STATE OF NEW HAMPSHIRE
COMMISSION TO STUDY BUSINESS TAXES

FINAL REPORT

October 30, 2014

Introduction

New Hampshire does not have a personal income tax or a state sales tax but does impose a tax on interest and dividends received by New Hampshire residents, fiduciaries and certain business entities (5%) and a Meals and Rooms tax (9%). As such, the majority (over 20%) of state tax revenue is generated from the Business Profits Tax ("BPT") and Business Enterprise Tax ("BET"), which are assessed on business conducted in the State. BET payments are credited against its BPT liability. Currently the tax rates are 8.5% and 0.75% for the BPT and BET, respectively. Because of the allowable BET credit against the BPT, the highest tax rate a business would pay is the BPT rate. Because New Hampshire has no personal income tax or sales taxes, property taxes (including those on business property) supply the majority of the local funding of cities and towns as well as contribute to New Hampshire's educational funding through its statewide property tax which generated $363.6 million in fiscal 2013. It is important to note that to the extent property taxes are paid by business, those too, along with others, could be considered "business taxes". However, for purposes of this report, we are focusing solely on the BPT, BET and the Interest and Dividends ("I&D") tax.

These combined taxes are anticipated by the General Court to raise approximately $1.1 billion during the 2014-2015 biennium. Because of the State's heavy reliance on these business taxes, and the critical importance of creating and expanding jobs, it is incumbent on New Hampshire to develop its business tax policy in a clear and consistent manner. The State's tax policy and its administration should always consider the impact that any current or future changes will have on the State's overall business climate.

Although the business taxes apply to all businesses, some businesses are exempt from filing when their gross receipts do not exceed certain levels. For the tax year 2011 (the most recent year for which data is available) less than 1 percent of all businesses filing tax returns paid 42.7 percent of the BET, and one percent of filers paid 73.6 percent of the total BPT in New Hampshire, primarily from large multi-state companies.

During our examination of the State's business taxes, we looked for ways to make our businesses tax structure more competitive with other states and simpler for the taxpayer to understand and the State to administer. We took into account ways to ensure fairness and equity in the allocation of business taxes among similarly situated business entities and taxpayers, ensure clear tax laws and synchronization with federal tax laws, and continue to provide a business tax environment that enhances the growth of jobs, income in the state, and the transition to clean and renewable energy. We have developed our recommendations balancing the conflicting objectives of generating current tax revenue with a long-term sustainable tax policy.

Our recommendations, therefore, take into account the potential impact a particular change may have on the State's revenues. In attempting to determine the potential

revenue impact, we did not perform a full fiscal study. Instead, we based our conclusion on former fiscal notes and analyses that have been discussed in recent Legislative hearings. Therefore, we have developed our recommendations based on a balance between the implementation of sound and competitive tax policy with the need for state revenues. It is important that New Hampshire continue to monitor and assess its tax policy in order to maintain a balance between competitiveness and revenue.

Members of the Commission

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TABLE OF CONTENTS

Introduction

I. Executive Summary of recommendations

II. Introduction – The Commission and its Mandate

III. The Work of the Commission

IV. New Hampshire’s Constitutional taxation framework

V. Recommendations of the Commission

VI. Matters for Further Consideration

VII. Exhibits

VIII. Prior Report dated February 2, 2012

I. Executive Summary of recommendations

The Commission recommends:

1. **Business Tax Rates**
    a. Long-term rate reductions should be based on tax competitiveness among New England states and nationally

    b. A near-term material reduction in business tax rates may be impractical in view of New Hampshire's current fiscal constraints. In the longer term, however, a meaningful reduction in the Business Profit Tax rate may be desirable in order to achieve good tax policy and remain competitive with our surrounding states.

    c. Review and potentially modify the various exemptions from BET.

    The State needs to be cognizant of the risk of a negative perception of its business tax structure among companies considering locating to and remaining or expanding in New Hampshire. Given the state's dependence on business tax revenue in the absence of broad-based taxes, the Commission recognized that short-term rate reduction is impractical. Any such rate reduction would need to be considered in light of any budgetary constraints.

2. Eliminate the limitation on Net Operating Loss Carryforwards

Make NH more competitive with surrounding states by:

a. For combined reporting filers, eliminate the double-apportionment of NOLs by providing that NOLs are to be carried forward either on pre- or post-apportioned basis. For example, if the NOL is to be carried forward from the loss year after apportionment (post-apportionment calculation), the NOL deduction should be applied in the carryforward year after apportionment;

b. Significant advances were made by increasing the NOL cap to its current level of $10 million. However, New Hampshire still remains only one of two states that have any limitation. We recommend eliminating the cap on the amount of an NOL generated in a tax year that may be carried forward;

c. Conforming to the federal NOL carryforward period of 20 years.

3. Credits

Type of Credit	**Recommendation**
Credit for Business Enterprise Tax	**No change; recently changed to 10 years**
Insurance tax credit	**No change**
Community Development Finance Authority (CDFA) tax Credit	**No change**
Credit for R&D expenditures	**Made permanent in 2013; improve application process ; increase carry-over to 20 years from 5 years**

4. Thresholds, Unitary, and Apportionment

Filing Thresholds

BET filing thresholds should remain at least at their current levels and the BPT thresholds should be raised to $75,000. Further consideration should be given to adjust the levels upward to more closely reflect average income earned by New Hampshire households.

Combined filing for Unitary Group

Allow in-state combined tax returns to be in conformity with multi-state filers. As such, unitary filing would be mandatory under all circumstances, including proprietorships, once unitary filing criteria is met.

In addition to combined filing discussed above, the DRA should consider amending the filing requirements for single member LLC's ("SMLLC") so to allow a common owner to file one combined return instead of a separate return for each SMLLC

Apportionment

a. New Hampshire should study and consider shifting from its current apportionment formula of double weighted sales factor plus payroll and property to a single sales factor and/or market-based sourcing.

5. Interest and dividends tax

To simplify the tax and filing, it is recommended that the NH interest and dividends tax be changed to start from the federal schedule B, adjust for municipal interest and US Government Obligations. The complex adjustment for distributions would be removed from law. Bringing our state tax definitions into conformity with federal law will significantly simplify tax preparation and predictability, thereby reducing preparation costs to taxpayers.

If the change above is not effected, the Commission recommends a clearer I&D statutory definition of "transferable shares" of businesses taxed as partnerships.

6. **Safe Harbors**

   Reasonable Compensation Safe Harbor Amount. As recommended in our Interim Report, recent legislation has increased to $75,000 the record keeping safe harbor.

