

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

**TECHNICAL INFORMATION RELEASE
TIR 2021-001 Date: January 20, 2021**

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 Taxpayer Services at (603) 230-5920.

New Hampshire Taxability of COVID-19 Financial Relief

The purpose of this Technical Information Release (“TIR”) is to provide taxpayers and practitioners with information about the taxability of certain COVID-19 financial relief programs under the Business Profits Tax (“BPT”) and Business Enterprise Tax (“BET”).

The New Hampshire BPT uses federally reported income as a starting point for purposes of calculating a taxpayer’s BPT liability. RSA 77-A:1, XX provides which version of the Internal Revenue Code (IRC) a taxpayer should reference to properly determine federally reported income for BPT purposes in each tax year. For taxable periods beginning on or after January 1, 2020 taxpayers should utilize the IRC in effect on December 31, 2018. Because the BPT references the IRC in effect on December 31, 2018, the New Hampshire tax treatment of certain COVID-19 financial relief programs will vary from the federal treatment of those same programs.

State-Level Programs

All state-level relief distributed to taxpayers required to file a BPT return – from the State of New Hampshire’s portion of the federal CARES Act funds – should be included as income for BPT purposes. However, any state-level relief taking the form of a loan should not be included as income for BPT purposes, unless that loan is forgiven or otherwise discharged. To determine whether and how to include forgiven or discharged loans in taxable income for BPT purposes, taxpayers shall utilize all applicable provisions of the IRC (including §§ 61(a)(11) and 108) of the applicable version of the code pursuant to RSA 77-A:1, XX.

Taxpayers may continue to take deductions for deductible expenses of operating their business, even when those expenses are paid for with state-level relief. Taxpayers should refer to the applicable version of the IRC and BPT statute to determine which business expenses are deductible. Expenses that are generally deductible include employee wages, business rental expenses, depreciation, and other “ordinary and necessary” expenses paid or incurred in carrying on any trade or business (See IRC § 162 and RSA 77-A:4). Expenses that are generally not deductible include distributions made to owners or shareholders, the payment of personal expenses of owners, or certain disallowed entertainment and meal expenses.

Additionally, any state-level relief received by taxpayers required to file a BET return that is utilized to pay wages or other compensation to employees, interest, or dividends shall be included in the enterprise value tax base of the business and subject to the BET.

A list of all state-level programs can be found on the State of New Hampshire Governor's Office for Emergency Relief and Recovery (GOFERR) website: www.goferr.nh.gov/covid-expenditures.

Federal-Level Programs

All federal-level COVID-19 relief distributed to taxpayers required to file a BPT return should be included as income for BPT purposes. However, any federal-level relief taking the form of a loan should not be included as income for BPT purposes, unless that loan is forgiven or otherwise discharged. To determine whether and how to include forgiven or discharged loans in taxable income for BPT purposes, taxpayers shall utilize all applicable provisions of the IRC (including §§ 61(a)(11) and 108) of the applicable version of the code pursuant to RSA 77-A:1, XX. Similar to the treatment of state-level relief, taxpayers are permitted a deduction for the expenses of operating a business, even if paid for with federal-level relief in accordance with the applicable version of the IRC and BPT statute.

Additionally, any federal-level relief received by taxpayers required to file a BET return that is utilized to pay wages or other compensation to employees, interest, or dividends shall be included in the enterprise value tax base of the business and subject to the BET.

In some instances, the federal tax treatment of federal-level relief will be different from the state-level tax treatment of those same funds. The reason for this difference is that both the federal CARES Act and the Coronavirus Response and Relief Supplemental Appropriations Act contained specific provisions governing the federal tax treatment of federal-level COVID-19 financial relief programs. Because the BPT statute references a version of the IRC in existence prior to the CARES Act and the Coronavirus Response and Relief Supplemental Appropriations Act, the BPT does not recognize the federal tax treatment of federal-level COVID-19 relief contained within those laws. In instances where the federal tax treatment of a state or federal COVID-19 relief program differs from the state tax treatment, taxpayers are required to appropriately adjust their income utilizing form Schedule IV of the BPT return.

For example, federal Paycheck Protection Program (PPP) loans that are ultimately forgiven in accordance with the terms of that program may not be taxable federally but should be included as income for BPT purposes pursuant to IRC § 61(a)(11), subject to the exclusions in IRC § 108. Therefore, taxpayers will be required to include forgiven PPP loans in taxable income for purposes of calculating their BPT liability by making an addition on form Schedule IV of the BPT return. The Schedule IV specifically identifies several areas where taxpayers may need to make adjustments to their taxable income for BPT purposes to account for the different state and federal tax treatment of COVID-19 relief. The Schedule IV is not an all-inclusive list of the possible required adjustments and taxpayers may need to list other additions or deductions to properly report taxable income under the BPT.

Information about federal COVID-19 tax relief for businesses, including information regarding the federal taxability of federal and state-level COVID-19 benefits, is available through the IRS: <http://www.irs.gov/coronavirus/coronavirus-tax-relief-for-businesses-and-tax-exempt-entities>

Questions regarding the New Hampshire taxability of state and federal COVID-19 relief programs should be directed to Taxpayer Services at (603) 230-5920.

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.