# Tax Expenditure and Potential Liability Report

**(Pursuant to RSA 71-C)**

## Fiscal Year 2017

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**Prepared By**

**New Hampshire Department of Revenue Administration**

**December 15, 2017**

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*For*
*The New Hampshire General Court*
*- and -*
*His Excellency, Governor Christopher Sununu*
*Governor of New Hampshire*

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# TABLE OF CONTENTS

# TAX EXPENDITURE AND POTENTIAL LIABILITY REPORT

## I. INTRODUCTION

The Legislature "expends" funds in two ways: 1) through actual appropriations (expenditures); and 2) by foregoing the collection of taxes that it has the statutory authority to collect. The New Hampshire Supreme Court has characterized tax expenditures as follows: ". . . *all exemptions from taxation are practically equivalent to a direct appropriation*." Canaan v. District, 74 N.H. 517, 537 (1908).

In 2014, the New Hampshire Legislature passed, and Governor Hassan signed, Chapter 28, Laws of 2014 (HB 1531) repealing RSA 77-A:5-a, relative to the "Tax Expenditure Report" previously published by the Department of Revenue Administration on February 1 of every calendar year, and creating a new chapter, RSA 71-C, entitled "Tax Expenditure and Potential Liability Reports."

Pursuant to RSA 71-C, on or before December 15 of every fiscal year, the Commissioner of the Department shall certify to the General Court and the Governor a "Tax Expenditure and Potential Liability Report," that analyzes each of the past fiscal year's tax expenditures and other credits allowed under RSA 77, RSA 77-A, RSA 77-E, RSA 77-G, RSA 78, RSA 78-A, 78-B, RSA 82-A, RSA 83-E, RSA 84-A, RSA 84-C, and RSA 400-A.

The new statute, RSA 71-C:1, defines "tax expenditure" to mean:

> a credit or exemption that is intended by the legislature to allow individuals or businesses to reduce the amount owed for state taxes in return for a change in behavior. A tax expenditure does not include a credit or exemption meant only to avoid double taxation of the same income or assets within the same taxing jurisdiction. A tax rate reduced for the express purpose of achieving a change in behavior may also be identified by the committee in RSA 71-C:3 as a tax expenditure for the purpose of regular review.

RSA 71-C:2 more specifically provides that tax expenditures include, but are not limited to, the Community Development Finance Authority Investment tax credit as computed in RSA 162-L:10; the Economic Revitalization Zone tax credit as computed in RSA 162-N:6; the Research and Development tax credit under RSA 77-A:5, XIII; the Coos County Job Creation tax credit under RSA 77-E:3-c; the Education Tax Credit as computed in RSA 77-G:4; and the Weighted Apportionment Factors under RSA 77-A:3, II(a).

RSA 71-C also created a Joint Committee on Tax Expenditures that shall:

- Determine which credits, exemptions, and reduced rates meet the definition of a tax expenditure;
- Recommend legislation to add any additional tax expenditures to RSA 71-C:2;
- Establish a rotating schedule for review of all qualifying tax expenditures over 5-year periods;
- Determine the goals of each tax expenditure; and
- Establish general criteria for the future evaluation of each such tax expenditure to review and determine which credits, exemptions, and reduced rates meet the definition of a tax expenditure.

For purposes of this first, new, “Tax Expenditure and Potential Liability Report,” the Joint Committee agreed the content of this report would remain materially the same as the previous Tax Expenditure Reports (RSA 77-A:5-a), except that the data shall be reported on a fiscal year basis instead of the previous calendar year reporting. As such, this report is based on tax returns filed in Fiscal Year (FY) 2017.

This FY 2017 Tax Expenditure and Potential Liability Report is a compilation of data contained within the Department'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. This report provides the most current and complete information and, thus, gives some insight into the next fiscal year.

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 and exemptions. I encourage readers of this report to provide comments and suggestions for future reports.

**Lindsey Stepp, Assistant Commissioner**

Lindsey M. Stepp

**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. 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.

C. Department means the NH Department of Revenue Administration.

D. Tax returns filed with the Department in FY 2017 means all tax returns filed with the Department from July 1, 2016 through June 30, 2017 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 FY 2017.

