April 1. The effective date was April 1, 1999. The tax is due annually on or before January 15<sup>th</sup>. Every corporation or company required to pay Utility Property Tax must file a declaration of its estimated Utility Property Tax for the subsequent taxable period. Quarterly estimated payments of the Utility Property Tax are due on April 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup>, and December 15<sup>th</sup>.