7. **Conformity with the Internal Revenue Code**

   Tax simplicity is good tax policy and a competitive goal that should be implemented where possible. We recommend that New Hampshire adopt the IRC as in effect at December 31, 2013. In doing so, we recommend that New Hampshire study the impact of decoupling depreciation and other provisions that may be significantly different from the State's current methods. We believe that these provisions would bring more simplicity and predictability to New Hampshire's tax policy

II. Introduction -- The Commission and its Mandate

Following the repeal in 2010 of Interest and Dividends tax legislation affecting LLC's and partnerships this Commission was formed to study and recommend changes to New Hampshire's business taxes that would produce (1) fairness and equity, (2) consistency, (3) predictability and clarity, and (4) greater synchronization with the Internal Revenue Code currently in effect.

The Commission to Study Business Taxes ("Commission") was established during the 2010 Legislative special session on June 9, 2010 as part of HB1[1]and signed into law by the Governor on June 10, 2010. Through this legislation the twelve members were recommended and appointed by the Governor and the appropriate Senate and House leaders. The legislation further provided that the Commission would expire on November 1, 2012 and a final report would be issued by then. On June 21, 2012, the Legislature extended the Commission and the report date to November 12, 2014. [2]

In gathering testimony and researching these topics, it became clear that businesses prefer a more stable, clear and predictable tax policy and administration. A major impediment to business is a tax climate that changes and reacts to each budgetary or legislative session. Based on four years of study and testimony from businesses and business groups, it is the Commission's conclusion that New Hampshire businesses do not consider the current BPT rate as a primary factor in making decisions to expand or locate within the State. Factors such as energy costs, skilled and educated work force, state infrastructure, and real estate costs (including property taxes) are more of a concern to New Hampshire businesses. Therefore, the Commission believes that consistent and predictable tax policy should be at the forefront of the State's mission to achieve those four goals set forth above.

The Commission members were appointed during September of 2010 and conducted its first meeting on October 7, 2010 where its schedule was set. Specifically the Commission's mandate is set forth below:

77-F:1 -- Commission to Study Business Taxes Established.

> **I.** There is a commission established to study business taxes.
> **II.** The members of the commission shall be as follows:
>> **(a)** Three members of the senate, appointed by the president of the senate.
>> **(b)** Four members of the house of representatives, appointed by the speaker of the house of representatives.
>> **(c)** Five members of the public appointed by the governor, representing the following groups and interests:
>>> **(1)** Tax experts and accountants;
>>> **(2)** Small business;

(3) Real estate, finance, and investment; and
(4) Business trade associations.

III. The commission shall study and evaluate:

(a) The present system of business taxation in New Hampshire, including but not limited to the rates and allocation among taxpayers of the business enterprise tax, the business profits tax, and the interest and dividends tax.

(b) Whether there are changes to the present system of business taxes and rates of assessment that should be considered by the legislature in order to:

(1) Ensure fairness and equity in the allocation of business taxes including among similarly situated business entities and taxpayers;

(2) Ensure clear tax laws and synchronization with federal tax laws; and

(3) Continue to provide a business tax environment that enhances the growth of jobs, income in the state, and the transition to clean and renewable energy.

(c) Safe harbors for the reasonable compensation deduction under the business profits tax, including but not limited to:

(1) Safe harbors based on the percentage of the gross selling price on the sale of business assets other than inventory;

(2) The percentage of gross revenues and the percentage of gross business profits using the independent investor return test;

(3) The federal self-employment tax; and

(4) Any other issue related to the reasonable compensation deduction.

(d) Business tax credits and deductions including, but not limited to, net operating losses.

(e) Offering tax credits to insurance companies that create new net jobs in New Hampshire.

IV. The commission may solicit and receive testimony and other information from any person or organization with information or expertise relevant to the committee's objective. State agencies shall cooperate with the commission, and provide data, information, reports, and testimony to the commission upon request.

V. The governor shall appoint a chair from among the members. The first meeting of the commission shall be called by the chair and shall be held within 45 days of the effective date of this section. Seven members of the commission shall constitute a quorum.

VI. Legislative members of the commission shall receive mileage at the legislative rate when attending meetings of the commission.

VII. The commission shall, following a public hearing on a draft final report, submit a final report on the items included in subparagraphs III(a), (b), and (e) or before December 1, 2010, containing its findings and any recommendations for proposed legislation, to the governor, the president of the senate, the speaker of

the house of representatives, the chairs of the house and senate ways and means committees, the house and senate clerks, and the state librarian.

VIII. The commission shall, following a public hearing on a draft final report, submit a final report on the items included in subparagraphs III(c) and (d) or before November 1, 2014, containing its findings and any recommendations for proposed legislation, to the governor, the president of the senate, the speaker of the house of representatives, the chairs of the house and senate ways and means committees, the house and senate clerks, and the state librarian.

III. The work of the Commission

Although the legislation provided for a report by December 1, 2010, the Commission determined that it would be problematic to finalize a fully vetted and complete study and issue a report within a two-month time frame. The Commission therefore provided an interim report on December 1, 2010 that summarized the results of testimony and preliminary findings that the Commission received during October and November. [3]

The Commission made an initial recommendation that New Hampshire not change it current rate or method of applying the Insurance Premium Tax currently in place as RSA 400-A:32.

IV. New Hampshire's Constitutional taxation framework

The state Constitutional framework within which our business tax scheme operates is important to understand. There are three provisions of the New Hampshire Constitution that are intended to work in combination to ensure fairness in taxation. First, Part I, Article 12 establishes that "[e]very member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection." Smith v. N.H. Dep't of Rev. Admin., 141 N.H. 681, 685 (1997) (quoting N.H. Const., pt. I, art. 12). Article 12 requires that a given class of property be taxed at a "uniform rate" and that "taxes must be not merely proportional, but in due proportion, so that each individual's just share, and no more, shall fall on him." Smith, 141 N.H. at 686.

Second, Part II, Article 5 grants the Legislature authority "to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within" the State. Smith, 141 N.H. at 686. Together, Part I, Article 12 and Part II, Article 5 "establish equality and justice as the basis of all constitutional taxation." Smith, 141 N.H. at 686.

Third, Part II, Article 6 authorizes the Legislature to "classify" property for purposes of taxation. The Legislature has "broad power to declare property to be taxable or non-taxable based upon a classification of the property's kind of use, but not based upon a classification of the property's owners." N. Country Envtl. Servs. v. State, 157 N.H. 15, 19 (2008) (quoting Smith, 141 N.H. at 686); see also Opinion of the Justices, 115 N.H. 306, 308 (1975) ("Property can be classified for tax purposes. The taxpayer cannot.").

