

STATE OF NEW HAMPSHIRE  
2009 Tax Expenditure Report

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Prepared By

The Department of Revenue Administration

January 31, 2010  
In accordance with RSA 77-A:5-a

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*For*

*The New Hampshire General Court*

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*- and -*

*His Excellency, Governor John Lynch  
Governor of New Hampshire*

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TAX EXPENDITURE REPORT

## I. INTRODUCTION

This is the nineteenth year of publication of The Report on New Hampshire Tax Expenditures, required pursuant RSA 77-A:5-a. The legislature "expends" funds in two ways; (1) via actual appropriations (expenditures), and (2) by foregoing the collection of taxes that it has the statutory authority to collect. Tax expenditures have been characterized by the New Hampshire Supreme Court as ". . . *all exemptions from taxation are practically equivalent to a direct appropriation.*" Canaan v. District, 74 N.H. 517, 537 (1908). This document details tax expenditures. Tax expenditures may be either tax credits or tax exemptions.

This nineteenth report is based on tax returns filed in calendar year 2009. The calendar year closely approximates the way most taxpayers file and it is only by the filing of a return that the actual utilization of credits and deductions is quantified. This format also provides the most current information and, thus, gives some insight into the next fiscal year.

This report is a compilation of data contained on the Department of Revenue Administration's Tax Information Management System (TIMS), a computer system in operation since January 1, 1991. The numbers have been rounded to the nearest thousand dollars to enhance visual clarity. The information presented is not a statistical sample but rather a summary of the information reported on returns filed within the period. The purpose of this report is not to single out any group of taxpayers, nor to comment on the correctness or appropriateness of any credit, but rather, to provide decision makers with the verifiable facts as to the "cost" of the various credits. I encourage readers of this report to provide comments and suggestions for future reports.

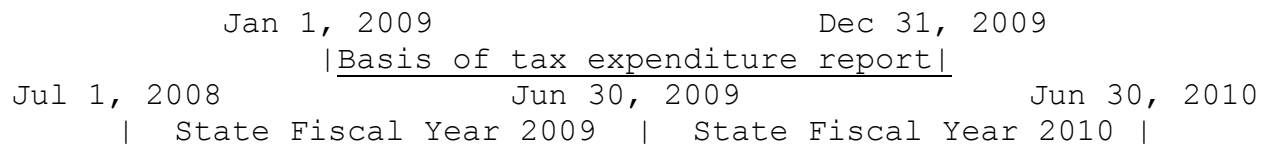


**Kevin A. Clougherty, Commissioner  
NH Department of Revenue Administration**

## II. DEFINITION OF TERMS

The following terms used in this report have the meaning ascribed below:

- A. Business profits tax liability or tax liability means the amount of tax shown to be due prior to the application of any payments or credits.
- B. CDFA means the Community Development Finance Authority.
- C. Statutory credit limits are:
  - 1. RSA 77-A:5 limits the sum of all credits to the amount of the business profits tax liability, before the application of any credit; and
  - 2. Credits and other expenditures not used expire unless specifically allowed to be carried forward. Credits and expenditures that do not expire are noted in the report.
- D. Department means the NH Department of Revenue Administration.
- E. Tax returns filed with the Department in 2009 means all tax returns filed with the Department from January 1, 2009 through December 31, 2009 without regard to the tax period for which the returns were filed. Amended returns and audit adjustments are not included in this report unless the original return was filed in calendar year 2009. Therefore, this report spans part of two state fiscal years as graphed below:



- F. TIMS means the Tax Information Management System, a computerized database, currently operated by the Department of Revenue Administration.

### III. GENERAL INFORMATION

The first part of this report covers four Business Profits/Business Enterprise Tax credits, provided under RSA 77-A:5 and 77-E:3-a, b & c. These credits may be categorized into two groups as follows:

Group A Credits provided for other New Hampshire taxes paid:

1. Insurance Tax, RSA 400-A;

Group B Credits provided for economic activities:

2. Investment Tax Credit - New Hampshire Community Development Finance Authority, RSA 162-L:10; and
3. Community Reinvestment and Opportunity Zones Credit, RSA 162-N:7, now the Economic Revitalization Zone Tax Credit.
4. Research and Development Tax Credit, RSA 77-A:5, XIII
5. Coos County Job Creation Tax Credit, RSA 162-Q

Additional Appendices cover the following areas:

1. Net Operating Losses.
2. Apportionment weighting of factors.
3. Business Enterprise Tax Credit.

**IV. EXECUTIVE SUMMARY OF TAX EXPENDITURES**

The following table gives a general view of the business profits and business enterprise tax expenditures reported on tax returns filed during calendar year 2009.