## III. GENERAL INFORMATION

This report includes five Business Profits Tax (BPT) and/or Business Enterprise Tax (BET) credits, provided under RSA 77-A and 77-E:

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

This report also includes information from additional areas:

1. Weighting of the Sales Apportionment Factor (RSA 77-A:3, II(a));
2. Net Operating Losses (RSA 77-A:4,XIII);
3. Business Enterprise Tax Credit (RSA 77-A:5, X);
4. Credit Carryovers From Overpaid Business Taxes; and
5. Insurance Tax (RSA 400-A);

## IV. OVERVIEW OF TAX EXPENDITURES AND AMOUNTS

The following table gives a general view of the BPT and/or BET tax expenditures and amounts as reported on tax returns filed during FY 2017:

| Type of Tax Credit | Amount of Credit Used |
|---|---|
| Community Development Finance Authority Investment Tax Credit (RSA 162-L:10) | $3,344,000 |
| Economic Revitalization Zone Tax Credit (RSA 162-N:7), formerly Community Reinvestment and Opportunity Zones Tax Credit | $823,000 |
| Research and Development Tax Credit (RSA 77-A:5, XIII) | $1,840,000 |
| Coos County Job Creation Tax Credit (RSA 162-Q) | $102,000 |
| Education Tax Credit (RSA 77-G) | $188,000 |
| Total Amount of Tax Credit Used | **$6,297,000** |

The following table gives a general view of the additional areas and amounts (revenue loss or amount claimed) as reported on tax returns filed during FY 2017:

| Additional Areas | Revenue Loss/Amount Claimed |
|---|---|
| Weighting of the Sales Apportionment Factor (RSA 77-A:3, II(a)) | $3,607,000 |
| Net Operating Loss Deductions Claimed (RSA 77-A:4,XIII) | $25,534,000 |
| Business Enterprise Tax Credits Claimed (RSA 77-A:5, X) | $158,833,000 |
| Credit Carryovers Requested – Business Taxes | $171,818,000 |
| Insurance Premium Tax Credits Claimed (RSA 77-A:5, III) | $36,939,000 |

Please note: In prior versions of this Tax Expenditure Report, the amount of credit attributable to Insurance Taxes was included in the “tax expenditures” chart at the top of this page. After performing an analysis of the definition of “tax expenditure” pursuant to RSA 71-C:1, the Department determined that credits attributable to the Insurance Tax are more appropriately included in the “additional areas” chart at the bottom of this page.

## V. REPORT OF TAX CREDIT UTILIZATION

### 1. Community Development Finance Authority (CDFA) - Investment Tax Credit (RSA 162-L:10):

**Description:** An Investment Tax Credit equal to 75% of the contributions made to the CDFA as provided in RSA 77-A:5, XI. The Investment Tax credit may be carried forward for no more than 5 years. The tax credit may be applied to the BPT, the BET, or the Insurance Premium Tax.

The Investment Tax 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.

**Methodology:** Credit used is the amount actually reported and used by 202 taxpayers to offset a tax liability on the New Hampshire BPT return, BET return, or both. This report does not include any credit taken to offset the Insurance Premium Tax, which may be done in lieu of applying the credit against business taxes.

**Tax returns filed in FY 2017:**

Tax Credit Used Against BPT, BET, or both........................................ $3,344,000

**INVESTMENT TAX CREDIT**
**Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017**

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $3,204,000 | $ 3,140,000 | $3,687,000 | $3,168,000 | $3,344,000 |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## 2. Economic Revitalization Zone Tax Credit (ERZTC) (RSA 162-N:7):

**Description:** The authority to enter into Community Reinvestment and Opportunity (CROP) Zone Credit Agreements became effective July 1, 2003. The CROP Zone tax credit was replaced with the ERZTC and shall be available to taxpayers only for tax liabilities arising during the five consecutive tax periods following the signing of the agreement. ERZTC shall be applied against tax due under RSA 77-A, the BPT. Any unused portion may be applied against tax due under RSA 77-E, the BET. For the purpose of the credit allowed under RSA 77-A:5, XII, the BPT, the ERZTC shall be considered taxes paid under RSA 77-E. ERZTCs shall not be transferable. The ERZTC may be carried forward for 5 years.

The ERZTC is a “cascading” tax credit that may be used to reduce a BET liability and, as considered “taxes paid” under RSA 77-E, may then be 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.

**Methodology:** Credit used is the amount actually reported by 57 taxpayers and used to offset a tax liability on the New Hampshire BPT return, BET return, or both.