Taken together, these three constitutional provisions "require that taxation be just, uniform, equal, and proportional; in addition, our constitution demands that classifications be made between types of property, not taxpayers." Smith, 141 H.H. at 686. In other words, "[e]qual protection protects an entity from state action which discriminates against it by subjecting it to taxes not imposed upon others of the same class." N. Country Envtl. Servs., 157 N.H. at 25. Thus, "the equal protection guarantee is essentially a direction that all persons similarly situated should be treated alike." North Country Envtl. Services, 157 N.H. at 25.

The 1997 New Hampshire Supreme Court case cited above, Smith v. NH Department of Revenue Administration provides a useful example of the way in which the constitutional provisions operate. In that case, New Hampshire residents challenged the constitutionality of the interest and dividends tax. Prior to 1995, the I&D tax included taxation, generally, of interest dividends received by New Hampshire residents, but exempted from taxation interest and dividends paid to residents by New Hampshire banks. In Smith, the Supreme Court held that the classification of interest and dividends

paid by New Hampshire banks was a classification of property, not a classification of taxpayers. That property was distinct, in this case, from interest and dividends paid by out of state banks. That classification of property was, in the Court's view, permissible so long as it was reasonable. What New Hampshire could not do (and in the Court's view did not do) was to distinguish based upon classifications of taxpayers. Thus, for example, the Court presumably would not have upheld a tax on the income of banks doing business in New Hampshire but chartered by states other than New Hampshire, while exempting otherwise identical income of New Hampshire chartered banks.

V. Recommendations of the Commission - Discussion

1. Business Tax Rates

Recommendation

a. Long-term changes should consider tax competitiveness among New England states and nationally and be based on all taxes levied and businesses' overall tax burden.

b. A near-term material reduction in business tax rates may be impractical in view of fiscal constraints. In the longer term, in order to maintain competitive business tax rates, reduction in the Business Profit Tax rate may be desirable. However, any change in the BET or BPT rates needs to maintain the current inter-relationship between the two rates (i. e. BET allowed as a credit for BPT) and maintain the BET base.

c. Review and potentially modify the various exemptions from BET.

There was general recognition that the State needed to be cognizant of the risk of a negative perception of its business tax structure among companies considering location to and remaining or expanding in New Hampshire, particularly, in view of Massachusetts's recent reduction of its general business tax rate to 8%. Given the state's dependence on business tax revenue in the absence of broad-based taxes, the Commission recognized that short-term rate reduction, in the absence of a corresponding expansion of the tax base, is impractical. Any such rate reduction would need to be considered in light of any budgetary constraints. There was broad support expressed for reducing the business ("BPT") tax rate from its current 8.5%, in the longer term, which certain members view as having a positive impact on competitiveness. In addition, it was recognized that such a rate reduction would provide a substantial benefit to all businesses subject to the New Hampshire BPT.

Ideally, a lower business profits tax rate competitive with the business tax rate in other New England states would be desirable. However, in view of the positive and highly competitive overall business tax climate with which New Hampshire is

credited, our view is that the current 8.5% rate does not materially affect New Hampshire's competitiveness in terms of attracting and retaining businesses. The testimony heard by the Commission suggests that business tax rates are typically a secondary and not a primary consideration for businesses making expansion or location decisions. The Commission's view is that the relationship between the BPT rate and competitiveness should be reviewed periodically, and that the rate should be reduced in the event that becomes feasible from a state fiscal perspective.

Additionally, testimony received both from the New Hampshire Department of Economic Development and other business groups indicated that the hierarchy of priorities for businesses focused more on energy, educated work force, transportation, and the overall cost of doing business. The predictability of the tax rate and a stable tax policy was more of a focus than was New Hampshire's current BPT and BET rates.

Background

All states levy taxes upon individual income, trade, or businesses, with many choosing to tax all three. New Hampshire has thus far generally avoided the first two options, with some notable exceptions such as interest and dividends, meals and rooms, gasoline, cigarettes, and alcohol. Since it has no broad-based tax with which to generate revenues, the Granite State has become ever more reliant upon property tax and business taxes. The two main business taxes are the Business Profits Tax (BPT) and the Business Enterprise Tax (BET).

The BPT was established in 1970 at 6%, went to 7% in 1971, 8% in 1978, and crossed the 9% threshold in 1982. In 1988 it was lowered back to 8% and 7% in 1995, but was increased again to 8.5% in 2001, where it has remained for the past decade. In the current biennium it is projected to generate revenues of $677.6 million.

Business Profits Tax	
Year	**Rate**
1970	**6%**
1971	**7%**
1978	**8%**
1982	**9.08%**
1984	**9.56%**
1985	**9.08%**
1986	**8.25%**
1988	**8%**
1994	**7.50%**
1995	**7%**
1999	**8%**
2001	**8.50%**

Because (1) the BPT is assessed on net business profits, (2) most small businesses report lower business profits, and (3) to the extent a small business is subject to the BPT, the BET paid by the small business is a credit against the BPT, the burden of the BPT has historically fallen predominately upon relatively few businesses. Many of these few businesses are among the state's largest employers but are headquartered outside of New Hampshire.

In 1991 one of those large companies, Cabletron, filed suit against the state alleging unfair taxation. In response, the BET was enacted in 1993 at a rate of .25% of the "enterprise value base," defined as the sum of all compensation, interest, dividends, and distributions paid. The rate was increased to .5% in 1999 and .75% in 2001.

Business Enterprise Tax	
Year	**Rate**
1993	**0.25%**
1999	**0.50%**
2001	**0.75%**

However, for tax years after 2014, businesses with gross receipts of less than $200,000 or an enterprise value base of less than $100,000 are not required to file

or pay the BET. This recently increased filing threshold is also indexed for inflation. The BET is projected to generate $452.7 million in revenues in the current 2014-2015 biennium.

Comparing NH's BPT to the profits tax assessed by other states is fairly straightforward. Most states charge different rates based on income brackets, unlike NH. This makes the Granite State's BPT comparatively easy to compute. If the BPT were the only substantial business tax NH would be solidly in the middle of the New England pack, and is higher than the recently reduced Massachusetts rate. Businesses with gross receipts of less than $50,000 are not required to file or pay the BPT. The BPT is projected to generate $677.6 million in revenues in the current 2014-2015 biennium.

