

## MEMORANDUM

To: Bryan Kelly, Chair, Nexus Committee

From: Richard Cram, Director, National Nexus Program

Re: New Hampshire Notice Requirements on Tax Departments for Remote Sellers

Date: November 20, 2024

New Hampshire is one of five states that do not impose sales/use tax. New Hampshire has enacted notice requirements that apply to state and local tax departments outside of New Hampshire, if those tax departments contemplate initiating sales/use tax collection activity against a retailer located in New Hampshire. Tax departments should be aware of these New Hampshire notice requirements before initiating such collection activity. The statutes imposing such notice requirements are attached.

### **N. H. Rev. Stat. § 78—D: 1 through 3**

These statutes were enacted in 2009, prior to *South Dakota v. Wayfair*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 2080 (2018), which repealed the physical presence nexus requirement protecting remote sellers from collecting, reporting and remitting sales/use tax. Section D:2 prohibits a retailer located in New Hampshire from providing any “private customer information” to a state or local tax department located outside of New Hampshire in connection with sales/use tax compliance activity concerning sales by the New Hampshire retailer in which the customer took possession at the retailer’s location in New Hampshire or the purchased item was delivered to the customer in New Hampshire, unless certain criteria are satisfied. The state or local tax department must provide written confirmation to the retailer that such department provided prior written notice of its intent to collect use tax on such retail transaction to the New Hampshire commissioner of revenue administration, and no later than 60 days following the commissioner's receipt of such notice by such tax department, the New Hampshire department of justice has submitted to the commissioner its determination that the foreign state's sales and use tax laws meet certain requirements set forth at N. H. Rev. Stat. § 78—D: 2 II. (a) through (h). Because this notice requirement only applies to transactions where the customer received possession of the purchased item in New Hampshire, it does not appear to apply to remote sales transactions in which a remote seller located in New Hampshire ships purchased items to customer located in the taxing state outside of New Hampshire.

### **N. H. Rev. Stat. §§ 78—E: 1 through 12**

These provisions were enacted after *Wayfair*, became effective 7/19/2019, and impose certain notice requirements on state and local tax departments outside of New Hampshire engaging in sales/use tax collection activity against a remote seller located in New Hampshire concerning remote sales for which the purchased items are delivered to customers in the taxing state. § 78—E: 2. At least 45 days prior to taking any action to determine or impose sales or use tax liability against a New Hampshire remote seller, the tax department must provide written notice (by physical letter labeled as “RSA 78-E Notice” and delivered by mail) to the New Hampshire Department of Justice. § 78—E: 4. The notice must include the full legal name and address of the seller, shall contain the reasons for the request or examination, shall cite the legal authorities that authorize imposition of a tax collection obligation on the seller, and shall explain why the seller is subject to those laws. *Id.* The notice should be mailed to the following address:

New Hampshire Department of Justice, Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301

The tax department cannot request any private customer transaction information from the remote seller for use in determining tax liability of the customer or seller, and cannot examine or impose any sales/use tax collection obligations, unless the tax department included in the notice to the New Hampshire Department of Justice its intent to request such information or conduct such an examination and 45 days from the date of such written notice have elapsed. *Id.*

The New Hampshire remote seller is supposed to notify the New Hampshire Department of Justice if an outside state or local tax department has initiated collection activity against it concerning its remote sales, in order to ensure that the tax department has first complied with the above notice requirements. The remote seller has the option to voluntarily comply with such collection activity, and if so, should notify the New Hampshire Department of Justice. The notice requirements imposed on the tax department apply, regardless of whether the remote seller voluntarily complies with the collection efforts. *Id.*

Once the New Hampshire Department of Justice receives notice of collection activity from a state or local tax department outside of New Hampshire, the Department is supposed to review the notice and the sales/use tax laws of the taxing state to ensure that they are proper under the U.S. and New Hampshire Constitutions and meet certain criteria. § 78—E: 6. The Department then can initiate a civil action against that tax department if it deems the collection efforts to be unconstitutional or otherwise

fail to meet certain criteria, seeking injunction, declaratory judgment, or both. *Id.* The remote seller can also initiate a civil action against the tax department and can seek damages and attorney fees. *Id.*

A New Hampshire remote seller required to collect sales/use tax for an outside state or local tax department is entitled to deduct from any such taxes collected any reasonable costs, including any initial set up and ongoing maintenance costs, incurred in the collection and remission of sales and use taxes to that jurisdiction or authority. § 78—E: 7.