**Tax returns filed in FY 2017:**

Tax Credit Used Against BPT, BET, or both........................................... $823,000

### ECONOMIC REVITALIZATION ZONE TAX CREDIT
### Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $426,000 | $360,000 | $806,000 | $901,000 | $823,000 |

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### 3. Research and Development (R&D) Tax Credit (RSA 77-A:5, XIII):

**Description:** Chapter 271, Laws of 2007 (SB 134) enacted the R&D Tax Credit. Through FY2013, the maximum credit allowed for all taxpayers was $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 ERZTC (RSA 162-N:7). Each taxpayer's share of the R&D tax credit shall not exceed $50,000 per fiscal year. Taxpayers may apply up until June 30 following the tax year during which the research and development occurred and a determination will be made by the Commissioner no later than September 30. The R&D tax credit is first applied to the BPT and, while this is not a "cascading" tax credit, the unused portion of any R&D tax credit shall be available to apply to the BET. Any R&D tax credit used against either tax is included herein. Beginning in FY2014, the maximum amount to be issued is $2,000,000 each year. Beginning in FY2017, the maximum amount to be issued is $7,000,000 each year. R&D tax credits issued in FY2017 will be reported beginning in the FY2018 Tax Expenditure Report.

**Methodology:** Credit used is the amount actually reported by 169 taxpayers and used to offset a tax liability on the New Hampshire BPT return, BET returns, or both.

**Tax returns filed in FY 2017:**

Tax Credit Used Against BPT, BET, or both....................................... $1,840,000

**RESEARCH and DEVELOPMENT TAX CREDIT**
**Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017**

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $1,320,000 | $1,366,000 | $1,892,000 | $2,106,000 | $1,840,000 |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## 4. Coos County Job Creation (CCJC) Tax Credit (RSA 162-Q):

**Description:** Chapter 172, Laws of 2008 (HB 1644) enacted the CCJC 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 five consecutive tax periods following the awarding of the credit. CCJC tax credits shall be applied against tax due under RSA 77-E, the BET, and any remainder may be applied against tax due under RSA 77-A:5, the BPT. For the purpose of the credit allowed under the BPT, the CCJC tax credit shall be considered "taxes paid" under the BET. The CCJC may be carried forward for up to 5 years.

The CCJC tax credit is a "cascading" credit that may be used to reduce a BET liability and the "taxes paid" under the BET may then be 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.

**Methodology:** Credit used is the amount actually reported by 30 taxpayers and used to offset a tax liability on the New Hampshire BET and BPT tax returns.

**Tax returns filed in FY 2017:**

Tax Credit Used Against BPT, BET or both............................................ $102,000

### COOS COUNTY JOB CREATION TAX CREDIT
### Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $68,000 | $58,000 | $96,000 | $99,000 | $102,000 |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## 5. Education Tax Credit (RSA 77-G):

**Description:** Chapter 287, Laws of 2012 (SB 372) allows a business organization or business enterprise to make a money donation (up to $600,000) to an approved scholarship organization(s) for which the business organization or business enterprise will receive a tax credit against the BPT and/or BET equal to 85% of their donation. The donations are used by an approved scholarship organization(s) to grant scholarships for children to attend private schools. The Education Tax Credit Program began January 1, 2013.

This tax credit is not a "cascading" credit and it also does not have any carryforward provisions. The tax credit may only be used to offset tax liabilities incurred in the tax year in which the donation was made.

The amount included in this report is the total reduction in revenue to the State whether applied against BPT, BET, or both tax liabilities.

**Methodology:** Credit used is the amount actually reported by 35 taxpayers and used to offset a tax liability on the New Hampshire BET and BPT returns.

**Tax returns filed in FY 2017:**

Tax Credit Used Against BPT, BET or both.................................. $188,000

### EDUCATION TAX CREDIT
### Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| N/A | $20,000 | $115,000 | $93,000 | $188,000 |

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## VI. Report of Additional Information

### 1. Weighting of the Sales Apportionment Factor (RSA 77-A:3, II(a)) (Net Loss)

For taxable periods ending on or after December 31, 1991 to June 30, 1994, the sales factor of the New Hampshire 3 factor apportionment formula for the BPT was modified. The sales factor was multiplied by 1.5 then combined with the payroll and property factors, the sum of which was divided by 3.5. Therefore, sales comprised 42.8% of the apportionment factor, while payroll and property comprised 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 FY 2017 were included in this analysis. 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. Below are the results of businesses impacted by this provision:

3,842 businesses with decreased liability paid $26,062,735 less in tax.
7,197 businesses with increased liability paid $22,455,770 more in tax.

The top 10 businesses paying less tax saved $8,318,419 with an average savings of $831,842.

The top 10 businesses paying more tax paid $5,345,869 with an average cost of $534,587.

Net Impact on Business Profits Tax Revenue: **Revenue loss** of $3,607,000.