New England Corporate Income Tax Rates (2013)

State	Rate	Threshold
NH	**8.50%**	**None***
CT	**7.50%****	**None**
ME	**3.50%**	**$0 - $25,000**
	7.93%	**$25,000**
	8.33%	**$75,000**
	8.93%	**$250,000**
MA	**8.0%*****	**None**
RI	**9%**	**None**
VT	**6%**	**$0 - $10,000**
	7%	**$10,000**
	8.50%	**$25,000**

* New Hampshire has a filing threshold of $50,000 of gross receipts
** Also has a minimum tax; added a 20% surtax for tax years 2012 through 2015
***The Massachusetts rate is 9.0% for financial institutions

The addition of the BET, however, makes such comparisons much more difficult, as the BET is unique among the 50 states. Stan Arnold, former commissioner of the NH Department of Revenue Administration, believes that the BET is far superior to traditional methods of income taxation, as he considers it fairer and more stable both financially and politically. It is certainly a more broadly applied tax, impacting far more businesses than the BPT. The Tax Foundation considers the BET similar to the US Alternative Minimum Tax whereby the business essentially pays the higher of the two taxes.

Recommendation

Any reduction in the BPT rate would result in a loss of revenue to the State which would make such a reduction impractical for the foreseeable future. The Commission had no basis for concluding that any effect of attracting new businesses or business expansion as a result of a rate reduction would generate additional tax revenue sufficient to compensate for the revenue loss that would result from the rate reduction. Although, the Commission believes that a longer-term reduction in BPT rate would be desirable insofar as making NH more rate-competitive with other states, it also recognizes that a material reduction in the rate would be impractical at present.

Under current law, 501(c)(3) not-for-profit organizations including qualifying hospitals, medical facilities, and educational institutions are exempt from filing and paying the BET. There has been observed flattening or decreasing BET revenue and base, which could be attributed to an ongoing shift of medical doctors and providers leaving private practice in favor of direct services under the hospital umbrella. Because of that trend, along with the recent Superior Court decisions related to the Medicaid Enhancement Tax ("MET"), the Commission recommends further evaluation of which entities are exempt from BET to ascertain whether some of the current exemptions should be eliminated.

A one-half percentage-point decrease in the BPT would place New Hampshire's corporate tax burden more in line with those of the surrounding states and expand on the perceived "NH Advantage." In particular, the State should try to assess the impact of Massachusetts's recently reduced tax rate on business retention and attraction, especially in the southern tier.

Sources

Current Operating and Capital Budget

2014 State Business Tax Climate Index; Scot Drenkard, Joseph Henchman; Tax Foundation; October 9, 2013

New Hampshire Department of Revenue Administration; Overview of New Hampshire Taxes; Governor and Council Breakfast; April 23, 2014; John Beardmore, Commissioner

"Ten Reasons Why New Hampshire's BET May Provide an Answer to State Tax Reform," Arnold, Stan, and Ardinger, William. State Tax Notes, November 29, 2004.

"Competitive Business Tax Improvements in a Challenging Budget Environment," Ardinger, William. Presentation to the Nashua Chamber of Commerce, January 10, 2010.

"Taxes, Competitiveness and the New Hampshire Business Climate," Hodge, Scott, President of the Tax Foundation, Testimony before the House Ways and Means Committee.

2. Carryover and deduction of the Net Operating Loss (NOL)

Recommendation

Make NH more competitive with surrounding states by:

- Eliminating the double-apportionment of NOLs by providing that NOLs are to be carried forward either on pre- or post-apportioned basis. For example, if the NOL is to be carried forward from the loss year after apportionment (post-apportionment calculation), the NOL deduction should be applied in the carryforward year after apportionment
- If an analysis of the revenue impact permits, eliminate the cap on the amount of an NOL generated in a tax year that may be carried forward (currently at $10 million); this will enhance New Hampshire's conformity with Federal statutes and overall predictability of its tax policy
- Conforming to the federal NOL carryforward period of 20 years (Note: a conforming NOL carryback will adversely impact tax revenues and is not provided for by most states);

Background

New Hampshire allows a deduction for the amount of the net operating loss ("NOL") carryover determined under federal Internal Revenue Code ("IRC") §172 in effect on December 31, 1996. A NOL is apportioned in the year incurred[4]. Current law does not allow for the carryback of losses in any instance. But for the loss carry back feature and the 10 year carry over, New Hampshire continues to use IRC §172 that was in effect on December 31, 1996.

As is the case in many states, the NOL must be apportioned in the year the loss is incurred in accordance with the general apportionment rules discussed in item 4 below. In New Hampshire, the loss is also a deduction *before* apportionment in the year deducted.[5] This results in a possible "double apportionment" for the business which would result

in the elimination of a substantial portion of the NOL generated in a given year.

NOLs may only be carried forward for the 10 years following the loss year:[6]

For taxable periods ending:

• on or before June 30, 2003, the amount of the NOL generated in a tax year that may be carried forward may not exceed $250,000;

• on or after July 1, 2003 and on or before June 30, 2004, the amount of the NOL generated in a tax year that may be carried forward may not exceed $500,000;

• on or after July 1, 2004 and on or before June 30, 2005, the amount of the NOL generated in a tax year that may be carried forward may not exceed $750,000;

• on or after July 1, 2005, the amount of the NOL generated in a tax year that may be carried forward may not exceed $1 million.

Current Law

Legislation passed in 2011 and 2012 provides that on or after January 1, 2013, the amount of the NOL that is generated in the originating tax year that may be carried forward is limited to $10,000,000.

Discussion and Analysis

While New Hampshire does permit an NOL deduction, that deduction is severely restricted by a number of provisions under New Hampshire law. First, NOLs may only be carried forward 10 years. Many states allow carryforward periods of twenty years, which conforms to the federal carryforward period.

Second, New Hampshire imposes a limit on the amount of an NOL that can be deducted. While previous legislation has increased the cap on NOL carryforwards, it has not eliminated the disadvantageous treatment of NOLs in New Hampshire. For example, while the dollar limitation on carryforwards has been raised, it still applies to the entire amount that can be carried forward, as opposed to a dollar limitation that applies to the deduction in each carryforward year.

Another disadvantage is that New Hampshire allows the carryforward of only the apportioned loss, and then requires the apportioned loss carryforward be deducted from pre-apportionment income. The result is the NOL deduction ends up being apportioned twice; once in the

year the loss is incurred and again in the year it is deducted. This "double apportionment" process is not consistent with that employed by most other states.