# N.H. Rev. Stat. § 78-D:1

Current through Chapter 378 of the 2024 Legislative Session

Section 78-D:1 - Findings and Purpose

The general court finds:

**I.** Numerous states impose a sales tax on goods and services purchased by customers within their boundaries, and also impose an excise known as a "use tax" on use, storage, or consumption of goods and services purchased by their residents from a business located out of the taxing state. Many of these states require their residents to report and pay the use tax directly to the state.**II.** The state of New Hampshire does not impose a sales tax on customers making purchases of goods and services in New Hampshire, nor on goods and services purchased by its residents out of state for use, storage, or consumption in New Hampshire. New Hampshire businesses are not required by law to determine where a person intends to use, store, or consume goods or services purchased within the state.**III.** The state of New Hampshire is a year-round destination visited by hundreds of thousands of persons from numerous states that impose sales and use tax on their own residents. A requirement on businesses located in New Hampshire to determine, collect, and remit such taxes could be, in many instances, unreasonably burdensome given the variation in rates and exemptions of these taxes in other states, the magnitude of sales to residents of foreign taxing states, and the absence of uniform administrative systems to determine, collect, and remit such taxes. Unlike other states, New Hampshire has not adopted the Streamlined Sales and Use Tax Agreement because of its sovereign decision not to impose such taxes.**IV.** New Hampshire has a strong governmental interest in protecting the privacy of an individual's personal information that may be used to facilitate the sale of goods and services within this state, while the general court can identify no governmental interest in requiring its businesses to make an affirmative inquiry concerning the location of the intended use of a good or service, or whether such good or service will be used by the purchaser or by another person.**V.** The United States Supreme Court has unequivocally determined that only businesses that have an adequate physical presence in a state imposing a sales and use tax may be subject to a requirement to assess, collect, and remit a sales and use tax on goods and services delivered by the seller into the taxing state. New Hampshire businesses that have no physical presence in such a foreign state, such as through retail or wholesale locations, or sales personnel, have no obligation to assess, collect, or remit a sales tax with respect to purchases by foreign state residents.**VI.** The imposition by other states of obligations to collect use tax imposed on residents with respect to purchases occurring within this state results in fundamental discrimination between businesses selling items within the foreign state (who are subject only to the sales tax administrative burdens) and businesses selling similar items within this state (who are subject to potentially highly

burdensome and arbitrary administrative requirements to determine, in some manner, whether a customer will store, use, or consume such items within such foreign state even before the customer has in fact stored, used, or consumed the item within such foreign state). This discriminatory burden violates federal constitutional protections that create an area of trade that is free from interference by state laws and prohibit state laws that discriminate against interstate commerce by providing a direct commercial advantage to local businesses.**VII.** Any foreign state that attempts to require an out-of-state business to collect a use tax imposed on citizens of such foreign state without first seeking actively to enforce such use tax against its own citizens shall have carefully developed information and documentation that demonstrates conclusively that a business knew, based on information provided by a customer, that such customer has stored, consumed, or used a purchased item within such foreign state. Any attempt by such foreign state to charge the business with use tax liability without satisfying these prior requirements is the effective equivalent of imposing a direct tax on the out-of-state business with respect to out-of-state transactions in a manner that unlawfully discriminates against such out-of-state transactions in violation of the Commerce Clause of the United States Constitution.  
*RSA 78-D:1*

