



State of New Hampshire
Department of Revenue Administration



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Lindsey M. Stepp
Commissioner

March 30, 2018

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New Hampshire Senate
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Concord, NH 03301

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New Hampshire House of Representatives
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Internal Revenue Code Update

Pursuant to RSA 21-J:3, XXXIII, the Commissioner of the Department of Revenue Administration (Department) shall file a report not later than March 31 of each year informing the members of the Senate and House Ways & Means Committees (Committees) of any changes to the United States Internal Revenue Code, related Treasury Regulations, and administrative rulings that would impact the New Hampshire Business Profits Tax (BPT).¹

The New Hampshire BPT uses federally reported income as a starting point for purposes of calculating a taxpayer's BPT liability. Therefore, changes to the Internal Revenue Code that impact a taxpayer's federally reported income may impact a taxpayer's BPT liability.

In a letter dated March 31, 2017, the Department updated the Committees on all major changes to the Internal Revenue Code occurring from December 31, 2015 to December 31, 2016.

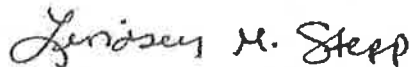
¹ RSA 21-J:3, XXXIII, provides, "In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, the commissioner shall: ... File a report not later than March 31 of each year with the ways and means committees of the senate and the house of representatives informing the committees of any changes to the United States Internal Revenue Code, related Treasury Regulations, and administrative rulings, which would impact New Hampshire."

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act (TCJA)² into law. The TCJA represents the most expansive package of tax law changes enacted since the 1986 overhaul of the U.S. tax code. The TCJA has and will continue to alter the various costs and incentives impacting businesses at the federal level in a way that will impact the state tax landscape regardless of whether New Hampshire legislatively adopts the Internal Revenue Code as amended by the TCJA. This report attempts to identify and quantify the ways in which the TCJA would directly impact the BPT, were New Hampshire to synchronize to the Internal Revenue Code as amended by the TCJA. This report does not, and the Department cannot, quantify how tax reform will generally modify business behavior in ways that will undoubtedly also impact the BPT.

Attachment A provides a detailed description and analysis of the components of the TCJA that we believe are most relevant to New Hampshire's BPT taxpayers. Attachment A has four sections that address provisions of the TCJA that impact multinational taxpayers, changes of general applicability to all taxpayers, changes that specifically apply to partnerships, and finally a list of other provisions too minor to warrant a more substantial discussion. Each section contains lettered subsections addressing specific changes contained within the TCJA. Each subsection discusses the status of both federal and NH law as it existed prior to federal tax reform followed by a discussion of the change implemented by federal tax reform and the impact on NH BPT should the state opt to conform or not.

We hope this resource is helpful as you consider whether NH should synchronize to some or all of the provisions enacted through federal tax reform. Feel free to contact me with any questions or concerns.

Sincerely,



Lindsey M. Stepp
Commissioner

CC: Senate President Chuck Morse
House Speaker Gene G. Chandler
DJ Bettencourt, Governor's Policy Director

² Pub. L. No. 115-97, 131 Stat. 2054 (2017), et seq.

New Hampshire Department of Revenue Administration
Internal Revenue Code Update
(RSA 21-J:3, XXXIII)

Every state with some form of a corporate income tax uses federally reported income as a starting point for the calculation of taxable income for state purposes. Some states adopt the Internal Revenue Code (IRC) up to a specific date, thus requiring taxpayers to make additions or deductions to income to the extent the IRC has changed. Other states adopt the IRC as amended to date, thus automatically incorporating any federal tax law changes into that state's tax law regime. In either situation, it is not uncommon for states to decouple from specific sections of the IRC.

When states adopt the IRC as amended to date, they automatically incorporate any federal tax policy objectives in their state tax law regime. Additionally, for states that adopt the IRC as amended to date, federal tax law changes may materially impact state revenues from year to year. Alternatively, when states adopt the IRC of a specific year, taxpayers must identify any subsequent changes that may impact their tax liability and account for those changes on their state return.

For the Business Profits Tax (BPT) New Hampshire adopts the IRC as of a specific date, currently, the IRC as of December 31, 2016 for taxable periods beginning on or after January 1, 2018. More specifically, as a starting point for calculating BPT liability, the taxpayer must use federally reported taxable income before net operating losses (NOLs) and "special deductions" reported by the taxpayer on their federal return. On the federal tax return, this figure appears on Line 28.