3. Credits

Recommendation

Type of Credit	Recommendation
Credit for Business Enterprise Tax	**No change; recently changed to 10 years**
Insurance tax credit	**No change**
Community Development Finance Authority (CDFA) tax Credit	**No change**
Credit for R&D expenditures	**Made permanent in 2013; improve application process ; increase carry-over to 20 years from 5 years**

Background

Continuation of the insurance tax credit for the premium taxes paid by insurance companies writing policies in NH is necessary. Testimony was received by many parties that the credit is a key factor in making New Hampshire a very competitive state for insurance companies to domicile in our state.

The Community Development Finance Authority ("CDFA") offers a preapproved credit to New Hampshire businesses who pay the BPT or BET for their contributions to charitable organizations that are investing in community projects in New Hampshire. Projects must be approved by the CDFA and then the charitable organizations can solicit businesses to buy these credits by contributing to the project. We view this credit as good tax policy and recommend that the CDFA credit continues as is.

The Commission does recommend changes to the carryover provision of the Business Enterprise Tax ("BET") credit that is allowed against

the Business Profits Tax ("BPT"). We also feel that administrative changes along with increased levels should be made to the Research and Development ("R&D") credit.

BET credit against BPT

The Commission heard testimony that the BET credit is very important in our dual business tax system. The rates and revenue base only work well together with the BET credit against the BPT. If the BET credit were eliminated or reduced from its current allowance, both the BET and BPT rates and coverage would need to be amended.

Additionally, current law allows a five year carryover where any BET paid that is not used to offset a company's BPT within five years is lost. The Commission recommends increasing the carryover period to ten years. We feel this will benefit start-up or early stage companies once those companies become profitable and start paying BPT. Certain testimony, primarily from high tech businesses and groups, indicated that BET payments in the early years of a business can be a disincentive to locate in New Hampshire. Increasing the likelihood that those BET credits would actually be utilized can soften the impact of paying BET in the early years of a business.

R&D Credit

One primary purpose of a research and development tax credit program is the desire to encourage businesses to create jobs and apply developments to products and services made in and provided from New Hampshire, perhaps most notably in advanced manufacturing.. In its decision process, a business would calculate the cost of labor reduced by any available R&D credits. The credit would lower the cost of the labor hire, and theoretically increase the probability that R&D labor will be hired and new technology developed.

As with any labor related credit, it is difficult to ascertain whether the New Hampshire R&D credit produces the intended incentive. Because of the application process and its related uncertainty, an employer does not know the actual amount of the R&D credit that they will receive until as much as six to nine months after the year of hire.

We recognize that so long as there are annual dollar limits on the total amount of the R&D credit, an administrative application process, after-the-fact allocation of the limited dollar amount, and tax return

> amendment filings will be unavoidable. While the limit achieves predictability for the State, that comes at a cost of lack of predictability and administrative burden for businesses. Conversely, changing to an unlimited credit along with perhaps a rate adjustment brings more clarity and predictability to businesses but shifts the unpredictability to the State.

The Commission believes that the R&D Credit needs to be simplified by modifying the administrative process at the Department of Revenue Administration ("DRA"). This will improve the predictability of the credit and allow businesses to employ the credit into their hiring process. Currently, when a business applies for the credit, it has no way to know how much of the credit will actually be awarded.

> The research and development credit (R&D) is currently limited to $2.0 million annually for the overall total credit that can be taken by NH businesses. This limit was increased by the Legislature in 2013 and the credit was also made permanent which were two recommendations that were made in our interim report.
>
> Administratively, businesses that wish to claim the credit must apply for the credit. They file a claim for the total amount they wish to apply for based on 10% of the NH R&D wages as reported on the IRS Form 6765. This result cannot exceed $50,000. Once the state has all the credit applications due on June 30, the DRA allows a fraction of all claims so that the total credit allowed from all applications does not exceed $2 million. The businesses are notified of the amount (not to exceed $50,000) and the credit is often taken on an amended tax return. We heard testimony from some R&D businesses that the administrative process increases their internal cost to claim the NH R&D credit, so they often compute their cost to apply as higher than the R&D credit that they receive. Accordingly, many companies do not even apply for the NH R&D credit. The timing of the DRA processes has improved in recent years but companies applying for the credit still do not have certainty when filing or planning their tax returns.

The administrative process can be a deterrent to a company that may be eligible for the credit. We recommend eliminating the application and approval process and lowering the rate to perhaps as little as 1-3% of the apportioned federal R&D base. This would lower the internal cost to businesses to comply with the administrative process and create more predictability and ease of filing for the taxpayer. One method would be simply allowing the credit based on information contained on the

taxpayer's filing on its federal tax return. The related New Hampshire form would then compute the allowable credit at whatever metrics that results in a similar tax credit currently. The allowable R&D credit should continue to be based on the wages reported on the federal Form 6765. Similarly, New Hampshire tax policy should continue to allow the R&D credit only on the increase in NH R&D labor and continue all other provisions of the current laws related to the actual computation of the credit. The current credit is 10%, limited to $50,000 annually per business.

If an analysis of projected revenue permits, we recommend the elimination of the current administrative process, replacing it with a lower rate and elimination the $50,000 limit.

Since New Hampshire's R&D credit was enacted in 2007, the number of applications has steadily risen from 71 to 101, while the average amount of the credit actually awarded has declined from approximately $21,000 to $13,000.

The Commission recommends modifying the current NH R&D credit application process to alleviate the administrative burden to businesses and to provide more certainty to the business and allow them to make more predictable hiring decisions The Commission heard testimony that businesses do not apply for the current credit because the administrative burden to apply for the credit is oftentimes more than the benefit of the credit. We can eliminate this issue by allowing businesses to calculate the credit based on the IRS Form 6765 and claim the NH credit as they file the NH return. This provides easy access to the credit, instant certainty to the credit amount, and no "red tape" or waiting. This simple step will also allow NH businesses to plan their R&D expenditures and hire with upfront knowledge of the credit they will receive. The credit would be calculated by using a lower percentage of NH Qualified R&D wages to arrive at the amounts currently being awarded; that is, the objective is not to change the amount of the credits being awarded, but to arrive at the same result through a different and simpler mechanism as follows:

Illustration

- Assume $1,000,000 NH Qualified R&D wages.
- NH R&D credit is currently limited to the lesser of 10% of NH Qualified R&D wages or $50,000.
- Based on the current fiscal year credit allowance of $2,000,000, the value of a $50,000 maximum credit amount awarded in 2013 would be reduced proportionately to approximately $13,000.

Current "application" process

1. Taxpayer files an application (Form DP-165) with the DRA on or before June 30th of the year reporting $1,000,000 of NH Qualified R&D wages. The credit applied for is limited to $50,000. (It should be noted that the June 30 deadline may be problematic for fiscal-year taxpayers.)
2. The DRA sends an acknowledgement letter to applicant by July
3. Applicant is notified, by mail, of award amount granted to them by September 30. For 2013, the applicant is awarded approximately $13,000.
4. If taxpayer filed for an extension they may now complete their return claiming the credit against business taxes. If the taxpayer previously filed their return without claiming the credit they would need to file an amended return.