| <u>Description of Credit</u>                                                                      | <u>Credit Used</u>      |
|---------------------------------------------------------------------------------------------------|-------------------------|
| 1. RSA 400-A Insurance Taxes.....                                                                 | <u>\$19,332,000</u>     |
| 2. RSA 162-L:10 NH Community Development Finance.....<br>Authority Investment Tax Credit          | <u>\$3,367,000</u>      |
| 3. RSA 162-N:7 NH Community Reinvestment and .....<br>Opportunity Zones Tax Credit, now the ERZTC | <u>\$37,000</u>         |
| 4. RSA 77-A:5, XIII Research and Development Tax Credit . ....                                    | <u>\$926,000</u>        |
| 5. RSA 162-Q, Coos County Job Creation Tax Credit .....                                           | <u>\$2,900</u>          |
| <br>Total Credits Used . . . . .                                                                  | <br><u>\$23,667,000</u> |

**TOTAL CREDIT USED  
 Comparison 2005 - 2009**

| 2005         | 2006         | 2007         | 2008         | 2009         |
|--------------|--------------|--------------|--------------|--------------|
| \$28,437,000 | \$27,520,000 | \$32,031,000 | \$22,851,000 | \$23,667,000 |

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As required by RSA 77-A:5-a

ADDITIONAL INFORMATION PROVIDED IN THIS REPORT

|                                                           |              |
|-----------------------------------------------------------|--------------|
| Appendix 1                                                |              |
| REVENUE LOSS DUE TO CLAIMED NET OPERATING LOSS DEDUCTIONS | \$13,815,000 |

|                                                                 |             |
|-----------------------------------------------------------------|-------------|
| Appendix 2                                                      |             |
| REVENUE LOSS DUE TO WEIGHTING OF THE SALES APPORTIONMENT FACTOR | \$1,705,000 |

|                                        |               |
|----------------------------------------|---------------|
| Appendix 3                             |               |
| BUSINESS ENTERPRISE TAX CREDIT CLAIMED | \$120,442,000 |

**V. REPORT OF CREDIT UTILIZATION**

**1. Insurance Tax, RSA 400-A**

**Description:** The insurance tax is a tax assessed on insurance companies that do business in New Hampshire as provided in RSA 400-A. The insurance tax is administered by the New Hampshire Insurance Department. A business profits tax credit for taxes paid pursuant to RSA 400-A is provided by RSA 77-A:5, III.

**Methodology:** The amount reported as insurance tax credit used, is the amount of credit actually used to offset a business profits tax liability on returns filed in 2009.

**Tax returns filed in 2009:**

Tax Credit Used Against Business Profits Tax.....\$19,332,000

**CREDIT FOR INSURANCE TAX  
 Comparison 2005 - 2009**

| 2005         | 2006         | 2007         | 2008         | 2009         |
|--------------|--------------|--------------|--------------|--------------|
| \$24,112,000 | \$23,617,000 | \$28,071,000 | \$18,817,000 | \$19,332,000 |



**2. Investment Tax Credit - New Hampshire Community Development Finance Authority  
 RSA 162-L:10.**

**Description:** An investment tax credit equal to 75% of the contributions made to the Community Development Finance Authority (CDFA) as provided in RSA 77-A:5, V. The 1998 legislature limited the tax credit for the New Hampshire Community Development Finance Authority to contributions made during the tax year from July 1, 1999 forward. This credit has carry forward provisions. The tax credit may now be applied to the business profits tax, the business enterprise tax or the insurance premium tax.

The CDFFA credit is a "cascading" credit that may be used to reduce a BET liability and then used to reduce a BPT liability. The amount included in this report is the total reduction in revenue to the state whether applied against BPT, BET, or both tax liabilities. Care was taken to prevent double counting of the credit.

**Methodology:** Credit used is the amount actually reported and used to offset a tax liability on the New Hampshire business profits tax or business enterprise tax return. This report does not include any credit taken to offset N.H. Insurance taxes.

