

Bill as Introduced

HB 557-FN-A - AS INTRODUCED

2011 SESSION

11-0160
09/04

HOUSE BILL ***557-FN-A***

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

SPONSORS: Rep. Sapareto, Rock 5; Rep. Weyler, Rock 8; Rep. Major, Rock 8; Rep. Chandler, Carr 1; Rep. Mirski, Graf 10; Sen. Gallus, Dist 1; Sen. Barnes, Jr., Dist 17

COMMITTEE: Ways and Means

ANALYSIS

This bill modifies the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

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

1 1 Purpose. The legislature finds that:

2 I. Small businesses are the lifeblood of the New Hampshire economy and are the most
3 important source of jobs for residents of New Hampshire.

4 II. Recent increases in audits of small businesses in which small business owners are not
5 allowed to deduct the full and fair value of their services to their small business in determining the
6 business profits tax liability of the business have undermined New Hampshire's ability to provide a
7 sound and encouraging environment for small business growth.

8 III. Good tax policy requires tax rules that provide taxpayers with clear guidance, encourage
9 compliance, and enhance the competitiveness of our economy.

10 IV. This act clarifies important business profits tax rules that apply to small businesses,
11 eliminate costly and inefficient audits, and restore New Hampshire's ability to encourage small
12 business growth and the good jobs these businesses create.

13 2 Clarification of Reasonable Compensation Deduction. RSA 77-A:4, III is repealed and
14 reenacted as follows:

15 III.(a) In the case of a proprietorship, partnership, or limited liability company filing a
16 business profits tax return as a proprietorship or a partnership, a deduction equal to a fair and
17 reasonable compensation for the personal services of a natural person who is a proprietor, partner, or
18 member provided to the business organization, provided, under this chapter however, that the
19 amount of such deduction shall not reduce such business organization's tax to less than zero. The
20 purpose of this paragraph is to permit a deduction from gross business profits of such a
21 proprietorship, partnership, or limited liability company of all amounts that are fairly attributable to
22 the personal services of the proprietor, partner, or member. Such amounts shall generally include all
23 amounts reported as earned income on federal tax returns, but shall also include amounts
24 attributable to personal services provided in connection with the operation and rental of real
25 property, the sale of property and services, and other amounts due to services rendered.

26 (b) A taxpayer claiming a deduction under this paragraph shall bear the burden of
27 proving that at least one or more proprietors, partners, or members provided actual services to the
28 business organization at any time during the taxable period. Once a taxpayer has satisfied this
29 burden of proof, the amount claimed as a deduction shall be presumed to be reasonable, unless the

HB 557-FN-A - AS INTRODUCED

- Page 2 -

1 commissioner proves by a preponderance of the evidence that the deduction claimed by the taxpayer
2 is grossly excessive.

3 3 Applicability. Sections 1-2 of this act shall apply with respect to taxable periods ending after
4 June 30, 2011.

5 4 Effective Date. This act shall take effect July 1, 2012.

LBAO
11-0160
12/20/10

HB 557-FN-A - FISCAL NOTE

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

FISCAL IMPACT:

The Department of Revenue Administration states this bill will decrease state revenue by \$49,430,000 in FY 2012 and each year thereafter. There will be no fiscal impact on county and local revenue or state, county, and local expenditures.

METHODOLOGY:

The Department of Revenue Administration states this bill would transfer the burden of proof for the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships to the Department. The Department states this bill would make it responsible for proving whether a deduction taken for reasonable compensation is grossly excessive. The Department states this bill will make it difficult for it to dispute a taxpayer's compensation deduction because the Department does not have any information about the services rendered by the partnership or proprietorship. The Department states as a result, it would be ineffective to conduct an audit of a partnership or proprietorship to ensure compliance with the law.

The Department of Revenue Administration states partnerships and proprietorships paid \$49,430,000 in business profits taxes during tax year 2008. The Department assumes the bill would result in no partnerships or proprietorships being liable to pay the business profits tax and would result in a decrease in revenue by the same amount. The Department further states it can administer the law without any additional direct costs.

HB 557-FN-A - AS AMENDED BY THE HOUSE

17Mar2011... 0757h

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16 business profits tax return as a proprietorship or a partnership, a deduction equal to a fair and
17 reasonable compensation for the personal services of a natural person who is a proprietor, partner,
18 or member provided to the business organization, provided, under this chapter however, that the
19 amount of such deduction shall not reduce such business organization's tax to less than zero. The
20 purpose of this paragraph is to permit a deduction from gross business profits of such a
21 proprietorship, partnership, or limited liability company of all amounts that are fairly attributable to
22 the personal services of the proprietor, partner, or member. Such amounts shall generally include
23 all amounts reported as earned income on federal tax returns, but shall also include amounts
24 attributable to personal services provided in connection with the operation and rental of real
25 property, the sale of property and services, and other amounts due to services rendered.

26 (b) Subject to the provisions of subparagraph (c) which establishes a record-keeping safe
27 harbor, one method of determining the amount of the deduction allowed under this paragraph shall
28 be by using the standards set forth in section 162(a)(1) of the United States Internal Revenue Code,
29 as it may be amended from time to time, and the Treasury Regulations, administrative rulings, and

1 judicial cases issued thereunder.

2 (c) In lieu of substantiating the value of the personal services of proprietors, partners, or
3 members, a business organization or group of related business organizations may elect, as a record-
4 keeping safe-harbor, to deduct up to \$50,000 as total compensation for the tax year;

5 (d)(1) In this paragraph, "record-keeping safe harbor" means that amount of
6 compensation for personal services claimed by a business organization which does not need to be
7 substantiated by any evidence, records, or legal or regulatory authority, except as provided in
8 subparagraph (e).

9 (2) Notwithstanding subparagraph III(d)(1), the record-keeping safe harbor shall not
10 be relevant or admissible for any purpose in determining whether a compensation deduction claimed
11 in an amount in excess of any such record-keeping safe harbor is fair and reasonable.

12 (e) A business organization or group of related business organizations may elect the
13 record-keeping safe-harbor option in subparagraph III(c) without a redetermination of the
14 reasonableness of the deduction by the commissioner. Any such deduction claimed by the business
15 organization or group of related business organizations shall not be subject to challenge; provided,
16 that upon request, the business organization or group of related business organizations shall be
17 required to substantiate that the proprietor or at least one partner or member performed personal
18 services for the business organization or group of related business organizations.

