

Bill as Introduced

SB 80-FN-A-LOCAL -AS INTRODUCED

2011 SESSION

11-0948
09/01

SENATE BILL ***80-FN-A-LOCAL***

AN ACT exempting certain rental income from the meals and rooms tax.

SPONSORS: Sen. Boutin, Dist 16; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13;
Rep. Warden, Hills 7; Rep. Major, Rock 8; Rep. Bettencourt, Rock 4; Rep. Griffin,
Rock 4

COMMITTEE: Ways and Means

ANALYSIS

This bill exempts rental income derived from renting a second home for no more than 12 weeks annually from the meals and rooms tax.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT exempting certain rental income from the meals and rooms tax.

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

1 1 Meals and Rooms Tax; Rental of Second Home Exempted. Amend RSA 78-A:3, VIII(c) to read
2 as follows:

3 (c) The term "rent" does not include:

4 (1) Rental charges for living quarters, sleeping, or household accommodations to any
5 student necessitated by attendance at a school as defined in this section[~~;~~].

6 (2) Rental charges for living quarters, sleeping or household accommodations
7 necessitated by the partial or complete destruction of a person's permanent residence.

8 (3) ***Rental charges for one vacation home rented for no more than 12 weeks***
9 ***annually.***

10 2 Effective Date. This act shall take effect July 1, 2011.

LBAO
11-0948
01/27/11

SB 80-FN-A-LOCAL - FISCAL NOTE

AN ACT exempting certain rental income from the meals and rooms tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill will decrease state revenue by an indeterminable amount in FY 2012 and each year thereafter. This bill will have no fiscal impact on state, county, and local expenditures, or county and local revenue.

METHODOLOGY:

The Department of Revenue Administration states this bill exempts rental income derived from renting a second home for no more than 12 weeks annually from the meals and rooms tax. The Department states although the law could be administered by the Department without any additional cost, it would eliminate an audit program currently in place to identify taxpayers who should be filing Meals and Rentals (M&R) tax returns and paying the tax under current law. Future auditing revenues would be slightly reduced as a result. The Department assumes many businesses would reorganize so that they could take advantage of this exemption. Many current M&R filers would no longer pay the tax and the state could lose more revenue than the revenue currently received from taxpayers who fall into the category of only renting their property for 12 weeks annually. In an attempt to estimate a maximum loss, the Department reviewed all M&R tax returns filed for taxable periods ending in FY 2010. Those returns with M&R licensing business activity codes indicating that they had "House/Chalet/Camps/Cottages and Condo Rentals" were segregated. This represented 1,485 M&R operators who paid \$3,486,432 in tax for FY 2010. Of the these segregated operators the Department identified 793 that filed only three M&R tax returns or fewer in FY 2010, and these operators paid \$867,923 in tax for FY 2010. The Department is unable to determine if the revenue impact will be at the high or low end of the range (\$867,923 to \$3,486,432 annually), but states the maximum loss could be more depending on taxpayer's business decisions. The exact fiscal impact cannot be determined at this time.

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: February 2, 2011

HEARINGS

Tuesday

2/8/2011

WAYS AND MEANS

SH 100

1:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: **Please note that SB59-FN-A was recessed from 2-1-11.

1:00 PM	SB59-FN-A	relative to fees for terrain alteration permits.
1:05 PM	SB18	deleting a function of the central tax services unit.
1:10 PM	SB39	relative to enforcement of the excavation tax by the department of revenue administration.
1:15 PM	SB42	relative to the declaration of consideration for purposes of the real estate transfer tax.
1:20 PM	SB43	making a technical correction to the tobacco tax laws.
1:25 PM	SB40	making technical corrections to meals and rooms tax laws.
1:35 PM	SB80-FN-A-L	exempting certain rental income from the meals and rooms tax.

Sponsors:

SB59-FN-A

Sen. John Gallus
 Rep. Paul Mirski

Sen. Andy Sanborn

Rep. Herbert Richardson

Rep. William Remick

SB18

Sen. Bob Odell

SB39

Sen. Bob Odell

SB42

Sen. Bob Odell

SB43

Sen. Bob Odell

SB40

Sen. Bob Odell

SB80-FN-A-L

Sen. David Boutin
 Rep. Mary Griffin

Rep. Mark Warden
 Sen. John Barnes, Jr.