**Tax returns filed in 2009:**

Tax Credit Used..... \$3,367,000

**INVESTMENT TAX CREDIT  
 Comparison 2005 - 2009**

| 2005        | 2006        | 2007         | 2008        | 2009        |
|-------------|-------------|--------------|-------------|-------------|
| \$4,325,000 | \$3,897,000 | \$ 3,918,000 | \$3,411,000 | \$3,367,000 |

**3. CROP Zone Tax Credit - New Hampshire Community Reinvestment and Opportunity Zones RSA 162-N:7.**

**Description:** The authority to enter into CROP Zone Credit Agreements became effective July 1, 2003. The CROP zone tax credit shall be available to taxpayers only for tax liabilities arising during the 5 consecutive tax periods following the signing of the agreement. CROP zone tax credits shall be applied against tax due under RSA 77-E, the Business Enterprise Tax. For the purpose of the credit allowed under RSA 77-A:5, X, (the Business Profits Tax), the CROP zone credit shall be considered taxes paid under RSA 77-E. CROP zone tax credits shall not be transferable. This credit has carry forward provisions.

The CROP zone credit is a "cascading" credit that may be used to reduce a BET liability and the "taxes paid" under RSA 77-E may then be used to reduce a BPT liability. The amount included in this report is solely the reduction in revenue to the state when applied against a BET tax liability.

**Methodology:** Credit used is the amount actually reported and used to offset a tax liability on the New Hampshire business enterprise tax return.

**Tax returns filed in 2009:**

Tax Credit Used..... \$37,000

**CROP ZONE TAX CREDIT  
 Comparison 2005 - 2009**

| 2005 | 2006    | 2007     | 2008     | 2009     |
|------|---------|----------|----------|----------|
| \$0  | \$6,500 | \$42,000 | \$65,000 | \$37,000 |

**4. RESEARCH and DEVELOPMENT TAX CREDIT RSA 77-A:5, XIII.**

**Description:** Chapter 271, Laws of 2007 (Senate Bill 134) enacted the Research and Development Tax Credit. The maximum credit allowed for all taxpayers is \$1,000,000 per fiscal year. The credit is based upon 10% of the excess of the qualified R&D expenses for the taxable year over the base amount. Wages for which a credit is taken shall not also be eligible under the CROP zone credit. Each taxpayer's share of the credit shall not exceed \$50,000 per fiscal year. Taxpayers may apply up to June 30 following the tax year during which the R&D occurred and a determination will be made by the Commissioner no later than September 30. The unused portion of any R&D credit shall be available to apply to the Business Enterprise Tax. Any R&D credit used against either tax is included herein. The first \$1,000,000 in credits were awarded in September 2008 and the second \$1,000,000 in credits were awarded in September 2009.

**Methodology:** Credit used is the amount actually reported and used to offset a tax liability on the New Hampshire business profits tax return and the business enterprise tax return filed in 2009.

**Tax returns filed in 2009:**

Tax Credit Used..... \$926,000

**RESEARCH and DEVELOPMENT TAX CREDIT  
 Comparison 2005 - 2009**

| 2005 | 2006 | 2007 | 2008      | 2009      |
|------|------|------|-----------|-----------|
| N/A  | N/A  | N/A  | \$557,000 | \$926,000 |

**5. Coos County Job Creation Tax Credit - RSA 162-Q**

**Description:** Chapter 172, Laws of 2008 (HB 1644) enacted the Coos County Job Creation Tax Credit and became effective for taxable periods ending on or after June 9, 2008. The CCJC tax credit shall be available to taxpayers only for tax liabilities arising during the 5 consecutive tax periods following the awarding of the credit. CCJC tax credits shall be applied against tax due under RSA 77-E, the Business Enterprise Tax and any remainder may be applied against the Business Profits Tax. For the purpose of the credit allowed under RSA 77-A:5, the Business Profits Tax, the CCJC credit shall be considered taxes paid under RSA 77-E. This credit has carry forward provisions.

The CCJC tax credit is a "cascading" credit that may be used to reduce a BET liability and the "taxes paid" under RSA 77-E may then be used to reduce a BPT liability. The amount included in this report is solely the reduction in revenue to the state when applied against a BET tax liability and any remainder taken against the Business Profits Tax.

**Methodology:** Credit used is the amount actually reported and used to offset a tax liability on the New Hampshire business enterprise and business profits tax returns.

**Tax returns filed in 2009:**

Tax Credit Used..... \$2,900

**COOS COUNTY JOB CREATION TAX CREDIT  
 Comparison 2005 - 2009**

| 2005 | 2006 | 2007 | 2008 | 2009    |
|------|------|------|------|---------|
| NA   | NA   | NA   | \$0  | \$2,900 |

**VI. Appendix 1 NET OPERATING LOSSES**

The department included in the first tax expenditure report, per request from the New Hampshire legislative leadership, information pertaining to taxpayer use of the Net Operating Loss deduction (NOL), RSA 77-A:5,XIII. The NOL carry forward provision has a result similar to a credit against the current year tax liability.

