

A Technical Information Release is designed to provide immediate information of changes in tax laws administered by the Department for 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 (ie., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.)

Questions specific to this Technical Information Release should be directed to the New Hampshire Department of Revenue Administration, Audit Division, 45 Chenell Drive, Concord, NH 03301 or (603) 271-3400.

The purpose of this information release is to provide individuals, business organizations and tax advisors with guidance to meet their tax filing requirements. This release is for educational purposes only. If you have questions of a general nature, please write to our Documents Processing Division, P.O. Box 637, Concord, NH 03302-0637 or telephone (603) 271-2191.

Statutory Changes From 1998 Session Of The Legislature

I Changes Affecting Business Profits Tax

(a) Chapter 105 of the Laws of 1998 adopts the Internal Revenue Code in effect on December 31, 1997 for purposes of the business profits tax with the exception of the net operating loss deduction [NOL] provided under RSA 77-A:4. The NOL provision uses the Internal Revenue Code in effect on December 31, 1996. The NOL will continue to be determined in a manner consistent to prior years and will require a 3 year carry back period. The changes are effective for tax years beginning after January 1, 1997.

(b) Chapter 163 of the Laws of 1998 repeals the tax on qualified venture capital funds and also repeals the related definitions. The statute also expands the permitted activities of qualified investment companies to include activities that are consistent with their organizational purpose. A qualified investment company will now include a "qualified investment capital company" as that term is defined under RSA 77-A:1, XXIV.

The criteria for qualified investment capital company status are:

(1) The principal purposes of the entity are to provide:

a. Investment capital to companies through investments in equity or debt securities;
and

b. Management oversight and business advice to such companies as would be reasonably appropriate to protect the investment and encourage its success;

(2) 30% or more of the outstanding equity capital and profits must be owned by a least 1 person not related to the company's investment manager;

(3) Each investment manager is subject to tax under RSA 77-A and has a payroll apportionment factor that exceeds 50%; and

(4) The entity files an election with the Department on or before the 15th day of the third month of the taxable period for which it is to become effective.

The provisions of Chapter 163 apply to taxable periods ending after June 30, 1998.

(c) Chapter 338 of the Laws of 1998 re-establishes an investment tax credit under RSA 162-L:10 which can be applied against the business profits or business enterprise taxes. The provisions of this chapter do not become effective until July 1, 1999. The information relating to this chapter will be discussed in a later Technical Information Release .

II. Changes Affecting Interest and Dividend Tax [I&D]

Chapter 163 of the Laws of 1998 also affects the I&D tax [RSA 77]. The provision allows a taxpayer subject to the tax to deduct from taxable I&D income an amount equal to any cash distributions made to a qualified investment capital company. The statute also requires the recapture of a previously taken deduction to the extent of any distribution or return of capital received by the taxpayer within 3 taxable periods after the taxable period in which it was deducted.

As previously stated, the provisions of Chapter 163 apply to taxable periods ending after June 30, 1998.

III. Changes Affecting Real Estate Transfer Tax

(a) Chapter 91 of the Laws of 1998 require the filing of a real estate transfer questionnaire with the Department and the local assessor or selectmen where the property is located. The effective date of this provision is July 18, 1998.

(b) Chapter 238 of the Laws of 1998 provides an exemption from the real estate transfer tax [RSA 78-B] for conveyances of real property from a municipality when the property is repurchased by the former owner after the municipality's acquisition by tax deed. The effective date of the provision is June 25, 1998.