

HB 281-FN - AS INTRODUCED

2021 SESSION

21-0629

10/11

HOUSE BILL            **281-FN**

AN ACT                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.

SPONSORS:            Rep. Abrami, Rock. 19; Rep. Ames, Ches. 9

COMMITTEE:          Ways and Means

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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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT 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.

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

1 1 Tax Expenditure Report; Weighted Apportionment Factors Removed. Amend RSA 71-C:2 to  
2 read as follows:

3 71-C:2 Tax Expenditures Specified. Tax expenditures include, but may not be limited to, the  
4 community development finance authority investment tax credit as computed in RSA 162-L:10; the  
5 economic revitalization zone tax credit as computed in RSA 162-N:6; the research and development  
6 tax credit under RSA 77-A:5, XIII; the Coos county job creation tax credit under RSA 77-E:3-c; the  
7 education tax credit as computed in RSA 77-G:4; ~~the weighted apportionment factors under RSA 77-~~  
8 ~~A:3, II(a);~~ **the regional career and technical education center tax credit pursuant to RSA**  
9 **188-E:9-a;** and the exemption for qualified regenerative manufacturing companies allowed under  
10 RSA 77-A:1, I and RSA 77-E:1, III.

11 2 Business Profits Tax; Single Sales Factor; Amendment to Prospective Amendment. 2019,  
12 346:426, prospectively amending RSA 77-A:3, I-III, are repealed and reenacted to read as follow:

13 346:426 Business Profits Tax; Apportionment; 2026. RSA 77-A:3, I-III are repealed and  
14 reenacted to read as follows:

15 I. A business organization which derives gross business profits from business activity both  
16 within and without this state, and which is subject to a net income tax, a franchise tax measured by  
17 net income, or a capital stock tax in another state or is subject to the jurisdiction of another state to  
18 impose a net income tax or capital stock tax upon it, whether or not such tax is actually imposed,  
19 shall apportion its gross business profits so as to allocate to this state a fair and equitable proportion  
20 of such business profits. Except as provided in this section, such apportionment shall be made in the  
21 following manner:

22 (a) For taxable periods ending before December 31, 2026:

23 (1) The business organization's gross business profits shall be apportioned on the  
24 basis of the following 3 factors:

25 (A) The percentage of value of the total real and tangible personal property  
26 owned, rented and employed by the business organization everywhere as is owned, rented and  
27 employed by it in the operation of its business in this state. Property owned by the business  
28 organization shall be valued at its original cost. Property rented by the business organization shall  
29 be valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate

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1 paid by the business organization less any annual rental rate received by the business organization  
2 from subrentals.

3 (B) The percentage of total compensation paid by the business organization to  
4 employees everywhere as is paid by the business organization to employees for services rendered  
5 within this state. Such compensation is deemed to be disbursed for services in this state if the  
6 service is performed entirely within this state, or if the service is performed both within and without  
7 this state and the service performed without this state is incidental to the service within this state,  
8 or some of the service is performed in this state and (i) the base of operations or, if there is no base of  
9 operations, the place from which the service is directed or controlled is in this state, or (ii) the base of  
10 operations or the place from which the service is directed or controlled is not in any state in which  
11 some part of the service is performed, but the individual performing such service resides within this  
12 state.

13 (C) The percentage of the total sales, including charges for services, made by the  
14 business organization everywhere as is made by it within this state:

15 (i) Sales of tangible personal property are made in this state if the property  
16 is delivered or shipped to a purchaser, other than the United States government, within this state  
17 regardless of f.o.b. point or other conditions of sale, or the property is shipped from an office, store,  
18 warehouse, factory or other place of storage in this state and the purchaser is the United States  
19 government, or the business organization is not taxable in the state of the purchaser.