19 (f) Related business organizations electing not to substantiate the extent of the personal
20 services of their proprietors, partners, and members, shall be limited to the safe harbor deduction,
21 less any owners' compensation taken on the federal tax returns of corporate members of the group,
22 allocated among the related business organizations. For the purposes of RSA 77-A:4, III, "related
23 business organizations" are unitary business organizations and business organizations that would
24 qualify as unitary but for the fact that they conduct business only within the state.

25 (g) A taxpayer claiming a deduction under this paragraph shall bear the burden of
26 proving that at least one or more proprietors, partners, or members provided actual services to the
27 business organization at any time during the taxable period. Once a taxpayer has satisfied this
28 burden of proof, the amount claimed as a deduction shall be presumed to be reasonable, unless the
29 commissioner proves by a preponderance of the evidence that the deduction claimed by the taxpayer
30 is grossly excessive.

31 3 New Paragraph; Appeal for Redetermination or Reconsideration; Procedure. Amend RSA 21-
32 J:28-b by inserting after paragraph VII the following new paragraph:

33 VIII. The department shall bear the burden of proof on any change to any compensation
34 deduction under RSA 77-A finally determined to be due after January 1, 2011.

35 4 New Section; Interest and Dividends Tax; Excess Compensation. Amend RSA 77 by inserting
36 after section 4-f the following new section:

37 → 77:4-g Dividend. Excess compensation determined by audit of the department shall not be
↑

HB 557-FN-A - AS AMENDED BY THE HOUSE

- Page 3 -

1 considered a dividend under this chapter unless such determination is accepted by the Internal
2 Revenue Service.

3 5 Applicability. Sections 1-2 of this act shall apply with respect to taxable periods ending after
4 June 30, 2011.

5 6 Effective Date. This act shall take effect July 1, 2012.

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METHODOLOGY:

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The Department of Revenue Administration states partnerships and proprietorships paid \$49,430,000 in business profits taxes during tax year 2008. The Department assumes the bill would result in no partnerships or proprietorships being liable to pay the business profits tax and would result in a decrease in revenue by the same amount. The Department further states it can administer the law without any additional direct costs.

HB 557-FN-A -- AS AMENDED BY THE SENATE

17Mar2011... 0757h

05/11/11 1716s

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COMMITTEE: Ways and Means

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1 Purpose. The legislature finds that:

I. Small businesses are the lifeblood of the New Hampshire economy and are the most important source of jobs for residents of New Hampshire.

II. Recent increases in audits of small businesses in which small business owners are not allowed to deduct the full and fair value of their services to their small business in determining the business profits tax liability of the business have undermined New Hampshire's ability to provide a sound and encouraging environment for small business growth.

III. Good tax policy requires tax rules that provide taxpayers with clear guidance, encourage compliance, and enhance the competitiveness of our economy.

IV. This act clarifies important business profits tax rules that apply to small businesses, eliminate costly and inefficient audits, and restore New Hampshire's ability to encourage small business growth and the good jobs these businesses create.

2 Reasonable Compensation Deduction. RSA 77-A:4, III is repealed and reenacted as follows:

III.(a) In the case of a proprietorship, partnership, or limited liability company filing a business profits tax return as a proprietorship, partnership, or limited liability company, a deduction 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, 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 proprietorship, partnership, or limited liability company of all amounts that are fairly attributable to the personal services of the proprietor, partner, or member. Such amounts shall generally include all amounts reported as earned income on federal tax returns, but shall 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) A taxpayer claiming a deduction under this paragraph shall bear the burden of proving that at least one or more proprietors, partners, or members provided actual services to the business organization at any time during the taxable period. Once a taxpayer has satisfied this burden of proof, the amount claimed as a deduction shall be presumed to be

reasonable, unless the commissioner proves by a preponderance of the evidence that the deduction claimed by the taxpayer is grossly excessive.

3 Applicability. This act shall apply with respect to taxable periods ending after January 1, 2013.

4 Effective Date. This act shall take effect upon its passage.

LBAO

11-0160

Amended 05/18/11

HB 557 FISCAL NOTE

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, **as amended by the Senate (Amendment #2011-1716s)**, will decrease state revenue by an indeterminable amount in FY 2013 and each year thereafter. There will be no fiscal impact on county and local revenue, or state, county, and local expenditures.

METHODOLOGY:

The Department of Revenue Administration states this bill would transfer the burden of proof for the business profits tax (BPT) deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships to the Department. The Department assumes that no partnership or proprietorship need ever pay the BPT should this bill become law. The Department states some of the BPT paid was most likely paid by partnerships composed of non-natural persons. However, the exact amount of the BPT paid by those partnerships cannot be determined from the data within the Department's current computer system. The BPT paid which could be attributable to these partnerships may still be paid to New Hampshire in the future, but not if the taxpayer chooses to have one real person who performs a service so that a compensation deduction could eliminate any taxable business profits. The bill would become effective upon passage and apply to taxable periods ending after January 1, 2013.

The Department of Revenue Administration states partnerships and proprietorships paid \$49,430,000 in business profits taxes during tax year 2008. In addition, the bill

includes the language "...filing a business profits tax return as a proprietorship, partnership, or limited liability company,...". The Department states a limited liability company is a legal construct not a tax filing status. This language opens the door for limited liability companies filing as corporations to deduct personal compensation because a limited liability company can file as a proprietorship, partnership, or corporation. The impact on this language is that incorporated entities (existing corporations) could restructure as limited liability companies and thereby use the compensation deduction proposed in this bill to reduce taxable business profits. In tax year 2008, corporations paid \$182 million in BPT. This amount could be significantly reduced as corporations take advantage of the change in law and become limited liability companies and reduces their taxable business profits through the compensation deduction. The Department is unable to determine the exact fiscal impact at this time. The Department further states it can administer the law without any additional direct costs.

