

SB 399-FN – AS AMENDED BY THE HOUSE

03/21/12 1202s
16May2012... 2217h
16May2012... 2269h

2012 SESSION

12-3059
06/03

SENATE BILL **399-FN**

AN ACT relative to the maximum permit application fee for certain municipal or state agency dredging projects, relative to the adoption of forms by the department of revenue administration for the filing of taxes and removing the requirement for electronic tax payments, excluding charges for Internet access from the communications services tax, requiring the transfer of insurance premium tax revenue to the department of health and human services, and increasing the threshold amounts for taxation under the business enterprise tax.

SPONSORS: Sen. Bragdon, Dist 11; Rep. Belvin, Hills 6; Rep. Willette, Hills 6; Rep. Hansen, Hills 6

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill:

I. Limits the maximum permit application fee for certain municipal or state agency dredging projects.

II. Requires that business tax forms relating to the business profits tax, the business enterprise tax, and the interest and dividends tax, developed or approved by the department of revenue administration, shall be adopted pursuant to RSA 541-A, the administrative procedure act. The bill also repeals the penalty for failure to make electronic payments and the authority of the department of revenue administration to require electronic payments.

III. Clarifies that Internet access services is not subject to the communications services tax.

IV. Requires the transfer of insurance premium tax revenue to the department of health and human services.

V. Increases the threshold amounts for taxation under the business enterprise 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the maximum permit application fee for certain municipal or state agency dredging projects, relative to the adoption of forms by the department of revenue administration for the filing of taxes and removing the requirement for electronic tax payments, excluding charges for Internet access from the communications services tax, requiring the transfer of insurance premium tax revenue to the department of health and human services, and increasing the threshold amounts for taxation under the business enterprise tax.

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

1 1 Excavating and Dredging Permit; Maximum Application Fee. Amend RSA 482-A:3, X(b) to
2 read as follows:

3 (b) For tidal dredging projects with the primary purpose to improve navigation for a
4 municipality **or state agency**, the maximum application fee for a municipality shall be \$10,000 per
5 application plus provisions for technical or consulting services or a combination of such services as
6 necessary to meet the needs of the department. The department may enter into a memorandum of
7 agreement with a municipality **or state agency** to accept equivalent technical or consulting services
8 or a combination of such services in lieu of a portion of their standard application fees.

9 (c) ***For dredging projects with the primary purpose to restore or reclaim a lake
10 or pond for a municipality or state agency, the maximum application fee for a
11 municipality or state agency shall be \$10,000 per application plus provisions for technical
12 or consulting services or a combination of such services as necessary to meet the needs of
13 the department. The department may enter into a memorandum of agreement with a
14 municipality or state agency to accept equivalent technical or consulting services or a
15 combination of such services in lieu of a portion of the standard application fees.***

16 2 New Paragraph; Department of Revenue Administration; Rulemaking Authority; Business
17 Tax Forms Added. Amend RSA 21-J:13 by inserting after paragraph XIII the following new
18 paragraph:

19 XIV. The requirements for business tax forms developed or approved by the department
20 which relate to the business profits tax under RSA 77-A, the business enterprise tax under RSA 77-
21 E, and the taxation of incomes under RSA 77.

22 3 Rulemaking; Forms. Amend RSA 21-J:13-a to read as follows:

23 21-J:13-a Exemption From Rulemaking Requirement. The commissioner shall be exempt from
24 adopting, as rules pursuant to RSA 541-A, the requirements on all forms **except as provided in**

SB 399-FN – AS AMENDED BY THE HOUSE

- Page 2 -

1 **RSA 21-J:13, XIV.**

2 4 Rulemaking; Reference Removed. Amend RSA 21-J:13, X to read as follows:

3 X. A method for collecting taxes by electronic transfer [~~under RSA 21-J:3, XXI~~].

4 5 Repeal. The following are repealed:

5 I. RSA 21-J:33, III, relative to the penalty for failure to comply with electronic payment
6 requirements.

7 II. RSA 21-J:3, XXI, relative to the authority of the commissioner of revenue administration
8 to require electronic payment.