In order to adopt the IRC as amended by the Tax Cuts and Jobs Act (TCJA), New Hampshire would need to adopt the IRC as of December 31, 2017.

Many of the tax law changes contained within the TCJA are time-limited, meaning; many of the provision will revert to prior law after a designated period of time. However, the U.S. House of Representatives and U.S. Senate is already hearing legislation to make many of the time-limited provisions permanent or to otherwise tweak the provisions of the TCJA. Therefore, we have not included an extensive discussion of the sunset provisions contained within the TCJA, except in instances where it is particularly relevant.

Additionally, 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 NH BPT.

I. Multinational Tax Issues

There are two methods for the treatment of foreign income. A system of "worldwide" taxation means that a U.S. parent company with foreign subsidiaries will be taxed on both domestic and foreign earnings. Taxing jurisdictions that tax "worldwide" income do not tax foreign dividends when paid to a U.S. parent company from a foreign subsidiary. Alternatively, some taxing jurisdictions adhere to a "territorial" or "water's-edge" system of taxation, meaning that a U.S. parent is not taxed on foreign subsidiary income. However, if the foreign subsidiary pays foreign dividends to the U.S. parent company, those foreign dividends are taxed.

A. Foreign Dividends and Subpart F Income

Pre-Tax Reform: Federal Treatment

The federal government taxed U.S. based multi-national corporations on their worldwide income. However, taxation of the income of foreign subsidiaries was generally deferred until the foreign subsidiary paid a dividend to the U.S. parent, with an exception that certain passive income of the foreign subsidiary was treated as a deemed dividend to the U.S. parent under Subpart F of the IRC. These U.S. shareholders were required to pay federal income tax on their pro rata share of this “Subpart F income” at the time it was earned by the foreign subsidiary.

Current NH Law

NH taxes U.S. based multi-national corporations on a water’s-edge basis. Foreign incorporated business organizations, as well as domestic business organizations with more than 80 percent of their payroll and property overseas (80/20 business organizations), are excluded from the NH water’s-edge combined group. However, when a foreign incorporated business organization or an 80/20 business organization pays up a dividend to the U.S. parent, the dividend is taxable, subject to a modified apportionment formula. Likewise, Subpart F income is treated similar to foreign dividends.

Tax Reform: Federal Treatment

Separate from the one-time repatriation discussed below (which is also effectuated through Subpart F), going forward the TCJA broadened the ways U.S. shareholders and foreign corporations will be subject to Subpart F. Additionally, foreign dividends will in many cases now be exempt from taxation, due to the allowance of a 100% dividend received deduction on dividends received from certain foreign corporations. Subpart F income continues to be taxed when earned by the foreign subsidiary. The net impact is that the U.S. has transitioned to a more “territorial” method of taxing multi-national corporations.

NH Impact: No Conformity

NH would continue to tax dividends received from foreign corporations and 80/20 business organizations because the starting point for the calculation of NH taxable income is federal line 28, which includes foreign dividends. It is not until federal line 29 that a taxpayer gets a federal deduction for dividends received from foreign subsidiaries. NH could see an increase in revenue because the federal deductibility of foreign dividends is expected to incentivize the payment of dividends. NH would also continue to tax Subpart F income when earned by a foreign subsidiary.

NH Impact: Conformity

NH would continue to tax dividends received from foreign corporations and 80/20 business organizations because the starting point for the calculation of NH taxable income is federal line 28, which includes foreign dividends. It is not until federal line 29 that a taxpayer gets a federal deduction for dividends received from foreign subsidiaries. NH could see an increase in revenue because the federal deductibility of foreign dividends is expected to incentivize the payment of dividends. NH would also continue to tax Subpart F income when earned by a foreign subsidiary.

B. One-Time Deemed Repatriation of Foreign Earnings

Pre-Tax Reform: Federal Treatment

N/A

Current NH Law

N/A

Tax Reform: Federal Treatment

To effectuate the transition from the worldwide system of taxation to the territorial system, the TCJA effectuates a one-time deemed repatriation of certain pre-2018 foreign income. This one-time deemed repatriation will be reported as Subpart F income by the shareholder. Several considerations will determine when taxpayers report their repatriation amount.

