

SB 293-FN – AS AMENDED BY THE SENATE

03/07/12 0796s

2012 SESSION

12-2869
10/01

SENATE BILL **293-FN**

AN ACT relative to notice requirements and payment of interest by the department of revenue administration for overpayments and underpayments of tax.

SPONSORS: Sen. Sanborn, Dist 7; Sen. Barnes, Jr., Dist 17; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Bettencourt, Rock 4; Rep. O'Brien, Hills 4

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill requires that the department of revenue administration give notice of an overpayment or underpayment of tax within 30 days, and notice of a final determination after a hearing within 90 days. The bill also increases the overpayment rate for refunds of tax to be the same as the underpayment rate.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to notice requirements and payment of interest by the department of revenue administration for overpayments and underpayments of tax.

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

1 1 Department of Revenue Administration; Interest Rate Paid; Tax Overpayments. Amend
2 RSA 21-J:28, III to read as follows:

3 III. For purposes of this section, with respect to any period, the term “overpayment rate”
4 shall ~~mean~~ **be determined in the same manner as** the underpayment rate determined under
5 paragraph II with respect to such period year ~~[less 3 percentage points]~~.

6 2 Refund of Taxes; Notice of Denial. Amend RSA 21-J:28-a, II to read as follows:

7 II. After a claim for refund is filed, the department shall examine it and either issue a notice
8 of refund or credit to the claimant or issue a notice of denial **within 90 days**. After receipt of the
9 department's decision, the claimant may file a written petition for reconsideration with the
10 department as provided in RSA 21-J:28-b.

11 3 Department Notice; Redetermination or Reconsideration of Tax. Amend RSA 21-J:28-b, III to
12 read as follows:

13 III. After a hearing on such petition for redetermination or reconsideration, the department
14 shall, **within 90 days of the close of the record**, issue a notice of decision affirming, increasing, or
15 decreasing the tax. Any increase ordered by the commissioner shall be assessed against the
16 taxpayer and shall carry interest as prescribed in RSA 21-J:28. Any refund or credit for
17 overpayment ordered by the commissioner shall, with interest pursuant to RSA 21-J:28 from the
18 date the tax was paid, be paid or credited to the taxpayer in the manner provided in RSA 21-J:28-a,
19 IV.

20 4 Taxpayer Information Statements; Distribution. Amend RSA 21-J:40, II(a) to read as follows:

21 (a) ~~When~~ **Within 30 days of the date** the taxpayer is first contacted by the
22 department for an examination of the taxpayer's records; for an assessment of taxes, penalties or
23 interest; or for a demand for payment of taxes, penalties or interest;

24 5 Effective Date. This act shall take effect July 1, 2012.

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12/15/11

SB 293-FN - FISCAL NOTE

AN ACT relative to notice requirements and payment of interest by the department of revenue administration for overpayments and underpayments of tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill will decrease state revenue and increase state expenditures by an indeterminable amount in FY 2013 and each year thereafter. This bill would have no fiscal impact on county and local revenue and expenditures.

METHODOLOGY:

The Department of Revenue Administration (DRA) states this bill relates to notice requirements and payment of interest by DRA for overpayments and underpayments of tax. The assumptions, method used to determine the fiscal impact, estimated fiscal impact and other comments are different for the various sections of the bill. As such, similar sections will be grouped together in the analysis and analyses may differ between sections.

Section 1 of the bill is relative to the overpayment interest rate. This section would make the overpayment rate, or the interest rate paid on refunds issued by DRA, equal to the underpayment rate, or the interest rate paid by taxpayers for taxes not paid in full by the due date. Currently, the overpayment rate is three percentage points less than the underpayment rate, where the underpayment rate is equal to the rate specified in Section 6621 (a) (2) of the Internal Revenue Code of 1986 as in effect on the September 1 immediately preceding the calendar year plus two percentage points. For calendar year 2010, calendar year 2011, and calendar year 2012 the overpayment rate is 3% and the underpayment rate is 6%. Thus, the overpayment rate for fiscal year 2011 is 3%. If the overpayment rate was equal to the underpayment rate, then the overpayment rate would double in this instance. The Department states for refunds paid in FY 2011, \$709,127.60 was paid in interest at a rate of 3%. If the interest rate was increased to 6% the amount paid in interest on refunds double to \$1,418,255.20 in FY 2013. The Department is unable to determine the fiscal impact in future fiscal years.

