HB 1492-FN - AS INTRODUCED

2024 SESSION

24-2762
02/05

HOUSE BILL ***1492-FN***

AN ACT relative to the rate and exemptions of the interest and dividends tax.

SPONSORS: Rep. Almy, Graf. 17; Rep. Wallner, Merr. 19

COMMITTEE: Ways and Means

ANALYSIS

This bill reimplements the interest and dividends tax.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

24-2762
02/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to the rate and exemptions of the interest and dividends tax.

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

1 New Chapter; Interest and Dividends Tax. Amend RSA by inserting after chapter 77-G the following new chapter:

CHAPTER 77-H

INTEREST AND DIVIDENDS TAX

77-H:1 Rate. The annual tax upon interest and dividend incomes shall be levied at the rate of 5 percent for all taxable periods beginning on or after January 1, 2025.

77-H:2 Conformity to Laws. It is the intention of this chapter, and it shall be construed, anything contained herein to the contrary notwithstanding, not to impose any tax upon any income in violation of the Constitution of the United States or in violation of any constitutional federal laws, or in violation of the constitution of this state.

77-H:3 Definitions.

I. "Commissioner" means the commissioner of the department of revenue administration.

II. "Department" means the New Hampshire department of revenue administration.

III. "Distribution" means a transfer of property from an organization to its shareholders or interest-holders solely as a result of their ownership interest in such organization.

IV. "Dividend" means an amount of property distributed, with respect to their ownership interest, other than in liquidation of the organization, to shareholders or interest-holders of an organization from current year profit or accumulated profits of such entity. "Dividend" shall include the term "distribution". Excess compensation determined by audit of the department shall not be considered a dividend under this chapter unless such determination is accepted by the Internal Revenue Service.

V. "Interest" means the amount of money or other property actually or constructively received as compensation for the use of money measured at the fair market value of the property received.

VI. "Limited liability company" for purposes of this chapter means a limited liability company formed under RSA 304-C or a foreign limited liability company as defined in RSA 304-C:9.

VII. "Taxable period" means the calendar year or fiscal year which the taxpayer uses for United States income tax purposes, or that part of a year for which a return is made.

VIII. "Qualified investment company" means "qualified investment company" as defined in RSA 77-A:1, XXI.

IX. "Taxpayer" means any individual, partnership, limited liability company, association, or other person required by this chapter to file a return or pay a tax on interest and dividends income.

77-H:4 Imposition of Tax. Taxable income is interest and dividends income derived, during the taxable period prior to the assessment date, by:

I. Individuals who are inhabitants or residents of this state, within the meaning of RSA 21:6 and RSA 21:6-a, for any part of the taxable period whose gross interest and dividend income from all sources, including income from a qualified investment company pursuant to RSA 77-H:5, V, exceeds $7,500 during that taxable period.

II. Partnerships, limited liability companies, and associations, the beneficial interest in which is not represented by transferable shares, whose gross interest and dividend income from all sources exceeds $7,500 during the taxable period, but not including a qualified investment company as defined in RSA 77-A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

III. Executors deriving their appointment from a court of this state whose gross interest and dividend income from all sources exceeds $7,500 during the taxable period.

IV. No person shall be subject to tax under this chapter solely due to its holding an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI.

V. For taxable years beginning January 1, 2027, the commissioner shall biennially adjust the threshold amounts in this section rounding to the nearest $500 based on the 2-year (24-month) percentage change in the Consumer Price Index for All Urban Consumers, Northeast Region as published by the Bureau of Labor Statistics, United States Department of Labor using the amount published for the month of June in the year prior to the start of the tax year.

77-H:4-a Partnerships and Limited Liability Companies. The following shall apply to associations, but not to partnerships, limited liability companies, and associations the beneficial interest in which is represented by transferable shares:

I. Partnerships and limited liability companies having a usual place of business in this state, any member of which is an inhabitant thereof, shall be subject to taxes imposed by this chapter. If any of the members of the partnership or limited liability company are not inhabitants of this state only so much of the income thereof as is proportionate to the aggregate interest of the partners or members who are inhabitants of this state in the profits of the partnership or limited liability company shall be taxed.