Rep. Norman Major
 Sen. Gary Lambert

Rep. David Bettencourt

Sonja Caldwell 271-2117

Sen. Bob Odell

Chairman

Ways and Means Committee

Hearing Report

To: Members of the Senate

From: Sonja Caldwell
Legislative Aide

Re: SB80-FN-A-L – *exempting certain rental income from the meals and rooms tax.*

Hearing date: February 8, 2011

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

Members absent:

Sponsor(s): Sen. Boutin, Dist 16; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13; Rep. Warden, Hills 7; Rep. Major, Rock 8; Rep. Bettencourt, Rock 4; Rep. Griffin, Rock 4

What the bill does: This bill exempts rental income derived from renting a second home for no more than 12 weeks annually from the meals and rooms tax.

Who supports the bill: Sen. Boutin, Rep. Major

Who opposes the bill: Sen. Stiles

Taking no position: DRA

Summary of testimony received:

Senator Boutin introduced his bill and said that his intent was to provide some relief to families in these difficult economic times. He said some of his constituents approached him, seeking tax relief. They want to be able to rent their property and not be subjected to the meals and rentals tax. They want to rent their property to gain some income to pay property taxes. He said it was not his intent for this to benefit businesses, but rather regular families. He doesn't look at it as giving businesses a break but rather giving good hardworking people a chance to keep something they have. He added that people could live with something less than 12 weeks. He said he discussed this with the Commissioner and while he wasn't sure of the Commissioner's position, Senator Boutin is open to an amendment.

Senator Odell asked if he owned a 2nd home in a company name, would he get the 12 weeks tax break.

Senator Boutin said that was not his intent. He intended it for families. He did not intend to benefit businesses. He is open to suggestions for a better way to word the bill.

Senator Rausch said he could understand if someone has a property and they come upon hard times but there would be a lot of LLCs, or people who purchase 2nd homes under a business name who would benefit from this. This is one whole summer season or ski season. He said you would be giving significant tax shelter to these people.

Senator Stiles testified in opposition to the bill. She said this includes the summer season and the ski season. She said she is not opposed to families renting out their homes, but if they do, they should be paying meals and rentals tax. She noted that they can add that on to the rental cost. She said a lot of family homes at the beach are rented out and when done through a realtor, they pay the tax. When people do it on their own they are not paying the tax. She said DRA should scan the web to find out who is renting. She listed several websites where people advertise to rent their homes. They include: Homeaway.com, vacation rental by owner or vrbo.com. She said the meals and rentals tax applies to anyone renting out property.

Senator D'Allesandro said he has heard that many in Senator Stiles' area were avoiding paying the tax. It could result in considerable revenue. He said he rents in the Hampton area and pays the tax. There is a great deal of revenue to be derived from those who don't pay the tax.

Senator Odell noted this is not a negative for the people renting out their property as they can factor in the cost of the tax.

Ms. Cyr said the DRA takes no position on the bill. This is about understanding who is paying the tax. It is the individual renting the property. Whoever is renting out the home, has to file with the department. She said there may be constitutional issues with treating taxpayers the same. For a year now the DRA has had an audit program and has been looking at the different websites, making sure everyone is compliance.

John Lighthall said the department issued a technical information release. Many people they knew were renting and not paying were notified.

Senator Odell asked if they were suggesting there is a constitutional issue because this bill creates an arbitrary category of non-payers.

Ms. Cyr said its classifying the taxpayer versus classifying the tax.

Senator Boutin asked if the department would feel the same if the bill was amended to say two weeks instead of 12.

Ms. Cyr said no because the issue is not the timing.

Action: Inexpedient to legislate. Vote: 5-1. Sen. D'Allesandro will report the bill out.

Speakers

Testimony

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

Date Sent to Agency: 12/28/2010

LSR #: 11-0948.0

Agency: Department of Revenue Administration

Bill #: SB 80

Due to LBAO: 01/12/2011

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	(\$868,000 to \$3,486,000)			
State Expenditure					
Net State Impact	Not Applicable	(\$868,000 to \$3,486,000)			
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 cost. The bill, however, would eliminate an audit program currently in place to identify taxpayers who should be filing Meals & Rentals (M&R) Tax returns and paying the tax under current law. Future auditing revenues would be slightly reduced should this bill become law.

