

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

15-0634

SB 211-FN, *relative to taxation of employee leasing companies under the business enterprise tax*

Senate Commerce Committee

Under existing New Hampshire Labor law, RSA Chp. 277-B, an employee leasing company and client company are deemed co-employers and divide employment responsibilities under RSA 277-B:9. More specifically, RSA 277-B:9, I (h) requires the employee leasing company to pay the Business Enterprise Tax (BET) imposed by RSA 77-E and include in its compensation portion of the base tax those wages paid to its leased employees. This bill would allow an employee leasing company and a client company to elect to make the client company solely responsible for paying the BET concerning its leased employees and be eligible for credits against such taxes.

The Department of Revenue Administration is unable to estimate the fiscal impact of this bill because the Department does not know what companies would make such an election and if those companies would be liable for BET and/or Business Profits Tax (BPT). The Department cannot predict the difference in business tax liabilities between the leasing company and the client company in order to determine the impact of switching the BET responsibility from the leasing company (which could have large BET liabilities, but not much BPT liability) to the client company (which could have minimal BET liabilities, but larger BPT liabilities). For example, a leasing company could have paid \$1,000 in BET and \$500 in BPT = \$1,500 in revenue and:

- An election is made to shift the BET liability to the client company, but the client company does not meet the BET threshold and has a BPT liability of \$1,000.
- An election is made to shift the BET liability to the client company and the client company pays \$500 in BET, but does not have a BPT liability to use a BET credit.
- An election is made to shift the BET liability to the client company and the client company pays \$1,000 in BET and has a \$1,000 BPT liability that is offset by the BET credit.

The Department notes that if the client company does not pay the BET on the wages paid to the employees on loan from a leasing company, then the leased employees should not “be deemed employees of the client company” as stated on page 2, section 2, new law RSA 277-B:17-a.

This bill would take effect on July 1, 2015 and the Department could administer this bill without incurring any additional costs that could not be absorbed in its budget.