

**New Hampshire Department of Revenue Administration
45 Chenell Drive, Concord, NH 03301**

**TECHNICAL INFORMATION RELEASE
TIR 2004-002 June 15, 2004**

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department or the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.).

The purpose of this information release is to advise taxpayers and tax preparers of changes to the tax laws relative to Qualified Investment Companies (QIC) and Qualified Investment Capital Companies (QICC).

Summary

The changes have been brought about by the recent enactment of Senate Bill 303, 2004 Laws of New Hampshire Chapter 143, effective May 24, 2004. Because this legislation was made effective upon passage, the changes discussed herein will apply to tax periods ending on or after May 24, 2004. With respect to qualified investment companies (QIC) the new law alters the procedure for qualification as a QIC, makes several changes relative to the tax consequences to individuals and business organizations owning or holding interests in a QIC, and imposes new tax reporting requirements. With respect to qualified investment capital companies (QICC), the new law prospectively repeals the tax exempt status of the QICC, eliminates the deductibility of contributions made to an existing QICC, and establishes transition provisions for an existing QICC.

Qualified Investment Companies

New qualification procedure

Organizations seeking QIC status following the effective date of the legislation must file an election with the Department to be treated as a QIC. The election is due on or before the 15th day of the third month of the tax period for which they are seeking QIC status. The election must be made on a form prescribed by the Department. This new election process replaces the former requirement that required filing for certification no later than 9 months following the commencement of investment activity. An important difference between the new election procedure and the former certification process is that, unlike the former law, there is no “untimely submission” provision relative to filing the new election that would authorize discretionary acceptance by the Department as heretofore applied to late certification requests. As a result, there is no possibility of retroactive QIC treatment under the new law.

A properly filed QIC election is valid for each succeeding tax period until either terminated by a voluntary revocation or by involuntary termination through ceasing to meet the requirements for QIC qualification. Voluntary revocation may be obtained either by the QIC manager or by action of a majority of the members, shareholders or interest holders of the QIC. A revocation notice must be filed with the Department on or before the 15th day of the third month of the taxable period to be effective for that period. Revocations submitted after such date will be effective for the next tax period.

An election valid for business profits tax (BPT) purposes is also valid for business enterprise tax (BET) and interest and dividends tax (I&D) purposes. The new election procedure is specified in RSA 77-A:5-b,I and V. Changes to RSA 77-A:1,XXI and RSA 77-E:1,XIV removed the former 9 month certification.

Tax consequences to QIC interest holders

The new law makes several changes to the tax effect that QIC status has upon income and distributions attributed to QIC interest holders. With respect to the I&D tax, the \$2400 gross interest and dividend income threshold provision, RSA 77:3,I(a), has been clarified. Under the new law the amount of the proportional share of QIC income attributed to a taxpayer who is a QIC interest holder will be included in determining whether or not the taxpayer has sufficient gross interest and dividends income to be required to report and pay I&D tax.

The new law also modifies the additions and deductions provision of the BPT, RSA 77-A:4, XV, regarding the recognition of QIC profits and distributions. The existing law requires a business organization that owns an interest in a QIC to add to its gross business profits a proportional share of the QIC's profits. This provision remains in effect. However, any actual distributions by a QIC to its business organization owners -- which under former law were deducted from its gross business profits -- are, under the new law, simply ignored for purposes of determining the business organization's taxable business profits.

New reporting requirements

The act imposes a new reporting requirement on QICs. Each QIC is now required to annually file a report with the Department detailing the following information:

- A. The aggregate amount of funds invested in the company;
- B. The names, addresses and federal taxpayer identification numbers of interest holders in the company, and the proportional share of income taxable to the holders under the I&D and/or the BPT;
- C. The name, address and federal taxpayer identification number of the manager of the QIC, if any; and
- D. The amount of income received and expenses incurred by the QIC for the tax period.

In lieu of completing and filing a report with the above information, the QIC may substitute a copy of its federal income tax return as filed with the Internal Revenue Service, covering the same tax period. The report or the federal return must be filed within 30 days following the filing of the QIC's federal return with the Internal Revenue Service. The reporting requirements are found in RSA 77-A:5-b,II and III.

A monetary penalty of \$100 per day for each day the return is late is imposed up to a maximum of \$5,000 under RSA 77-A:5-b, III of the new law. If the report or return is more than 50 days late the delinquent organization shall lose its QIC status for the tax period for which the report or return was due.

All of the normal tax administration powers given to the Department with respect to other taxes and taxpayers are also applicable to QICs. In accordance with the provisions of RSA 77-A:5-b,IV, subjects QICs to the requirements of RSA 77-A:11 and RSA 77-E:10, such organizations must comply with the standard record keeping and availability of records for audit requirements that heretofore apply to other taxpayers.

Qualified Investment Capital Companies

Repeal

Effective May 24, 2004, no new QICCs will be recognized either under the BPT, BET or I&D tax laws. The sections of the tax statutes that formerly related to the qualification and tax effect of QICC organizations have been repealed. The repealed sections include: RSA 77:4,VI, relating to I&D tax upon holders of an ownership interest in a QICC; RSA 77:4-f, relating to adjustments to the I&D tax for contributions to and any distributions from a QICC; RSA 77-A:1, XXIV and XXV, relating to the BPT definition of a QICC and to the QICC manager; and RSA 77-A:4, XVII and XVIII, relating to additions and deductions to the gross business profits of QICC owners for contributions to or returns of capital from a QICC.

Transition provision

Any QICC properly qualified prior to the effective date of the act will continue to retain its tax-exempt status as long as it was properly qualified according to prior law. However, no new contributions to capital of a QICC by a business organization owner will qualify as a deduction from the owner's gross business profits. Likewise, contributions of capital made by an individual to a QICC will no longer qualify as a deduction for I&D tax purposes. In all other aspects, an existing QICC will be subject to the same requirements as a QIC.