Recommend ongoing review of the application process

The Legislature should review the current $2.0 million limit for its effectiveness and application. A 2014 survey conducted by the Department of Economic Development indicated a significant increase in the number of filers and the amount applied for after the increase in the limit on the annual credit.

Implementing certain changes that would improve the administrative process for both the DRA and the taxpayer may increase the utilization by New Hampshire qualifying businesses and make New Hampshire more attractive for companies that traditionally utilize R&D credits.

In order to determine the economic impact of these changes we recommend establishing a study committee after two years of enactment

that would assess the actual economic outcome and its effect on job creation and overall economic growth. Continued close monitoring of the revenue impact should also be implemented.

4. Thresholds, Combined Filings for Unitary Group, and Apportionment

Filing Thresholds

Current filing thresholds:

- I&D $2,400
- BPT Gross receipts equal to or greater than $50,000
- BET Gross receipts equal to or greater than $200,000 or BET base $100,000 or more

Filing thresholds are intended to offer both administrative and tax relief to the smaller businesses who would most likely not result in paying taxes. This also provides some relief to the DRA in that they do not need to process returns from which there would be no tax revenue. The only benefit to processing those returns would be for statistical and analytical purposes.

The Commissions recommends that all filing thresholds remain at least at their current levels but consider raising the BPT threshold to $75,000. Finally, as economic conditions warrant, further consideration should be given to adjust the levels upward to more closely reflect average income earned by New Hampshire households.

Combined Filing

Background

The NH system of taxing commonly-owned business entities separately adds complexity to business owners at every level. The current economic and legal environment encourages business owners to operate separate business activities and lines in separate single member LLCs (SMLLC). An example is many individuals who own several businesses or rental properties in separate entities. Since a SMLLC is a disregarded entity under federal tax laws, the individual owner includes all of its separate SMLLC's on their single federal tax return that includes the net income or loss from all SMLLCs. Most states also follow the same rules as IRS.

NH requires that each SMLLC that meets the filing threshold file a separate return for each entity. So if a person owns six SMLLCs, they file one federal tax return, but six NH tax returns. The requirement to file multiple returns also applies similarly to corporations. This complicates and adds cost to the administration of a NH business.

We recommend that the DRA conduct a study to determine circumstances where the taxpayer can file all SMLLC on one return. Solutions may include but are not limited to conforming the NH filing requirement to those under IRS rules, mandating in-state unitary for SMLLCs owners, or a consolidated filing for SMLLCs.

In New Hampshire the ability to combine business organizations is based on three primary criteria: (1) ownership of one or more related business organizations, (2) engaged in business activity both ***within and without New Hampshire***, and (3) among which there exists a unity of ownership, operation, and use; or simply interdependence in their functions.[7] A combined filing is required in all cases where a unitary business exists.[8] Therefore, once the unitary threshold is met, combined reporting is mandatory.

New Hampshire limits the application of its combined reporting to the so-called "water's edge." A water's edge combined group is a group of business organizations operating a unitary business, except for "overseas business organizations." "Overseas business organizations" are foreign incorporated business organizations and business organizations with 80 percent or more of the average of their payroll and property assignable to a location outside the 50 states and the District of Columbia ("80/20 companies"). "80/20 companies" will only be excluded from the water's edge combined group, provided (1) the taxpayer certifies that the transactions between such organizations and other members of the group are on a comparable basis to transactions between other entities owned or controlled by the taxpayer and any members of the group and (2) the taxpayer agrees to report any IRS adjustments to transactions between any related organizations that may affect the "comparable basis" referred to in (1) above; these federal adjustments must also be made for New Hampshire purposes so that a comparable basis is maintained.[9]

There are three fundamental methods that companies use when filing their state tax returns: (1) separate filings, (2) combined filings, and (3) consolidated filings. Generally, New Hampshire requires each business to file separate tax returns unless the business group meets the Unitary criteria above. Then combined filing is required.

Combined filing typically refers to the amalgamation and combination of various business entities based upon unitary criteria. The aspects determining which entities are subject to combined reporting in a particular jurisdiction are based on different criteria depending on the governing taxing authority. The Federal rules allow for the Consolidation of related entities only under a parent-subsidiary relationship and only if that ownership exceed 80%[10]. Combined reporting on a state level is generally applicable to not only "parent-sub" relationships but also so called "brother-sister" relationships, meaning that two or more commonly owned entities may be in the same combined filing even though the parent company is excluded. In addition, the ownership threshold is typically lower than the federal threshold.

Many states allow affiliated corporate groups that have one or more members with nexus in the state to elect to file a consolidated return. Requirements regarding membership of a state consolidated return vary among the states, e.g., some states permit a consolidated election for only those members with nexus in the state, some states permit a consolidated election for all members that file as part of a federal consolidated return, etc. States permitting some type of consolidated return include, but are not limited to, Connecticut, Florida, Indiana, and Virginia. (Connecticut uses the term "combined return" for what is usually called a consolidated return.) In several states, including North Carolina and Wisconsin, affiliated corporations may be required to file a consolidated return to accurately reflect income.

In addition, many states limit eligibility for filing a state consolidated return to those taxpayers that filed a federal consolidated return. However, the filing of a federal consolidated return is not a prerequisite to filing a consolidated return in other states, including Colorado, Indiana, and Kentucky. In Kentucky, the filing of a consolidated return is mandated for specified corporations. In addition, Kansas requires affiliated corporations that file a federal consolidated return to file a Kansas consolidated return if all their income and expenses are derived from Kansas sources.

Some states require separate reporting by each corporation that has nexus with the state, regardless of whether such corporation files as part of a federal consolidated group or would otherwise meet unitary requirements with other commonly-owned affiliates. These states include Maryland, North Carolina, and Pennsylvania. Others, like New Mexico and Virginia, allow taxpayers to elect between filing a separate report, a combined return, or a consolidated return.

Complicating New Hampshire's unitary filing is the fact that New Hampshire subjects unincorporated entities to the Business Profits Tax. Therefore, it is likely that a Unitary group of companies subject to combined reporting in New Hampshire will include partnerships, proprietorships (including single member LLC's), corporations, and even certain trusts. Questions then arise as to what return is filed as the single entity. New Hampshire requires that the "predominate" type of entity will control the return being filed. A combined return is filed by the "principal New Hampshire business organization"[11] and should not be reported on Form NH-1120. Instead, Form NH-1120-WE, *Combined Business Profits Tax Return* is used regardless of the type of "principal" business organization.