II. The tax shall be assessed on such a partnership or limited liability company by the name under which it does business, and the partners or members shall not be taxed with respect to the taxable income derived by them from such a partnership or limited liability company.

III. An inhabitant of this state who is a member of a partnership or limited liability company having no usual place of business in this state, who receives income from such partnership or limited liability company derived from such a source that it would be taxable if received directly

from such source by such partner or member, shall as to such income be subject to the taxes imposed by this chapter.

77-H:5 What Taxable. Income of the following described classes is taxable:

I. Interest from bonds, notes, money at interest, and from all debts due the person to be taxed, except interest from notes or bonds of this state and notes or bonds of any political subdivision of this state.

II. Dividends, other than stock dividends paid in new stock of the company issuing the same, on shares in all corporations and joint stock companies organized under the laws of any state, territory, or nation.

III. Dividends, other than stock dividends paid in new stock of the partnership, limited liability company, or association issuing the same, on shares in partnerships, limited liability companies, or associations the beneficial interest in which is represented by transferable shares.

IV. Dividends, other than that portion of a dividend declared by corporations to be a return of capital and considered by the federal internal revenue service to be such, the exemption of which is permitted by RSA 77-H:6, VII.

V. Amounts reported and taxed federally as dividends or interest to a holder of an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI, a mutual fund, or a unit investment trust.

77-H:6 Income Not Taxable. Income of the following described classes is not taxable:

I. Interest and dividend income received by an employee benefit plan as defined by the Employee Retirement Income Security Act of 1974, section 3, or any successor act enacted for the purpose of regulating employee benefit plans, or an individual retirement arrangement, Keogh plan or any other arrangement pursuant to which payment of federal tax on the income thereof and of the plan sponsors, participants and beneficiaries is deferred, shall at no time be considered taxable income under this chapter, either to the plan or arrangement or to its sponsors, participants or beneficiaries, irrespective of when or whether all or any portion of such income is accumulated or expended for the benefit of, or distributed in any form or manner to, such sponsors, participants or beneficiaries.

II. Any amount received from the sale, exchange or transfer of either a share of corporate stock or any other transferable share under this chapter, whether by way of liquidation, redemption or otherwise, and irrespective of the identity of the parties to the sale, exchange or transfer.

III. Amounts accruing to the holder of an ownership interest in a qualified investment company, as defined in RSA 77-A:1, XXI, or a mutual fund or investment income earned or distributions received by the holder of an ownership interest in a unit investment trust, which qualified investment company, mutual fund, or unit investment trust invests solely in New Hampshire tax-exempt tax anticipation notes, bond anticipation notes, and other instruments exempt under New Hampshire law.

IV. Amounts reported and taxed federally as capital gains to the holder of an ownership interest in a qualified investment company, as defined in RSA 77-A:1, XXI, a mutual fund, or a unit investment trust.

V. Income and distributions from any qualified tuition program as defined in the Internal Revenue Code of 1986, as amended, shall not be taxable under this chapter to the plan or to its sponsors, participants, or beneficiaries to the extent that the same is exempt from federal income taxation under section 529 of the Internal Revenue Code of 1986, as amended, as that section was in effect on July 1, 2003.

VI. Income and distributions from any Achieving a Better Life Experience (ABLE) plan as defined in the Internal Revenue Code of 1986, as amended, shall not be taxable under this chapter to the plan or its sponsors, participants, or beneficiaries to the extent that the same is exempted from federal income taxation under section 529A of the Internal Revenue Code of 1986, as amended.

VII. No distribution of capital, whether in liquidation or otherwise, shall be taxable as income, but accumulated profits shall not be regarded as capital.

