

## COVER SHEET FOR FINAL PROPOSAL

Notice Number

**2022-86**

Rule Number

**Rev 701.06; Rev 701.15; Rev 701.19; Rev 701.23; Rev 702.11; Rev 703.10; Rev 704.01; Rev 704.07; and Rev 705.01**

1. Agency Name & Address:

**Department of Revenue Administration  
P.O. Box 457  
Concord, NH 03302-0457**

2. RSA Authority:

**RSA 78-A:2, II**

3. Federal Authority:

4. Type of Action:

- ☒ Adopt  
☐ Amendment  
☒ Repeal  
☐ Readoption  
☒ Readoption w/amendment

5. Short Title: **Various Meals and Rentals Changes**

6. Contact person for copies and questions:

Name: **Beth A. McDaniel**

Title: **Paralegal**

Address: **Legal Bureau  
P.O. Box 457  
Concord, NH 03302-0457**

Phone #: **603.230.5027**

7. Yes ☐ No ☒ Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on **May 19, 2022 and again on May 26, 2022**

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET  
AND ONE COPY OF THE FOLLOWING:  
(optional to number correspondingly)**

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

11. Yes ☐ N/A ☒ The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

12. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

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Rev 701.19; Rev 701.23;  
Rev 702.11; Rev 703.10;  
Rev 704.01; Rev 704.07;  
and Rev 705.01**

1. Agency Name &amp; Address:

**New Hampshire Department of Revenue  
Administration  
109 Pleasant Street, PO Box 457  
Concord, NH 03302-0457**

2. RSA Authority:

**RSA 78-A:2, II**3. Federal  
Authority:

4. Type of Action:

Adoption

**X**

Repeal

**X**

Readoption

Readoption w/amendment

**X**5. Short Title: **Various Meals and Rentals Changes**

6. (a) Summary of what the rule says and of any proposed amendments:

**Chapter 91, Sections 103-105 (Laws of 2021) amends the Meals & Rentals (M&R) Tax statute to reduce the M&R Tax rate from 9% to 8.5%. Rev 702.11 is being readopted with an amendment that reflects the change in the M&R Tax rate.****Chapter 160 (Laws of 2021) added the definition of Room Facilitator and Rental Facilitator as an M&R Operator. Rev. 701.15; Rev 701.19; Rev 704.01; and Rev 705.01 are being readopted with amendment and Rev 703.10 and Rev 704.07 are being adopted to reflect those changes.**

6. (b) Brief description of the groups affected:

**New Hampshire Meals and Rentals licensed operators.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Rev 701.06	<del>RSA 78-A:2, II; RSA 78-A:8 B</del> <b><u>Reserved</u></b>
Rev 701.15	RSA 78-A:2, II; RSA 78-A:3, XIII
Rev 701.19	RSA 78-A:2, II; RSA 78-A:6-c, II
Rev 701.23	RSA 78-A:9, II(b)
Rev 702.11	RSA 78-A:2, II; RSA 78-A:3, XXV
Rev 703.10	RSA 78-A:3, XIX-a.; RSA 78-A:3, XVII
Rev 704.01	RSA 78-A:2, II; RSA 78-A:6, II-a
Rev 704.07	RSA 78-A:3, VI; RSA 78-A:3, XIII; RSA 78-A:3, XVIII-a.
Rev 705.01	RSA 78-A:2, II; RSA 78-A:4; 78-A:4-a

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	<b>Beth A. McDaniel</b>	Title:	<b>Paralegal</b>
Address:	<b>109 Pleasant Street</b>	Phone #:	<b>603-230-5027</b>
	<b>PO Box 457</b>	Fax#:	<b>603-230-5932</b>
	<b>Concord New Hampshire 03302-0457</b>	E-mail:	<b>beth.a.mcdaniel@dra.nh.gov</b>
		TTY/TDD Access:	Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, June 15, 2022**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, June 7, 2022 @ 2pm**  
**New Hampshire Department of Revenue Administration**  
**Medical and Surgical Building**  
**109 Pleasant Street, 2<sup>nd</sup> Floor Training Room**  
**Concord, NH 03302**

Place: **\*\*\*The security procedures at the Department of Revenue Administration require all visitors to sign-in and present photo identification. If you plan on attending the public hearing, please bring photo identification with you.\*\*\***

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 22:095 , dated 5/6/2022

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the existing rules to the proposed rules. Not applicable to Rev 703.10 and Rev 704.07 are new sections.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

New sections Rev 703.10 and Rev 704.07 will not result in any additional cost or benefit.

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule does not mandate fees, or additional local expenditures on a political subdivision of the state and therefore does not violate Part I, Article 28-a of the NH Constitution.**

Leg. Intent: The FIS says that there is no difference in cost when comparing the rules, but the rules change the tax rate from 9% to 8.5%. That is a difference in cost that needs to be addressed in the FIS.