*2009, 169:1, eff. July 9, 2009.*

## **N.H. Rev. Stat. § 78-D:2**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-D:2 - Qualifying Foreign Sales and Use Tax Statute**I.** In this section:**(a)** "Adequate physical presence" means the presence of stores, offices, or other tangible locations within the foreign state at which the retailer or its affiliates engage in business within the foreign state through the activities of owners, officers, directors, partners, managers, employees, representatives, or agents, whether or not related to the activity of the retailer sought to be taxed.**(b)** "Foreign state" means a foreign state or commonwealth which assesses sales or use tax on its residents with respect to the use, storage, and consumption of goods and services.**(c)** "Goods" means tangible personal property intended for any use other than resale.**(d)** "New Hampshire retail purchase transaction" means any sale of services or goods, or both, for any purpose other than resale in the regular course of business that is completed at a location within New Hampshire and where delivery or other first use of the services or goods occurs in New Hampshire.**(e)** "Private customer information" means documents, records, and other information maintained in any form which contains the purchaser's name, address, telephone number, credit card, debit card or check number, a description of the goods or service purchased, the identity of any person for whom the goods or services were purchased, and the identification of the point of transfer of any

goods or services that comprise a New Hampshire retail purchase transaction. **(f)** "Retailer" means any individual, trust, estate, fiduciary, partnership, corporation, or other legal entity, located within the state that engages in New Hampshire retail purchase transactions. **II.** No retailer shall provide to a foreign state any private customer information for use in the determination of sales or use tax liability of the customer in the foreign state or for use in the determination, collection, and remittance of sales or use tax by the retailer with respect to a New Hampshire retail purchase transaction, unless the foreign state has first provided to the retailer written confirmation that the foreign state provided prior written notice of its intent to collect a use tax on such retail transaction to the commissioner of revenue administration, and no later than 60 days following the commissioner's receipt of such notice by the foreign state, the department of justice has submitted to the commissioner its determination that the foreign state's sales and use tax statutes: **(a)** Impose upon its residents a requirement to individually pay sales or use tax on the use, storage, or consumption of goods or services purchased in any other state; **(b)** Specifically identify the goods and services to which the use tax applies and exemptions to the use tax; **(c)** Require that the retailer or its affiliates have adequate physical presence to establish nexus with the foreign state for the imposition of an obligation of the retailer to determine, collect, and remit a sales and use tax with respect to purchases by foreign state residents; **(d)** Require every resident to submit annually to the foreign state a statement (i) identifying each and every item subject to such foreign state's sales and use tax purchased outside such foreign state for storage, use or consumption within such foreign state during an applicable period, (ii) stating the value of such items purchased, and (iii) including a statement under penalties of perjury that such resident complied with the requirement stated in this chapter; **(e)** Require its residents or the foreign state to provide the retailer at the time of a New Hampshire retail purchase transaction with information establishing whether or not the goods or services purchased in the state are intended to be used, stored, or consumed within the foreign state, and provide that any information supplied by its residents is irrefutably presumed to be correct and complete, and that the retailer may rely on such information regardless of the accuracy or completeness of such information; **(f)** Require that any agency of such foreign state responsible for enforcing such foreign state's sales or use tax shall annually audit, investigate, or examine not less than 10 percent of the total use tax returns filed by residents of such foreign state with respect to each year; **(g)** Require that any agency of such foreign state responsible for enforcing such foreign state's use tax shall conduct its audit, investigation, or examination practices with respect to residents' use tax returns in a manner that ensures that such practices are applied equally regardless of the state in which the sales transaction occurs, and that requires any such agency to file a public report annually demonstrating compliance with this nondiscrimination requirement; **(h)** Create an irrebutable presumption that, in the absence of voluntary

information by the resident, the goods or services purchased are intended to be used in the state in which they are purchased; and **(i)** Explicitly impose use tax collection requirements on out-of-state retailers with respect to retail purchase transactions that are completed in those other states.