Amendments

Amendment to HB 557-FN-A

1 Amend the bill by replacing all after section 1 with the following:

2

3 2 Reasonable Compensation Deduction. RSA 77-A:4, III is repealed and reenacted as follows:

4 III.(a) In the case of a proprietorship, partnership, or limited liability company filing a
5 business profits tax return as a proprietorship, partnership, or limited liability company, a deduction
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8 amount of such deduction shall not exceed such business organization's gross business profits. The
9 purpose of this paragraph is to permit a deduction from gross business profits of such a
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11 the personal services of the proprietor, partner, or member. Such amounts shall generally include
12 all amounts reported as earned income on federal tax returns, but shall also include amounts
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15 (b) A taxpayer claiming a deduction under this paragraph shall bear the burden of
16 proving that at least one or more proprietors, partners, or members provided actual services to the
17 business organization at any time during the taxable period. Once a taxpayer has satisfied this
18 burden of proof, the amount claimed as a deduction shall be presumed to be reasonable, unless the
19 commissioner proves by a preponderance of the evidence that the deduction claimed by the taxpayer
20 is grossly excessive.

21 3 Applicability. This act shall apply with respect to taxable periods ending after January 1,
22 2013.

23 4 Effective Date. This act shall take effect April 15, 2013.

Amendment to HB 557-FN-A

1 Amend the bill by replacing all after section 1 with the following:

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19 commissioner proves by a preponderance of the evidence that the deduction claimed by the taxpayer
20 is grossly excessive.

21 3 Applicability. This act shall apply with respect to taxable periods ending after January 1,
22 2013.

23 4 Effective Date. This act shall take effect upon its passage.

Committee Minutes

**SENATE CALENDAR NOTICE
WAYS AND MEANS**

Senator Bob Odell Chairman
 Senator Jim Luther V Chairman
 Senator David Boutin
 Senator Lou D'Allesandro
 Senator Chuck Morse
 Senator Jim Rausch

For Use by Senate Clerk's Office ONLY		
<input type="checkbox"/>	Bill Status	
<input type="checkbox"/>	Docket	
<input type="checkbox"/>	Calendar	
Proof:	<input type="checkbox"/> Calendar	<input type="checkbox"/> Bill Status

Date: March 30, 2011

HEARINGS

Tuesday

4/5/2011

WAYS AND MEANS

SH 100

2:30 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

<p>2:30 PM HB187-FN-A</p> <p>2:45 PM HB557-FN-A</p> <p>3:00 PM HB348-FN</p>	<p>relative to the carry forward periods for the business enterprise tax credit against the business profits tax.</p> <p>relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.</p> <p>transferring the duties of the racing and charitable gaming commission to the lottery commission and abolishing the racing and charitable gaming commission, and prohibiting new electronic gaming devices without statutory authorization.</p>
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Sponsors:

HB187-FN-A

Rep. Frank Sapareto
 Rep. Larry Emerton

Rep. Kenneth Weyler

Rep. Norman Major

Rep. John Graham

HB557-FN-A

Rep. Frank Sapareto
 Rep. Paul Mirski

Rep. Kenneth Weyler
 Sen. John Gallus

Rep. Norman Major
 Sen. John Barnes, Jr.

Rep. Gene Chandler

HB348-FN

Rep. Neal Kurk

Rep. David Hess

Ways and Means Committee

Hearing Report

To: Members of the Senate

From: Sonja Caldwell
Legislative Aide

Re: **HB557-FN-A** – *relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.*

Hearing date: April 4, 2011

Members present: Sen. Odell, Sen. Luther, Sen. D'Allesandro, Sen. Morse, Sen. Rausch, Sen. Boutin

Members absent:

Sponsor(s): Rep. Sapareto, Rock 5; Rep. Weyler, Rock 8; Rep. Major, Rock 8; Rep. Chandler, Carr 1; Rep. Mirski, Graf 10; Sen. Gallus, Dist 1; Sen. Barnes, Jr., Dist 17

What the bill does: This bill modifies the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

Who supports the bill: Rep. Gene Chandler, Rep. Frank Sapareto, Rep. Norman Major, Rep. Paul Mirski, Bruce Berke (National Federation of Independent Business), Dave Juvet (BIA), Rep. Ken Weyler, David Heath (Nashua Chamber of Commerce), Chris Williams (Nashua Chamber of Commerce)

Who opposes the bill: Robert Walsh (Self), Cathy Silber (Granite State Fair Tax Coalition)

Taking no position: Rep. David Hess, Phil Blatsos (Self),

Summary of testimony received:

Rep Sapareto said there are three main differences in this house bill from a similar senate bill. This bill gives an example of 162C of the federal IRS code for also satisfying requirements for the state. It has a safe harbor of \$50,000, which he said is already in current law. Lastly, this bill retains the written requirement for record keeping. They also change the term grossly excessive to clearly unreasonable.

Rep. Hess

He offered a proposal on SB125 this morning to the House Ways and Means committee. He said these changes being put forth are in response to criticisms of language in all these bills. The first area concerns the fact that the taxpayer has satisfied his burden of proof by saying they provided some services. Pg 2, lines 25-26 would change "at least one" to "all" have to show they provided services. The 2nd change is on line 30. The concern is that grossly excessive conveys something off the charts and would be difficult for the DRA to prove. He suggested clearly unreasonable. He believes that is a lower standard. He believes it is a standard that is above the simple unreasonable and should be employed to make sure taxpayers are not unduly required to participate in the auditing process unless there is really good reason for doing that. He would repeal the record keeping requirements as SB125 does. He thinks if you're going to use 162C as an example, he thinks the language needs to be clearer and that this is just one way to interpret. His impression on House Ways and Means is that they were favorably inclined at least to the provision changing to "All" for whom deduction is claimed instead of at least one.

Robert Walsh - opposed

He is a retired CPA. He said that under this bill, reasonable compensation is redefined as all amounts declared as earned income on federal returns. He said this relieves certain entities from the BPT. Corporations would still be subject to the BPT. There is no distinction as to the size of corporations for who has to file if gross receipts are under \$50,000. He operated his business as a corporation. He said his was a very small business. His gross receipts were in excess of \$50,000 but less than \$150,000 and he is penalized under this bill for operating as a corporation. He thinks this bill shifts the tax burden and will drive corporations away.

Phil Blatsos

Right now there is no burden on the DRA. This bill provides a methodology for the DRA to follow. He likes Rep Hess' approach with the new term. He thinks this puts the taxpayer and the department on the same playing field.