LBAO  
FIS 22:095  
05/06/2022

Fiscal Impact Statement for Department of Revenue Administration rules governing Various Meals and Rentals Changes. [Rev 701.06; Rev 701.15; Rev 701.19; Rev 701.23; Rev 702.11; Rev 703.10; Rev 704.01; Rev 704.07; and Rev 705.01]

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None

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None

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None

CHAPTER Rev 700 MEALS AND RENTALS TAX

PART Rev 701 DEFINITIONS

**Repeal Rev 701.06, effective 10-23-19 (Document# 12907), and hold said section in reserve as follows:**

Rev 701.06 ~~“File” means file as defined in Rev 2902.04.~~ **RESERVED**

**Readopt with amendment Rev 701.15, effective 7-25-20 (Document# 13077), to read as follows:**

Rev 701.15 “Operator” means “operator” as defined in RSA 78-A:3, XIII and includes a person:

- (a) Offering sleeping accommodations for rent to the general public, including owners of private homes who offer sleeping accommodations for rent to the general public;
- (b) Charging for a taxable meal;
- (c) Offering a motor vehicle to a renter under a rental agreement that is subject to the tax;
- (d) Who acts in the capacity of an agent, whether as lessee, sublessee, mortgagee, licensee or otherwise, for an owner in renting sleeping accommodations, a motor vehicle or providing taxable meals; or
- (e) Who is a rental facilitator or room facilitator.

**Readopt with amendment Rev 701.19, effective 7-25-20 (Document# 13077), to read as follows:**

Rev 701.19 “Rent” means “rent” as defined in RSA 78-A:3, XVII and includes:

- (a) Any amount for which an occupant is liable as a result of occupancy without any deductions;
- (b) Any and all charges for services or furnishings and accommodations customarily and ordinarily furnished by a hotel to occupants; and
- (c) Any fee, services, or other charge required to be paid by the occupant to a room facilitator, except that the term rent shall not include amounts paid by an operator to a travel agent as commission or compensation for the travel agent’s services.

**Readopt with amendment Rev 701.19, effective 7-25-20 (Document# 13077), to read as follows:**

Rev 701.23 “Seasonal business” means a business which operates and receives taxable receipts on a regular basis only during a particular season of the year, for a period of less than 12 months.

PART Rev 702 COMPUTATION OF TAXABLE MEALS

**Readopt with amendment Rev 702.11, effective 7-25-20 (Document# 13077), to read as follows:**

Rev 702.11 Meals with Free Coupons, Discounts, Gift Certificates, Complementary Sales, and Other Promotional Items.

(a) When an operator gives a free promotional coupon, gift certificate, or other document for no consideration, and the document is redeemed, the tax shall be computed on the actual amount paid for the taxable meal, excluding the face value of the coupon or the amount discounted, as illustrated below:

**Unclear:** Not in compliance with §§3.17-3.18 of Ch. 4 of *Manual*. This is not a table or illustration, it is a mathematical formula, and should have rule language to define the factors or terms in the formula. But JLCAR did not object to this formatting in 2014 when it accepted the conditional approval request. The conditional approval was based on another part of the rule.

2 for 1

\$10.00 Dinner  
\$10.00 2<sup>nd</sup> Dinner  
 \$20.00 Total Meals

(\$10.00) Free Dinner  
 \$10.00 Total

.85 tax at 8.5%  
 \$10.85 Amount Paid

Tax Due = \$.85

20% Discount

\$10.00 Dinner  
(\$2.00) discount  
 \$8.00 Total Meal

.68 tax at 8.5%  
 \$8.68 Total Paid

Tax Due = \$.68

Edit: Say "as described below". This is not an "illustration", i.e. a picture, as understood in the *Manual*. See the comment to the left.

Leg. Intent: The FIS says that there is no difference in cost when comparing the rules, but the rules change the tax rate from 9% to 8.5%. That is a difference in cost that needs to be addressed in the FIS.

(b) All supporting source documents, such as, but not limited to, cash register tapes and guest checks, shall show the tax calculation, unless tax is included in the charge made for the meal.

(c) Donated meals, including meals in exchange for gift certificates, and complementary meals shall not be taxable, provided no consideration was given for the meals.

(d) Barter transactions, such as, but not limited to, meals exchanged for advertising, shall be taxable to the extent of the usual and customary charge for such taxable meal exchanged.

(e) When a meal is purchased with nutrition assistance benefits issued under federal law pursuant to a program that prohibits the assessment of a state tax on items purchased, it shall not be taxable to the extent of the part of the meal purchased with nutrition assistance benefits.

PART Rev 703 COMPUTATION OF TAXABLE RENT

**Adopt Rev 703.10 to read as follows:**

Rev 703.10 Room Facilitator.

(a) The full retail price charged for occupancy shall be subject to tax, including any fee, service, or other charge required to be paid by the occupant to a room facilitator.

(b) Amounts paid by an operator to a travel agent as commission or compensation for the travel agent's services shall not be subject to tax.

PART Rev 704 MOTOR VEHICLE RENTALS

**Readopt with amendment Rev 704.01, effective 11-7-14 (Document# 10714), to read as follows:**

Rev 704.01 Taxable Rental Receipts.