20 (ii) Sales other than sales of tangible personal property are in this state if  
21 the business organization's market for the sales is in this state, as follows:

22 1. In the case of sale, rental, lease, or license of real property, if and to  
23 the extent the property is located in this state;

24 2. In the case of rental, lease, or license of tangible personal property, if  
25 and to the extent the property is located in this state;

26 3. In the case of sale of a service, if and to the extent the service is  
27 delivered to a location in this state;

28 4. In the case of sale, rental, lease, or license of intangible property, if  
29 and to the extent the property is used in this state;

30 5. In the case of interest income, if and to the extent the debtor or  
31 encumbered property is located in this state;

32 6. In the case of dividend income, if and to the extent the business  
33 organization's commercial domicile is in this state; and

34 7. In the case of other income, if and to the extent the income is derived  
35 from sources in this state.

1 (iii) In the case of sales other than sales of tangible personal property, if the  
2 state or states of assignment cannot be determined, the state or states of assignment shall be  
3 reasonably approximated.

4 (iv) In the case of sales other than sales of tangible personal property, if the  
5 taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be  
6 determined or reasonably approximated, such sale shall be excluded from the denominator of the  
7 sales factor.

8 (2) A fraction, the numerator of which shall be the property factor in subparagraph  
9 I(a)(1)(A) plus the compensation factor in subparagraph I(a)(1)(B) plus 2 multiplied by the sales  
10 factor in subparagraph I(a)(1)(C) and the denominator of which is 4, shall be applied to the total  
11 gross business profits (less foreign dividends) of the business organization to ascertain its gross  
12 business profits in this state.

13 (b) For taxable periods ending on or after December 31, 2026, the business  
14 organization's gross business profits shall be apportioned by multiplying the total gross business  
15 profits (less foreign dividends) of the business organization by the sales factor in subparagraph  
16 I(a)(1)(C).

17 II.(a) If the applicable method of apportionment in paragraph I does not fairly represent the  
18 business organization's business activity in this state, the business organization may petition for, or  
19 the commissioner may require, in respect to all or any part of the business organization's business  
20 activity, if reasonable, the employment of any other method to effect an equitable apportionment of  
21 the business organization's gross business profits.

22 (b) For foreign dividends from unitary sources, the following formula shall be used to  
23 modify factors relating to included dividends:

24 (1) Determine a percentage for each dividend payor consisting of dividends paid  
25 divided by taxable income which has been computed using United States standards.

26 (2) Apply this percentage to the dividend payor's foreign property, payroll, and sales  
27 for taxable periods ending before December 31, 2026, or to the dividend payor's foreign sales for  
28 taxable periods ending on or after December 31, 2026.

29 (3) Sum the results in subparagraph (2) for all dividend payors.

30 (4) Add the result in subparagraph (3) to the denominators of the combined water's  
31 edge group. The numerator will remain the New Hampshire numerator.

32 (5) Apply the resulting percentage to the foreign dividends.

33 (6) Add this amount to the amount of New Hampshire taxable business profits  
34 computed pursuant to RSA 77-A:3, I.

35 III. When 2 or more related business organizations are engaged in a unitary business, as  
36 defined in RSA 77-A:1, XIV, a part of which is conducted in this state by one or more members of the

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1 group, the income attributable to this state shall be determined by means of the applicable combined  
2 apportionment factors of the unitary business group in accordance with paragraphs I and II.

3 3 Legislative Committee on Apportionment; Extended; Duties Revised. Amend RSA 77-A:23-a  
4 to read as follows:

5 77-A:23-a Legislative Committee on Apportionment. There is established a committee to study  
6 the apportionment of gross business profits under the business profits tax, ~~[and to authorize the~~  
7 ~~enactment of]~~ **with special emphasis on the impact on the state's businesses, employment**  
8 **and revenues of moving to** the single sales factor for the business profits tax and business  
9 enterprise tax.

10 I. The members of the committee shall be as follows:

11 (a) Three members of the senate, appointed by the president of the senate.

12 (b) Four members of the house of representatives, appointed by the speaker of the house  
13 of representatives.

14 II. Members of the committee shall receive mileage at the legislative rate when attending to  
15 the duties of the committee.

