

**New Hampshire Department of Revenue Administration
109 Pleasant Street, Concord, NH 03301**

**TECHNICAL INFORMATION RELEASE
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A Technical Information Release is designed to provide immediate information regarding 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.). Questions should be directed to Central Tax Services at (603) 230-5920.

House Bill 1656 – Exceptions to the Real Estate Transfer Tax

The New Hampshire Legislature has passed and Governor Hassan has signed into law House Bill 1656 (Chapter 288, Laws of 2016), codifying two exceptions to the RSA 78-B Real Estate Transfer Tax (RETT) and modifying the definition of “price or consideration” applicable to transfers occurring on or after June 21, 2016.

RETT Exemptions

Pursuant to RSA 78-B:1, I(a) a tax is imposed on each sale, granting or transfer of real estate or any interest in real estate. Each sale, granting or transfer of real estate or an interest in real estate is presumed to be taxable unless specifically exempt from taxation pursuant to RSA 78-B:2. HB 1656 codifies two exemptions to the RETT as follows:

RSA 78-B:2, XXI exempts transfers that are coincidental to a change in the transferor’s form of organization, provided that:

1. No consideration is exchanged;
2. The assets and liabilities of the transferor immediately preceding the transfer and the assets and liabilities of the transferee immediately following the transfer are the same; and
3. The owner(s) of the transferor and transferee and their respective ownership percentages remain the same.

RSA 78-B:2, XXII exempts transfers from the owners of an entity to the entity, or from the entity to the owners of the entity, provided that:

1. No consideration is exchanged;
2. The assets and liabilities of the transferor and transferee remain the same except with respect to the transferred real estate; and
3. The owner(s) of the transferor and transferee and their respective ownership percentages remain the same;

As the result of the RETT exemptions codified by HB 1656, the Department of Revenue Administration (Department) is evaluating whether N.H. Admin. Rules Rev 800, Transfer of Real Property, require amendment. The Department anticipates filing an Initial Proposal of necessary amendments upon completion of this evaluation process.

The Department is aware of at least one instance where the aforementioned RETT exemptions may conflict with the existing administrative rules governing the RETT. N.H. Admin. Rule Rev 802.02(a) provides that transfers to or from a revocable trust are contractual transfers, and therefore subject to the RETT. However, Rev 802.02(b) further provides that the measure of the tax upon a transfer to or from a revocable trust shall be the actual price or consideration paid. Therefore, for transfers to or from a revocable trust where no consideration is paid, the transferor and transferee are required to only pay the minimum transfer tax pursuant to RSA 78-B:1, I(b). Please be advised that a transfer to or from a revocable trust without consideration that meets the criteria of one of the two exemptions to the RETT codified by HB 1656 is no longer governed by N.H. Admin. Rule Rev 802.02 and the transferor and transferee are not required to pay the minimum transfer tax so long as the requirements of the exemption are otherwise met.

The Department's rules also currently address LLC conversion transactions. N.H. Admin. Rule Rev 803.06 provides that the RETT shall not apply to the conversion of a business entity to an LLC pursuant to RSA 304-C:147 through RSA 304-C:149. The exemption codified by RSA 78-B:2, XXI would also exempt LLC conversion transactions from the RETT if the requirements of the exception are met. N.H. Admin. Rule Rev 803.06 is not inconsistent with RSA 78-B:2, XXI and both provisions shall continue to apply.

Definition of "Price or Consideration"

HB 1656 also modifies the RSA 78-B:1-a, IV definition of "price or consideration." The new definition provides that:

Transfers made solely to obtain financing or refinancing, as required by a lending institution, and that accomplish no other business purposes shall not be considered sufficient consideration to make a transfer a contractual transfer.

Additionally, the definition of "price or consideration" is modified to provide that:

The recitation of nominal consideration of \$10 or other valuable consideration for purposes of satisfying the statute of frauds is not consideration for purposes of this chapter.

Pursuant to RSA 78-B, whether a transfer is a "contractual transfer" involving the exchange of "consideration" is central to the determination of whether a transfer is subject to the RETT. Therefore, although these changes to the definition of "price or consideration" do not create an exemption to the RETT, the changes enacted by HB 1656 could impact the taxability of certain real estate transfers. All aspects of the transaction and not just those aspects addressed by the new language added to the definition of "price or consideration" must be examined to determine whether the transaction is subject to the RETT.

Additional information about the RETT can be obtained by referencing RSA 78-B and N.H. Code of Admin. Rules Rev 800, which can be accessed through the Department's [website](#).

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301 or by contacting them at (603) 230-5000.