

Senate Ways and Means Committee

Sonja Caldwell 271-2117

HB 281-FN, relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes.

Hearing Date: March 22, 2021

Members of the Committee Present: Senators Giuda, D'Allesandro, Daniels, Hennessey and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill removes the consideration of weighted apportionment factors under the business profits tax from inclusion in the tax expenditure report and includes the regional career and technical education center tax credit. The bill also delays the enactment of the single sales factor for determining apportionment under the business profits tax and the business enterprise tax and extends and amends the legislative committee on apportionment.

Sponsors:

Rep. Abrami

Rep. Ames

Who supports the bill: Robin Vogt

Who opposes the bill: Peggy Gilmour (Greater Nashua Chamber of Commerce)

Who is neutral on the bill: No one

Summary of testimony presented:

Rep. Abrami

- This bill amends which tax expenditures must be reported on each year in the tax expenditure report. When we went to double sales factor years ago, the legislature asked DRA to report on how it was going. That practice is still continuing today even though DRA told House Ways and Means that no one pays attention to that report. They asked to remove that requirement.
- The bill also delays implementation of single sales factor under the BPT from taxable periods ending on or after December 31, 2022 to periods ending on or after December 31, 2026. This is because we are still trying to understand the impact of market-based sourcing. It will take until that period to understand the full impact.
- It also amends the duties of the legislative committee that the Senate put into HB4 from the last budget. The committee expired in December last year. This reactivates that committee. It's a joint committee of senate and house members.

- 4 years ago, there was a senate bill calling for a commission to study market-based sourcing and how a sales and apportionment formula would work. At that time, we were a cost of performance state. Under market-based sourcing, the state where the benefit is received gets the tax benefit. The report recommended moving forward with market-based sourcing. The report did not recommend moving forward with single sales factor.
- Market based sourcing is in effect for the first time this year.
- This solved the problem of our companies having to apportion tax to multiple states for the same service. Businesses that are based in NH and providing services to other states no longer have to pay tax to NH. They pay tax to the state in which the service is being performed. The legislature has to identify all those out of state businesses that provide services in NH. That is the only way to ensure this will be revenue neutral, if not positive, for NH.
- Single sales factor was in HB4, the last budget. It is slated to start next year. HB4 created a study committee on apportionment that was to meet and decide whether to rescind single sales factor. It never met because of covid. Legal counsel said the committee didn't have the authority to rescind single sales factor. As a result, single sales factor is now in statute. The House never had a hearing on single sales factor.
- He explained the reasons for wanting to slow down implementation of single sales factor as follows: we need to see the impact of market-based sourcing on business tax revenues; DRA needs time to compile data; We need to ensure that a move to single sales factor doesn't diminish business tax revenue. Other states jumped in without data. They were able to do that because they have income and sales taxes as a buffer.
- We have learned that the business community is split on whether this is a positive for them.

Sen. D'Allesandro said they got two different schools of thought from that commission. Attorney Sullivan gave them a positive note. DRA wasn't clear about what would happen as a result of adopting single sales factor. The positive opinion stated that because of activities taking place in surrounding states, that this was a direction we should move in. Pushing it off to 2026 is a huge difference.

Rep. Abrami agreed that Attorney Sullivan said about 30 states have adopted single sales factor. As a commission, they did not put in the report that NH should move forward with single sales factor. Attorney Sullivan's point was NH should do it because everyone else was. Rep. Abrami would like to slow it down and understand the impact of it. NH won't know the full picture of market-based sourcing until 2026. He is willing to discuss this with the Senate.

Sen. Rosenwald said her understanding is that we can't bind a future legislature. She questioned if pushing this back to 2026 would be binding.

Rep. Abrami said no. The next legislature could revert it back or push it out even further. If the legislature doesn't act now, this will become law next year.

Sen. Daniels said if we delay this, he understands there will be tax increases on our manufacturers.

Rep. Abrami said that was not his understanding.

Rep. Almy

- Sen. D'Allesandro was on the committee, which did meet for two meetings. He was the only one who came consistently from the Senate.
- They asked DRA to separate out for the most recent data they could get, the amount of money we would have gained or lost each year if this had been in place before market-based sourcing. From 2013-2017 it averaged out to a small loss over 2 years and a small gain over

2 years. They finished the data for 2018 by the second meeting of the committee and learned NH would have lost about \$118 million.

- They also separated out the businesses over 1 million dollars and then all of the businesses. The loss that we experienced, they gained \$10 million more than that. All the rest of the businesses who paid less than a million dollars in taxes per year were having to pay more in order to compensate.
- They also separated the businesses they knew were mostly service oriented which are affected by market-based sourcing. The difference between them was very small in 2018. Meaning that market-based probably isn't going to make a lot of difference.
- Market-based sourcing returns won't come in until next year so that is why the House chose 2026. We won't have one year done until two years from now. There won't be any audits yet. 2026 is the first time they will have most of two years of data.
- They had an expert looking at this issue from a progressive think tank in DC and he said that most states lose when they go over to single sales factor, but not a lot, because the highest percentage of total revenues of states that have done this is 7% corporate tax of total revenues. They have a lot less to lose than we do.

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Date Hearing Report completed: March 24, 2021