Sections 2 and 4 of the bill are relative to notice of overpayment or underpayment. These sections state DRA shall give notice of any overpayment or underpayment, along with an

explanation in cases of an underpayment of the basis for the underpayment, interest and penalties, within 30 days of the date the tax payment is made by the taxpayer. Overpayments and underpayments are the result of various scenarios including a payment that does not equal the amount stated on a document, calculation errors when determining tax liability, and the result of an audit. Section 2 does not define what the "notice" of overpayment or underpayment must contain, based on Section 4, however, it appears that it is intended that the notice contain the amount of an underpayment given that detail must be provided. These sections do not define how the overpayment or underpayment is determined therefore, the Department assumes that they have 30 days from the date of a payment to conclude that any type of overpayment or underpayment occurred and, in cases of an underpayment, provide an explanation for the underpayment, penalties and interest. These sections could be administered by the Department, but with significant additional costs for computer system upgrades and IT development, along with hiring additional employees to perform tax system maintenance and validation. The Department states these sections would effectively eliminate almost all audit activity by DRA because it is virtually impossible to complete an audit within 30 days from the date of payment. Thus, the fiscal impact would be equal to the audit revenue. Audit revenue, during the past three fiscal years has averaged \$45,000,000. As a practical matter the DRA could not administer this law if passed. For example, with estimate and extension payments there is no way to know if an overpayment or underpayment occurred without a return being filed, and this will not occur within 30 days. Also, a determination of overpayment or underpayment in the case of an audit can take longer than 30 days given the audit process of requesting documents from a taxpayer, meeting with a taxpayer and thoroughly analyzing the information received. While it is difficult to complete this process within 30 days from initial contact to any notice of overpayment or underpayment, it is impossible to complete this process within 30 days of a payment. The Department states no matter how many auditors DRA has, the current process of estimate and extensions payments, final returns, and communication with the taxpayer during an audit could not be conducted within 30 days.

Section 3 of the bill is relative to hearing notice of decision. This section states that the DRA shall, within 60 days of a hearing, issue a notice of decision affirming, increasing or decreasing the tax. During FY 2010 the time required to produce a Final Order after "the close of the record" averaged 55 days. There were, however, five complex cases where the Final Order was issued more than six months after the close of the record. Of the 53 Final Orders issued during FY 2010, 17 were produced after 60 days. During FY 2011 the time required to produce a Final Order after the close of the record averaged 19 days. There was, however, one complex case in which the Final Order was issued more than six months after the close of the record. Of the 91

Final Orders issued during FY 2011, 6 were produced after 60 days. It should be noted that the average number of days to produce a Final Order during FY 2011 was affected by an increased number of cases dismissed by a Final Order for the taxpayer's failure to appear. Final Orders dismissing a case for failure to appear are generally issued on the same day or the day after the hearing. In order to ensure that Final Orders are issued within 60 days after the close of the record and to maintain the same level of review and analysis that currently exists, DRA would need to hire two additional Hearing Officers to keep the current timing for the scheduling of hearings, at a cost of approximately \$196,000 annually. This bill does not contain an appropriation or authorized additional positions. Without additional resources (continuing operating with 1 Hearing Officer), the timing for the scheduling of hearings would be significantly increased to ensure compliance with the new law. The Hearing Officer would require more days in which to write Final Orders. If the taxpayer does not choose to pay the tax pending the hearing, an increase in the timing of scheduling of hearings could result in increased interest payments by taxpayers. Where the Final Order determines that tax is due, the interest would accrue from original due date of the tax. This amount cannot be estimated given various unknowns, including the additional number of days for which interest will need to be paid and the amount of additional tax due on which the interest is paid.

Section 5 of this bill is relative to taxpayer information statements. The section states that taxpayer information statements shall be distributed by DRA to a taxpayer within 30 days of the date the taxpayer is first contacted by DRA for an examination of the taxpayer's records, an assessment or a demand for payment. The taxpayer information statements are currently distributed to the taxpayer within 30 days of contact for examination, assessment or demand of payment. With respect to assessments, the taxpayer information statement is printed on the back of all tax notices issued by DRA. The Department states there would be no fiscal impact associated with this section.