We feel that a combined unitary return would more accurately reflect the activities of a number of companies that are, in effect, acting as one taxpayer. The mere fact that a unitary group of businesses does not have nexus outside New Hampshire should not tax that group differently than a multi-state unitary group. We do not know of any justification that exists for limiting a combined filing in New Hampshire to multi-state filers and not in-state filers. Under current law, New Hampshire's statutory limitation has the potential to distort the true income from a business group attributable to the state by preventing companies from filing combined when their activities are unitary. States that have shifted to combined filing for unitary groups have not limited their groups to only multi-state businesses.

Apportionment

New Hampshire Legislature should study the effect of shifting from its current formula of double weighted sales factor plus payroll and property. Many states are shifting to a single sales factor or other non-traditional apportionment weighting.

Beginning in 2014, Massachusetts has changed its method of allocating its sales component of the apportionment formula to "Market-based" sourcing of its sales. New Hampshire apportionment rules are based on where the services are performed. This difference in allocation methods could result in certain sales to being allocated to both New Hampshire and Massachusetts thereby increasing the likelihood that businesses would pay higher combined state taxes. By itself, the change in allocation would not reduce the amount of income apportioned income to New Hampshire. However, it may cause a company to alter its behavior enough to locate

more of its business outside of the state. New Hampshire needs to ensure that its apportionment methods remain in concert with its surrounding business climate.

5. **Interest and Dividends Tax**

Background

New Hampshire has a tax on *resident* individuals, trusts, estates, and partnerships that have interest and dividend income and some types of distributions. Recent legislation effectively shifted the tax burden to the resident beneficiary from certain trusts that previously were taxable on the portion of its income distributed on behalf of its resident beneficiaries. Most ordinary types of interest income is taxable under the NH tax as well as dividends as reported as income on the federal IRS Schedule B that gets attached to a Form 1040. This is the starting point.
Adjustments include such things as:

Municipal interest income is taxable if earned outside NH.
US Government Obligation Interest income is exempt.

The other addition is based on distributions from other entities owned by the taxpayer. Taxability of the distributions are first dependent on whether the distributions are from entities owned with transferable or non-transferable shares. The NH laws are complex in order to determine taxability of the distributions. The complexity leads to errors and omissions on tax returns causing uncertainty for the taxpayer and further detracts from the predictability and clarity.

Recommendations

To simplify the tax and filing, it is recommended that the NH interest and dividends tax be changed to start from the federal schedule B, adjust for municipal interest and US Government Obligations. The complex adjustment for distributions would be removed from law. Bringing our state tax definitions into conformity with federal law will significantly simplify tax preparation and predictability, thereby reducing preparation costs to taxpayers.

If the change above is not effected, the Commission recommends a clearer I&D statutory definition of “transferable shares” of businesses taxed as partnerships or proprietorships, including LLC’s taxed as such.

The result of amending our antiquated tax definitions removes constitutional and economic conflicts, and would treat similarly-situated

taxpayers more equally regardless of the corporate form under which they are organized. It avoids the double taxation which some owners of Subchapter S corporations experience under current law. The Commission received information that approximately 95% of all taxpayers, including in particular small business owners, will experience no significant change in tax liability with this statutory change, with some expected to pay at most only 1% to 1.5% more.*

This shift to federal tax conformity will result in some taxpayers paying more and some paying less. The Commission may further study this matter with the DRA and others to better understand that fiscal impact of this recommendation.

*Based upon the testimony and presentations of former DRA Commissioner Stanley Arnold, Attorney William Ardinger, and DRA representative John Lighthall.

Transferable Shares definition

Recommendation: In the event that New Hampshire cannot conform its I&D base to the federal tax structure, it is imperative that New Hampshire more clearly address its' definition of "transferable shares" as it relates to distributions from partnerships.

Discussion: Distributions made to partners and entities taxed federally as partnerships (which typically include limited liability companies) are not dividends for federal tax purposes and do not appear on Form 1040 Schedule B. If the legislature does not amend the interest and dividend tax provisions such that only items on Schedule B are subject to I&D tax, the Commission recommends clarification by the legislature of the statutory definition of partnership/limited liability company distributions that can result in those distributions being taxed as dividends under the I&D tax.

RSA 77:4 III includes in I&D taxable income "dividends…on shares and partnerships…the beneficial interest of which is represented by transferable shares." The term "transferable shares" also appears in RSA 77:3. Accordingly, income received from a partnership (or LLC) in which the partner's interest is not represented by "transferable shares" is not subject to I&D taxation.

The Commission believes that the absence of definition in the statute of "transferable shares," and therefore the uncertainty that surrounds it, has been disadvantageous to New Hampshire businesses and their owners. Department of Revenue regulations previously and currently in effect include descriptions of transferable shares using the following language:

- “equity interests and all ownership rights are not transferable without obtaining prior member approval or causing a dissolution of the organization”
- “equity interests and ownership rights are freely transferable without the necessity of securing prior member approval or causing dissolution of the organization”
- “the ability of a shareholder or interest holders in an organization to dispose of, by any means, all rights incidental to his interest without a required approval of the disposition by another member, and without dissolution of the organization itself”

The uncertainly for New Hampshire businesses, attempting to structure their organizations in a business and tax efficient manner, and to best attract capital, is that the Department of Revenue Administration formulations of what constitutes a transferable share and what does not are unclear. For example, in a multi-partner partnership or a multi-member limited liability company, must the partnership agreement require the consent to transfer of all partners or members in order that the interests not constitute transferable shares? Is the consent of a majority of the partners or members, or one partner or member enough? And if not, the reason for single partner or member consent not being sufficient certainly is not suggested by the statute.

While it would be simple enough for the Department of Revenue Administration to rewrite rules to answer those questions, the Commission believes that the clarification should come from the legislature, given that the simple phrase in the statute, “transferable shares,” is not defined, and there is absolutely nothing in the statute that provides guidance to the Department of Revenue Administration as to what that term means. For example, if a limited liability company agreement provided that shares are not transferable without the approval of the manager of the LLC, who need not be a member, why is that not a non-transferable share? If a partnership agreement provided that a majority of the partners were required to approve a proposed share transfer, is that sufficient in the legislature’s view?

For these reasons, the Commission recommends clarification of the statute by the legislature. Moreover, the Commission suggests that “transferable shares” should mean shares that are transferable by the holder of the shares (or similar interest) without the need to obtain the consent of any other person having an ownership or other financial interest in the entity or management duties in the entity.

