New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

19-0971

SB 244, *relative to taxes applicable to certain real estate investment trusts.*

Senate Ways & Means

Sections 1 thru 3 of this proposed legislation provides that income received from interest and dividends by a publicly offered REIT is not taxable income under the Interest and Dividends (I&D) Tax. It also provides that income earned or distributions received by a holder of an ownership interest in a publicly offered REIT who is an inhabitant or resident of this state is taxable income, unless the publicly offered REIT invests solely in instruments exempt under New Hampshire law.

Sections 4 thru10 of this proposed legislation provides exemptions from the Business Profits Tax (BPT) and the Business Enterprise Tax (BET) for a publicly offered REIT. It requires an enterprise which otherwise meets the requirements to be a publicly offered REIT to also file an election and annual reports with the Department of Revenue Administration (DRA). (See Section D, Technical or Mechanical Defects). The proposed legislation also provides deductions to a holder of an ownership interest in a publicly offered REIT for distributions made to the holder by the publicly offered REIT. The holder shall make an addition to the enterprise value tax base (for BET purposes only) of an amount equal to the holder's proportional share of profits of the publicly offered REIT.

Sections 11 and12 of this proposed legislation provides that transfers of shares or direct participation ownership interests in a publicly offered REIT shall not be subject to the Real Estate Transfer Tax (RETT). It also amends RSA 78-B:2 to add an exception for transfers of ownership interests "relative to a transfer of a specific real property after payment of the tax for the acquisition of such real property."

The proposed legislation would take effect July 1, 2019.

The fiscal impact is indeterminable because the DRA does not currently capture data specifically with respect to publicly offered REITs. However, because the proposed legislation provides additional exemptions and deductions from various taxes, it would likely decrease revenues.

The DRA would like to note the proposed legislation does not have any applicability dates. The effective date of July 1, 2019 does not apply to any particular tax year for business taxes and the I&D Tax, and so would apply to taxpayers in different tax years. Sections 1-10 should instead apply to "taxable periods ending on or after December 31, 2020," to ensure that the changes impact all taxpayer in the same tax year. Section 11-12 on the RETT should also have an applicability date to avoid any confusion with respect to transfers occurring before the effective date but not recorded until afterwards. In addition, the applicability dates should allow the DRA sufficient time to (1) notify taxpayers; (2) revised affected forms; (3) update its information management systems; and (4) adopt rules.

Lastly, if a publicly offered REIT fails to file a delinquent report within 30 days after notification as required by proposed RSA 77-A:5-d, III, the proposed legislation does not explicitly provide for the DRA to disallow the public offered REIT tax-exempt status. (See RSA 77-A:5-b, III).