

**MEMO# 17724**

June 30, 2004

## **NEW HAMPSHIRE AND VERMONT ADOPT TAX LAW CHANGES**

[17724] June 30, 2004 TO: TAX MEMBERS No. 35-04 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 8-04 RE: NEW HAMPSHIRE AND VERMONT ADOPT TAX LAW CHANGES New Hampshire and Vermont have adopted changes in their tax laws that may be of interest to members of the Institute. New Hampshire has amended its laws governing “qualified investment companies” (“QICs”). QICs remain exempt from tax at the entity level. However, under S.B. 303 (Chapter 143 of the 2004 Laws of New Hampshire),<sup>1</sup> an entity must now affirmatively elect to be treated as a QIC to be eligible for the exemption. The election must be made, on an approved form, by the 15th day of the third month of the taxable year, and there is no authority for the Department of Revenue to accept late forms. All regulated investment companies, as defined in section 851 of the Internal Revenue Code (as well as all investment companies under the Investment Company Act of 1940) are eligible for a QIC election. In addition to filing a timely election, QICs must also annually file either: (1) a report including certain information on the QIC and its shareholders (including each shareholder’s name, address, tax identification number, and New Hampshire taxable income); or (2) a copy of the QIC’s federal income tax return. QICs choosing to file a copy of their federal income tax return must file the copy within 30 days of the filing of the return with the IRS, or face daily \$100 fines and (where the return is filed more than 50 days late) revocation of QIC status. The law also makes certain other changes to the tax treatment of businesses that invest in QICs, and makes QICs subject to the same record-keeping requirements applicable to other taxpayers.<sup>2</sup> The law is effective as of May 24, 2004. A recent Technical Information Release from the New Hampshire Department of Revenue discussing the law is attached. 1 The text of S.B. 303 can be found at <http://www.gencourt.state.nh.us/legislation/2004/sb0303.html>. 2 Taxpayers are required to preserve records necessary to determine liability under the business enterprise tax for 5 years, or until the conclusion of litigation. Records relevant to liability under the business profits tax must be preserved for at least three years. 2 Vermont has adopted water’s edge combined reporting for affiliated corporate taxpayers. Under H.784 (Act 152 of the General Assembly),<sup>3</sup> a corporation that is a member of an “affiliated group” and engaged in a unitary business with one or more members of the group must pay tax on the allocable amount of “Vermont net income” for the entire group. Corporations are members of an affiliated group if more than 50% of the voting stock of a corporation is owned directly or indirectly by a common owner or owners (or a member of the group), but foreign businesses and Vermont captive insurance companies are not treated as members of the group.<sup>4</sup> Vermont continues to use a three-factor apportionment method, but under this legislation the sales factor is double-weighted. The legislation also reduces the corporate tax rate. These changes will take effect for taxable years beginning on or after January 1, 2006, with an additional reduction in corporate tax rates to take effect for years beginning

on or after January 1, 2007. David Orlin Assistant Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17724, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17724. 3 The text of H.784 can be found at

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2004/acts/ACT152.HTM> 4 A corporation is excluded from the group as “an overseas business organization” if it ordinarily has at least 80 percent of its payroll and property outside the United States. A Vermont captive insurance company is subject to tax under section 6014 of the Vermont Statutes.

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