



# State of New Hampshire

GENERAL COURT

CONCORD

## MEMORANDUM

---

---

**DATE:** October 26, 2022

**TO:** Honorable Sherman Packard, Speaker of the House  
Honorable Chuck Morse, President of the Senate  
Honorable Paul C. Smith, House Clerk  
Honorable Tammy L. Wright, Senate Clerk  
Honorable Chris Sununu, Governor  
Michael York, State Librarian

**FROM:** Representative Patrick Abrami, Chairman

**SUBJECT:** Interim Report of the Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax.  
RSA 77-A:23-b (HB 102, Chapter 12, Laws of 2022)

---

---

Pursuant to RSA 77-A:23-b (HB 102, Chapter 12, Laws of 2022), enclosed please find the Interim Report of the Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

I would like to thank those members of the commission who were instrumental in this study. I would also like to acknowledge all those who testified before the commission and assisted the commission in our study.

Enclosures

cc: Members of the Commission

**INTERIM REPORT**

**COMMISSION ON WORLDWIDE COMBINED REPORTING FOR UNITARY  
BUSINESSES UNDER THE BUSINESS PROFITS TAX**

**RSA 77-A:23-b (HB 102, Chapter 12, Laws of 2022)**

**November 1, 2022**

<b>Member</b>	<b>Appointing Authority</b>
Representative Patrick Abrami, Chair	Speaker of the House
Representative Thomas Schamberg	Speaker of the House
Representative Walter Spilsbury	Speaker of the House
Senator Gary Daniels	Senate President
Kevin Kennedy	Business and Industry Association
Alex Fries	NH Dept. of Business & Economic Affairs
Matthew Foley	NH Society of Certified Public Accountants
Keen Wong	NH Dept. of Revenue Administration

**Commission Charge and Study Purpose:**

**RSA 77-A:23-b Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax.**

III. The commission shall study the advantages and disadvantages for the state’s economy and revenues of replacement of the current water’s edge method by the worldwide combined reporting method for reporting and apportionment of income under the business profits tax. It shall consult with national experts in both methods, including economists, business associations, and tax experts.

**Organizational Meeting**

There was an organizational meeting of the commission that took place October 11 at the offices of the Department of Revenue Administration (DRA). Rep. Patrick Abrami, being the first named House member, called the meeting to order at 10:00 a.m. Rep. Abrami explained that the commission got off at such a late date because the House Clerk’s Office had difficulty filling all the commission seats. Even at this writing there are four vacant seats: two from the NH Business and Industry Association, one from the NH Attorney General’s Office, and one from the NH Bar Association. Rep. Abrami indicated that the House Clerk’s Office will continue to find members to fill these slots.

The second order of business was to elect a chair. Rep. Schamberg nominated Rep. Abrami as the chair which was seconded and Rep. Abrami was voted chair with no objections. Rep. Abrami then reviewed our charge and discussed the timeframe for the commission’s work. It was noted that an interim report was due on November 1, 2022 and that the final report was due

on November 1, 2023. He also pointed out that it was unusual for this type of commission to cross from one legislature to the next. He pointed out that if legislative members do not get reelected, that they would need to be replaced once the new Speaker of the House or Senate President for the 2023-24 session are elected by their respective bodies.

Rep. Schamberg, who was the prime sponsor of HB 102 which formed this commission, gave an overview of the issue. His thoughts on this topic are summarized in Attachment 1. An example to illustrate how tax avoidance can occur is shown in Attachment 2.

The next topic discussed was concerning expert witnesses to bring into our next meeting and future meetings. Rep. Schamberg suggested four names which are shown in Attachment 3. Rep. Spilsbury suggested that at our next meeting that we invite someone that is neutral on the topic, but who understands the history of the issue to where we are. The commission members thought that was a good idea. Rep. Abrami asked Mr. Wong of the DRA to ask the Commissioner of the DRA to assist us in finding such an expert. Since this meeting, Mr. Wong and Rep. Abrami met with Commissioner Stepp who said she would reach out to the Multistate Tax Commission and the Federation of Tax Administration and to ask for names of experts in this area of tax apportionment.

Rep. Abrami said that he would draft the interim report and have it to the members with enough time for the members to review, with the understanding that the report be transmitted by November 1, 2022.

### **Next Meeting**

The commission decided to meet once again on November 10 at 10:00 a.m. at a site to be determined.

Respectfully Submitted,

Representative Patrick Abrami, Chairman

## House Bill 102- Commission Studying Worldwide Combined Reporting Method for Unitary Businesses under the Business Profits Tax

The role and duty of the Ways and Means Committees of the NH House and NH Senate are to make sure that NH's State tax policies enable the state to meet its obligations to our citizens, while assuring a fair and level playing field for taxpayers.