2. This bill would exempt from taxation under the M&R Tax "[r]ental charges for one vacation home rented for no more than 12 weeks annually." It would appear that this disparate treatment would be unconstitutional. See Section E, Technical or Mechanical Defects.

3. It is assumed that many businesses would reorganize so that they could take advantage of this exemption. Many current M&R Tax filers would no longer pay the M&R Tax and the State could lose much more than the revenue currently received from taxpayers who fall into the category of only renting their property for 12 weeks annually.

4. As a basis for looking at the possible impact of this bill, a range of revenue loss is shown for FY2011 based upon the total tax paid in FY2010 by those filers whose M&R licensing business activity code indicated they had House/Chalet/Camps/Cottages and Condo Rentals. No determination can be made as to the possible impact of this exemption for non-filers or those who change ownership of properties in order to take advantage of the new exemption.

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

In an attempt to estimate a maximum loss, the Department reviewed all M&R Tax returns filed for taxable periods ending in FY2010. Those returns with M&R licensing business activity codes indicating that they had "House/Chalet/Camps/Cottages and Condo Rentals" were segregated. Those segregated represented 1,485 M&R operators, who paid \$3,486,432 in M&R Tax for FY2010. Should all those 1,485 M&R operators qualify for the new exemption, then all of the \$3,486,432 in M&R Tax revenue would be at risk. It is also possible that other M&R operators may change their businesses in such a manner that they could take advantage of the exemption and thus the loss of M&R Tax revenue could be greater.

In an attempt to better define a minimum that the State could lose in M&R Tax revenue, the Department identified 793 of those 1,485 licensed M&R operators that filed only three M&R Tax returns or fewer all FY2010. This suggested that those 793 M&R operators could possibly meet the criteria of the proposed exemption now. Those 793 M&R operators paid \$867,923 in M&R Tax in FY2010. This represents the minimum of the Department's estimated revenue loss due to this bill.

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

A minimum and maximum range of loss of revenue for FY2011 has been estimated at between \$868,000 and \$3,486,000. The maximum loss, however, could be more depending upon taxpayers' business decisions.

(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.

Constitutional Issues: "Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classifications of taxpayers owning a common class of property." Opinion of Justices, 132 N.H. 777 (1990) citing Opinion of Justices, 115 N.H. 306 (1975).

Only "rental charges for one vacation home rented for no more than 12 weeks annually" would be exempt from taxation. Thus, a similarly situated taxpayer who rents for 13 weeks annually would not be exempt, nor would a hotel/motel owner who rents rooms for no more than 12 weeks annually.

A review by a constitutional tax lawyer should be performed on this bill.

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

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


Approval Name/Signature

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

11/24/11
Date

Voting Sheets

S: 1:45
E: 2:03

Senate Ways & Means Committee

EXECUTIVE SESSION

Bill # SB80

Hearing date: 2-8
Executive session date: 2-8
Motion of: ITL

Room: State House - Room 100

VOTE: 5-1

Made by Odell
Senator: D'Allesandro
Luther
Boutin
Morse
Rausch

Seconded Odell
by Senator: D'Allesandro
Luther
Boutin
Morse
Rausch

<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 checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator D'Allesandro	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	D'Allesandro
Senator Luther	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator Boutin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Senator Morse	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator Rausch	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

*Amendments:

NOTES: constititutional issue

Committee Report

New Hampshire General Court - Bill Status System

Docket of SB80

Docket Abbreviations

Bill Title: exempting certain rental income from the meals and rooms tax.*Official Docket of SB80:*

Date	Body	Description
1/19/2011	S	Introduced and Referred to Ways & Means, SJ 3 , Pg.34
2/3/2011	S	Hearing: 2/8/11, Room 100 State House, 1:35 p.m.; SC10
2/9/2011	S	Committee Report: Inexpedient to Legislate, 2/16/2011; SC11
2/16/2011	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===, SJ 6 , Pg.60

NH House**NH Senate**

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB80 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

_____ HANDOUTS FROM THE PUBLIC HEARING

_____ PREPARED TESTIMONY AND OTHER SUBMISSIONS.

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

_____ - AMENDMENT # _____ _____ - AMENDMENT # _____
_____ - AMENDMENT # _____ _____ - 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

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7-22-11 SLC
BY COMMITTEE AIDE