9 6 Communications Services Tax; Purpose. Amend RSA 82-A:1 to read as follows:

10 82-A:1 Statement of Purpose. It is the intent of the general court to impose a tax on those who
11 use 2-way communications services and to source mobile telecommunications services to the place of
12 primary use. It is also the intent of the general court that **Internet access service and** basic
13 communications services essential to public health, safety, and welfare shall not be subject to the tax
14 imposed by this chapter.

15 7 Communications Services Tax; Definition of “Communications Services;” Internet Access
16 Excluded. Amend RSA 82-A:2, III(b) and (c) to read as follows:

17 (b) Purchases of communications services by a communications services provider for use
18 as a component part of the service provided by him to the ultimate retail consumer who originates or
19 terminates the taxable end-to-end communications, including carrier access charges, right of access
20 charges, charges for use of inter-company facilities, and all communications services resold in the
21 subsequent provision of, used as a component of, or integrated into end-to-end communications
22 services; ~~or~~

23 (c) The one-way transmission of radio or television programming, by cable, broadcast,
24 satellite, microwave or similar facility, which is made available generally to any person able to
25 receive such transmission, together with the interaction, if any, of such person required for the
26 selection of such programming other than by use of the same facility by which such transmission was
27 received[-]; **or**

28 **(d) Internet access.**

29 8 New Paragraphs; Communications Services Tax; Definitions of “Internet” and “Internet
30 Access.” Amend RSA 82-A:2 by inserting after paragraph XXIV the following new paragraphs:

31 XXV. “Internet” means collectively the myriad of computer and telecommunications
32 facilities, including equipment and operating software, which comprises the interconnected world-
33 wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any
34 predecessor or successor protocols to such protocol, to communicate information of all kinds by wire
35 or radio.

36 XXVI. “Internet access”:

37 (a) Means a service that enables users to connect to the Internet to access content,

1 information, or other services offered over the Internet;

2 (b) Includes the purchase, use, or sale of communications services by a provider of a
3 service described in subparagraph (a) to the extent such communications services are purchased,
4 used or sold:

5 (1) To provide such service; or

6 (2) To otherwise enable users to access content, information, or other services offered
7 over the Internet;

8 (c) Includes services that are incidental to the provision of the service described in
9 subparagraph (a) when furnished to users as part of such service, such as a home page, electronic
10 mail, and instant messaging (including voice- and video-capable electronic mail and instant
11 messaging), video clips, and personal electronic storage capacity;

12 (d) Does not include voice, audio, or video programming, or other products and services,
13 except services described in subparagraph (a), (b), (c), or (e) that utilize Internet protocol or any
14 successor protocol and for which there is a charge, regardless of whether such charge is separately
15 stated or aggregated with the charge for services described in subparagraph (a), (b), (c), or (e); and

16 (e) Includes a homepage, electronic mail, and instant messaging (including voice- and
17 video-capable electronic mail and instant messaging), video clips, and personal electronic storage
18 capacity that are provided independently or not packaged with Internet access.

19 9 Communications Services Tax; Definition of “Gross Charge;” Charges of Internet Access
20 Excluded. Amend RSA 82-A:2, V(f)-(h) to read as follows:

21 (f) Charges for communications services and all services and equipment provided in
22 connection therewith between a parent corporation and its wholly owned subsidiaries or between
23 wholly owned subsidiaries, when the tax imposed under this chapter has already been paid to a
24 retailer and only to the extent that the charges between the parent corporation and wholly owned
25 subsidiaries or between wholly owned subsidiaries represent expense allocation between the
26 corporations and not the generation of profit for the corporation rendering such service; ~~and~~

27 (g) [Repealed.]

28 (h) Bad debt. For the purposes of this paragraph, bad debt means any portion of a debt
29 that is related to a purchase at retail for which gross charges are not otherwise deductible or
30 excludable that has become worthless or uncollectible, as determined under applicable federal
31 income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer
32 shall report and pay the tax on that portion during the reporting period in which the payment is
33 made[-]; *and*

34 (i) ***Charges for Internet access.***

35 10 Existing Assessments Not Enforceable. The department of revenue administration shall not
36 enforce any existing assessment of communications services tax on charges for Internet access, shall
37 promptly withdraw all such pending assessments, and shall issue no additional assessments with

1 respect to such charges.