Cathy Silber - opposed - Granite State Fair Tax Coalition

They are opposed because of the fiscal note and the cost of the bill. Now is not the time for any reform that reduces revenues. When it is time for revenue reform it should be comprehensive and not piece meal. 'We can't afford it' has been the rational for cuts to services the state provides. If we can't afford that, we can't afford HB557.

Chris Williams and David Heath - Greater Nashua Chamber of Commerce -Support
The LLC tax shed light on this issue. We discussed reforms last session. The proposals in these bills will make the changes they have been looking for. This restores balance between needs of state and private sector.

David Heath – this has been a difficult and unclear area in tax law. This has been a difficult time for small and mid sized businesses. The safe harbor is a good thing to have

though he thinks it should be a little higher. He thinks the per entity piece is problematic and may limit it to very small businesses. The record keeping piece changes it to a point where it's more like normal business records. He said no one keeps time sheets anymore. With regard to the clearly unreasonable language change, he said that is shifting one subjective statement to another and he doesn't really have an opinion on it. He likes the 162 C reference in the burden of proof section. Bringing the state into parity with the federal code is good. He Likes Rep. Hess' proposal that the deduction needs to be all members for which your taking a deduction. The fiscal note is problematic. To assume that every dollar proprietorships and partnerships paid is going to go away is a very aggressive assumption.

Speakers

Testimony

**TESTIMONY TO THE NEW HAMPSHIRE SENATE ON HB 557
APRIL 5, 2011**

To the members of the New Hampshire Senate:

My name is Robert M. Walsh, Jr. I live in Manchester. I recently retired as a Certified Public Accountant, practicing within my own firm for the past 45 years. I recently concluded a term in the New Hampshire House of Representatives as a member of the Ways and Means Committee. I appear here today in opposition to HB 557.

Reasonable Compensation

This bill allows allows a reasonable compensation deduction in the determination of an entity's business profits tax. Under this bill, reasonable compensation for all proprietorships and partnerships is redefined as "all amounts reported as earned income on federal tax returns".

The effect of this bill means that certain business entities **but not all** business entities are relieved from business profits taxes. What about corporations? According to this bill, corporations still are subject to BPT and still have to pay! And there is no distinction as to the size of the corporation.

Limited Liability Companies

Every entity that establishes itself under the limited liability company statutes of his or her state, must make an election under the Internal Revenue Code as to the type of entity under which it wishes to operate, whether a proprietorship, a partnership, an S Corporation, or a C Corporation. The entity makes this election by "checking the box", usually at the start of its business, most often done during the first year of operations in conjunction with his or her accountant or lawyer.

Many entities that I have observed over the years, select the S Corporation status as the owner or owners prefer to pay themselves a salary and have taxes taken out on a regular pay

TESTIMONY TO THE NEW HAMPSHIRE SENATE ON HB 557
APRIL 5, 2011

as you go basis.

Now those companies are stuck with business profits taxes, whereas, if they had selected a proprietorship in the case of a single member or selected a partnership in the case of more than one member, they would have no business profits taxes.

Somehow, this does not seem fair to me! I personally object to this bill!!

I have operated my business as a corporation under the New Hampshire corporation statutes. I pay business profits taxes, and I am a very small business. I am penalized because I chose to be a corporation. **That is not fair!!!**

Large Corporations

We are all aware of the large corporations in our state. Many towns in New Hampshire are one Company towns, employing most of the town's citizens. Maybe some of your districts have towns like I describe. Do you think for one minute that they will be pleased to be shouldering the tax burden for New Hampshire?

What will General Electric think about the effects of this bill? Will they stay?

What will BAE Systems think about the effects of this bill? Will they stay?

What will Sylvania in Hillsborough think about the effects of this bill? Will they stay?

They will look at this and **they wont be happy paying the bulk of the corporate taxes in the State**, and in addition, they will continue to bear the burden of local property taxes.

Senator D'allesandro told a Study Committee that he and I were on last fall, that there was one large employer in Manchester, being actively courted to transfer to China. What will that company think of this bill? Do you think for one minute they will put up with the unfairness of this bill?

I ask this Committee and I ask the members of the New Hampshire Senate to vote this bill

Inexpedient To Legislate! I ask for Fairness!!

MARCH 9, 2011
February 11, 2010

To: House Ways and Means Committee
From: Rep. David W. Hess

HB 611 557

1. Sharing the Burden between the taxpayer and the DRA to Prove that Claimed Compensation is Not Fair and Reasonable

Under current law the business organization has the burden of proving that a compensation deduction is reasonable. This proposal does not shift the burden of proof entirely from the tax payer to the DRA. Rather, this would place the burden, in the first instance, on the taxpayer to submit some evidence to support its claim of reasonable compensation. After that submission, the burden would then shift to the DRA to prove that the claimed compensation was unreasonable. Therefore, this would represent a change—but for several very good reasons.

First, current bills seek to extend the DRA's oversight power to bureaucratically determine what is "reasonable compensation" to more and more, and smaller and smaller businesses—ensnaring tens of thousands of small closely held LLCs and partnerships in the DRA's audit net for the first time. These business organizations have far fewer resources than DRA to address the issues of "reasonable compensation." Indeed the legal and investigative resources of the DRA literally dwarf those of the businesses they will be auditing. Given the reality of this unlevel playing field, it is only fair and a matter of common sense that DRA should bear this burden.

Placing this burden on DRA also substantially reduces the moral hazard that would ensue if the burden of proof is unchanged. By moral hazard, I mean the situation that will rise with increasing frequency when the DRA claims compensation is unreasonable and the taxpayer either cannot or decides not to contest that determination because of the cost to do so is either prohibitive, or far exceeds the increased tax liability resulting from the DRA's determination.

Finally, if as seems likely, the provisions of IRC §162 and its regulations and case law are added as a criteria to be considered in determining reasonable compensation, the imbalance in resources between the DRA and the taxpayer is substantially widened. Those sources are enough to literally fill shelf upon shelf in a library, and their esoteric content are known and understood only by highly paid specialists and experts. The burden should be on the DRA to search through the sources to find a justification for its position, not the taxpayer.