6. Safe Harbors

Reasonable Compensation Safe Harbor – As recommended in our Interim Report, recent legislation has increased to $75,000 the reasonable compensation "record-keeping" safe harbor.

Background

New Hampshire has a unique taxing structure on businesses. In general, the New Hampshire tax system looks to the profits of the business, regardless of its federal tax filing requirement or the entity type. The Business Profits Tax is a tax on business net taxable income. In the early stages of the BPT it became clear that, because the starting point was Federal taxable income, the courts required that taxable business profits must include a deemed deduction for reasonable compensation for unincorporated entities. This was necessary to bring parity among the various forms of business entities. Since then, New Hampshire taxpayers, professional return preparers, DRA, court system, and legislature have all considered different approaches to the computation and reasonableness of the compensation deduction. With few regulations or other clear guidelines to address "reasonableness", businesses can end up in difficult and expensive tax audit cases.

Current Law

In 2011, New Hampshire tax law was changed to implement a reasonable compensation safe harbor specific dollar amount. Also the compensation deduction now follows IRC §162 and the related regulations and case law. Historical federal case law for the reasonableness of an executive's compensation deduction has provided several concepts including the so-called "independent investor test".

New Hampshire statutes include a safe harbor to assist small business owners and exclude them from some of the recordkeeping requirements to support the deduction. The safe harbor allows that an amount claimed by a taxpayer cannot be challenged if the amount is equal to or less than $75,000. The $75,000 amount is available to an entity for its owners who provide services to the business. This safe harbor is a good step to eliminate small businesses from the tax and computation of reasonable compensation. Small businesses should see this as part of the business-friendly regulations in New Hampshire.

Recommendation

The $75,000 amount recently enacted should be evaluated no less than each biennium to ensure it continues to represent proximity to an average wage earner in New Hampshire.

7. Conformity with Federal tax Code ("IRC")

Recommendation: Tax simplicity is good tax policy and a competitive goal that should be implemented where possible. Since many tax benefits expired at the end of 2013, we have an opportunity now to update our conformity to a more current year. Therefore, we recommend that New Hampshire adopt the IRC as in effect at December 31, 2013. In doing so, we recommend that New Hampshire study the revenue impact of this adoption along with decoupling certain provisions that may be significantly different from the State's current methods. We believe that this change would bring more simplicity and predictability to New Hampshire's tax policy

Discussion: Generally, state income tax conformity to the federal income tax treatment of a transaction or item is more the rule rather than the exception. Some states define "state taxable income" as federal taxable income plus or minus certain additions or subtractions while other states may define certain terms, like income, deduction, etc. as being the same as defined in the Internal Revenue Code ("IRC"). The highest level of a state's tax conformity is most clearly seen in its forms where state taxable income in often beginning with federal taxable income. Then there are usually a series of adjustments for items not inconformity with the federal laws to arrive at state taxable income. New Hampshire forms generally follow this procedure. These modifications require adjustments for such items as depreciation differences, state income taxes paid, dividends, and net operating losses. New Hampshire has more than fifteen such modifications.[12]

State conformity to federal law has its advantages and disadvantages to both the state and the taxpayers. In many cases conformity allows both taxpayers and state tax administrators to rely on federal interpretations when analyzing the state tax treatment of a particular item. Some states provide that conformity also includes federal regulations, rulings, case law, and other adjudicative decisions while others are silent on the issue. When addressing issues of federal tax conformity, there is a general methodology that applies across the states. The first step is to identify the

type of conformity: rolling, fixed, or selective. Currently, New Hampshire has adopted the IRC as of December 31, 2000 which provides a fixed point of reference as of a specific date. Twenty one states, including Massachusetts, Rhode Island, New York, and Connecticut, have adopted a "rolling" method of conformity where the adoption of federal provisions is automatic with each change of the federal statutes. Only five states have adopted "selective" conformity whereby the state picks and chooses the specific items of the IRC to which they conform. Then there are eleven states that do not impose corporate or personal income taxes at all so the IRC would have no impact on their tax policy.

VI. Matters for further consideration

During the course of our study we discussed topics that we felt warranted further consideration and improvement. These topics are important to establishing a broader tax policy. Those topics consisted of the following:

1. Consider eliminating the deemed income on step-up of assets

   New Hampshire taxes a business under certain reorganization and other ownership changes. For instance, when one owner buys out another owner's interest BPT is incurred on the difference between the book value and transfer value of the owner's interest many times resulting in "phantom income" to the purchasing / acquiring owners.

   This New Hampshire tax provision imposes a current tax on a business who enters into an otherwise tax-deferred adjustment when the business receives no current economic benefit.

   Eliminating this adjustment would bring better conformity with the IRC and eliminate a very detrimental and draconian tax on a New Hampshire business.

2. Rules issued by the Department of Revenue Administration should include examples where appropriate. This would follow the same process relating to the Real Estate Transfer Tax allowed recently by Legislation and similar to the examples contained in many US Treasury Regulations.

3. Good tax policy would allow a menu of safe harbors in order to defend a reasonable compensation deduction. Business entity and economic models have changed substantially since the implementation of both the BPT and BET. Most federal compensation tax cases are complex but are based on several factors and measurements of different business financial dynamics some of which are listed below – the following financial benchmarks are considered in many of the federal tax cases related to reasonable compensation.

   The Legislature may consider the following safe harbors related to reasonable compensation deduction based on:

   a. Percentage of the gross selling price on the sale of business assets other than inventory,

   b. Percentage of gross revenues (i.e. rental income)

c. Percentage of gross business profits using the "Independent investor" test.

4. The Legislature should evaluate certain tax deductions that would provide incentives for businesses to invest in and create a clean and renewable energy economy

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Respectfully submitted,

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October 30, 2014

Endnotes

[1]Enrolled, Special Session 06/09/2010; PG.56 06/10/2010; see also RSA 77-F, SS HB1-FN-A, Chapter 1:55, Laws of 2010
[2] Attachment A
[3] Attachment B
[4] NH RSA §77-A:3. [NH RSA §77-A:4, XIII
[5] New Hampshire Technical Information Release 2005-003, 10/25/05; NH Admin. Rules, Rev §303.03(g)
[6] NH RSA §77-A:4, XIII
[7] RSA 77-A:1(XIV)
[8] NH Technical Information Release TIR 89-003
[9]RSA 77-A:1(XV)
[10] IRC §1504
[11] NH Rules: Rev 307.07
[12] NH RSA 77-A(I) through (XVI)

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