*RSA 78-D:2*

*2009, 169:1, eff. July 9, 2009.*

## **N.H. Rev. Stat. § 78-D:3**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-D:3 - Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

*RSA 78-D:3*

*2009, 169:1, eff. July 9, 2009.*

## **N.H. Rev. Stat. § 78-E:1**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:1 - Findings and Purpose

The general court finds that:

**I.** Over 10,000 state and local jurisdictions within the United States impose sales and use taxes. Many of these jurisdictions have their own laws, regulations, policies, and standards for determining sales and use tax obligations. **II.** The state of New Hampshire does not impose a traditional broad-based sales and use tax on customers making purchases of goods and services in New Hampshire, nor on goods and services purchased by its residents out of state for use, storage, or consumption in New Hampshire. New Hampshire law and policy does not require New Hampshire businesses to suffer the cost and burdens of establishing administrative systems to comply with the collection and remission provisions of a traditional broad-based sales and use tax law. **III.** The state of New Hampshire is a year-round destination visited by millions of persons from various states that impose sales and use tax on their own residents. Complying with the complexities of these multiple and various foreign sales and use tax laws and regulations will impose very costly burdens on all affected New Hampshire retail businesses. These burdens will be especially difficult for smaller

businesses that seek to expand their customer base by using old and new technologies such as traditional mail and communications using the Internet.**IV.** On June 21, 2018, the United States Supreme Court issued its decision in *South Dakota v. Wayfair, Inc., et al.* The Court overturned over 50 years of precedent that had required the physical presence in a state of a retail seller before the state could impose on the seller its sales and use tax collection requirements. This decision exposes remote retail businesses, including those located within New Hampshire, to assertions by thousands of foreign taxing jurisdictions of various collection and remission requirements on remote retail businesses that were previously protected by the longstanding physical presence rule.**V.** The Wayfair decision left unresolved many questions relating to the scope of constitutionally allowable sales tax impositions on remote sellers, including the definition of a constitutionally sufficient safe harbor for the protection of relatively small businesses and others with relatively low levels of sales business in the foreign taxing jurisdiction. The Court directly invited further examination of these questions, observing that the Wayfair case involved only "large, national companies that undoubtedly maintain an extensive virtual presence" and stating that the "question remains whether some other principle in the Court's Commerce Clause doctrine might invalidate the [South Dakota] Act."**VI.** New Hampshire has enacted the business enterprise tax (BET), which is a form of value-added or consumption tax imposed directly on the business, and not on the consumer. The enactment of the BET represents the affirmative adoption by New Hampshire of a fundamentally different consumption tax policy than other states' adoption of retail sales and use taxes, and further reflects New Hampshire's direct rejection of complexities and undue administrative burdens that result from traditional retail sales and use taxes and their third-party collection regimes.**VII.** Because New Hampshire has never enacted a traditional broad-based sales and use tax law, New Hampshire retailers selling intrastate and remotely to other states had been fully protected pre-Wayfair from the burden of sales tax collection and remittance responsibilities. Post-Wayfair, New Hampshire has a compelling governmental interest in providing for the continuing protection of these retailers, especially relatively small retailers, from any unlawful imposition of this burden. The establishment and expansion of small and "micro-businesses" represent a particularly valuable segment of New Hampshire's economy and comprise a majority of employers in the state. The high cost and practical difficulty of compliance with sales and use tax requirements in a state that has chosen not to impose sales and use tax obligations would disproportionately and negatively impact these businesses and discourage other aspiring entrepreneurs from starting new businesses in New Hampshire.**VIII.** New Hampshire has a compelling governmental interest in protecting the privacy of an individual's personal information that may be used to facilitate the sale of goods and services within this state.**IX.** New Hampshire has a compelling governmental interest in protecting its remote sellers and the private, personal information they possess from consumers from persons who may attempt to



steal money or sensitive information from remote sellers by impersonating a foreign taxing jurisdiction or foreign taxing authority.**X.** New Hampshire has a compelling governmental interest in protecting New Hampshire remote sellers from tax assessment and collection practices by foreign taxing jurisdictions and authorities that unlawfully discriminate against out-of-state persons in favor of in-state persons.**XI.** The purpose of this chapter is to (a) ensure that no foreign taxing jurisdiction or authority imposes or attempts to impose sales and use tax collection obligations on a New Hampshire remote seller in a manner that violates the United States or New Hampshire constitutions or any other applicable provision of law and (b) protect New Hampshire remote sellers and the private, personal information they possess from consumers from persons who may attempt to steal money or sensitive information from remote sellers by impersonating a foreign taxing jurisdiction or foreign taxing authority.