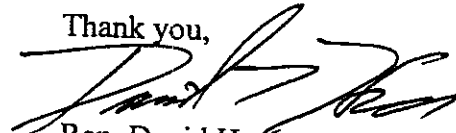
2. If the Primary Purpose of this Bill is to Tax Passive Income not Earned by Personal Service, Then Just Say It

The DRA has repeatedly testified that it does not do "compensation audits." It has said that the sister legislation to this bill, the newly expanded dividends tax on partnerships and LLCs, is aimed at taxing passive income distributions to partners and members who have not rendered personal services to their partnership or LLC. And it has strongly implied that it does not expect or intend to generally challenge claimed compensation deductions for partners and members who render personal services in this business. So let's just say that in the

statute, if a taxpayer in fact renders personal services to his partnership, LLC or sole proprietorship, receives compensation for those services, and pays social security and Medicare taxes or that compensation, then that compensation shall be presumed fair and reasonable.

✓ 3 Third, it deletes the reference to "employee or" on p.2 line 28. This addresses the concern of another tax practitioner who testified that nowhere else in our tax-law universe is the compensation of a simple employee used as a standard to determine what is fair and reasonable compensation for an entrepreneur—owner or owner-employee of a small business. The compensation of a 40-hour-a-week employee would command to perform a set of tasks is not even closely comparable to what is reasonable compensation for an owner-employee who worries about making his weekly payroll, lies awake nights thinking about how he can expand his customers, and takes out a second mortgage on his house to keep his business afloat or

Thank you,



Rep. David Hess

HB 557-FN-A - AS AMENDED BY THE HOUSE

17Mar2011... 0757h

2011 SESSION

11-0160
09/04

HOUSE BILL

557-FN-A

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

SPONSORS: Rep. Sapareto, Rock 5; Rep. Weyler, Rock 8; Rep. Major, Rock 8; Rep. Chandler, Carr 1; Rep. Mirski, Graf 10; Sen. Gallus, Dist 1; Sen. Barnes, Jr., Dist 17

COMMITTEE: Ways and Means

ANALYSIS

This bill modifies the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

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

4/5/11 17Mar2011... 0757h

11-0160
09/04

*Notes of Rep. Hess concerning
possibly amendments to the bill as passed
by the House*

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

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

1 1 Purpose. The legislature finds that:

2 I. Small businesses are the lifeblood of the New Hampshire economy and are the most
3 important source of jobs for residents of New Hampshire.

4 II. Recent increases in audits of small businesses in which small business owners are not
5 allowed to deduct the full and fair value of their services to their small business in determining the
6 business profits tax liability of the business have undermined New Hampshire's ability to provide a
7 sound and encouraging environment for small business growth.

8 III. Good tax policy requires tax rules that provide taxpayers with clear guidance, encourage
9 compliance, and enhance the competitiveness of our economy.

10 IV. This act clarifies important business profits tax rules that apply to small businesses,
11 eliminate costly and inefficient audits, and restore New Hampshire's ability to encourage small
12 business growth and the good jobs these businesses create.

13 2 Clarification of Reasonable Compensation Deduction. RSA 77-A:4, III is repealed and
14 reenacted as follows:

15 III.(a) In the case of a proprietorship, partnership, or limited liability company filing a
16 business profits tax return as a proprietorship or a partnership, ^{if} a deduction equal to a fair and
17 reasonable compensation for the ^{ACTUAL} personal services of a natural person who is a proprietor, partner,
18 or member provided to the business organization, provided, under this chapter however, that the
19 amount of such deduction shall not reduce such business organization's tax to less than zero. The
20 purpose of this paragraph is to permit ^{if} a deduction from gross business profits of such a
21 proprietorship, partnership, or limited liability company of all amounts that are fairly attributable to
22 the ^{ACTUAL} personal services of the proprietor, partner, or member. Such amounts shall generally include
23 all amounts ^{ACTUAL} reported as earned income on federal tax returns, but shall also include amounts
24 attributable to ^{ACTUAL} personal services provided in connection with the operation and rental of real
25 property; the ^{ACTUAL} sale of property and services, and other amounts due to services rendered.

26 (b) Subject to the provisions of subparagraph (c) which establishes a record-keeping safe
27 harbor, one method of determining the amount of the deduction allowed under this paragraph shall
28 be by using the standards set forth in section 162(a)(1) of the United States Internal Revenue Code,
29 as it may be amended from time to time, and the Treasury Regulations, administrative rulings, and

1 judicial cases issued thereunder.

2 (c) In lieu of substantiating the value of the personal services of proprietors, partners, or
3 members, a business organization or group of related business organizations may elect, as a record-
4 keeping safe-harbor, to deduct up to \$50,000 as total compensation for the tax year;

5 (d)(1) In this paragraph, "record-keeping safe harbor" means that amount of
6 compensation for personal services claimed by a business organization which does not need to be
7 substantiated by any evidence, records, or legal or regulatory authority, except as provided in
8 subparagraph (e).

9 (2) Notwithstanding subparagraph III(d)(1), the record-keeping safe harbor shall not
10 be relevant or admissible for any purpose in determining whether a compensation deduction claimed
11 in an amount in excess of any such record-keeping safe harbor is fair and reasonable.

12 (e) A business organization or group of related business organizations may elect the
13 record-keeping safe-harbor option in subparagraph III(c) without a redetermination of the
14 reasonableness of the deduction by the commissioner. Any such deduction claimed by the business
15 organization or group of related business organizations shall not be subject to challenge; provided,
16 that upon request, the business organization or group of related business organizations shall be
17 required to substantiate that the proprietor or at least one partner or member performed personal
18 services for the business organization or group of related business organizations.

19 (f) Related business organizations electing not to substantiate the extent of the personal
20 services of their proprietors, partners, and members, shall be limited to the safe harbor deduction,
21 less any owners' compensation taken on the federal tax returns of corporate members of the group,
22 allocated among the related business organizations. For the purposes of RSA 77-A:4, III, "related
23 business organizations" are unitary business organizations and business organizations that would
24 qualify as unitary but for the fact that they conduct business only within the state.

25 (g) A taxpayer claiming a deduction under this paragraph shall bear the burden of
26 proving that ~~at least one or more~~ ^{ALL} proprietors, partners, or members ^{for whom the taxpayer is claiming a deduction} provided actual services to the
27 business organization at any time during the taxable period. Once a taxpayer has satisfied this ^{personal}
28 burden of proof, the amount claimed as a deduction shall be presumed to be reasonable, unless the
29 commissioner proves by a preponderance of the evidence that the deduction claimed by the taxpayer
30 is ~~grossly excessive~~ ^{clearly UNREASONABLE}.

