

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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## SALT



### SUBJECT

## NEW HAMPSHIRE REDUCES CORPORATE TAX RATES, ESTABLISHES TAX AMNESTY, FORMALIZES VOLUNTARY DISCLOSURE PROGRAM, AND AUTHORIZES THE DEPARTMENT TO PARTICIPATE IN MTC AUDITS

### SUMMARY

On September 16, 2015, New Hampshire Governor Maggie Hassan signed into law Senate Bill 9, 2015 Session (“S.B. 9”) and, on the same day, the New Hampshire legislature overrode the Governor’s veto of H.B. 2, 2015 Session (“H.B. 2”), thus, making it law as well. Together, S.B. 9 and H.B. 2 reduce the Business Profits Tax and the Business Enterprise Tax rates, establish a tax amnesty which begins December 1, 2015, formalize New Hampshire’s voluntary disclosure program, make certain penalties mandatory, and authorize the Department of Revenue Administration (the “Department”) to participate in the Joint Audit Program of the Multistate Tax Commission (“MTC”).

### DETAILS

#### *Business Tax Rate Reductions*

For taxable periods ending on or after December 31, 2016, S.B. 9 reduces the Business Profits Tax rate from 8.5 percent to 8.2 percent and reduces the Business Enterprise Tax rate from 0.75 percent to 0.72 percent. If the amount of combined unrestricted general and education trust fund revenue collected for the biennium ending June 30, 2017, meets the threshold prescribed in S.B. 9, the rates are further reduced to 7.9% and 0.675%, respectively, for taxable periods ending on or after December 31, 2018.

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### *Tax Amnesty and Voluntary Disclosure*

H.B. 2 establishes a tax amnesty program and formalizes New Hampshire's voluntary disclosure program. Under H.B. 2, the amnesty program runs from December 1, 2015, through February 15, 2016. A participating taxpayer qualifies for a waiver of all penalties and 50 percent of interest for taxes due (even if previously assessed) but unpaid before February 16, 2016.

Effective July 1, 2015, the voluntary disclosure program authorized under H.B. 2 allows the Department to enter into an agreement with a self-disclosing taxpayer that has not been contacted by the Department for waiver of penalties and the settlement and compromise of taxes and interest due. Taxpayer contact under this provision includes instances where the Department contacts the taxpayer directly and cases where the Department contacts an affiliate of the taxpayer or a member of its unitary business group.

### *Mandatory Penalties*

Effective after February 2016, H.B. 2 removes the authority and/or jurisdiction to waive, abate, or reduce penalties with respect to taxes that were due before December 1, 2015, from the Department, any administrative tribunal, and New Hampshire state courts.

### *MTC Audits*

Effective as of September 16, 2015, H.B. 2 authorizes the Department to contract with the MTC for participation in multistate audits performed by the MTC on behalf of its member states and other contracting states.

## **BDO INSIGHTS**

- ▶ The mandatory penalty provision under H.B. 2 effectively penalizes an eligible taxpayer that does not participate in the amnesty program. This is because, after February 2016, the new law removes the authority of the Department to waive penalties with respect to taxes due before December 1, 2015, that it must waive under that program.
- ▶ More auditors equates to a greater capacity to audit and, presumably, an increased probability of a taxpayer being selected for an audit. Thus, if the Department exercises its grant of authority under H.B. 2 and enters into a contract with the MTC for participation in multistate audits, the voluntary disclosure program formalized under H.B. 2 becomes even more significant to a taxpayer with undisclosed liabilities.

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