*RSA 78-E:1*

Added by 2019, 280:1, eff. 7/19/2019.

*2019, 280:1, eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:2**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:2 - Definitions

In this chapter:

**I.** "Foreign taxing authority" means an agency or other instrumentality of, or a person acting on behalf of, a foreign taxing jurisdiction that is authorized to administer, audit, and enforce sales or use tax laws of the foreign taxing jurisdiction.**II.** "Foreign taxing jurisdiction" means a state, territory, the District of Columbia, a local government, political subdivision, or any other entity which assesses a retail sales tax or use tax on its persons with respect to the use, storage, and consumption of goods and services.**III.** "New Hampshire remote purchase transaction" means any sale of services or goods, or both, for any purpose other than resale in the regular course of business where the customer takes possession of the services or goods in a foreign taxing jurisdiction.**IV.(a)** "New Hampshire remote seller" means any individual, trust, estate, fiduciary, partnership, corporation, or other legal entity, including a retailer as defined in RSA 78-D, located within the state, that engages in New Hampshire remote purchase transactions, and that does not have a physical presence within the foreign taxing jurisdiction.**(b)** For purposes of this paragraph, a person has a "physical presence" in a foreign taxing jurisdiction only if such person's business activities within the jurisdiction include any of the following:**(1)** Maintaining its commercial or legal domicile in the foreign taxing jurisdiction;**(2)** Owning, holding a leasehold interest in, or

maintaining real property for business purposes such as a retail store, warehouse, distribution center, manufacturing operation, assembly facility, or any other facility in the foreign taxing jurisdiction;**(3)** Leasing or owning tangible personal property for business purposes (other than computer software) of more than de minimis value in the foreign taxing jurisdiction;**(4)** Having one or more employees or independent sales persons present in the foreign taxing jurisdiction actively soliciting sales;**(5)** Maintaining an office in the foreign taxing jurisdiction at which it regularly employs 3 or more employees for any purpose.**(c)** For purposes of this paragraph, the term "physical presence" shall not include:**(1)** Entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a person outside the foreign taxing jurisdiction, whether by an Internet-based link or platform, Internet website, or otherwise;**(2)** Any presence in a foreign taxing jurisdiction, as described in this paragraph, for less than 15 days in a taxable year (or a greater number of days if provided by foreign taxing jurisdiction law);**(3)** Product placement, setup, or other services offered in connection with delivery of products by an interstate or in-state carrier or other service provider;**(4)** Internet advertising services provided by in-state residents which are not exclusively directed towards, or do not solicit exclusively, in-state customers;**(5)** Ownership by a person outside the foreign taxing jurisdiction of an interest in a limited liability company or similar entity organized or with a physical presence in the foreign taxing jurisdiction;**(6)** The furnishing of information to customers or affiliates in such foreign taxing jurisdiction, or the coverage of events or other gathering of information in such foreign taxing jurisdiction by such person, or his or her representative, which information is used or disseminated from a point outside the foreign taxing jurisdiction; or**(7)** Business activities directly relating to such person's potential or actual purchase of goods or services within the foreign taxing jurisdiction if the final decision to purchase is made outside the foreign taxing jurisdiction.**V.** "Person" means any individual, trust, estate, fiduciary, partnership, corporation, or any state, territory, the District of Columbia, a local government or political subdivision, or any other legal entity.**VI.** "Private customer transaction information" means, with respect to any New Hampshire remote seller, any documents, records, and other information possessed or maintained by a New Hampshire remote seller in any form which contain information concerning the name, address, or telephone number of any customer, or any other information related to a customer such as credit card, debit card, or checks used to complete a customer transaction, a description of the goods or service purchased, the identity of any person for whom the goods or services were purchased, and the identification of the point of transfer of any goods or services that comprise a transaction of sales used for the calculation of sales or use tax liability.**VII.** "Streamlined Sales and Use Tax Agreement" means the Streamlined Sales and Use Tax Agreement as adopted and amended from time to time by the Streamlined Sales Tax Governing Board.**VIII.** "Written notice"

means a notice in writing, by physical letter, addressed and physically mailed to the New Hampshire department of justice. No other form of notice shall be deemed to meet the requirements of this chapter.