NH Impact: No Conformity

NH would not capture this one-time deemed repatriation of foreign earnings even though NH does tax Subpart F income reported federally because the amended IRC section effectuating this change will not have been adopted by NH. As a result, taxpayers will adjust their Subpart F income to exclude these repatriated foreign earnings when filing their NH tax return.

NH Impact: Conformity

Federally, this one-time repatriation is deemed to have occurred in tax year 2017. Therefore there is an added level of complexity because in order for NH to capture this one-time deemed repatriation for all NH taxpayers equally, NH would have to conform to federal tax reform for taxable periods ending on or after December 31, 2017.

C. Foreign Base Erosion Tax

Pre-Tax Reform: Federal Treatment

Ordinary and necessary business expenses were fully deductible even if paid to a foreign related party.

Current NH Law

NH conforms to the federal treatment of ordinary and necessary business expenses. The business may deduct all ordinary and necessary business expenses when calculating their taxable income for NH purposes.

Tax Reform: Federal Treatment

Generally, business expenses remain fully deductible even if paid to a foreign related party. However, the payment of certain expenses (insurance premiums, interest, and certain property purchases) will be subject to a “base erosion minimum tax” that is completely distinct from the corporate income tax.

NH Impact: No Conformity

NH will continue to allow ordinary and necessary business expenses to be fully deducted on the NH return.

NH Impact: Conformity

Conformity to the IRC as modified by the TCJA would not impact the deductibility of expenses paid to foreign related parties for NH BPT purposes. The “base erosion minimum tax” would likely be reported after the line on the federal return where NH picks up federally reported income for the BPT. In order to conform to this new minimum tax, NH would have to undertake a more comprehensive review of the BPT statute and the existing system of water’s-edge taxation.

D. Global Intangible Low-Taxed Income

Pre-Tax Reform: Federal Treatment

N/A

Current NH Law

N/A

Tax Reform: Federal Treatment

A U.S. shareholder is required to include in income the global intangible low taxed income (GILTI) of its controlled foreign corporations (CFCs) in a manner similar to Subpart F income. The full amount of GILTI would be includable in the U.S. shareholder’s income, but reduced by a 50 % deduction.

NH Impact: No Conformity

NH would not include this GILTI in income.

NH Impact: Conformity

NH would include this GILTI in income; however, NH’s continued taxation of foreign dividends may require an adjustment for GILTI to ensure there is no double taxation of income.

II. Provisions of General Applicability

The following provisions apply to all BPT taxpayers equally including taxpayers that are taxed as proprietorships, partnerships, corporations, and fiduciaries.

A. Business Interest Deduction Limitation

Pre-Tax Reform: Federal Treatment

Interest paid by a business was generally fully deductible as an ordinary and necessary business expense.

Current NH Law

NH conforms to the federal treatment of interest paid by a business. The business may generally deduct all ordinary and necessary interest paid as a business expense when calculating taxable income for NH purposes.

Tax Reform: Federal Treatment

The deduction of business interest expense will generally be limited to the business's interest income plus 30% of the business's "adjusted taxable income." This limitation does not apply to certain "small businesses" defined to mean a business with average gross receipts of \$25,000,000 or less over the prior 3 years.

NH Impact: No Conformity

NH will continue to allow ordinary and necessary business interest expense to generally be fully deducted on the NH return.

NH Impact: Conformity

NH would limit the deduction of interest expense to the business's interest income plus 30% of the business's "adjusted taxable income." This would decrease deductions and thereby increase taxable income in NH, thereby resulting in increased revenues.

B. Section 179 Deduction Increase

Pre-Tax Reform: Federal Treatment

Taxpayers could elect to treat up to \$500,000 of the cost to acquire depreciable property as a deductible business expense in the year the property was placed in service. The ability to immediately expense otherwise depreciable property was limited to the extent total capital expenditures exceeded \$2 million.

Current NH Law

Historically, NH has "decoupled" from the federal Section 179 deduction. Prior to January 1, 2017, NH allowed an immediate deduction of only \$25,000 of the cost to acquire a depreciable asset. In 2017, NH allowed the immediate deduction of \$100,000 of the cost to acquire a depreciable asset. Starting on January 1, 2018, up to \$500,000 of the cost to acquire a depreciable asset can be immediately deducted.