VIII. No tax shall be levied directly or indirectly under this chapter upon any income otherwise taxable hereunder, which is received and used by any educational, religious, or charitable organization incorporated or organized in this state, for the purposes for which it is established; provided, that none of the income or profits of such organizations is divided among its stockholders or members or is used for purposes other than those for which it is established, or which is received by any trustee for the use of the state or any of its political subdivisions, or for the use of such organization for such purposes.

77-H:7 Exemptions.

I. Each taxpayer shall have the following exemptions:

(a) Income of $7,500.

(b) An additional one-half of the exemption provided for in RSA 77-H:7, I(a) for each taxpayer or spouse who is 65 years of age or older on the last day of the tax year.

(c) An additional one-half of the exemption provided for in RSA 77-H:7, I(a) for each taxpayer or spouse who is blind.

(d) An additional one-half of the exemption provided for in RSA 77-H:7, I(a) for each taxpayer or spouse who is disabled, unable to work, and have not yet reached their sixty-fifth birthday.

(e) For taxable year beginning January 1, 2027, the commissioner shall biennially adjust the threshold amounts in this section rounding to the nearest $500 based on the 2-year (24-month) percentage change in the Consumer Price Index for All Urban Consumers, Northeast Region as published by the Bureau of Labor Statistics, United States Department of Labor using the amount published for the month of June in the year prior to the start of the tax year.

II. A married taxpayer may claim the exemptions provided in this section for both self and spouse, regardless of the ownership of the income from interest or dividends, provided that both spouses file a joint return.

77-H:8 Income From Pledged Property. For the purposes of this chapter, any securities or property of the classes designated herein producing taxable income, held in pledge, or on margin, or otherwise as security for a debt of the owner, whether standing in the name of the owner or of any other person, shall be deemed the property of the owner, and the income arising therefrom shall be included in his total taxable income.

77-H:9 Decedents' Estates. The estates of deceased persons who were residents or inhabitants in this state at the time of death shall be subject to the taxes imposed by this chapter upon all taxable income received by such persons during their lifetime, which has not already been taxed. The income received by such estates during administration shall be taxable to the estate, except such proportion thereof as equals the proportion of the estate to be distributed to non-taxable persons or organizations. The commissioner of revenue administration and executors and administrators of estates may effect a settlement by compromise of any question of doubt or dispute arising under this section.

77-H:10 Income From Trusts and Foundations. Interest and dividend income received by trusts and foundations treated as grantor trusts under section 671 of the United States Internal Revenue Code of 1986, as amended, shall be included in the return of their grantor, to the extent that the grantor is an inhabitant or resident of this state. Income reported by, and taxed federally as interest or dividends to, a trust or foundation beneficiary who is an individual inhabitant or resident of this state with respect to distributions from a trust or foundation that is not treated as a grantor trust under section 671 of the United States Internal Revenue Code of 1986, as amended, shall be included as interest or dividends in the return of such beneficiary and subject to taxation in accordance with the provisions of this chapter.

77-H:11 Accumulations. Income accumulated in an employee benefit plan, as defined by the Employment Retirement Income Security Act of 1974, section 3, 29 United States Code § 1002(3), as amended, or in a trust comprising a part of such a plan, shall not be subject to taxation under RSA 77-H:1.

77-H:12 Guardians, etc. RSA 77-H:9 through RSA 77-H:11 shall apply to guardians, conservators, trustees in bankruptcy, receivers, and assignees for the benefit of creditors.

77-H:13 Part Year Inhabitant or Resident.

I. A taxpayer who is an inhabitant or resident in this state for less than a full taxable period shall only be liable for the tax upon that portion of income derived when they were an inhabitant or resident of this state.