*RSA 78-E:2*

Added by 2019 , 280: 1, eff. 7/19/2019.

*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:3**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:3 - Voluntary Information Sharing and Collaboration**I.** In furtherance of the purposes of this chapter, the department of justice shall develop a system providing for voluntary information sharing and collaboration between the department of justice and New Hampshire remote sellers.**II.** In collaboration with the department of revenue administration and through such other means as it determines appropriate, the department of justice shall transmit periodic bulletins to businesses located in New Hampshire providing information about the provisions of this chapter and about new developments relating to the collection and remission of sales taxes to foreign taxing jurisdictions and authorities. The department of revenue administration is hereby authorized to collaborate with the department of justice in developing and distributing such bulletins.**III.** The system established by the department of justice shall encourage and enable the confidential transmission to the department of justice by New Hampshire remote sellers of information regarding sales tax collection or remission actions, including actions seeking private customer information, taken or threatened against said sellers by foreign taxing jurisdictions and authorities or by other persons. Such information shall be exempt from disclosure under RSA 91-A.

*RSA 78-E:3*

Added by 2019 , 280: 1, eff. 7/19/2019.

*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:4**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:4 - Notice Requirements; Prohibitions**I.** A foreign taxing authority shall provide written notice to the department of justice at least 45 days prior to taking any action to determine or impose sales or use tax liability against a New Hampshire remote seller. The written notice regarding a particular New Hampshire remote seller shall state that it is an "RSA 78-E Notice," shall provide the full legal name and address

of the seller, shall contain the reasons for the request or examination, shall cite the legal authorities that authorize imposition of a tax collection obligation on the seller, and shall explain why the seller is subject to those laws.**II.** No foreign taxing authority shall request from a New Hampshire remote seller any private customer transaction information for use in the determination of sales or use tax liability of the customer or for use in the determination, collection, and remittance of sales or use tax by the seller with respect to a customer transaction, nor shall a foreign taxing authority proceed with conducting such an examination or imposing sales and use tax collection obligations, unless the foreign taxing authority has first provided the department of justice with written notice of its intent to request such information or conduct such an examination from a particular New Hampshire remote seller pursuant to paragraph I and 45 days from the date of such written notice have elapsed.**III.(a)** A New Hampshire remote seller should provide to the department of justice notice of a foreign taxing authority's first request for any private customer transaction information for use in the determination of sales or use tax liability of the customer or for use in the determination, collection, and remittance of sales or use tax by the seller with respect to a customer transaction, to insure that the foreign taxing authority has provided the notice required by paragraph I.**(b)** Notwithstanding the provisions of subparagraph (a), a New Hampshire remote seller may elect immediate compliance with a request or directive of a foreign taxing authority if the seller determines that such compliance is in its best interests. If a New Hampshire remote seller elects immediate compliance, that seller should remit notice to the department of justice after such compliance to insure that the foreign taxing authority has provided the notice required by paragraph I. Immediate compliance by a New Hampshire remote seller shall not relieve a foreign taxing authority's obligation to comply with the notice requirements contained in paragraph I.**(c)** A New Hampshire remote seller may satisfy the notice provisions under this paragraph through email, phone call, letter, or other method established and specified by the department of justice.**IV.** A New Hampshire remote seller who elects immediate compliance under paragraph III of this section may do so under protest while reserving all rights provided under this chapter, the United States or New Hampshire Constitutions, or any other provision of law.

*RSA 78-E:4*

Added by 2019 , 280: 1, eff. 7/19/2019.