Tax Reform: Federal Treatment

Taxpayers may elect to treat up to \$1 million of the cost to acquire depreciable property as a deductible business expense for property placed in service on or after January 1, 2018. The ability to immediately expense otherwise depreciable property will be limited to the extent total capital expenditures exceeds \$2.5 million.

NH Impact: No Conformity

NH will continue to allow taxpayers to immediately expense up to \$500,000 of the cost to acquire depreciable capital assets.

NH Impact: Conformity

NH could conform to the federal Section 179 deduction and thereby increase the amount of the cost to acquire depreciable property that may be deducted immediately from \$500,000 to \$1 million. However, updating NH's reference to the IRC will not alone accomplish conformity. Additionally, RSA 77-A:3-a, which decouples NH from the Section 179 deduction, would need to be repealed.

C. Bonus Depreciation

Pre-Tax Reform: Federal Treatment

Generally, business property is depreciable over the useful life of the property as defined by the IRC. However, the standard depreciation deduction is accelerated (termed “bonus depreciation”) depending on the type of capital asset being depreciated.

Current NH Law

NH “decouples” from “bonus depreciation” and thereby allows a taxpayer to take only the standard depreciation deduction on the NH BPT return.

Tax Reform: Federal Treatment

Taxpayers are now permitted to immediately deduct 100% of the cost to acquire certain tangible depreciable business assets in the year the property is placed in service from September 27, 2017 through December 31, 2022, at which point the permissible percentage deduction is reduced by 20% in each calendar year until such time as “bonus depreciation” is phased out entirely.

NH Impact: No Conformity

NH will continue to disallow “bonus depreciation” and thereby allow only the standard depreciation deduction.

NH Impact: Conformity

NH could conform to federal “bonus depreciation” and thereby increase the amount of the cost to acquire depreciable property that may be immediately deducted until such time as “bonus depreciation” is phased out federally. However, updating NH’s reference to the IRC will not alone accomplish conformity. Additionally, RSA 77-A:3-b, I, which decouples NH from federal “bonus depreciation,” would need to be repealed.

D. Research & Experimental Expenditures

Pre-Tax Reform: Federal Treatment

Certain reasonable research and experimental expenditures may be immediately deducted in the year paid or incurred.

Current NH Law

NH conforms to the federal treatment of research and experimental expenditures as it existed prior to federal tax reform. Certain reasonable research and experimental expenditures can generally be deducted in the year paid or incurred.

Tax Reform: Federal Treatment

Beginning January 1, 2022, research and experimental expenditures will now generally be amortized and deducted over a 5-year period.

NH Impact: No Conformity

NH will continue to allow the immediate deduction of certain reasonable research and experimental expenditures in the year paid or incurred.

NH Impact: Conformity

NH could conform to the federal treatment of research and experimental expenditures and thus require taxpayers to amortize and deduct research and experimental expenditures over a 5-year period. This change is essentially a timing issue, with what was once an immediate deduction being instead taken equally over a 5-year period. Additionally, taxpayers may seek to characterize these expenses as immediately deductible ordinary and necessary business expenses, thus reducing any revenue impact for NH.

E. Qualified Opportunity Zones

Pre-Tax Reform: Federal Treatment

N/A

Current NH Law

N/A

Tax Reform: Federal Treatment

Payment of tax on capital gains can be deferred if the capital gains are reinvested in “qualified opportunity zones,” which will be low-income areas nominated by the chief executive of each state. The gain will be recognized when the taxpayer sells their investment in the qualified opportunity zone, unless the investment is held for 10 years or more, in which case the gain is no longer subject to tax.

NH Impact: No Conformity

Capital gains will be fully taxable under the BPT even if reinvested in qualified opportunity zones.

NH Impact: Conformity

Inclusion of capital gain income in gross business profits under the BPT could be deferred if a taxpayer reinvests the gain in a “qualified opportunity zone” and avoided altogether if that investment is held for 10 years or more. This would result in reduced revenue to the extent utilized by NH taxpayers.

F. Net Operating Loss Deduction

Pre-Tax Reform: Federal Treatment

Net Operating Losses (NOLs) could be carried back 2 years and forward 20 years and were available to reduce taxable income to zero. Taxpayers in the insurance industry adhered to a specific NOL deduction convention of a 3-year carry back and a 15-year carry forward.