16 III.(a) The committee shall study apportionment among states pursuant to RSA 77-A:3 of  
17 gross business profits under the business profits tax. The committee shall also monitor the laws and  
18 legislation of other states concerning market-based sourcing **and single sales factor**  
19 **apportionment** and may study any other related issues. The committee may solicit input or  
20 testimony from any person or organization the committee deems relevant to the study.

21 (b) ~~[The committee shall conduct meetings and]~~ **Beginning** on or before November 1,  
22 ~~[2020]~~ **2024, the committee shall examine the data provided by the department of revenue**  
23 **administration on the effects of single sales factor apportionment under the new market**  
24 **rules, and** shall ~~[hold at least 2 public hearings on the enactment of the single sales tax provisions~~  
25 ~~contained in sections 426-429 of HB 4-FN-A-LOCAL of the 2019 regular legislative session. In~~  
26 ~~November 2020, the committee shall, by majority vote of the committee, vote on whether to rescind~~  
27 ~~the enactment of the amendments contained in sections 426-429 of HB 4-FN-A-LOCAL regular~~  
28 ~~legislative session. If the majority of the committee rescinds the enactment of sections 426-429 of~~  
29 ~~HB 4-FN-A-LOCAL regular legislative session, such sections shall not take effect.]~~ **by majority**  
30 **vote of the committee, vote on whether to recommend and sponsor legislation to rescind or**  
31 **further delay the change to single sales factor apportionment described in RSA 77:3.** The  
32 committee shall report on its actions to the chairpersons of the senate and house finance committees,  
33 the chairpersons of the senate and house ways and means committees, the secretary of state, and the  
34 director of the office of legislative services.

35 IV. The members of the committee shall elect a chairperson from among the members. The  
36 first meeting shall be called by the first-named ~~[senate]~~ **house** member. The first meeting of the

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1 committee shall be held within 45 days ~~[of the effective date of this section]~~ **after May 1, 2024**. Four  
2 members of the committee shall constitute a quorum.

3 V. The committee shall report its findings and any recommendations for proposed legislation  
4 to the president of the senate, the speaker of the house of representatives, the senate clerk, the  
5 house clerk, the governor, and the state library on or before December 1, ~~[2020]~~ **2024**.

6 4 Enactment of Single Sales Factor; Date Changed. Amend 2019, 346:432 to read as follows:

7 346:432 Enactment of Single Sales Factor. Sections 426-429 of this act shall take effect January  
8 1, ~~[2022]~~ **2026** unless upon the report of the committee established in RSA 77-A:23-a, as inserted in  
9 this act, ~~[that by majority vote of the committee, sections 426-429 are rescinded]~~ **legislation is**  
10 **adopted to rescind or further delay the change to single sales factor apportionment.**

11 5 Repeal of Legislative Committee; Change to Effective Date. Amend 2019, 346:440, XIII to  
12 read as follows:

13 XIII. Section 433 of this act shall take effect December 1, ~~[2020]~~ **2024**.

14 6 Effective Date. This act shall take effect upon its passage.

**HB 281-FN- FISCAL NOTE  
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AN ACT 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.

**FISCAL IMPACT:**     State                     County                     Local                     None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	\$0	\$0	\$0
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill removes the weighted apportionment factors under the business profits tax from and includes the regional career and technical education center tax credit to the tax expenditure report. This bill also delays the enactment of the single sales factor for determining apportionment under the business profits tax.

The Department of Revenue Administration states the changes to the tax expenditure report will have no fiscal impact.

The Department states the change to move the implementation of the single sales factor apportionment methodology under the BPT from taxable periods ending on or after December 31, 2022 to taxable periods ending on or after December 31, 2026 on business profits tax revenue will have an indeterminable fiscal impact beginning in FY 2023. The Department states until it obtains returns from taxpayers utilizing the market based method of sourcing under the business profits tax for taxable periods ending on or after December 31, 2021, the Department is not able to reliably predict the impact of delaying the implementation of single sales factor apportionment.

**AGENCIES CONTACTED:**

Department of Revenue Administration