*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:5**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:5 - Impersonation of foreign taxing jurisdiction or authority; Enforcement

No person shall impersonate or attempt to impersonate a foreign taxing jurisdiction, foreign taxing authority, or any other government agency for any reason and, any person who does shall be deemed to have committed an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A, including those set forth in RSA 358-A:4, may be used to enforce the provisions of this section. The exemptions provided for in RSA 358-A:3, I shall not apply to this paragraph.

*RSA 78-E:5*

Added by 2019 , 280: 1, eff. 7/19/2019.  
*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:6**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:6 - Administration; Enforcement**I.** Upon receipt of a written notice of a foreign taxing authority's intent to request private customer information from, conduct an examination of, or impose sales and use tax collection obligations on one or more New Hampshire remote sellers, the department of justice shall determine whether the laws of the foreign taxing jurisdiction meet the requirements of the United States and New Hampshire Constitutions and, if they do, whether they can be applied to the New Hampshire remote seller or sellers based on the reasons provided in the required written notice. In conducting the review required by this paragraph, the department of justice shall consider all laws and regulations existing as of the time of the review, and all applicable principles of the United States and New Hampshire Constitutions, including but not limited to: whether or not the foreign taxing jurisdiction's laws provide a satisfactory safe harbor for New Hampshire remote sellers that conduct only limited business within the jurisdiction; whether or not the laws ensure that no obligation to remit sales or use tax may be applied retroactively; whether or not the foreign taxing jurisdiction has adopted the Streamlined Sales and Use Tax Agreement or otherwise adopted laws that are substantially compliant with each of the requirements set forth in the Streamlined Sales and Use Tax Agreement; whether or not the foreign taxing jurisdiction's laws provide for deduction, reimbursement, or exemption for the cost of compliance of the New Hampshire remote seller in collecting, accounting, and remitting the foreign taxing jurisdiction's sales or use taxes; whether or not the laws require substantial compliance and enforcement of the entirety of such laws, including whether or not the laws include a use tax and the requirement that persons report and pay use tax liability; whether or not the foreign taxing jurisdiction or authority is actively seeking to enforce its own requirement that persons report and pay use tax liability; and whether or not the application of such

laws in practice are fairly related to the tangible benefits provided by such state to the New Hampshire remote seller.**II.** Whenever the department of justice has reason to believe that a foreign taxing jurisdiction or authority or any other person has taken, is taking, or is threatening to take any tax assessment or collection action against any New Hampshire remote seller, and the department further determines that said action constitutes an undue burden on interstate commerce within the meaning of Article 1, Section 8, Clause 3 of the United States Constitution, or that said action violates any other provision of the United States Constitution or New Hampshire constitution or of any other applicable state or federal law, including but not limited to the notice requirements in RSA 78-E:4, the department may bring a civil action in the name of the state against such person to restrain by temporary, preliminary, or permanent injunction the said action and may petition the court for an order of restitution of money or property to any person or class of persons injured thereby. The department of justice may further bring a declaratory judgment action against any foreign taxing authority or jurisdiction to establish that the proposed assertion of an obligation to collect and remit sales tax by one or more New Hampshire remote sellers violates applicable state or federal law. The action may be brought in any court of competent jurisdiction. Nothing in this chapter shall be construed as creating a cause of action against the state of New Hampshire or any of its officials or employees. Any action taken by the department of justice pursuant to the provisions of this chapter shall not be read to preclude a New Hampshire remote seller from bringing its own action under paragraph IV, or upon any other legal basis, and nothing in this chapter shall be construed to require or permit the department of justice to act as legal counsel or provide legal advice to a New Hampshire remote seller or any other person to whom the department of justice is not otherwise authorized by law to provide legal counsel.**III.** Any information, testimony, or documentary material obtained under the authority of this section shall be used only for one or more of the following purposes:**(a)** In connection with investigations instituted under this chapter or for the prosecution of legal proceedings instituted under this chapter or any other provision of New Hampshire law; and**(b)** In connection with any formal or informal program of or request for information exchange between the department of justice and any other local, state, or federal agency. However, no information or material obtained or used pursuant to the authority of this section shall be released publicly by any governmental agency except in connection with the prosecution of legal proceedings instituted under this chapter or any other provision of New Hampshire law. In addition, any information, testimony, or documentary material obtained or used pursuant to a protective order shall not be exchanged or released, as provided herein, publicly except in compliance with such protective order.**IV.** A New Hampshire remote seller who is subject to collection, audit, or examination by a foreign taxing authority in connection with alleged sales tax collection or remission obligations may file an action in any court of competent jurisdiction seeking immediate, emergency relief to enjoin any collection,