Current NH Law

“Gross business profits” under the BPT is calculated using federally reported taxable income prior to the application of the NOL deduction. Therefore, NH does not adhere to federal NOL limitations. Instead, RSA 77-A:4, XIII permits only a 10-year carryforward of NOLs, limited to \$10,000,000 in any tax year.

Tax Reform: Federal Treatment

NOLs can no longer be carried back and can now be carried forward indefinitely. Additionally, the NOL deduction taken in any year will be capped at 80% of taxable income (the NOL can no longer reduce taxable income to zero). Taxpayers in the insurance industry will be entitled to the same NOL deductions as other types of taxpayers.

NH Impact: No Conformity

NH will continue to depart from the federal NOL limitations and instead permit a 10-year carryforward of NOLs, limited to \$10,000,000 in any tax year.

NH Impact: Conformity

Conformity to the most recent IRC will not automatically synch NH to the federal treatment of NOLs because NH's definition of "gross business profits" utilizes federal taxable income prior to the application of the NOL deduction. In order to conform to the federal treatment of NOLs, NH would have to undertake a more comprehensive review of the treatment of NOLs under the BPT statute.

G. Like-Kind Exchanges

Pre-Tax Reform: Federal Treatment

Capital gain from the sale of real property and some types of personal property could be deferred if the consideration received by the taxpayer is "like-kind," or similar property.

Current NH Law

NH similarly permits the deferral of capital gains from the sale of real property and some types of personal property for business tax purposes if the consideration received by the taxpayer is like-kind property.

Tax Reform: Federal Treatment

Capital gain deferral will still be permitted through the use of like-kind exchanges; however, this treatment will now only be available for real estate (and no longer available for personal property).

NH Impact: No Conformity

NH will continue to allow deferral of capital gains through the use of like-kind exchanges for both real estate and certain qualifying personal property.

NH Impact: Conformity

NH would limit deferral of capital gains through the use of like-kind exchanges to real estate exchanges. This could result in increased revenue to NH.

H. Fringe Benefit Deduction

Pre-Tax Reform: Federal Treatment

Employers could deduct up to 50% of meal and entertainment expenses that were sufficiently business related. Certain meals provided on the employer's premises could be fully deducted as "de minimis" fringe benefits.

Current NH Law

NH adopts the former federal convention for the deductibility of meal and entertainment expenses. Employers may deduct up to 50% of meal and entertainment expenses that are sufficiently business related. Certain meals provided on the employer's premises may be fully deducted as "de minimis" fringe benefits.

Tax Reform: Federal Treatment

Employers may no longer deduct 50% of entertainment expenses, even if business-related. Meal expenses continue to be deductible, up to 50%. Meals provided on the employer's premises are now also subject to this 50% limitation.

NH Impact: No Conformity

NH will continue to allow the more generous meal and entertainment expense deduction of 50% of meal and entertainment expenses that are business related and 100% of certain meals provided on the employer's premises.

NH Impact: Conformity

NH would adopt the more restrictive deductibility of meal and entertainment expenses contained in federal tax reform. Business related entertainment expenses would no longer be deductible and would now be subject to the 50% limitation. This could result in increased revenue in NH.

I. Domestic Production Activities Deduction

Pre-Tax Reform: Federal Treatment

A 9% deduction from income (with certain limitations tied to W-2 wages) was allowed for income attributable to a very broad class of production activities (mining, oil extraction, farming, construction, manufacturing, engineering, film production) taking place in the United States.

Current NH Law

NH does not allow the federal deduction for domestic production activities.

Tax Reform

The 9% deduction for domestic production activities is repealed.

NH Impact: No Conformity

NH already decouples from the federal deduction for domestic production activities.

NH Impact: Conformity

Conformity to the current version of the IRC will have no impact in NH because NH already decouples from the federal deduction for domestic production activities.

J. Deduction for Fines and Penalties

Pre-Tax Reform: Federal Treatment

The deduction of fines or penalties paid to a government for the violation of any law was prohibited.

Current NH Law

NH adopts the federal prohibition of the deduction of fines or penalties paid to a government for the violation of any law.

Tax Reform: Federal Treatment

The prohibition of the deduction of fines paid to a government for the violation of any law is expanded to prohibit the deduction of “any amount paid or incurred” in relation to the violation of any law or any investigation or inquiry into a potential violation, including amounts paid or incurred pursuant to a settlement agreement.