II. Residency in this state shall be determined to the exclusion of residency in all other states or jurisdictions.

III. To determine the extent of a taxpayer's residency in this state, the commissioner may consider factors including but not limited to, the extent to which a taxpayer:

(a) Maintained a home or other living quarters in this state;

(b) Spent a greater percentage of time in this state than in any other state;

(c) Had family residing with them in this state;

(d) Advised any federal, state, or local agency that the individual considers herself or himself a resident of this state;

(e) Was employed or conducting business activity within this state or at a place to which the individual can readily commute virtually or in person from this state; or

(f) Registered to vote in this state.

IV. The commissioner may rely upon one or more of such factors in determining whether the taxpayer is a resident or inhabitant and shall ascribe such weight to the factors as the commissioner may reasonably determine based upon the facts and circumstances in a given case.

77-H:14 Returns and Declarations.

I. Every taxpayer shall, on or before the fifteenth day of the fourth month following the expiration of the taxable period, make a return to the commissioner. The commissioner shall adopt rules pursuant to RSA 541-A relative to the prescribed form for filing returns under this section and for filing joint returns under this chapter. Returns required by this chapter shall be signed by the taxpayer, and spouse if applicable, and by their authorized representative, subject to the pains and penalties of perjury provided in RSA 21-J:39. By signing a return, a taxpayer shall certify that they are a resident or inhabitant of this state for the taxable period or that portion of that taxable period in which they are a resident or inhabitant.

II. At the same time the return is filed, as required by paragraph I, every taxpayer as defined in RSA 77-H:3 shall, in addition, file a declaration of their estimated tax for its subsequent taxable period; provided, however, that if the estimated tax is less than $500, a declaration need not be filed; and provided further that a declaration shall be filed at the end of any quarter thereafter in which the annualized estimated tax exceeds $500.

III.(a) One quarter of the taxpayer's estimated tax for the subsequent taxable period is due and payable on the fifteenth day of the fourth month of the subsequent taxable year; 1/4 is due and payable on the fifteenth day of the sixth month of the subsequent taxable year; 1/4 is due and payable on the fifteenth day of the ninth month of the subsequent taxable year; and 1/4 is due and payable on the fifteenth day of the twelfth month of the subsequent taxable year, unless the taxpayer is a calendar year taxpayer in which case the final 1/4 is due and payable on the fifteenth day of the January next following the tax year.

(b) If the return required by this section shows an additional amount to be due, such additional amount is due and payable on the original statutory due date. If such return shows an

overpayment of the tax due, the commissioner shall refund or credit the overpayment to the taxpayer in accordance with RSA 21-J:28-a.

IV. Notwithstanding the provisions of paragraphs I-III, the following individuals shall not be required to file a return and shall not be considered to have gross or net taxable income for the purposes of this chapter:

(a) Every taxpayer whose total interest and dividend income is less than $7,500 for a taxable period.

(b) Joint filers whose total interest and dividend income is less than $15,000 for a taxable period.

(c) For taxable years beginning January 1, 2027, the commissioner shall biennially adjust the threshold amounts in subparagraphs (a) and (b), rounding to the nearest $500, based on the 2-year (24-month) percentage change in the Consumer Price Index for All Urban Consumers, Northeast Region as published by the Bureau of Labor Statistics, United States Department of Labor, using the amount published for the month of June in the year prior to the start of the tax year.

V. A taxpayer may elect to credit all or a portion of the education tax credit computed under RSA 77-G:4 against the tax due and payable under this chapter.

VI. Every small business corporation within this state, the stockholders of which have elected, or elect, to report their share of the corporation's taxable income upon their individual federal income tax returns, pursuant to federal tax laws and regulations, shall annually on or before May 1, file a list of the names and addresses of all stockholders during the preceding year together with the amount of dividends paid to each with the department of revenue administration. Provided, however, the information report shall not be filed in any year that no such dividends are paid and provided further that stockholders not legally residents in the state of New Hampshire shall not be listed.

