HB 1541-FN - AS INTRODUCED

2022 SESSION

22-2720
05/10

HOUSE BILL ***1541-FN***

AN ACT establishing a deferral from the business profits tax and the business enterprise tax for qualified limited liability startups.

SPONSORS: Rep. Abramson, Rock. 37

COMMITTEE: Ways and Means

ANALYSIS

This bill establishes a 5-year deferral from the business profits tax and the business enterprise tax for qualifying limited liability startups. The bill also establishes a committee to study the formation and structure of limited liability companies in New Hampshire.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing a deferral from the business profits tax and the business enterprise tax for qualified limited liability startups.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Business Profits Tax; Qualified LLC Startups; Tax Deferral. Amend RSA 77-A by inserting after section 5-c the following new section:

77-A:5-d Tax Deferral; Election and Reporting for Qualified LLC Startups.

I. In this section, a "qualified LLC startup" means a limited liability company that was formed to develop a service or innovative product and bring it to market, with a payroll of no more than $100,000 per year for employees as defined in RSA 275:42, II.

II. A business organization that meets the definition of a qualified LLC startup in paragraph I shall be granted a tax deferral for any tax due under this chapter for a period of 5 years from the date of election. During the period of deferment, the qualified LLC startup shall remain responsible for the annual payment of interest.

III. Business organizations shall file an election with the commissioner to be a qualified LLC startup with respect to any taxable period on a form prescribed by the commissioner at any time on or before the fifteenth day of the third month immediately following the end of such taxable period. Such an election shall be effective for the taxable period of the qualified LLC startup for which it is made and for all succeeding taxable periods until such election is terminated as provided in this section. No filing fee shall be required to establish the qualified LLC startup.

IV. The election to be a qualified LLC startup shall expire 5 years from the date of election. No subsequent election may be made after the expiration, with respect to either the business organization or any successor business organization.

V. Every business organization electing treatment as a qualified LLC startup shall, with respect to each taxable period, file a report, in accordance with such rules or forms as the commissioner may prescribe. No filing fee shall be required in conjunction with the report. The report shall set forth the following:

(a) The names, addresses, and federal taxpayer identification numbers of the holders of any equity interests in such qualified LLC startup.

(b) The name, address, and federal taxpayer identification number of the manager of such qualified LLC startup.

(c) The amount of the income received and expenses incurred by the qualified LLC startup for the tax period.

(d) Notwithstanding any other provision of this section, a qualified LLC startup shall be deemed to have satisfied the reporting requirements of this section if it files with the commissioner a copy of its federal income tax return, as filed with the Internal Revenue Service.

VI. The election provided for in paragraph III may be terminated as follows:

(a) By revoking said election by consent of the majority of the members, partners, or shareholders of the qualified LLC startup, or by determination of the manager of the qualified LLC startup. Such revocation must be filed with the department on or before the fifteenth day of the third month of the taxable period to be effective for such period. Any revocation filed after the fifteenth day of the third month of the taxable period shall be effective for the following tax period; or

(b) Whenever the company ceases to satisfy the requirements for qualification as a qualified LLC startup as provided in paragraph I.

2 New Section; Business Enterprise Tax; Election of Qualified LLC Startup Status; Tax Deferral. Amend RSA 77-E by inserting after section 5-a the following new section:

77-E:5-b Election of Qualified LLC Startup Status; Tax Deferral. Business organizations that have elected qualified LLC startup status pursuant to RSA 77-A:5-d shall be qualified LLC startups for the purposes of this chapter for the tax period or periods corresponding to the election. No filing fee shall be required to register as a qualified LLC startup under this chapter. As a qualified LLC startup, the business organization shall be granted a tax deferral for any tax due under this chapter for a period of 5 years from the date of election. During the period of deferment, the qualified LLC startup shall remain responsible for the annual payment of interest. A qualified LLC startup that meets the election and reporting requirements of RSA 77-A:5-d shall be deemed to have met any election and reporting requirements under this chapter.

3 Committee Established. There is established a committee to study the formation of limited liability companies.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall study the procedure for formation of limited liability companies in New Hampshire and ways in which the process can be simplified or modified to support business startups in New Hampshire.

IV. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

V. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2022.

4 Effective Date.

I. Section 3 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

LBA
22-2720
Redraft 12/8/21

HB 1541-FN- FISCAL NOTE
AS INTRODUCED

AN ACT establishing a deferral from the business profits tax and the business enterprise tax for qualified limited liability startups.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Appropriation	$0	$0	$0	$0
Revenue	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	$0	$0	$0	$0
Funding Source:	[X] General	[X] Education	[ ] Highway	[ ] Other

METHODOLOGY:

This bill creates a five year Business Profits Tax (BPT) and Business Enterprise Tax (BET) deferral for qualified LLC startups that make an election to utilize the tax deferral. A qualified LLC startup is a limited liability company formed to develop a service or innovative product and bring it to market, with a payroll of no more than $100,000 per year for employees. A qualified LLC startup that makes a tax deferral election:

- can defer the payment of taxes for up to five years, but must pay interest on such deferral.
- must file an annual report with the Department of Revenue Administration reporting information regarding the qualified LLC startup's equity interest holders, managers, and income and expenses. A copy of the qualified LLC startup's federal return is deemed to satisfy this filing requirement.
- can terminate the election by filing a revocation with the Department after a majority vote of the members, partners shareholders, etc. or whenever the qualified LLC startup ceases to meet the qualifications for the election.

The Department anticipates the proposed legislation would initially result in an indeterminable decrease in BPT and BET revenue beginning in FY 2023 for taxpayers making such election. The Department does not have sufficient data to determine how many existing or future BPT and BET taxpayers would be eligible to take such election and therefore cannot estimate the exact fiscal impact.

Ultimately, for many electing qualified LLC startups, the proposed legislation would only effectuate the deferral of their tax liability for up to five years, with the total tax liability plus interest being due after the five year deferral expires. In theory the tax deferral provided by the proposed legislation could be characterized as only a timing provision because the tax is simply being deferred to a later year (with the addition of interest that might not otherwise be paid). However, in some instances, those businesses making the qualified LLC startup election will cease operation with inadequate resources to pay their deferred tax obligation and therefore the proposed legislation could still ultimately result in lost revenue.

The Department would need to update all necessary tax forms and electronic management systems related to the changes contained in this bill, however it is not anticipated this bill would result in any additional administrative costs that could not be absorbed in the Department's operating budget.

AGENCIES CONTACTED:

Department of Revenue Administration