The NOL deduction is a provision of the business profits tax law added in 1988. The NOL provision was effective for losses incurred after January 1, 1989. \*On July 1, 2002 the law was revised so that NOLs may now be carried forward for 10 years following the loss year instead of 5 years. The amount of NOL generated each year per entity was \$250,000. Now for taxable periods ending between July 1, 2003 and June 30, 2004, the NOL generated may not exceed \$500,000. For taxable periods ending between July 1, 2004 and June 30, 2005, the NOL generated may not exceed \$750,000. For taxable periods ending on or after July 1, 2005, the NOL generated may not exceed \$1,000,000 and the requirement to carry-back losses is eliminated.

In 2009, 4,531 business organizations used the net operating loss deduction. The following table details the results of this usage:

|                                             |                            |
|---------------------------------------------|----------------------------|
| Total NOL Used (after apportionment) .....  | <u>\$162,541,000</u>       |
| Average NOL Used (after apportionment)..... | <u>\$35,873</u>            |
| <b>Total tax decrease due to NOL.....</b>   | <b><u>\$13,815,140</u></b> |
| Average Tax Benefit to each taxpayer .....  | <u>\$3,049</u>             |

**NET OPERATING LOSS (Reduction in BPT)  
 Comparison 2005 – 2009**

| 2005         | 2006         | 2007         | 2008         | 2009         |
|--------------|--------------|--------------|--------------|--------------|
| \$12,681,000 | \$13,281,000 | \$16,695,000 | \$17,743,000 | \$13,815,000 |

**VII. Appendix 2. EFFECTS OF THE CHANGE TO APPORTIONMENT OF INCOME**

For all tax years ending on or after December 31, 1991 the sales factor of the New Hampshire 3 factor apportionment formula is modified. The sales factor is multiplied by 1.5 then combined with the payroll and property factors, the sum of which is divided by 3.5. Therefore, sales comprise 42.8% of the apportionment factor, while payroll and property comprise 28.6% each. It is important to note that this change has no effect on 100% New Hampshire business organizations.

Taxpayers with tax years ending on or after July 1, 1994 must double weight the sales factor of the apportionment formula. This change results in the sales factor comprising 50% of the apportionment factor, with payroll and property comprising 25% each.

**METHODOLOGY:** All business returns filed in 2009 were included in this study. Programs were developed to actually calculate the tax that would have been due using equally weighted factors. The results were compared to the actual tax liability and the difference computed. **Amended returns and audit adjustments from prior periods are not included in this report. Inclusion of amended returns and audit adjustments would significantly increase the revenue loss resulting from this provision.** Below are the results.

Businesses Impacted By This Provision

3,653 businesses with decreased liability paid \$23,175,914 less in tax.  
 6,593 businesses with increased liability paid \$21,470,839 more in tax.

The top 10 businesses paying less tax saved \$9,453,413, with an average tax savings of \$945,341.

Net Impact On Business Profits Tax Revenue: **Revenue loss of \$1,705,000**

**CHANGE TO APPORTIONMENT NET IMPACT (LOSS)  
 Comparison 2005 - 2009**

| 2005          | 2006        | 2007        | 2008         | 2009        |
|---------------|-------------|-------------|--------------|-------------|
| (\$1,829,000) | \$8,733,000 | \$6,660,000 | \$ 6,228,000 | \$1,705,000 |

**VIII. Appendix 3 BUSINESS ENTERPRISE TAX CREDIT**

Taxes paid under the Business Enterprise Tax receive a dollar-for-dollar credit against Business Profits Taxes. This credit can be carried forward for up to 5 years. Total Business Enterprise Tax reported on returns filed in 2009 was \$202,013,000.

Total Business Enterprise Credit Taken: .....\$120,442,000

**BUSINESS ENTERPRISE TAX CREDIT  
 Comparison 2005 - 2009**

| 2005         | 2006          | 2007          | 2008          | 2009          |
|--------------|---------------|---------------|---------------|---------------|
| \$93,261,000 | \$105,117,000 | \$120,308,000 | \$121,507,000 | \$120,442,000 |

**X. ACKNOWLEDGMENTS**

The following individuals made a material contribution to the production of this report. Without their help in compiling the data, this report would not have been possible.

Richard Nadeau, OIT

John C. Lighthall, Revenue Discovery Bureau

A handwritten signature in black ink, reading "Kevin A. Clougherty". The signature is written in a cursive style with a large, stylized initial "K".

**Kevin A. Clougherty, Commissioner  
NH Department of Revenue Administration**