(a) Motor vehicle rentals shall be taxed upon the gross rental receipts including charges for items such as, but not limited to:

- (1) Excess mileage;
- (2) Drop-off fees;
- (3) Under-age surcharges;
- (4) Second driver fees; or
- (5) Airport access fees.

(b) Gross rental receipts shall include, but not be limited to, the receipts for the rental, when a driver is not provided for the following vehicles:

- (1) A bus;
- (2) Taxi;
- (3) A recreational vehicle as defined in RSA 216-I:1, VIII; or
- (4) Limousine.

(c) Gross rental receipts shall not include the receipts for the performance of a service by the owner of a motor vehicle or any rental facilitator when a motor vehicle is required in the performance of the service such as, but not limited to, services by:

- (1) Taxi companies;
- (2) Limousine companies;
- (3) Bus companies; or
- (4) Vehicles modified for the transportation of individuals with disabilities.

**Adopt Rev 704.07 to read as follows:**

Rev 704.07 Rental Facilitator.

(a) Gross rental receipts includes value received or promised as consideration to any rental facilitator for a rental agreement, including any fee, service, or other charge or amount required to be paid by the renter as a condition for the rental agreement.

(b) Gross rental receipts shall not include amounts paid by an operator to a travel agent as commission or compensation for the travel agent's services.

**PART Rev 705 LICENSING AND RESPONSIBILITIES OF OPERATORS**

**Readopt with amendment Rev 705.01, effective 7-25-20 (Document# 13077), to read as follows:**

Rev 705.01 License Requirement.

(a) Every individual or entity intending to sell meals, rent rooms, rent motor vehicles, or act as a rental facilitator or room facilitator, shall:

- (1) Complete and file a “Meals and Rentals Tax License Application” with the department; and
- (2) Be issued a license by the department prior to the opening of business.

(b) A paper Form CD-3, “Application for Meals and Rentals Tax Operator’s License”, shall be available by:

- (1) Accessing [www.revenue.nh.gov](http://www.revenue.nh.gov);
- (2) Calling the collections division at (603) 230-5900; or
- (3) Writing to:

NH Department of Revenue Administration  
Collections Division  
109 Pleasant Street  
PO Box 637  
Concord, NH 03302-0637.

Unclear: Is this the same form? If so, should have the same name. If not, where can one find this first form? Deleted the part of the rule that provided the form, so where can a person go now to find it? That is not a requirement that is exempted by RSA 21-J:13-a & RSA 541-A:21, V.

(c) A separate license shall be required for each business location of the operator.

(d) A catering business shall obtain:

- (1) A separate operator's license for each fixed location where taxable meals are regularly served; and
- (2) A single separate operator's license for the occasional serving of meals at various locations such as those listed in Rev 701.01.

(e) Mobile catering businesses and vending truck operators shall:

- (1) Obtain a single operator's license covering the overall business rather than an individual operator's license for each mobile vending truck they operate;
- (2) Display their operator’s license number on the outside of each vehicle; and
- (3) Display a reprint, provided by the department, of their license in each vehicle.

(f) Any person in the business of renting motor vehicles shall obtain a separate operator's license for each fixed location where vehicles are rented.

(g) A rental facilitator or room facilitator shall:

- (1) Obtain a single operator’s license covering all rental facilitator business, and a separate operator’s license covering any room facilitator business; and
- (2) Prominently and conspicuously display such operator’s license numbers wherever such rental facilitator or room facilitator transactions are conducted.

(h) A meals and rentals tax operator’s license shall not be transferable.



(i) A meals and rentals tax operator's license shall be posted in a conspicuous location for public view.

(j) Any advertisement for a short-term rental shall prominently and conspicuously display the operator's license number.

(k) An operator's failure to comply with the requirements specified in (i) or (j) above, after receiving a warning from the department, shall constitute sufficient cause for revocation, suspension, or denial of the operator's license.

Edit: Move up, does not have to be on a separate page.

## APPENDIX

Edit: should be no changes shown on final

Rule	Specific State Statute the Rule Implements
Rev 701.06	<del>RSA 78-A:2, II; RSA 78-A:8 B</del> <b>Reserved</b>
Rev 701.15	RSA 78-A:2, II; RSA 78-A:3, XIII
Rev 701.19	RSA 78-A:2, II; RSA 78-A:6-c, II
Rev 701.23	RSA 78-A:9, II(b)
Rev 702.11	RSA 78-A:2, II; RSA 78-A:3, XXV
Rev 703.10	RSA 78-A:3, XIX-a.; RSA 78-A:3, XVII
Rev 704.01	RSA 78-A:2, II; RSA 78-A:6, II-a
Rev 704.07	RSA 78-A:3, VI; RSA 78-A:3, XIII; RSA 78-A:3, XVIII-a.
Rev 705.01	RSA 78-A:2, II; RSA 78-A:4; 78-A:4-a

Edit: change to RSA 78-A:3, XVII

Edit: Should include RSA 78-A:6