NH Impact: No Conformity

The prohibition on deduction will remain limited to fines or penalties paid to the government for the violation of any law.

NH Impact: Conformity

NH would adopt the more expansive prohibition of any deduction of costs related to the violation of any law or any investigation or inquiry into a potential violation. This could result in increased revenue in NH.

K. Sexual Harassment Settlements

Pre-Tax Reform: Federal Treatment

Settlement payments, including payments to settle sexual harassment or sexual abuse claims, were deductible as ordinary and necessary business expenses.

Current NH Law

NH adopts the federal deductibility of settlement payments, including payments to settle sexual harassment or sexual abuse claims, as ordinary and necessary business expenses.

Tax Reform: Federal Treatment

Settlement payments to settle sexual harassment or sexual abuse claims (including attorney’s fees) will no longer be deductible if such settlement or payment is subject to a nondisclosure agreement.

NH Impact: No Conformity

NH would continue to permit the deduction of payments to settle sexual harassment or sexual abuse claims as ordinary and necessary business expenses.

NH Impact: Conformity

NH would prohibit the deduction of payments to settle sexual harassment and sexual abuse claims if such settlement or payment is subject to a nondisclosure agreement. This could result in increased revenue to NH.

L. Lobbying Expenses

Pre-Tax Reform: Federal Treatment

Although lobbying expenses were not deductible to the extent attributable to activities before the federal government, lobbying expenses incurred to lobby a local governing body were deductible as an ordinary and necessary business expense.

Current NH Law

NH conforms to both the prohibition on deducting lobbying expenses incurred to lobby the federal government and the ability to deduct lobbying expenses incurred to lobby local governments.

Tax Reform: Federal Treatment

Local lobbying expenses will no longer be deductible.

NH Impact: No Conformity

NH will continue to allow the deduction of local lobbying expenses as an ordinary and necessary business expense.

NH Impact: Conformity

NH would adopt the prohibition on the deduction of local lobbying expenses. This could result in increased revenue in NH.

M. Rollover Of Publicly Traded Securities Gain Into Small Business Investment Companies

Pre-Tax Reform: Federal Treatment

Corporations or individuals could defer the recognition of gain from the sale of publicly traded securities if reinvested into “specialized small business investment companies” (SSBICs) licensed by the U.S. Small Business Administration.

Current NH Law

NH adopts the federal deferral of the recognition of gain from the sale of publicly traded securities if reinvested into SSBICs.

Tax Reform: Federal Treatment

The deferral of the recognition of gain from the sale of publicly traded securities if reinvested in SSBICs is repealed.

NH Impact: No Conformity

NH would continue to allow the deferral of the recognition of gain from the sale of publicly traded securities if reinvested into SSBICs. However, given the absence of a federal deferral of gain, it is unlikely that a meaningful number of these reinvestment transactions will take place going forward.

NH Impact: Conformity

NH would no longer allow the deferral of the recognition of gain from the sale of publicly traded securities if reinvested into SSBICs.

N. Deduction of FDIC Premiums

Pre-Tax Reform: Federal Treatment

FDIC premiums were generally 100% deductible as an ordinary and necessary business expense.

Current NH Law

NH adheres to the federal treatment of FDIC premiums and generally allows taxpayers to deduct 100% of FDIC premiums paid as an ordinary and necessary business expense.

Tax Reform: Federal Treatment

The deduction of FDIC premiums will be limited for certain large banks (total consolidated assets in excess of \$10 billion).

NH Impact: No Conformity

For NH purposes, taxpayers would continue to be generally permitted to deduct 100% of FDIC premiums paid as an ordinary and necessary business expense.

NH Impact: Conformity

If NH conforms to the most recent version of the IRC, the deduction of FDIC premiums would be limited for certain large banks. This could result in increased revenue to NH.

O. Deduction of Commission and Performance-Based Employee Wages

Pre-Tax Reform: Federal Treatment

Employee remuneration is generally deductible as an ordinary and necessary business expense. However, in the case of publicly held companies, employee remuneration in excess of \$1 million was not deductible unless it was commission or performance-based.