2 11 Transfer of Insurance Premium Tax Revenue to Department of Health and Human Services.
3 Notwithstanding any provision of law to the contrary, and in recognition of an unanticipated surplus
4 for the fiscal year ending June 30, 2011 as determined by the official audit performed pursuant to
5 RSA 21-I:8, II(a), the state treasurer shall transfer \$1,500,000 in revenue received from the
6 insurance premium tax pursuant to RSA 400-A:32 to the department of health and human services
7 for the purpose of providing services to the developmentally disabled. Said amounts are hereby
8 appropriated to the department for the biennium ending June 30, 2013.

9 12 Business Enterprise Tax; Returns. Amend RSA 77-E:5 to read as follows:

10 77-E:5 Returns.

11 I. Every business enterprise having gross business receipts in excess of [~~\$150,000~~] **\$200,000**
12 ***as adjusted biennially for inflation and rounded to the nearest \$1,000 by the commissioner***
13 ***using the Consumer Price Index, Northeast Region*** as defined by RSA 77-E:1, X, during the
14 taxable period or the enterprise value tax base of which is greater than [~~\$75,000~~] **\$100,000 as**
15 ***adjusted biennially for inflation and rounded to the nearest \$1,000 by the commissioner***
16 ***using the Consumer Price Index, Northeast Region***, shall, on or before the fifteenth day of the
17 third month in the case of enterprises required to file a United States corporation tax return, and the
18 fifteenth day of the fourth month in the case of all other business enterprises, following expiration of
19 its taxable period, make a return to the commissioner. All returns shall be signed by the business
20 enterprise or by its authorized representative, subject to the pains and penalties of perjury and the
21 penalties provided in RSA 21-J:39.

22 II. Every business enterprise shall in addition file a declaration of its estimated business
23 enterprise tax for its subsequent taxable period; provided, however, if the estimated tax is less than
24 [~~\$200~~] **\$260**, a declaration need not be filed; and provided further that a declaration shall be filed at
25 the end of any quarter thereafter in which estimated tax exceeds [~~\$200~~] **\$260**. The declaration shall
26 be filed when payments are due under RSA 77-E:6.

27 13 Effective Date.

28 I. Section 1 of this act shall take effect July 1, 2012.

29 II. Section 11 of this act shall take effect upon its passage.

30 III. Section 12 of this act shall be in effect for taxable periods ending on or after December
31 31, 2013.

32 IV. The remainder of this act shall take effect 60 days after its passage.

LBAO
12-3059
Amended 04/04/12

SB 399 FISCAL NOTE

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FISCAL IMPACT:

The Department of Environmental Services states this bill, as amended by the Senate (Amendment #2012-1202s), may decrease local expenditures by an indeterminable amount in FY 2013 and each year thereafter, and have an indeterminable impact on state restricted expenditures and revenue in FY 2013 and each year thereafter. The New Hampshire Municipal Association states this bill may decrease local expenditures by an indeterminable amount in FY 2013 and each year thereafter. This bill will have no impact on county and local revenue, or county expenditures.

METHODOLOGY:

The Department of Environmental Services states this bill limits the maximum permit application fee to \$10,000 for certain municipal dredging projects, and allows the state to enter into memorandum of agreements with a municipality to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of the standard application fees. The Department states with a fee of \$0.20 per square foot of impact, projects that exceed 50,000 square feet of impact will benefit from capping the maximum fee at \$10,000. The Department is not able to determine the impact on state and local expenditures, or state revenue as it is not able to determine the number of applications that will be received that will involve projects with an impact of greater than 50,000 square feet. Historically, very few municipal projects and fewer than one state agency dredging projects a year exceeds 50,000 square feet, so the fiscal impact on state revenues is expected to be minor. Additionally, the Department has no information to determine how many memorandums of agreements would be entered, and the impact on application fees to determine the fiscal impact.

The New Hampshire Municipal Association states to the extent a municipality seeks to undertake a municipal dredging project, and depending on the negotiations between the state

SB 399-FN – AS AMENDED BY THE HOUSE
- Page 6 -

and the municipality of services in lieu of a portion of the standard application fee, local expenditures may decrease by an indeterminable amount.