

# New Hampshire Department of Revenue Administration

## Fiscal Note Quick Guide

16-2461

**HB 1656-FN**, *relative to exceptions to the real estate transfer tax.*

Pursuant to RSA 78-B:1, I (a), the Real Estate Transfer Tax (RETT) is a tax imposed on every sale, granting, or transfer of real estate, or any interest therein, unless specifically exempted.

The New Hampshire Supreme Court has held to determine the taxability of a real estate transfer under the existing RETT statute, the existence of consideration must be determined.” See *First Berkshire Bus. Trust v. Comm’r, N.H. Dep’t of Revenue Admin.*, 161 N.H. 176, 180-181 (2010).

The proposed bill would exempt from the RETT certain real estate transfers from one entity to another entity if: (1) the transfer is coincidental to a change in the transferor’s form of organization; (2) the assets and liabilities of the transferor become the assets and liabilities of the transferee; and (3) the owner(s) of the transferor and the owner(s) of the transferee are the same with identical ownership percentages.

The creation of a new exemption to the RETT will result in a net decrease in revenues, however, it is possible that some number of real estate transactions made exempt by the proposed bill would have already been exempt based upon whether the transfer resulted in an exchange of consideration in accordance with the case law cited above.

It is also possible that some number of real estate transactions made exempt by the proposed bill would have already been exempt under N.H. Admin. Rules Rev. 800, including, but not limited to, Rev 803.04 governing single entity reorganizations and Rev 803.06 governing LLC conversions.

The DRA does not collect specific data on whether a real estate transaction is incidental to a change in an entity’s form of organization, and thus cannot determine how many previously taxable transfers would be made exempt by the proposed bill.

Pursuant to RSA 78-B:8, II, each register of deeds is paid 4% of the face value of the RETT stamps issued at the registry. As such, any decrease in RETT revenues corresponds to a decrease in county revenues.

The Department could administer this bill within its current operating budget.

This bill would take effect on July 1, 2016.