Current NH Law

Generally, NH adheres to the federal deductibility of employee remuneration. Employee remuneration is generally deductible as an ordinary and necessary business expense. However, employee remuneration in excess of \$1 million is not deductible by publicly held companies unless it is commission or performance-based.

Tax Reform: Federal Treatment

Employee remuneration in excess of \$1 million that would have previously been deductible as “commission” or “performance-based” will now no longer be deductible.

NH Impact: No Conformity

NH will continue to permit the deduction of employee remuneration in excess of \$1 million if it is commission or performance-based.

NH Impact: Conformity

NH would adopt the federal deductibility of employee remuneration, thereby limiting deductibility to the extent amounts paid exceed \$1 million regardless of the type of remuneration. This could result in increased revenues to NH.

P. Craft Beverage Provisions

Pre-Tax Reform: Federal Treatment

Interest costs associated with the production of beer, wine, and distilled spirits had to be capitalized over the duration of the production period, which included the aging process.

Current NH Law

NH adheres to the capitalization of interest costs associated with the production of beer, wine, and distilled spirits over the production period, including the aging process.

Tax Reform: Federal Treatment

Interest costs associated with the production of beer, wine, and distilled spirits will continue to be capitalized during the production period. However, for beer, wine, and distilled spirits, the aging process will be excluded from the production period, thereby shortening the time period over which production costs must be capitalized (accelerates deductions).

NH Impact: No Conformity

NH would continue to include the aging process in the production period for producers of beer, wine, and distilled spirits thereby requiring interest costs to be capitalized over a longer period that includes the aging process.

NH Impact: Conformity

NH would no longer include the aging process in the production period for producers of beer, wine, and distilled spirits, and therefore, the deduction of interest costs would be accelerated. This change is essentially a timing issue, with expense deductions being accelerated.

III. Partnership Specific Provisions

New Hampshire taxes partnerships and other disregarded entities differently than the federal government and most other states. Federally, a partnership is not subject to taxation. Instead, each item of partnership income or loss is passed through to each partner, reported on each partner's individual income tax return, and subject to the individual income tax rates. New Hampshire does not have an income tax and therefore, imposes the BPT at the partnership level. Because of this differential tax treatment, federal tax provisions relevant to partnerships and other disregarded entities have limited direct impact on the taxation of partnerships and disregarded entities in New Hampshire.

A. 20% Pass Through Deduction

Pre-Tax Reform: Federal Treatment

The income of a partnership or disregarded entity was not taxed federally. Instead, the partnership's or entity's income was passed through to the owners, reported on each owner's individual income tax return, and taxed at the individual income tax rates.

Current NH Law

Unlike at the federal level, NH taxes the income of a partnership or a disregarded at the entity level. Therefore, the federal taxation of pass through income has no impact in NH.

Tax Reform: Federal Treatment

The income of a partnership or a disregarded entity will continue to be passed through to the owners and reported on each owner's individual income tax return, and taxed at the individual income tax rates. However, to create parity with the now lower corporate income tax rates, up to 20% of certain qualified business income passed through to an owner's income tax return may be deducted from taxable income.

NH Impact: No Conformity

NH will continue to tax the income of a partnership or disregarded entity at the entity level. The 20% deduction of pass through income will not be applicable to the NH business tax return.

NH Impact: Conformity

NH would continue to tax the income of a partnership or disregarded entity at the entity level. The 20% deduction of pass through income would not be applicable to the entity's NH tax return. Conformity does not result in NH's recognition of the 20% deduction of pass through income because NH's starting point for the calculation of taxable income occurs prior to the 20% deduction.

B. Sale of Partnership Interest

Pre-Tax Reform: Federal Impact

Partnership income passed through to a foreign individual or entity was subject to U.S. taxation if that income was "effectively connected" to the conduct of a trade or business in the U.S.

Current NH Law

NH taxes partnerships at the entity level; therefore, NH captures all partnership income for partnerships conducting business in NH. When a partner sells a partnership interest in a NH partnership, the partnership can elect to make an addition to gross business profits in an amount equal to the net increase in the basis of the underlying assets federally. Alternatively, the partnership can forgo the depreciation or amortization associated with the federal basis "step-up" for NH purposes (See TIR 2016-007).

Tax Reform: Federal Impact

Gain or loss on the sale of a partnership interest will be deemed to be “effectively connected” to the conduct of a trade or business in the U.S. if the sale of the underlying partnership assets would have been considered “effectively connected” to the conduct of a U.S. trade or business.

