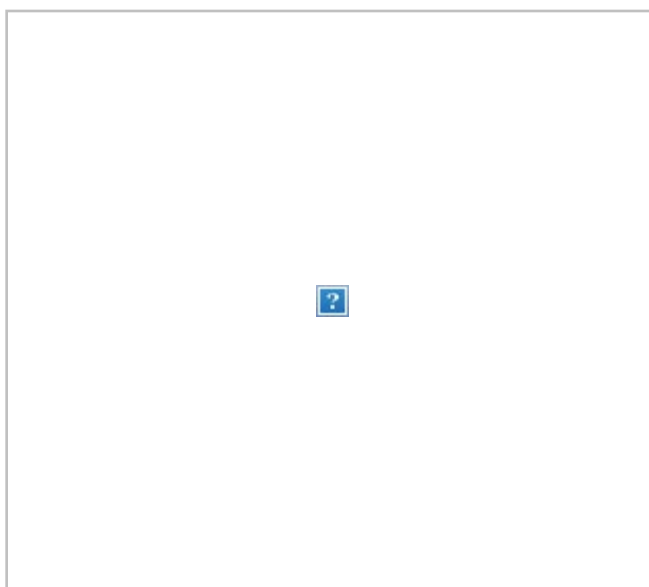


STATE OF NEW HAMPSHIRE

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Second Year of 161st Session of the New Hampshire General Court

Legislative

SENATE CALENDAR ADDENDUM REPORT, AMENDMENT

THE SENATE WILL MEET IN SESSION ON WEDNESDAY, MARCH 24, 2010, AT 10:00 A.M.

REPORT

FINANCE

SB 497-FN-A, changing the business profits tax deduction for reasonable compensation for partnerships, limited liability companies, and sole proprietorships and modifying the interest and dividends tax statute to follow the definitions of interest and dividends used in the United States Internal Revenue Code.

Ought to Pass with Amendment, Vote 7-0.

Senator D'Allesandro for the committee.

AMENDMENT

Senate Finance

March 22, 2010

2010-1142s

09/01

Amendment to SB 497-FN-A

Amend the bill by replacing sections 2 and 3 with the following:

2] Business Profits Tax; Reasonable Compensation Deduction. RSA 77-A:4, III is repealed and reenacted to read as follows:

III.(a) In the case of any business organization filing a business profits tax return as a proprietorship or a partnership, a deduction of an amount equal to a fair and reasonable compensation for the personal services of a natural person who is a proprietor, partner, or member provided to the business organization, as determined pursuant to the general rule of subparagraph (b) and the reporting safe harbor rule of subparagraph (c); provided, however, that the amount of such deduction shall not exceed such business organization's gross business profits. The purpose of this paragraph is to permit a deduction from gross business profits of such a business organization all amounts that are fairly attributable to the personal services of the proprietor, partner, or member, but not to permit a deduction from gross business profits of amounts that are attributable to a rate of return on net equity capital actually invested in the business organization. Such amounts would generally include amounts reported as earned income on federal tax returns, but would also include amounts attributable to personal services provided in connection with the operation and rental of real property, the sale of property and services, and other amounts due to services rendered.

(b) Subject to the provisions of subparagraph (c) which establishes a reporting safe harbor, the amount of the deduction allowed under this paragraph shall be determined using the standards set forth in section 162(a)(1) of the United States Internal Revenue Code, as it may be amended from time to time, and the Treasury Regulations, administrative rulings, and judicial cases issued thereunder.

(c)(1) Amounts described in subparagraph (2) with respect to any taxable period shall be treated as attributable to the provision of personal services to the business organization by a proprietor, partner, or member. A business organization may elect the reporting safe harbor set forth in subparagraph (2) by specifying its election on its annual return required to be filed pursuant to RSA 77-A:6, I. The amount of the deduction reported pursuant to the safe harbor set forth below shall not be subject to redetermination or adjustment by the commissioner; provided, that upon request, the business organization shall be required to substantiate that the proprietor or at least one partner or member performed personal services for the business organization.

(2) For any business organization filing a business profits tax return as a proprietorship or partnership, if the business organization has gross business profits determined after applying the additions and deductions required by RSA 77-A:4 but before application of this subparagraph equal to or greater than the independent investor return amount, then the business organization may deduct all amounts of such adjusted gross business profits in excess of such independent investor return amount.

(d) The principles stated in subparagraphs (b) and (c) shall apply similarly to all business organizations regardless of their form of organization.

3] New Paragraphs; Business Profits Tax; New Definition; Independent Investor Return Amount; Actual Total Capital. Amend RSA 77-A:1 by inserting after paragraph XXIX the following new paragraphs:

XXX. "Independent investor return amount" means the amount that an independent investor would realize as an

investment return on the actual total capital invested in the business organization, assuming that a single independent investor contributed all of the actual total capital and required an investment return determined using the independent investor risk rate per annum applicable for the taxable period, computed on a simple interest basis. The independent investor return amount shall be determined on a cumulative basis so that if gross business profits determined after applying the additions and deductions required by RSA 77-A:4 but before application of RSA 77-A:4, III are less than the independent investor return amount for a taxable period ending after June 30, 2010, the portion of the independent investor return amount that is not reported as taxable business profits for such taxable period shall be carried forward to subsequent tax periods.

XXXI. “Independent investor risk rate,” with respect to any taxable period, means the long-term annual applicable federal rate specified in section 1274(d) of the United States Internal Revenue Code, as it may be amended from time to time, as in effect for the September that is included within such taxable period, plus 15 percentage points.

XXXII. “Actual total capital” means the net equity value for the business organization measured at the beginning of each applicable taxable period. For a business organization required to file a federal partnership information return, the actual total capital shall be the amount of the organization’s aggregate partners’ capital account as reported on its federal partnership information return. For all other business organizations, the actual total capital shall be determined by reference to the organization’s aggregate net owners’ equity amount using principles similar to business organizations required to make and file a United States partnership return of income.