31 3 New Paragraph; Appeal for Redetermination or Reconsideration; Procedure. Amend RSA 21-
32 J:28-b by inserting after paragraph VII the following new paragraph:

33 VIII. The department shall bear the burden of proof on any change to any compensation
34 deduction under RSA 77-A finally determined to be due after January 1, 2011.

35 4 New Section; Interest and Dividends Tax; Excess Compensation. Amend RSA 77 by inserting
36 after section 4-f the following new section:

77:4-g Dividend. Excess compensation determined by audit of the department shall not be

Delete

HB 557-FN-A - AS AMENDED BY THE HOUSE

- Page 3 -

1 considered a dividend under this chapter unless such determination is accepted by the Internal
2 Revenue Service.

3 5 Applicability. Sections 1-2 of this act shall apply with respect to taxable periods ending after
4 June 30, 2011.

5 6 Effective Date. This act shall take effect July 1, 2012.

LBAO
11-0160
12/20/10

HB 557-FN-A - FISCAL NOTE

AN ACT relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

FISCAL IMPACT:

The Department of Revenue Administration states this bill will decrease state revenue by \$49,430,000 in FY 2012 and each year thereafter. There will be no fiscal impact on county and local revenue or state, county, and local expenditures.

METHODOLOGY:

The Department of Revenue Administration states this bill would transfer the burden of proof for the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships to the Department. The Department states this bill would make it responsible for proving whether a deduction taken for reasonable compensation is grossly excessive. The Department states this bill will make it difficult for it to dispute a taxpayer's compensation deduction because the Department does not have any information about the services rendered by the partnership or proprietorship. The Department states as a result, it would be ineffective to conduct an audit of a partnership or proprietorship to ensure compliance with the law.

The Department of Revenue Administration states partnerships and proprietorships paid \$49,430,000 in business profits taxes during tax year 2008. The Department assumes the bill would result in no partnerships or proprietorships being liable to pay the business profits tax and would result in a decrease in revenue by the same amount. The Department further states it can administer the law without any additional direct costs.

GRANITE STATE FAIR TAX COALITION
PO Box 3431, Concord, NH 03302
www.nhfairtax.org

April 5, 2011

The Honorable Bob Odell
NH Senate Ways and Means Committee

Re: HB 557-FN-A

Dear Senator Odell and Committee Members:

The Granite State Fair Tax Coalition is a nonprofit, nonpartisan coalition of groups and individuals that reaches more than 70,000 people across the state. We advocate for a more effective revenue structure for New Hampshire, one that raises enough to meet the state's needs in a way that everyone pays their share.

We urge the committee to recommend HB 557-FN-A Inexpedient to Legislate.

The BPT may well need reform, and it may well need exactly the reforms in this bill. But we believe now is not the time for any reform that reduces revenues, and that revenue reform, when the time comes, should be done comprehensively, not piecemeal, as this bill attempts.

A time of deep cuts into the programs and infrastructures that our families and businesses depend upon is not the time to reduce revenues further. Whatever the merits of reforming the Business Profits Tax, reducing revenues by any amount--be it \$4 million a year or \$50 million a year or anywhere in between is too great a price to pay at this time. Again and again, "We can't afford it," has been the rationale for cuts into the programs and infrastructures that keep our state strong. If we can't afford some of the most basic functions of our state, we surely can't afford HB 557-FN-A.. It's a question of priorities.

We can debate the necessity of the spending cuts in the budget. I can say the deficit we're facing is primarily the result of the dramatic revenue shortfalls of the Great Recession, so we need all all the revenue we have; you might say our state has been spending excessively, over-educating our children, making college too affordable, keeping too many people out of expensive institutions like hospitals and prisons, training too many people for jobs, and enabling too many welfare mothers to return to work, so we can afford to reduce revenues.

We can debate the value of these spending cuts to businesses in our state I might say that businesses small and large have always thrived in communities of educated employees and customers, communities with good schools, roads, parks, libraries, police and fire protection, and that the continued success of business in our state depends upon maintaining these infrastructures, and thus the revenues to do so. You might say that business needs none of this as much as it does a tax cut, so reducing revenues is worth it.

We could even debate the meaning of the phrase "Ways and Means." I could insist that it has always implied coming up with the ways, coming up with the means, not shutting off ways and refusing means. You might say the term simply means revenues.

If the term simply means revenues, then GSFTC urges the committee to entertain alterations to various tax laws only within the context of our revenue structure as a whole. If this bill aims to help small business, please note that, according to the Council on State Taxation, the BPT and BET combined amount to less than 20% of the state and local taxes businesses pay in New Hampshire. According to the DRA, 35% of businesses in the state pay no BPT or BET at all, and another 17% pay less than \$500 a year (<http://www.nhfpi.org/>).

Again according to the Council on State Taxation, 59% of the state and local taxes business pay are the property tax. State revenue reductions and the downshifting of costs onto the local property tax only increase property taxes, which is the single biggest way to increase business taxes. Again, business tax reform should happen in the context of comprehensive revenue reform, not piecemeal.

It's a question of priorities. Whatever this bill will cost, it is money that currently invests in our state and that we need to continue to invest in our state. Previous generations invested in the infrastructures we rely on today and it is our responsibility to maintain those infrastructures, not erode them.

From 30,000 feet, I can testify about programs and infrastructures and dollar amounts on a ledger line. But here on the ground, right here in this room, I need to tell you about my brother. His story pertains directly to the cost of this bill, whatever it is. He graduated from the University of Chicago with honors, a soccer star, destined to be a research scientist or a doctor. Then schizophrenia hit, a lifelong disabling condition. Before medication, he was tormented by voices in his head, voices that ordered him to kill himself. Money this bill would divert to revenue reduction paid for the state hospital that cared for him after he slit his throat with the butcher knife, my five-foot-tall mother trying to grab it from his hands. Money this bill would divert to revenue reduction also got spent on far more costly ER visits and jail time, for lack of maintenance and prevention services.

It's a question of priorities. Our small businesses are better served at this time by spending the money this bill would divert to revenue reduction on the programs and infrastructures upon which all us, including small businesses, depend. Whether it's \$4 million or \$50 million or anywhere in between.

