

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

19-0117

HB 234, *establishing an exemption from business taxes for media production companies engaged in business in New Hampshire.*

House Ways & Means

The proposed legislation establishes a Business Profits Tax (BPT) and Business Enterprise Tax (BET) exemption for certain media production companies.

The media production company (MPC) exemption is for 100% of the BPT and/or BET liability that would be owed by the MPC. Business organizations shall file an election with the Department to be a MPC with respect to any taxable period at any time on or before the fifteenth day of the third month immediately following the end of such taxable period. Such an election shall be effective for the taxable period of the MPC for which it is made and for all succeeding taxable periods until such election is terminated (by revocation by the MPC or whenever the business organization ceases to satisfy the requirements for an MPC), or expires (for taxable periods beginning after December 31, 2025). No subsequent election may be made after the expiration of the election, with respect to either the business organization or the active media production business conducted by such business organization or any successor business organization.

Every business organization electing treatment as a MPC shall file a report with the Department for each taxable period setting forth the following: (a) the names, addresses, and federal taxpayer identification numbers of the holders of any equity interests in such MPC; (b) the name, address, and federal taxpayer identification number of the manager of such MPC; and (c) the amount of the income received and expenses incurred by the MPC for the tax period. The MPC may also elect to file a copy of its federal income tax return, as filed with the Internal Revenue Service. Any MPC which fails to timely file the report shall pay a penalty equal to \$100 for each day such report is not filed, unless an extension has been granted by the Commissioner. In no event shall the monetary fine exceed \$5,000.

The Department would be responsible for creating the necessary election and reporting forms and updating the electronic management systems related to this proposed legislation. However, this would not result in any additional administrative costs that could not be absorbed in the Department's operating budget.

The Department is unable to determine the fiscal impact for FY 2020 through FY 2027 because it has no way of knowing how many current and/or new taxpayers would utilize the proposed exemption program, or the future amount of BPT and/or BET that would be exempted.

Also, the Department is unable to predict any penalty revenue that might result from the proposed legislation.

Please note, section 2 of the proposed legislation defines “media production company,” including, in both proposed RSA 77-A:1, XXXI(b) and (c), the term “media production.” In other words, the term “media production” is separately defined in two provisions. It appears that the intent of proposed RSA 77-A:1, XXXI(c) was instead to define “active media production company.”

Also, the term “*qualified* media production company” is referenced in the proposed legislation, in sections 4 and 6, but is not defined. Specifically, deleting the word “qualified” may avoid confusion, because a “media production company” as defined in proposed RSA 77-A:1, XXXI is necessarily qualified.

The proposed legislation lists an effective date of July 1, 2019. However, there is no applicability date corresponding to a particular tax year. As a result, the proposed legislation would initially apply to only a portion of the tax year for calendar year taxpayers and some fiscal year taxpayers. Instead, the Department recommends an applicability date that impacts “taxable periods beginning after December 31,” consistent with the expiration in proposed RSA 77-A:5-d, II. Adopting this applicability date would ensure that the change impacts all taxpayers in the same way, in the same tax year.

Lastly, the proposed legislation may result in an impermissible classification of taxpayers given the limited class of activities that it applies to, and the various factors required to qualify for the exemption. “Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classification of taxpayers owning a common class of property.” Opinion of the Justices, 132 N.H. 777, 781 (1990). The proposed legislation should be reviewed by a constitutional lawyer.