**CHANGE TO APPORTIONMENT (NET LOSS)**
**Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017**

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $169,000 Gain | ($971,000) Loss | ($698,000) Loss | ($921,000) Loss | ($3,607,000) Loss |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## 2. Net Operating Losses (RSA 77-A:4,XIII) (Reduction in BPT)

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 (NOL) deduction, RSA 77-A:4,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 BPT law added in 1988. The NOL provision was effective for losses incurred after January 1, 1989. On July 1, 2002, the law was revised to provide that NOLs may be carried forward for 10 years following the loss year instead of 5 years. The amount of NOL generated each year per entity was limited to $250,000. For taxable periods ending between July 1, 2003 and June 30, 2004, the NOL generated could not exceed $500,000, between July 1, 2004 and June 30, 2005, the NOL generated could not exceed $750,000 and on or after July 1, 2005, the NOL generated could not exceed $1,000,000 and the requirement to carry-back losses is eliminated.

For taxable periods ending on or after January 1, 2013, the NOL generated may not exceed **$ 10,000,000** per entity.

In FY 2017, 6,548 business organizations used the net operating loss deduction. The following table details the results of this usage:

Total NOL Used (after apportionment) .................................... $305,043,000

Average NOL Used (after apportionment) ........................................ $46,586

**Total tax decrease due to NOL ............................................. $25,534,000**

Average Tax Benefit to each taxpayer ................................................ $3,899

**NET OPERATING LOSS (Reduction in BPT)**
**Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017**

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $16,975,000 | $19,396,000 | $21,111,000 | $34,053,000 | $25,534,000 |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## 3. Business Enterprise Tax Credit (RSA 77-A:5, X)

Taxes paid under the BET receive a dollar-for-dollar credit against BPT. This tax credit was allowed to be carried forward for up to five years. Effective July 1, 2014, any unused BET credit can be carried forward for 10 years from the taxable period in which it was paid starting with taxable periods ending on or after December 31, 2014.

BET reported paid on the 39,017 returns filed in FY 2017 with a BET liability was $221,650,000.

BET Credit Used Against BPT …………………. ...................$158,833,000

BET credit was used to offset BPT liabilities on 19,410 returns filed in FY 2017.

### BUSINESS ENTERPRISE TAX CREDIT
### Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $103,606,000 | $116,620,000 | $124,870,000 | $151,069,000 | $158,833,000 |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## 4. Credit Carryovers From Overpaid Business Taxes

Taxpayers quite often pay more in estimated payments and extension payments than the actual amount of the tax liability due as determined by the filing of their Business Tax return. In that case, the taxpayer directs the Department what he or she would like the Department to do with their overpaid BPT and BET. Sometimes the taxpayer requests the overpayment be returned to the taxpayer in the form of a refund. Sometimes the taxpayer requests the overpayment be credited against next year's tax liability. And, sometimes the overpayment is partially refunded and partially credited as an estimate against the subsequent filing period.

As of December 5, 2017, the number of business returns filed in FY 2017 was 77,011.

On these 77,011 returns filed in FY 2017, 18,583 taxpayers requested that their overpayment of taxes be credited and carried over to the next tax year. The total amount of requested overpayment to be credited and carried over was $171,818,000.

### CREDIT CARRYOVERS FROM OVERPAID BUSINESS TAXES
### Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| N/A | $144,648,000 | $156,315,000 | $173,384,000 | $171,818,000 |

** This is the first year this data is being reported. This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013.*

## 5. Insurance Premium Tax (RSA 400-A):

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

The amount reported as Insurance Premium Tax credit used is the amount of credit actually used to offset a BPT liability on 261 returns filed in FY 2017.

Tax Credit Used Against BPT returns filed in FY 2017 ……….. $36,939,000

**CREDIT FOR INSURANCE PREMIUM TAX**
**Comparison CY 2013 + FY 2014* + FY 2015 + FY 2016 + FY 2017**

| CY 2013 | FY 2014* | FY 2015 | FY 2016 | FY 2017 |
|---|---|---|---|---|
| $23,803,000 | $26,633,000 | $34,278,000 | $36,651,000 | $36,939,000 |

** This data is based on tax returns filed in FY 2014 as required by RSA 71-C. This is in contrast to previous Tax Expenditure Reports published by the Department under RSA 77-A:5-a, which were based upon returns filed in a calendar year. Therefore, the FY 2014 box above contains data from the returns from the last six months of CY 2013, which has already been reported in the CY 2013 box above.*

## VII. Acknowledgements

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Melissa Rollins, Senior Financial Analyst, NH Department of Revenue Administration

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