Finally, the fact that estimates of what the bill would cost range from \$4 to \$50 million is in itself a reason to urge prudence and caution. If the BPT needs revising in this way, so be it, but not now, and not piecemeal. Investing resources where they're most needed at this time is the best thing we can do for small business in New Hampshire.

Respectfully,

Cathy Silber, executive director
Granite State Fair Tax Coalition

The Granite State Fair Tax Coalition is a nonpartisan, nonprofit, 501(c)3 organization whose members include American Friends Service Committee NH, Episcopal Diocese of New Hampshire, League of Women Voters of New Hampshire, NEA-New Hampshire, Northern New England District Unitarian Universalist Association, State Employee's Association (SEIU Local 1984), United Church of Christ, Commission for Witness and Action, and over 1,000 individuals across the state.

**STATE OF NEW HAMPSHIRE
OFFICE OF LEGISLATIVE BUDGET ASSISTANT
FISCAL NOTE WORKSHEET**

Date Sent to Agency: 11/29/2010

LSR #: 11-0160.0

Agency: Department of Revenue Administration

Bill #: _____

Due to LBAO: 12/13/2010

Amendment #(s): _____

Correction to a prior response? (Y/N): No

State Fund(s) Affected:

(1) Indicate here what state funds will be affected by the bill: general funds, federal funds, or any special fund. If it is a special fund, please specify.

General: XXX Federal: _____ Other: Education Trust Fund

	FY 2011	FIRST BIENNIUM		SECOND BIENNIUM	
		FY 2012	FY 2013	FY 2014	FY 2015
State Revenue	Not Applicable	(\$49,430,000)	(\$49,430,000)	(\$49,430,000)	(\$49,430,000)
State Expenditure					
Net State Impact	Not Applicable	(\$49,430,000)	(\$49,430,000)	(\$49,430,000)	(\$49,430,000)
County Revenue	Not Applicable				
County Expenditure					
Net County Impact	Not Applicable				
Local Revenue	Not Applicable				
Local Expenditure					
Net Local Impact	Not Applicable				

- NOTE: (1) List only the amount of change in the appropriate column.
 (2) Place all negative numbers in parenthesis.
 (3) You may replicate this worksheet.
 (4) Refer to Guidelines for Fiscal Note Worksheets for further information.

(A) **ASSUMPTIONS:** Explain how estimate was derived. Describe costs that can be absorbed without additional funding. If no estimate can be prepared, explain why in detail. If no fiscal impact, explain why in detail.

1. This law could be administered by the Department of Revenue Administration without any additional direct cost. The indirect cost of this bill, however, would be the loss of millions of dollars in Department generated revenue, the exact amount of which cannot be determined.

2. It is assumed that no partnership or proprietorship need ever pay the Business Profits Tax (BPT) should this bill become law. As such, passage of this bill may result in litigation similar to that filed by Cabletron Systems in 1991. (See Section (F) "Other Comments" below)

3. This bill seeks to transfer the burden of proof concerning the New Hampshire compensation deduction to the Department. This is the pre-1991 version of the law wherein the Department would have to prove that a deduction is "grossly excessive".

4. Some of the BPT paid was most likely paid by partnerships composed of non-natural persons. However, the exact amount of the BPT paid by those partnerships cannot be determined from the data within the Department's current computer system. The BPT paid which could be attributable to these partnerships may still be paid to New Hampshire in the future, but not if the taxpayer chooses to have one real person who performs a service so that a compensation deduction could eliminate any taxable business profits.

5. This bill would become effective July 1, 2012 for taxable periods ending after June 30, 2011. Please see Section (E) "Technical or Mechanical Defects" for suggested changes.

(B) **METHOD:** Show calculations used to determine fiscal impact. Calculations must agree with and explain totals on first page.

In tax year 2008, more than forty nine million dollars (\$49,430,000) of BPT was paid by partnerships and proprietorships. Under this bill, it is anticipated that no partnership or proprietorship would pay the BPT should this bill become law. Thus there is the possibility of a loss of revenue equaling \$49,430,000.

(C) **ESTIMATED FISCAL IMPACT (from A and B):** Estimated Fiscal Impact must agree with the totals on first page.

In tax year 2008, more than forty nine million dollars (\$49,430,000) of BPT was paid by partnerships and proprietorships. Some of this may have been paid by those entities composed of non-natural persons, but that cannot be determined. Under this bill, it is anticipated that no partnership or proprietorship would pay the BPT should this bill become law. Thus there is the possibility of a loss of revenue equaling \$49,430,000.

(D) ADDITIONAL COUNTY, LOCAL OR LONG-RANGE EFFECTS:

(E) TECHNICAL OR MECHANICAL DEFECTS: Note any conflicts with existing law. Do not comment on the merits of the legislation.

1. The effective date of this bill is July 1, 2012, while the applicability is for taxable periods ending after June 30, 2011. If it is the true intention of the bill's sponsor to have this bill apply to taxable period ending after June 30th, it is suggested that the effective and applicability dates be changed to be either effective July 1, 2011 and applicable to taxable periods ending after June 30, 2011 – OR - be effective July 1, 2012 and applicable to taxable periods ending after June 30, 2012.

2. As a practical matter, for tax administration purposes, it is suggested that the applicability date be changed to reflect a full calendar year. For example, "This act shall take effect for taxable periods ending on or after December 31, 2012."

3. Section 2 of the bill, line 15, "or limited liability company" should be deleted as no such filing entity exists under New Hampshire tax law. A limited liability company (LLC) is a legal construct not a tax filing status. A taxpayer does not file as an "LLC." A taxpayer files either as a corporation, partnership, proprietorship, or fiduciary.

(F) OTHER COMMENTS: Include tax variables, federal mandates, etc.

It is a fundamental tenet of taxation federally and in New Hampshire, that the burden of proof is on the taxpayer to justify any and all deductions from taxable income. See Appeal of Steele Hill Development, Inc., 121 N.H. 881 (1981) (*if a tax system is to be effective, the assessments of the taxing authorities must be deemed correct and justifiable, and the burden of overturning the action of the board must be with the taxpayer.*) (citations omitted).

