New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

24-2537.0

HB 1536, *relative to increasing the amount of the expense deduction allowed against the business profits tax.*

Ways and Means

This bill increases the amount of the section 179 expense deduction permitted against the business profits tax

IRC §179 in effect on December 31, 2018, allows a business organization to treat the cost of certain property placed in service during a taxable year as an expense up to $1,000,000, which is adjusted annually for inflation. Where not modified, the Business Profits Tax (BPT) is currently in conformity with the IRC in effect on December 31, 2018. However, under current BPT law, in determining the gross business profits before net operating loss and special deductions, a business organization is allowed a deduction under IRC §179 not exceeding $500,000 for property placed in service on or after January 1, 2018.

The proposed legislation increases the $500,000 limit to $1,000,000 and conforms to the IRC §179 in effect on December 31, 2018, but without the federal annual inflation adjustment.

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 property placed in service on or after January 1, 2025.

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 DRA currently captures the amount of IRC §179 expense in excess of the currently allowed $500,000 as an add back to the calculation of the taxable business profits. DRA used the latest full year of data (TY 2021) and calculated the tax impact on the additional $500,000 to increase the limitation up to $1M for each taxpayer able to claim the addition deduction. The excess identified was then multiplied by the taxpayer's original apportionment percentage and the tax rate of 7.5%, resulting in a maximum fiscal impact of $4.7M.

However, the assets disallowed as a §179 expense on the NH return will be allowed a regular depreciation claim. Therefore, the line item for taxpayers to claim the allowed regular depreciation includes a depreciation claim for other assets as well and may also include a depreciation claim that year for any expenses disallowed from prior taxable periods. The $4.7M represents the fiscal impact of increasing the allowable IRC Section 179 deduction in isolation without taking into consideration the offset of deductions or credits taken by taxpayers in the year analyzed, including what may be deducted as regular depreciation over several years.

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).

In theory, the fiscal impact of this proposed legislation is likely a timing issue because it 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 §179. 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 on or after January 1, 2025. Therefore, DRA suggests Section 2 of the proposed bill apply to all taxable periods ending **after** December 31, 2024.