VII. Taxpayers who file a federal income tax return on a fiscal year basis shall file the return required by this chapter on the same fiscal year, paying the tax due on the fifteenth day of the fourth month following the end of said fiscal year. Taxpayers who elect for federal tax purposes to change their tax year shall have an exemption allowed under RSA 77-H:7 in the same proportion as their tax year bears to the calendar year.

VIII. For good cause, the commissioner may extend the time within which a taxpayer is required to file a return, and if such return is filed during the period of extension no penalty may be imposed for failure to file the return at the time required by this chapter, but the taxpayer shall be liable for interest and late payment charges as prescribed in RSA 21-J:28, 21-J:32, or 21-J:33. Failure to file the return within the period of extension shall void the extension.

77-H:15 Interest. Any taxpayer who fails to make payment with a return when due shall be subject to interest computed as prescribed in RSA 21-J:28.

77-H:16 To Whom Payable. All taxes assessed hereunder shall be paid to the commissioner and made payable to the state of New Hampshire.

77-H:17 Reassessment by Department of Revenue Administration. The department of revenue administration shall reassess the amount of the tax in cases in which it appears in the examination of the returns that the amount paid is either higher or lower than the actual tax due. The department shall notify the taxpayer of any corrections made. If the department of revenue administration determines a deficiency, the amount of said deficiency and interest as prescribed in RSA 21-J:28 shall be forwarded by the taxpayer to the department of revenue administration. If the reassessment results in a determination of overpayment, the amount of the excess shall be repaid to the taxpayer in the manner provided by RSA 21-J:28-a. All assessments made under this section shall be subject to the same right of appeal as provided in RSA 21-J:28-b, and nothing contained in this section shall be construed to limit the power of the commissioner to make a later assessment under RSA 21-J:29 and to seek penalties for fraudulent returns as provided by RSA 77-H:19.

77-H:18 Corrections. Each taxpayer shall report to the commissioner any change in the amount of the taxpayer's income as provided in RSA 77-H:5 as finally determined by the United States Internal Revenue Service with respect to any beneficial interest for which the taxpayer has made a return under this chapter. Such a report shall be made not later than 6 months after the taxpayer has received notice that such change has been finally determined. Notwithstanding any other provision of law, a taxpayer reporting a correction pursuant to this section shall be given notice by the department of any adjustment to the tax due with respect to such correction within 6 months after the filing of the report.

77-H:19 Penalty; Fraudulent or Incorrect Return. For purposes of the application of RSA 21-J:31 to this chapter, if a return is not filed when due and the failure to file a return when due is not a violation of any provision of RSA 21-J:39, then neither the $10 nor the $50 alternate penalties of RSA 21-J:31 shall apply to the return.

77-H:20 Administration.

I. The commissioner shall collect the taxes, interest, additions to tax and penalties imposed under this chapter. The commissioner shall determine the expense of administration of this chapter and shall certify and pay over to the state treasurer the amount of remaining balance of the funds collected under this chapter after the expenses of administration have been deducted.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the interest and dividends tax;

(b) The form of the return and the data it must contain for the correct computation of the interest and dividends tax;

(c) The recovery of any tax, interest on tax, or penalties imposed by this chapter or by RSA 21-J; and

(d) The implementation, interpretation, or specific application of any part of this chapter to particular taxpayers.

III. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax or the penalties imposed by this chapter.

IV. In the collection of the tax imposed by this chapter, the commissioner may exercise the power of distraint pursuant to RSA 21-J:28-c and RSA 21-J:28-d. Any lien imposed by the commissioner shall have priority over all other liens and encumbrances except for prior recorded first and second mortgages.

77-H:21 Taxpayer Records.

I. Every taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of its liability under this chapter.

(b) Preserve such records for the period of 3 years or until any litigation or prosecution under this chapter is finally determined.

(c) Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times.

II. Whoever violates the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

2 Effective Date. This act shall take effect July 1, 2024.

LBA
24-2762
Revised 12/29/23

HB 1492-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the rate and exemptions of the interest and dividends tax.