At the Internal Revenue Services website (IRS.gov) under "Burden of Proof," the following message appears:

"The responsibility to prove entries, deductions, and statements made on your tax returns is known as the burden of proof. You must be able to prove (substantiate) certain elements of expenses to deduct them. Generally, taxpayers meet their burden of proof by having the information and receipts (where needed) for the expenses. You should keep adequate records to prove your expenses or have sufficient evidence that will support your own statement. You generally must have documentary evidence, such as receipts, canceled checks, or bills, to support your expenses. Additional evidence is required for travel, entertainment, gifts, and auto expenses."

This bill would make it nearly impossible for the Department to dispute a taxpayer's compensation deduction. The Department is not in possession of any information about the services provided to the taxpayer in order to prove the compensation deduction is grossly excessive. The taxpayer has all the evidence needed to prove the reasonableness of a compensation deduction.

The effect of such reversal of policy would be felt in every audit of a partnership or proprietorship. Technically speaking, no matter the audit adjustment done on either of these entity's tax returns, the entity could amend its tax return to increase the compensation deduction and effectively erase the audit adjustment(s). As such, it would be ineffective to ever conduct an audit of a partnership or proprietorship to ensure compliance with the law.

In 1991, Cabletron Systems filed a lawsuit against the State of New Hampshire on the basis that the BPT was "discriminatory and unconstitutional." More specifically, Cabletron challenged the constitutionality of the compensation deduction. Due in large part to the Cabletron case, the statute was revised in 1991 and eliminated the Department's burden to prove "grossly excessive." Former Commissioner Stan Arnold testified before the Legislature in 1991 that the revision to the statute would help reduce abuses of the deduction. This bill would revert to the pre-1991 burden of proof - the Department would have to prove that a taxpayer's deduction was grossly excessive.

In addition, this bill would repeal the federal standards adopted last year. In the 2010 Legislative session, after much study, the statute was amended to utilize the federal standards for the determination of a New Hampshire compensation deduction through the adoption of the Internal Revenue Code Section 162 standards.

AGENCY REPRESENTATIVE PREPARING WORKSHEET: John C. Lighthall NHDRA 271-1321


Approval Name/Signature

Asst. Commissioner NHDRA 271-2318
Title, Agency and Phone Number

12/14/10
Date

Voting Sheets

NO
action
taken

Senate Ways & Means Committee

EXECUTIVE SESSION

Bill # SS7

Hearing date: _____
Executive session date: ~~4-14~~ 5-3-11
Motion of: DTP/A

Room: State House - Room 100

VOTE: 4-0

<u>Made by</u>	Odell	<input type="checkbox"/>	<u>Seconded</u>	Odell	<input type="checkbox"/>
<u>Senator:</u>	D'Allesandro	<input type="checkbox"/>	<u>by Senator:</u>	D'Allesandro	<input type="checkbox"/>
	Luther	<input checked="" type="checkbox"/>		Luther	<input type="checkbox"/>
	Boutin	<input type="checkbox"/>		Boutin	<input type="checkbox"/>
	Morse	<input type="checkbox"/>		Morse	<input type="checkbox"/>
	Rausch	<input type="checkbox"/>		Rausch	<input checked="" type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>YES</u>	<u>NO</u>	<u>Reported out by</u>
Senator Odell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Senator D'Allesandro	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator Luther	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Luther
Senator Boutin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Senator Morse	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Senator Rausch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

*Amendments: 1342 moved by LD 2nd by Rausch 4-0

NOTES: Repeals record keeping ¹⁶² uses federal rule as example; has a safe harbor clearly unreasonable; "All" effective date

side by side - ? no idea what bill SB125

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: May 3, 2011

THE COMMITTEE ON Ways and Means

to which was referred House Bill 557-FN-A

AN ACT relative to the standards and burden of proof with respect
to the business profits tax deduction for reasonable
compensation attributable to owners of partnerships,
limited liability companies, and sole proprietorships.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 1716s

Senator Jim Luther
For the Committee

Sonja Caldwell 271-2117

New Hampshire General Court - Bill Status System

Docket of HB557

Docket Abbreviations

Bill Title: relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

Official Docket of HB557:

Date	Body	Description
1/24/2011	H	Introduced 1/6/2011 and Referred to Ways and Means; HJ 11 , PG. 191
2/9/2011	H	Public Hearing: 2/22/2011 2:00 PM LOB 202
2/23/2011	H	Executive Session: 3/9/2011 1:00 PM LOB 202 ==TIME CHANGE (Orig 2:00 PM)==
3/9/2011	H	Majority Committee Report: Ought to Pass with Amendment #0757h for Mar 15 (Vote 16-4; RC); HC 22 , PG.571-572
3/9/2011	H	Proposed Majority Committee Amendment #2011-0757h ; HC 23 , PG.641-642
3/9/2011	H	Minority Committee Report: Inexpedient to Legislate; HC 22 , PG.571-572
3/17/2011	H	Amendment #0757h Adopted, VV; HJ 30 , PG.1010-1011
3/17/2011	H	Ought to Pass with Amendment #0757h: MA RC 238-77 ; HJ 30 , PG.1010-1013
3/17/2011	H	Reconsideration (Rep Stepanek): MF DIV 72-243; HJ 30 , PG.1013-1014
3/23/2011	S	Introduced and Referred to Ways & Means; SJ 11 , Pg.193
3/31/2011	S	Hearing: 4/5/11, Room 100, State House, 2:45 p.m.; SC18
5/3/2011	S	Committee Report: Ought to Pass with Amendment #2011-1716s , 5/11/11; SC23
5/11/2011	S	Committee Amendment 1716s, AA, VV; SJ 16
5/11/2011	S	Ought to Pass with Amendment 1716s, MA, VV; Refer to Finance Rule 4-3; SJ 16
5/12/2011	S	Committee Report: Ought to Pass, 5/18/11; SC24
5/18/2011	S	Ought to Pass, MA, VV; SJ 17 , Pg.347
5/18/2011	S	Pending Motion OT3rdg; SJ 17 , Pg.347
5/18/2011	S	Sen. Morse Moved Laid on Table, MA, VV; SJ 17 , Pg.348

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

H13557 ORIGINAL REFERRAL

_____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1716s _____ - AMENDMENT # _____
 - AMENDMENT # 1342s _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

Fiscal note worksheet

DATE DELIVERED TO SENATE CLERK

7-22-11

BY:

SLC

COMMITTEE AIDE