

HB 1509-FN-A – AS INTRODUCED

2014 SESSION

14-2174
10/05

HOUSE BILL ***1509-FN-A***

AN ACT relative to including nonprofit charitable enterprises in the business enterprise tax and lowering the rate of the tax.

SPONSORS: Rep. Hess, Merr 24; Rep. Weyler, Rock 13

COMMITTEE: Ways and Means

ANALYSIS

This bill includes in taxation under the business enterprise tax the enterprise value of nonprofit charitable organizations organized under Internal Revenue Code section 501(c)(3) that exceed \$1,500,000 in gross annual operating expenditures or \$750,000 in enterprise value tax base. The bill also lowers the rate of 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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Fourteen

AN ACT relative to including nonprofit charitable enterprises in the business enterprise tax and lowering the rate of the tax.

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

1 1 Purpose. The general court intends that the inclusion in taxation under the business
2 enterprise tax of the enterprise value of nonprofit charitable organizations that exceed \$1,500,000 in
3 gross annual operating expenditures or \$750,000 in enterprise value tax base will result in
4 additional business tax revenues, so that the rate of the business enterprise tax may be reduced
5 accordingly for a revenue neutral result.

6 2 Business Enterprise Tax; Definition of Business Enterprise. Amend RSA 77-E:1, III to read as
7 follows:

8 III.(a) “Business enterprise” means any profit or nonprofit enterprise or organization,
9 whether corporation, partnership, limited liability company, proprietorship, association, trust,
10 business trust, real estate trust or other form of organization engaged in or carrying on any business
11 activity within this state~~[, except]~~.

12 (b) **“Business enterprise” shall include a nonprofit charitable organization**
13 **organized under section 501(c)(3) of the United States Internal Revenue Code to the extent**
14 **such organizations are required to file under RSA 77-E:5, I-a,** ~~[such enterprises as are~~
15 ~~expressly made exempt from income taxation under section 501(c)(3) of the United States Internal~~
16 ~~Revenue Code to the extent such enterprise does not engage in]~~ **provided that** any business activity
17 constituting unrelated business activity as defined by section 513 of the United States Internal
18 Revenue Code **shall be subject to tax on the amount due under RSA 77-E:5, I.**

19 (c) Each business enterprise under this definition shall be subject to the tax imposed
20 under RSA 77-E as a separate entity except that trusts treated as grantor trusts under section 671 of
21 the United States Internal Revenue Code shall be included in the return of their owners, and such
22 owners shall be subject to the tax thereon to the extent any such owners would be considered a
23 business enterprise hereunder notwithstanding the existence of the trust. The use of consolidated
24 returns as defined in the United States Internal Revenue Code or of combined reporting is not
25 permitted.

26 (d) Notwithstanding any other provision of this paragraph, an enterprise shall not be
27 characterized as a business enterprise and shall be excluded from taxation at the entity level if it is a
28 qualified investment company as defined in RSA 77-E:1, XIV.

29 3 New Paragraph; Returns. Amend RSA 77-E:5 by inserting after paragraph I the following new
30 paragraph:

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1 I-a. Every business enterprise of a nonprofit charitable organization as described in RSA 77-
2 E:1, III (b) having gross operating expenditures in excess of \$1,500,000 during the taxable period or
3 the enterprise value tax base of which is greater than \$750,000 shall, on or before the fifteenth day of
4 the fourth month, following expiration of its taxable period, make a return to the commissioner. All
5 returns shall be signed by the business enterprise or by its authorized representative, subject to the
6 pains and penalties of perjury and the penalties provided in RSA 21-J:39.

7 4 Imposition of Tax; Rate Reduced. Amend RSA 77-E:2 to read as follows:

8 77-E:2 Imposition of Tax. A tax is imposed at the rate of [~~3/4~~] **0.68** of one percent upon the
9 taxable enterprise value tax base of every business enterprise.

10 5 Effective Date. This act shall take effect July 1, 2014.

HB 1509-FN-A - FISCAL NOTE

AN ACT relative to including nonprofit charitable enterprises in the business enterprise tax and lowering the rate of the tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, as introduced, would have an indeterminable fiscal impact on state revenue in FY 2015 and each year thereafter. This bill would have no fiscal impact on state, county, and local expenditures, or county and local revenue.

METHODOLOGY:

The Department of Revenue Administration (DRA) states this bill would make nonprofit charitable organizations organized under Section 501(c)(3) of the Internal Revenue Code (the Code) with gross operating expenditures in excess of \$1,500,000 or an enterprise value tax base (EVTB) greater than \$750,000 subject to tax under the Business Enterprise Tax (BET). To the extent that the 501(c)(3) organization has any business activity constituting unrelated business activity as defined by Section 513 of the Code, this activity would be subject to tax under the current thresholds of gross business receipts of \$200,000 or an EVTB of \$100,000. This does not result in a change from existing law. The bill would also reduce the current BET rate from 0.75% to 0.68%. DRA estimates the change in BET tax rate would reduce state general and education trust fund revenue by approximately \$21.3 million in FY 2015. DRA does not have any data as to which 501(c)(3) organizations would be subject to the BET under this bill given the threshold amounts. In addition, DRA does not have any data to calculate the potential revenue that could be generated from any organization that would be subject to BET under this bill, as they do not have compensation, or interest and dividend data from these organizations, as they are not currently required to file or pay BET. Although the purpose statement of the proposed bill states the intent of the bill is to remain revenue neutral, without data on the potential additional revenue, DRA cannot confirm whether this could be achieved. DRA states in order for this bill to be revenue neutral, nonprofit charitable organizations meeting the thresholds for gross operating expenditures or EVTB would need to have a total taxable base of approximately \$3.125 billion. The exact fiscal impact cannot be determined at this time. The Department states they could administer the proposed bill without any additional cost.