

New Hampshire Department of Revenue Administration  
109 Pleasant Street, Concord, NH 03301

TECHNICAL INFORMATION RELEASE  
TIR 2013-010 Date December 9, 2013

A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or 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 (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Central Tax Services at (603) 230-5920.

**New Hampshire Education Tax Credit Update**

The New Hampshire Department of Revenue Administration (“Department”) issues this Technical Information Release (“TIR”) to provide updates and guidance regarding RSA 77-G, the Education Tax Credit.

**A. Measuring “eligible students” for purposes of RSA 77-G:2, I(b).**

Pursuant to RSA 77-G:2, I(b), in the Education Tax Credit’s first and second program years “a scholarship organization shall award a minimum of 70 percent of all scholarships to eligible students as defined in RSA 77-G:1, VIII(a)(1) and (2).” Additionally, RSA 77-G:5, II(g) requires the Department to review the annual report of each scholarship organization to ensure that, among other things, “the *number* of scholarships issued under RSA 77-G:1, VIII(a)(1) and (2) (i.e., the number of scholarships awarded to “eligible students”) meets the requirements of this Chapter.

The Department would like to make clear that compliance with RSA 77-G:2, I(b) is measured by the *number* of scholarships awarded to eligible students, not the total dollar value of scholarships awarded to eligible students.

As this was the first year of the new tax credit program, the Department will not deny scholarship organization applications for the 2014 program year in instances where the scholarship organization’s only issue of non-compliance relates to misinterpreting RSA 77-G:2, I(b).

**B. Allowable average value of scholarships for 2014 program year.**

RSA 77-G:2, I(b) provides that the average allowable value of scholarships be adjusted annually by the Department to reflect the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the “services less medical care services” special aggregate index, as published by the Bureau of Labor Statistics. The average change is calculated using the calendar year ending 12 months prior to the beginning of the program year. The change during the relevant time period was 1.65%. As a result, in order for a scholarship

organization to comply with RSA 77-G:2, I(b), the average value of all scholarships for the 2014 program year shall not exceed two thousand five hundred forty-one dollars (\$2,541).

**C. Publication of scholarship reports.**

On December 9, 2013, the Department will publish the “Scholarship Organization Report” (Form ED-05) submitted by each scholarship organization on the Department’s website. Pursuant to RSA 77-G:1, XIX, The “Scholarship Organization Report” is a public record not subject to the non-disclosure and confidentiality provisions contained within RSA 21-J:14.

**D. 2014 form changes.**

There will be limited changes to the Department’s Education Tax Credit Forms for the 2014 program year. Substantive changes to the forms are as follows:

- Form ED-02 “Education Tax Credit Application” – Due to the increase in total allowable donations going from four million dollars (\$4,000,000) to six million dollars (\$6,000,000), the maximum donation allowed by any one entity is increased to six hundred thousand dollars (\$600,000) pursuant to RSA 77-G:5, II(b).
- Form ED-04 “Education Tax Credit Scholarship Receipt” – Line 10, Donation Amount Carried forward becomes an optional field in the second program year.
- Form ED-05 “Scholarship Organization Report” – In Step 2, Line 7, Scholarship Organizations will now be asked to provide the total dollar value of all scholarships provided to students being homeschooled as well as for each private school where students were provided scholarships.

Updated versions of the Education Tax Credit forms will soon be available on the Department’s website.

**E. Pending litigation.**

On June 17, 2013, the Strafford County Superior Court issued a decision on the constitutionality of the Education Tax Credit, RSA 77-G. That decision prohibits the issuance of ‘scholarships, as well as any associated tax credits...covering education expenses of “schools or institutions of any religious sect or denomination.”’ An appeal by all parties is pending before the New Hampshire Supreme Court as Case No. 2013-0455. Oral argument has not yet been scheduled.

***Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301 or by contacting them at (603) 230-5000.***