New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

15-0059

HB 569-FN-A, *including certain nonprofit charitable enterprises under the business enterprise tax and reducing the rate of the tax.*

House Ways & Means Committee

Under the current Business Enterprise Tax (BET) statute, to the extent a Section 501(c)(3) organization has any business activity constituting unrelated business activity as defined by Section 513 of the Internal Revenue Code (IRC), this activity would be subject to tax under the current thresholds of gross business receipts of $200,000 or an enterprise value tax base (EVTB) of $100,000.

This bill would make all nonprofit charitable organizations organized under Section 501(c)(3) of the IRC with gross business receipts in excess of $4,000,000 subject to BET; and would reduce the current BET rate from 0.75% to 0.68%.

Section 1 of the bill, "Purpose," states that the additional BET revenue generated from the taxation of nonprofit charitable organizations would be equal to the revenue lost from the reduction in the BET rate; thus, creating a "revenue neutral" result. Without complete data on the potential additional revenue, the Department of Revenue Administration cannot confirm whether a revenue neutral result would be achieved. The Department does not have any data to calculate the potential increase in revenue due to the interest and dividend elements of the EVTB that could be generated from any organization that would be subject to BET under this bill.

This bill would take effect July 1, 2015 and, therefore, the Plan amount for FY 2015 was used to estimate the impact of the reduction in the BET rate. This amount does not include any surplus statement adjustments; but, rather, is the revenue estimate contained in House Bill 1 (Chp. 143, Laws of 2013). To estimate the compensation element of the EVTB, the Department utilized wage data provided by the New Hampshire Department of Employment Security (DES). The amount of New Hampshire gross wages for all nonprofit organizations reporting wages to the State for calendar year 2013 totaled $3,951,986,531.

The estimated BET revenue for FY 2015 is $227,700,000 divided by 0.75%, results in a taxable base of $30,360,000,000. The taxable base of $30,360,000,000 multiplied by the new BET rate of 0.68% would result in revenue of $206,448,000, which is a reduction in revenue of $21,252,000.

In order for this bill to be revenue neutral, nonprofit charitable organizations meeting the threshold for gross business receipts would need to have a total taxable base of $3,125,294,118 ($21,252,000 divided by 0.68%).

If all of the wages reported by DES as being nonprofit gross wages ($3,951,986,531) is taxable under the BET, then it is possible that this bill would be revenue neutral or produce an increase in revenue. The Department, however, does not have data on the entire possible EVTB of these organizations, so an exact fiscal impact cannot be determined.

The Department notes that the bill would take effect on July 1, 2015. This date is most likely in the middle of many taxpayers' tax years. Therefore, Department would suggest language for an "applicability" section making this bill effective for taxable periods beginning on or after January 1, 2016.

The Department also notes that the bill imposes two different filing thresholds for the same tax; one for non-profit organizations and one for everyone else. As the proposed change to the statute appears to classify taxpayers as opposed to classifying property received, legal precedent indicates that a constitutional challenge could be made. "Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classifications of taxpayers owning a common class of property." Opinion of Justices, 132 N.H. 777 (1990) citing Opinion of Justices, 115 N.H. 306 (1975).

This bill requires the Department to update systems, rules and forms to reflect the additional entities subject to taxation and the reduction in the BET rate; however, this bill could be administered by the Department without any additional cost.