NH Impact: No Conformity

NH will continue to tax partnerships at the entity level and capture all partnership income for partnerships conducting business in NH, including for the sale of a partnership interest in accordance with the partnership’s “step-up” election.

NH Impact: Conformity

Because of NH’s taxation of partnerships at the entity level, conformity to IRC provisions such as this, that impact the taxation of pass-through income at the partner level will not impact NH’s taxation of partnerships.

IV. Other Provisions

The TCJA contains a large number of very minor tweaks or highly technical and industry specific changes that in the DRA’s estimation will have no meaningful impact on the BPT if NH synchs to the IRC as it exists following enactment of the TCJA. Although the DRA has completed a thorough analysis of every provision contained within the TCJA, due to the low impact of a large number of those provisions and a desire to focus your attention on only those provisions most meaningful to taxpayers or the State, the DRA lists, but does not fully explain, the following federal IRC changes:

1. **Corporate Tax Rates:** The TJCA reduces the rate of taxation on corporate taxpayers from 35% to 21% effective January 1, 2018.
2. **Individual Income Tax:** The TJCA makes numerous changes to the individual income tax provisions that will have no impact on the BPT. Additionally, the DRA has examined the individual income tax provisions and confirmed that these federal changes will have no impact on the NH Interest & Dividends Tax. These federal changes include modification of the individual income tax brackets, capping the deduction for state and local taxes to \$10,000, limits the home mortgage interest deduction to the extent the indebtedness exceeds \$750,000, and limitation of the deductibility of moving expenses.
3. **Tax Treatment of Patents and Other Property:** Gain or loss from the sale of patents and other self-created property will be treated as ordinary income. Previously, these items were taxed at the capital gains rates.
4. **Business Credits:** A number of existing federal corporate tax credits are modified and new credits are created, including; limiting the “orphan drug credit,” modifying the historic building rehabilitation credit, and creating a 12.5% credit for of Family Medical Leave Act wages paid. These credits are taken on the federal return after Line 28.
5. **Excess Losses:** Limits the deduction of losses attributable to farming activities and passive activities. NH relies on its own NOL provisions.
6. **Excise Tax on Tax Exempt Organization Remuneration:** Would impose a 21% excise tax on employee remuneration in excess of \$1 million paid by a tax exempt organization.
7. **Partner Loss Limitations:** Charitable contributions and foreign taxes paid will be taken into consideration when calculating the partner’s loss limitation, thereby decreasing the

amount of loss that can be attributed to a partner. No impact in NH because NH taxes at the partnership level.

8. **Character of Partnership Interest:** Would require that a partner hold their interest in the partnership for 3 years for the asset to be considered a long-term capital asset. No impact in NH because NH taxes at the partnership level.
9. **Insurance Industry Provisions:** There are a large number of highly technical and low-impact tweaks to the federal taxation of the insurance industry. These changes will have little or no impact in NH because the overwhelming majority of NH's insurance industry taxpayers pay only the Insurance Premium Tax.
10. **Exempt Organizations:** Modifications to the calculation of unrelated business income (UBI) that would limit the ability to net UBI against losses from other activities. Imposition of a 1.4% excise tax on the investment income of private colleges and universities. Repeal of deduction for charitable contributions for charitable contributions if the charitable contribution comes with the ability to purchase event seating on a preferential basis.
11. **Foreign Tax Credits:** A number of foreign tax credit provisions are repealed or modified consistent with the overall transition to a new system of taxing foreign earnings. However, these modified tax credits are taken after NH picks up federally reported taxable income and therefore will have no impact in NH.
12. **IRS Levy Appeals:** Extends the timeframe for a taxpayer to appeal an IRS levy from 9 months to 2 years. No impact on DRA levies.
13. **Beverage Excise Tax:** A number of technical changes are made to the excise tax applicable to beer, wine, and distilled spirits.
14. **REITs and RICs:** Numerous changes to the taxation of Real Estate Investment Trusts and Real Estate Investment Companies including modification of the applicable tax rate, limiting the utilization of NOLs, and modifying the taxation of a REIT's foreign income. A number of other changes to the taxation of REITs are made consistent with the changes made with respect to the taxation of other corporate taxpayers federally.