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

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue Fund(s)	General Fund			
Expenditures	$0	$0	$0	$0
Funding Source(s)	None			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] See Below
- Does this bill authorize new positions to implement this bill? [X] N/A

METHODOLOGY:

This bill enacts a new Interest and Dividends (I&D) Tax under RSA 77-H at a rate of 5% effective for taxable periods beginning on or after January 1, 2025. This new I&D Tax will have higher income thresholds and exemptions, and exemptions for taxpayers 65 years of age or older, blind taxpayers, and disabled, unable to work taxpayers that have not reached their 65th birthday. The income threshold in determining taxable income for individuals, partnerships, limited liability companies, associations, and court appointed executors is $7,500 from tax periods beginning on or after January 1, 2025. For tax years beginning January 1, 2027, the Department is required to biennially adjust these threshold amounts rounding to the nearest $500 based on the 2-year (24-month) percentage change in the Consumer Price Index for All Urban Consumers, Northeast Region as published by the Bureau of Labor Statistics, United States Department of Labor using the amount published for the month of June in the year prior to the start of the tax year.

The Department states this bill will increase State General Fund revenue by an indeterminable amount beginning in FY 2025. The Department is not able to determine the exact fiscal impact as it has no method to determine future I&D tax liability, credit carryforward amounts and

future inflation. However, the Department is able to provide an estimate of the fiscal impact based on the following assumptions/data:

- The tax is applied to taxable periods ending on or after December 31, 2025 (Tax Year 2025).
- The Department's analysis based on prior years found the split of tax year revenue to fiscal year revenue is as follows: 5% attributable to two tax years prior, 68% attributable to prior tax year, and 27% attributable to current tax year. See table 1 below.
- Tax Year 2021 net taxable income of $2,779,900,000 is the starting point to calculate the FY 2024 thru FY 2027 revenues under current law.
- The I&D rate based on current law and the proposed in the bill is then applied based on the relevant tax year in each fiscal year to come up with the revenue for each fiscal year in each comparative scenario. This calculation keeps all income exemptions and additional exemptions unchanged. Then these results are used to adjust the TY 2021 Net Taxable Income for the income exemption and additional exemption increases in the bill.

The tables below provide the tax year splits to fiscal years and the potential fiscal impact of the proposed the I&D tax.

Table 1. I&D Revenue Tax Year Splits to Fiscal Year

Fiscal Year	Tax Year	% Applicable to Tax Year	Current Law I&D Rates	Proposed Law I&D Rates
FY 2024	TY 2022	5%	5.0%	5.0%
	TY 2023	68%	4.0%	4.0%
	TY 2024	27%	3.0%	3.0%
FY 2025	TY 2023	5%	4.0%	4.0%
	TY 2024	68%	3.0%	3.0%
	TY 2025	27%	0.0%	5.0%
FY 2026	TY 2024	5%	0.0%	3.0%
	TY 2025	68%	0.0%	5.0%
	TY 2026	27%	0.0%	5.0%
FY 2027	TY 2025 and forward	100%	0.0%	5.0%

Table 2: Static Analysis of I&D Rate Change Impact on Revenue

Fiscal Year	Current Law Revenue (Based on TY 2021)	Estimated Revenue w/ Proposed Rate Change	Estimated Fiscal Impact Per Year	Cumulative Fiscal Impact

2024	$105,000,000	$105,000,000	$0	$0
2025	$62,300,000	$94,600,000	$32,300,000	$32,300,000
2026	$4,200,000	$117,800,000	$113,600,000	$145,900,000
2027	$0	$119,500,000	$119,500,000	$265,400,000

The fiscal impact as depicted in the above table may be overstated or understated for future years depending on whether actual revenue is more or less than the TY 2021 net taxable income used for the analysis of this bill.

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

AGENCIES CONTACTED:

Department of Revenue Administration