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For Immediate Distribution

April 19, 2018

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NH Department of Revenue Administration Reports Potential Impact of Federal Tax Reform on BPT Taxpayers

NHDRA has issued a report for New Hampshire legislature; full report and supplemental information available on website for public

Concord, NH – On December 22, 2017, President Trump signed the Tax Cuts and Job Act (TCJA) into law, representing the most expansive package of tax law changes enacted since the 1986 overhaul of the U.S. tax code. The New Hampshire Department of Revenue Administration (NHDRA) formed a committee earlier in the year to identify how TCJA would directly impact the New Hampshire Business Profits Tax (BPT) and recently presented a report to the Senate and House Ways & Means committees in a joint economic briefing. The report identified areas of particular relevance to the state's BPT taxpayers, including multinational taxpayers, expense deductions applicable to all taxpayers, partnership-specific changes and other deductions.

As a static conformity state, meaning a state that adopts the Internal Revenue Code (IRC) up to a specific date, rather than automatically adopting the IRC as it is amended (rolling conformity), New Hampshire can decide whether or not to synchronize to the IRC as amended by the TCJA. For the BPT, New Hampshire has adopted the IRC as of December 31, 2016 for taxable periods beginning on or after January 1, 2018.

"There is an even split between states with rolling conformity and states with static conformity. In either situation, it is not uncommon for states to decouple from specific sections of the IRC," said Lindsey Stepp, Commissioner of NHDRA. "This report is not intended as a tool to persuade one way or the other, but as a point of reference as our legislature determines whether New Hampshire will synchronize to some or all of the provisions enacted through TCJA."

NHDRA created a "Federal Tax Reform" landing page on its website with the full report and supplemental information. A tax reform chart references the issues most relevant to BPT taxpayers with the status of both federal and New Hampshire law as it existed prior to federal tax reform, the change implemented by TCJA and the impact on New Hampshire BPT should the state conform or not. Notably, many of the tax law changes contained within the TCJA are subject to regulations, holdings and guidance expected to be provided by the Internal Revenue Service (IRS). Future IRS regulations and guidance could alter the impact of federal tax reform on the New Hampshire BPT.

There are 22 issues outlined in the report, including:

Business Interest Deduction Limitation
As it stands, businesses may generally deduct all ordinary and necessary interest paid as a business expense when calculating taxable income for New Hampshire purposes. If New Hampshire were to conform, the State would limit deductions of interest expense to the business' interest income plus 30-percent of the business' "adjustable taxable income."

Section 179 Deduction
Federally, prior to TCJA, taxpayers could elect to immediately deduct up to $500,000 of the cost to acquire otherwise depreciable property. Now, taxpayers can immediately deduct up to $1 million. New Hampshire decouples from IRC Section 179, so conforming to the TCJA will not alone accomplish conformity.

Bonus Depreciation
Generally, business property is depreciable over the useful life of the property as defined by the IRC. However, the standard depreciation deduction is accelerated ("bonus depreciation") depending on the type of capital asset. Now, under TCJA, taxpayers are permitted to immediately deduct the full cost to acquire certain capital assets until December 31, 2022, at which point the deduction is reduced to 20-percent in each calendar year until such time as bonus depreciation is phased out entirely. Currently New Hampshire decouples from bonus depreciation and thereby allows a taxpayer to take only the standard depreciation deduction on the BPT return. If New Hampshire conforms, the amount that may be immediately deducted until such time as bonus depreciation has phased out would increase.

Research & Experimental Expenditures
Under the TCJA, beginning January 1, 2022, research and experimental expenditures will be deducted over a five-year period, which previously had generally been immediately deductible. Because of the time value of money, business moving, going out of business or New Hampshire apportionment changing, it cannot be said with certainty that conforming would result in long-term revenue neutrality.

Qualified Operating Zones
Under the TCJA, payment of tax on capital gains can be deferred if the capital gains are reinvested in "qualified opportunity zones" (designated low-income areas nominated by the chief executive of every state). The gain will be recognized when the taxpayer sells their investment in the qualified opportunity zone, unless the investment is held for longer than 10 years, in which case the gain is no longer subject to tax. This is an entirely new tax deferral mechanism that would apply in New Hampshire if New Hampshire adopts the TCJA.

Other deductions modified by TCJA

- Like-Kind Exchanges – The ability to defer the recognition of capital gains to the extent sale proceeds are used to purchase "like-kind" property has been limited to real property. Previously it was also applicable to the purchase of like-kind personal property.
- Fringe Benefit Deduction – The ability to deduct meal and entertainment expenses and the cost to provide on-premise meals to employees has been limited.
- Fines and Penalties – The ability to deduct expenses incurred for a law violation has been limited. Previously, a fine paid was not deductible but associated expenses were deductible.
- Sexual Harassment Settlements – Settlement payments are generally deductible. The cost to settle sexual harassment or assault claims will no longer be deductible if subject to a nondisclosure agreement.
- Lobbying Expenses – State and local lobbying expenses may no longer be deducted.
- FDIC Premiums – The deduction of FDIC premiums will be limited for certain large banks.
- Commission and Performance-Based Wages – The ability to deduct commission or performance-based employee remuneration in excess of $1 million is limited.

Over the coming months, the State Legislature is expected to evaluate the implications of conforming to the TCJA for the New Hampshire BPT.

About the New Hampshire Department of Revenue Administration
The New Hampshire Department of Revenue Administration (NHDRA) is responsible for fairly and efficiently administering the tax laws of the State of New Hampshire. NHDRA collects approximately 80% of New Hampshire's general taxes. During Fiscal Year 2017, DRA collected $1.5 billion in revenue for the New Hampshire General Fund and Education Trust Fund. DRA also provides assistance to municipalities in budgeting, finance and real estate appraisal.

NHDRA administers and collects the following taxes at the state level: Business Enterprise Tax, Business Profits Tax, Communications Services Tax, Electricity Consumption Tax, Interest and Dividends Tax, Meals and Rooms Tax, Medicaid Enhancement Tax, Nursing Facility Quality Assessment, Tobacco Tax, Taxation of Railroads, Utility Property Tax, Real Estate Transfer Tax; and the following taxes at the local level: Property Tax, Excavation Tax, Timber Tax. To learn more about NHDRA, please visit www.revenue.nh.gov.

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