The original concept of HB 102 is to examine whether the present tax policy, the Water's Edge method, favors foreign corporations over domestic corporations. HB 102 as presented to the NH House Ways and Means Committee would improve NH Business Profits Tax revenue system (BPT) with fairness for NH's domestic corporations by removing the distinct advantage given to foreign multinationals with subsidiaries in NH that currently exists and, with our shift to single sales factor, could be made even worse.

1. The current system under the Water's Edge method advantages multinational corporations because they alone can use legal accounting methods to shift profits away from US jurisdictions and thus lower their tax bills.
2. While the accounting techniques are legal, they have these bad consequences:
  - a. It unfairly adds to the tax burden of domestic businesses, especially NH based businesses
  - b. It distorts NH's business tax structure, imposing additional burdens on all taxpayers and/or denying revenue NH should be receiving based on its laws.

Two examples of the types of small businesses that could be most harmed by this unfair distortion of our tax structure are local coffee shops which have to compete against the global reach of Starbucks and local breweries competing against huge beverage conglomerates like the one that now owns Budweiser.

Many multi-foreign corporations have created subsidiaries (tax havens) that profess to be unrelated to the main business of their NH company and then funnel income of that NH company into that subsidiary (a tax haven) by the use of intangible accounting techniques which the NH company has to pay a fee to its' parent company for using a trademark, a copyright, patents, domain names, customer lists, lease agreements, licensing agreements, etc. This approach is not available to a domestic company under the Water's Edge method. It is an uneven playing field.

The problem has gotten so egregious that corporations receive offers to help create offshore subsidiaries. Loyal businesses are torn between playing on an uneven playing field or moving profits out of New Hampshire.

The NH marketplace, like the rest of America's public marketplaces, provides a top-notch public infrastructure, an educated workforce, security, and the rule of law, all supported one way or another by tax dollars. Every business, domestic or global, benefits from that infrastructure and that educated workforce. All should pay their fair share to support it.

The concept and structure of HB 102 now should be an accounting method that staves off tax avoidance strategies. The present Water's Edge rule leaves open the shifting of income to other countries. It raises the question – is the Water's Edge method fair? Does the Water's Edge method favor foreign corporations over US corporations? The New Hampshire Supreme Court has indicated that the Water's Edge method does favor foreign over domestic commerce per their 1999 Caterpillar decision: "We point out that the water's edge method was adopted for the benefit of foreign business."

In closing, HB 102 is thinking distant posterity. It is global accounting for global business. The goal of this commission should be a Business Profits Tax that treats all corporate taxpayers the same, that levels the playing field for all.

NH Representative Tom Schamberg  
NH House Ways & Means Committee  
Merrimack County #4  
Towns of Wilmot & Sutton

## Evolution of corporate structures to accommodate tax avoidance

As economies have become more globalized, US corporations have established offshoot partnership and subsidiary companies that facilitate sales to non-US markets, oversee manufacturing operations, and in some cases serve as a landing place to shift profits from US based sales out of the US tax base.

Corporations use a variety of accounting schemes to move profits off their US balance sheets and onto those of subsidiaries in countries with low taxes. The simplest of these schemes relates to pricing of intellectual properties such as logos and patents. Companies can also shift debt between subsidiaries to change which country is recording their profits.

Here's an example of how an intellectual property scheme might work:

Global Shoes Inc. **sells** their logo to offshore subsidiary Logo Co. for a **low cost**.

Logo Co. **charges** Global Shoes Inc. a **high royalty cost**, \$80, for each shoe that displays its logo.

Global Shoes Inc. **sells** these shoes for \$150. When it calculates profits, Global Shoes Inc. **subtracts** the \$30 manufacturing cost and \$80 royalty to arrive at a \$40 in **taxable profit**.

Logo Co. **reports** an \$80 profit on the sale of the royalty and **pays taxes** to the country with low taxes where it is registered.

## Experts for Worldwide Combined Reporting

1. Dan Bucks – experience on Multi state tax commission.  
Email: [danbucks@publicrevenues.com](mailto:danbucks@publicrevenues.com)
  
2. Ben Miller- Helped argue case in front of Supreme court upholding right of states to tax on basis of apportionment without Water's Edge and that Worldwide Combined Reporting is permissible.  
Email: [bmiller450@aol.com](mailto:bmiller450@aol.com)
  
3. Michael Mazerov – Center for Budgetary and Public Policy. Many studies on WWCR.  
Email: [mazerov@cbpp.org](mailto:mazerov@cbpp.org)
  
4. David Morse – Coalition for a Prosperous America – impact of taxation on domestic businesses.  
Email: [David.Matthew.Morse@gmail.com](mailto:David.Matthew.Morse@gmail.com)