audit, or examination attempt that is occurring or will occur in violation of rights provided by this chapter or of any other provision of constitutional or statutory law. Any New Hampshire remote seller who prevails in such an action shall be entitled to recover any damages suffered as a result of the violation of rights provided by this chapter and reasonable attorney fees and costs incurred in maintaining the action. Nothing in this paragraph is intended to limit a New Hampshire remote seller's judicial recourse to enforcement of this chapter.

*RSA 78-E:6*

Added by 2019, 280:1, eff. 7/19/2019.

*2019, 280:1, eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:7**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:7 - Reimbursement for Sales and Use Tax Collection

Notwithstanding the provisions of this chapter, if a New Hampshire remote seller is determined to be obligated to collect and remit a sales or use tax on behalf of a foreign taxing jurisdiction or foreign taxing authority, then that New Hampshire remote seller shall be entitled to recover or deduct from any taxes collected on behalf of such foreign taxing jurisdiction or foreign taxing authority any reasonable costs, including any initial set up and ongoing maintenance costs, incurred in the collection and remission of sales and use taxes to that jurisdiction or authority.

*RSA 78-E:7*

Added by 2019, 280:1, eff. 7/19/2019.

*2019, 280:1, eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:8**

Current through Chapter 378 of the 2024 Legislative Session

Section 78-E:8 - Rulemaking

The department of justice may establish procedures, in rules adopted by the attorney general under RSA 541-A, to facilitate the department of justice's implementation of this chapter, including the creation of forms, schedules, explanatory documents, or other materials. Such rules may be adopted through emergency rulemaking under RSA 541-A:18.

*RSA 78-E:8*

Added by 2019 , 280: 1, eff. 7/19/2019.  
*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:9**

Current through Chapter 378 of the 2024 Legislative Session  
Section 78-E:9 - Supplement to RSA 78-D

The protections for New Hampshire remote sellers provided by this chapter are intended to supplement, and not replace or supplant, protections provided to retailers under RSA 78-D. Therefore, in any situation where a provision of this chapter conflicts with the provisions of RSA 78-D, the provision that provides greater protection from sales and use tax collection liabilities to a New Hampshire remote seller or retailer, as that term is defined in RSA 78-D, shall control.

*RSA 78-E:9*

Added by 2019 , 280: 1, eff. 7/19/2019.  
*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:10**

Current through Chapter 378 of the 2024 Legislative Session  
Section 78-E:10 - Annual reports

On or before November 1 of each year, the department of justice shall report on the status of implementation of the provisions of RSA 78-E along with any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the chairs of the senate and house committees on ways and means, the senate clerk, the house clerk, the governor, and the state library.

*RSA 78-E:10*

Added by 2019 , 280: 1, eff. 7/19/2019.  
*2019, 280 : 1 , eff. July 19, 2019.*

## **N.H. Rev. Stat. § 78-E:12**

Current through Chapter 378 of the 2024 Legislative Session  
Section 78-E:12 - Severability

If any provision of this chapter or the application thereof to any agency, person, or circumstances is held invalid, the invalidity does not affect other provisions or



applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

*RSA 78-E:12*

Added by 2019, 280:1, eff. 7/19/2019.

*2019, 280:1, eff. July 19, 2019.*

## Contact Us

### Main Office Information

NH Department of Justice

Office of the Attorney General

33 Capitol Street

Concord, NH 03301

Telephone: (603) 271-3658

Fax: (603) 271-2110

TDD Access: Relay NH 1-800-735-2964

Email: [attorneygeneral@doj.nh.gov](mailto:attorneygeneral@doj.nh.gov)