



## **New Hampshire Tax Law Update**

### **New Tax on LLC and Partnership Distributions for NH Residents**

Recent New Hampshire legislation took effect July 1, 2009. It contains over 38 tax and fee increases.

One provision has changed the way an LLC/Partnership and its members/partners are taxed for NH Interest & Dividends tax purposes. This change has the potential for “double tax” treatment on income. The 5% NH Interest & Dividends tax is in addition to the 8.5% NH Business Profits tax that the LLC/Partnership already pays on its income.

#### **LLC member/Partnership partner:**

Prior Law –

Members/partners who are residents of New Hampshire only paid the 5% Interest & Dividends tax on distributions that were attributable to the interest and dividend income of the LLC/Partnership that was not already subject to the Interest & Dividends tax at the LLC/Partnership entity level.

New Law –

A distribution from an LLC/Partnership to a New Hampshire resident will generally be treated as a dividend for the 5% Interest & Dividends tax regardless of the source of the income at the entity level.

The distribution will only be taxed to the extent:

1. it is from current or accumulated earnings and profits;
2. it exceeds the amount of the personal compensation deduction allowed for NH Business Profits tax purposes;
3. it is not a liquidating distribution.

The personal compensation deduction will be an important element in tax planning to minimize the amount of distributions subject to the 5% NH Interest & Dividends tax.

Following is an example of the new law, based on current year earnings & profits:

LLC/Partnership earnings & profits	\$ 200,000
Reasonable compensation deduction	<u>(175,000)</u>
Net	<u>\$ 25,000</u>
Distribution to member/partner	<u>\$ 190,000</u>

The distribution exceeds the compensation deduction by \$15,000 (\$190,000 - \$175,000). The \$15,000 is subject to the 5% NH Interest & Dividends tax. The \$10,000 remaining in the entity carries over as accumulated earnings for the following year calculation.

**LLC/Partnership entity:**

Prior Law –

The LLC/Partnership entity is subject to the 5% Interest & Dividends tax if it did business in NH, had at least one NH resident as a member/partner, and had “nontransferable interests”.

New Law –

The LLC/Partnership entity is not subject to the Interest & Dividends tax under any circumstances.

**Retroactive to January 1, 2009:**

Although the new law took effect July 1, 2009, it applies to all taxable periods ending on or after December 31, 2009. This includes a tax period that began as early as January 1, 2009. Therefore, the tax is retroactive for distributions that have already occurred during 2009.

Since these tax changes were introduced so late in the legislative process, clarification of the new law will not occur until the NH Department of Revenue Administration (DRA) issues guidance through new administrative rules.

The DRA is also expected to address the “reasonable compensation” deduction through new administrative rules.

We will continue to keep you informed of developments relating to the changes in NH tax laws. Should you have any questions or need assistance, please contact us.