New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

24-2439.0

HB 1531, *relative to allowing a business profits tax adjustment for the depreciation deduction permitted under Internal Revenue Code Section 168(k).*

Ways and Means

This bill allows for an adjustment to gross business profits under RSA 77-A for depreciation permitted under Internal Revenue code Section 168(k)

Under current Business Profits Tax (BPT) law, NH conforms to the Internal Revenue Code (IRC) in effect on December 31, 2018. However, NH disallows the deduction under IRC §168(k) and decoupled from the IRC in that regard. The proposed legislation would permit businesses to calculate an additional allowance as permitted under §168(k) of the Internal Revenue Code (IRC) provided in RSA 77-A:1, XX only for qualified property placed in service after December 31, 2024.

The IRC §168(k) in effect on December 31, 2018, establishes a first year deduction of 100% of the adjusted basis for qualifying property placed in service after September 27, 2017. That rate decreases to 80% for property placed in service after December 31, 2022, 60% for property placed in service after December 31, 2023, 40% for property placed in service after December 31, 2024, 20% for property placed in service after December 31, 2025, and before January 1, 2027. Thereafter, the deduction is fully phased out. The percentages of phase out do vary for certain forms of property. The proposed legislation removes this year-over-year phase out.

The proposed legislation is effective for taxable periods ending on or after December 31, 2024. DRA assumes that this legislation shall be effective only after December 31, 2024, because the allowed deduction applies only to assets placed in service after December 31, 2024.

This proposed legislation would result in an indeterminable decrease in State revenues to the General Fund and Education Trust Fund.

The DRA would be responsible for updating all necessary tax return forms and electronic management systems related to this proposed legislation, which would not result in any additional administrative costs that could not be absorbed in the DRA operating budget.

The estimated fiscal impact of this proposed legislation is an indeterminable decrease to the General Fund and Education Trust Fund starting in FY 2025. The DRA currently captures the amount of IRC §168(k) deduction that is disallowed and based on the latest full year of tax data (TY 2021), that amount is $504.9M. However, because the §168(k) deduction is disallowed, taxpayers are able to claim a regular depreciation deduction on those same assets for NH BPT purposes. The DRA is unable to estimate the fiscal impact of the proposed legislation on BPT revenues as the line item for taxpayers to claim the allowed regular depreciation includes depreciation claims for other assets as well. Additionally, the apportionment methodology transitioned to single sales factor (SSF) apportionment after TY2021 for taxable periods ending on or after December 31, 2022, and the net operating loss deduction also moved to single apportionment (apportioned only in the year the loss was generated). For these reasons, the DRA is unable to come up with a meaningful amount for the fiscal impact of this proposed legislation.

In theory, the fiscal impact of this proposed legislation is likely a timing issue for revenue recognition. This proposed legislation enables the acceleration of the depreciation claim of qualifying assets, as opposed to depreciating the asset over a longer stretch of time. The DRA is unable to isolate the depreciation amount over the years compared to the immediate deduction under of IRC §168(k). However, because DRA is unable to predict the future activities of a business organization, we cannot say for certain that the fiscal impact is simply a timing issue.

Technical or Mechanical Defects - Section 1 of the proposed legislation is to allow a depreciation deduction for property placed in service **after** December 31, 2024. Therefore, DRA suggests Section 3 of the proposed bill apply to all taxable periods ending **after** December 31, 2024, to be consistent with Section 1.