

HB 551-FN - AS INTRODUCED

2015 SESSION

15-0366
09/01

HOUSE BILL ***551-FN***

AN ACT relative to preventing diversion of business income to tax havens.

SPONSORS: Rep. Ames, Ches 9; Rep. Luneau, Merr 10; Rep. Horrigan, Straf 6; Rep. Karrick, Merr 25; Rep. Cloutier, Sull 10; Rep. Myler, Merr 10; Rep. C. Chase, Ches 8; Sen. Feltes, Dist 15; Sen. Soucy, Dist 18

COMMITTEE: Ways and Means

ANALYSIS

 This bill changes certain business profits tax laws to prevent the diversion of business income to tax havens.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to preventing diversion of business income to tax havens.

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

1 1 New Paragraph; Duties of Commissioner of Revenue Administration. Amend RSA 21-J:3 by
2 inserting after paragraph XXX the following new paragraph:

3 XXXI. Report biennially to the chairs of the house and senate ways and means committees
4 with an update of countries that may be considered tax havens under RSA 77-A:1, XV.

5 2 Definitions; Water's Edge Combined Group. Amend RSA 77-A:1, XV to read as follows:

6 XV. "Water's edge combined group" means a group of business organizations as defined in
7 RSA 77-A:1, I operating a unitary business, except for overseas business organizations, as defined in
8 paragraph XIX; provided, however[-]:

9 ***(a) Overseas business organizations are not incorporated in one of the following***
10 ***jurisdictions that are hereby identified as tax havens: the Principality of Andorra,***
11 ***Anguilla, Antigua and Barbuda, Aruba, the Commonwealth of the Bahamas, the Kingdom***
12 ***of Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands,***
13 ***the Cook Islands, the Republic of Cyprus, the Commonwealth of Dominica, Gibraltar,***
14 ***Grenada, the Bailiwick of Guernsey, the Isle of Man, the Bailiwick of Jersey, the Republic***
15 ***of Liberia, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, Malta, the***
16 ***Republic of the Marshall Islands, the Republic of Mauritius, the Principality of Monaco,***
17 ***Montserrat, the Republic of Nauru, the Caribbean Netherlands, Niue, the Independent***
18 ***State of Samoa, the Republic of San Marino, the Republic of Seychelles, the Federation of***
19 ***St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and***
20 ***Caicos Islands, the United States Virgin Islands, and the Republic of Vanuatu; and***

21 ***(b)*** 80/20 business organizations shall only be excluded from the definition of "water's
22 edge combined group" if the following criteria are met:

23 ~~[(a)]~~ ***(1)*** The taxpayer certifies that transactions conducted between such business
24 organizations and other members of the group are on a comparable basis to transactions between
25 other business organizations owned or controlled by the taxpayer and any members of the water's
26 edge combined group; and

27 ~~[(b)]~~ ***(2)*** The taxpayer agrees to report to the commissioner any adjustments as finally
28 determined by the United States Internal Revenue Service with respect to such transactions between
29 any related business organizations as may have a bearing on the comparability of transactions
30 referred to in subparagraph ~~[(a)]~~ ***(1)***. These adjustments shall be made to the 80/20 business
31 organizations so that a comparable basis shall be maintained for New Hampshire tax purposes.

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1 Such report shall be made in the manner and within the time limits as provided in RSA 77-A:10.
2 Nothing in this paragraph shall exclude from taxation any business organization carrying on
3 business activity within the state.

4 3 New Paragraph; Definitions; Tax Haven. Amend RSA 77-A:1 by inserting after paragraph
5 XXIX the following new paragraph:

6 XXX. "Tax haven" means a jurisdiction outside the United States which, during the tax year,
7 has no, or nominal, effective tax on the income of an overseas business organization that is unitary
8 with a group of business organizations defined in RSA 77-A:1, I; and

9 (a) Has laws or practices that prevent effective exchange of information for tax purposes
10 with other governments on taxpayers benefiting from the jurisdiction's tax structure;

11 (b) Has a tax structure that lacks transparency;

12 (c) Facilitates the establishment of foreign-owned entities without the need for a
13 substantive local presence or commercial impact on the local economy;

14 (d) Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking
15 advantage of the tax structure benefits afforded foreign-owned entities;

16 (e) Explicitly or implicitly excludes foreign-owned entities from participating in the
17 jurisdiction's domestic market; or

18 (f) Has created a tax structure that is favorable for tax avoidance.

19 4 Applicability. This act shall apply to tax periods ending after December 31, 2014.

20 5 Effective Date. This act shall take effect July 1, 2015.

LBAO
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HB 551-FN - FISCAL NOTE

AN ACT relative to preventing diversion of business income to tax havens.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, **as introduced**, may increase state revenue by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on state, county, and local expenditures, or county and local revenue.

METHODOLOGY:

The Department of Revenue Administration states this bill prevents the diversion of business income to certain offshore tax havens. The Department states the bill takes effect on July 1, 2015 and applies to taxable periods ending after December 31, 2014. The Department does not know how much money is currently being diverted to off-shore tax havens, but indicates the bill may increase business tax revenue by an indeterminable amount. The Department reports there will be no additional state expenditures as the workload associated with this bill will be absorbed by existing resources.