

LEGISLATIVE COMMITTEE MINUTES

SB189

Bill as Introduced

SB 189-FN - AS INTRODUCED

2023 SESSION

23-0764

02/04

SENATE BILL

189-FN

AN ACT

relative to the definition of gross business profits in determining taxable business profits.

SPONSORS:

Sen. Lang, Dist 2; Sen. Gendreau, Dist 1; Sen. Gannon, Dist 23; Sen. Innis, Dist 7; Sen. Pearl, Dist 17; Rep. Moffett, Merr. 4

COMMITTEE:

Ways and Means

ANALYSIS

This bill alters the definition of gross business profits in determining additions and deductions allowed under the business profits tax.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the definition of gross business profits in determining taxable business profits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Business Profits Tax; Additions and Deductions. Amend RSA 77-A:4 by
2 inserting after paragraph XIX the following new paragraph:

3 XX. For tax years commencing on or after January 1, 2024, a deduction equal to the amount
4 disallowed as a deduction under section 163(j) of the Internal Revenue Code. For tax years
5 commencing on or after January 1, 2024, an addition equal to the amount deducted by reason of a
6 carry forward of disallowed business interest under section 163(j) of the Internal Revenue Code
7 generated in tax years commencing before January 1, 2024.

8 2 Effective Date. This act shall take effect January 1, 2024.

**SB 189-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the definition of gross business profits in determining taxable business profits.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	\$0	\$0	\$0
Funding Source:	<input checked="" type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill proposes to allow business organizations to fully deduct its business interest expense in the year it is incurred for tax years commencing on or after January 1, 2024.

The Department of Revenue Administration states this bill amends the adjustments needed to be made to gross business profits for the determination of taxable business profits by giving a deduction for the federally disallowed portion of business interest expense deduction under Internal Revenue Code (IRC) section 163(j) (section 163(j) limitation). The bill does not state that this deduction applies to business interest expenses incurred in a specific year. As a result, the Department assumes this deduction applies only to business interest expense incurred in tax years commencing on or after January 1, 2024.

The Department also states this bill would disallow a deduction for the business interest expense carry forward generated in tax years commencing before January 1, 2024 from the 163(j) limitation, by adding back to the gross business profits the deduction taken federally. It is assumed the disallowed deduction is the deduction taken by the business organization on its federal return.

The Department provides the following information relative to the current law:

- the section 163(j) limitation caps the business interest expense deduction to the sum of business interest income, 30% of the adjusted taxable income, and floor plan financing interest expense.

- the business interest expense in excess of the 163(j) limitation shall be carried forward to the following year.
- the 163(j) limitation shall not apply to small business taxpayers that has an average annual gross receipt of \$25 million (adjusted for inflation for taxable years beginning after December 31, 2018) or less for the three prior tax years. This proposed legislation does not change this.

The Department is unable to provide an estimate of the fiscal impact to revenue as it does not have sufficient information on all the federal calculations made by business organizations to arrive at their federal business interest expense deduction. However, the Department does state this bill would accelerate the effects of business interest expense deduction to the year in which the business organization incurred that expense resulting in an indeterminable decrease in General Fund and Education Trust Fund revenue. Additionally, this bill disallows the deduction of any excess 163(j) limitation generated from taxable years commencing before January 1, 2024 by adding back to the gross business profits the deduction of the carried over excess limitation taken federally, which may result in an indeterminable increase in General Fund and Education Trust Fund revenue. Overall, the impact on revenue is indeterminable.

The Department would need to update all necessary tax return forms and electronic management systems to reflect the proposed change; however, it is not anticipated this will result in any additional administrative costs that could not be absorbed in the Department's operating budget. The proposed legislation would accelerate the effects of business interest expense deduction to the year in which the business organization incurred that expense.

AGENCIES CONTACTED:

Department of Revenue Administration

SB 189-FN - AS AMENDED BY THE SENATE

02/22/2023 0558s

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SB 189-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-0558s)

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Department of Revenue Administration

**SB 189-FN FISCAL NOTE
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AGENCIES CONTACTED:

Department of Revenue Administration

SB 189-FN - AS AMENDED BY THE HOUSE

02/22/2023 0558s
18May2023... 1628h

2023 SESSION

23-0764
02/04

SENATE BILL ***189-FN***

AN ACT relative to the definition of gross business profits in determining taxable business profits.

SPONSORS: Sen. Lang, Dist 2; Sen. Gendreau, Dist 1; Sen. Gannon, Dist 23; Sen. Innis, Dist 7; Sen. Pearl, Dist 17; Rep. Moffett, Merr. 4

COMMITTEE: Ways and Means

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23-0764
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10 years, beginning with the first tax year commencing on or after January 1, 2024.
11 2 Effective Date. This act shall take effect January 1, 2024.

SB 189-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-0558s)

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AGENCIES CONTACTED:

Department of Revenue Administration

CHAPTER 169
SB 189-FN - FINAL VERSION

02/22/2023 0558s
18May2023... 1628h

2023 SESSION

23-0764
02/04

SENATE BILL ***189-FN***

AN ACT relative to the definition of gross business profits in determining taxable business profits.

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CHAPTER 169
SB 189-FN - FINAL VERSION

02/22/2023 0558s
18May2023... 1628h

23-0764
02/04

STATE OF NEW HAMPSHIRE

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10 years, beginning with the first tax year commencing on or after January 1, 2024.
11 169:2 Effective Date. This act shall take effect January 1, 2024.

Approved: July 28, 2023
Effective Date: January 01, 2024

Amendments

Adopted

Sen. Lang, Dist 2
February 8, 2023
2023-0426s
02/08

Amendment to SB 189-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Paragraph; Business Profits Tax; Additions and Deductions. Amend RSA 77-A:4 by
4 inserting after paragraph XIX the following new paragraph:

5 XX. For tax years commencing on or after January 1, 2024, a deduction equal to the amount
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UNAPPROVED

Senate Ways and Means
February 16, 2023
2023-0558s
02/08

Amendment to SB 189-FN

1 Amend the bill by replacing section 1 with the following:

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Committee Minutes

SENATE CALENDAR NOTICE
Ways and Means

Sen Timothy Lang, Chair
Sen Lou D'Allesandro, Vice Chair
Sen Keith Murphy, Member
Sen Daniel Innis, Member
Sen Cindy Rosenwald, Member

Date: January 31, 2023

HEARINGS

Wednesday	02/08/2023	
(Day)	(Date)	
Ways and Means	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	SB 189-FN	relative to the definition of gross business profits in determining taxable business profits.
9:15 a.m.	SB 260-FN	relative to deductions under the business profits tax for compensation of members and owners.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 189-FN

Sen. Lang

Sen. Pearl

SB 260-FN

Sen. Lang

Sen. Gendreau

Rep. Moffett

Rep. Mooney

Sen. Gannon

Sen. Innis

Sonja Caldwell 271-2117

Timothy Lang
Chairman

Senate Ways and Means Committee

Sonja Caldwell 271-2117

SB 189-FN, relative to the definition of gross business profits in determining taxable business profits.

Hearing Date: February 8, 2023

Members of the Committee Present: Senators Lang, D'Allesandro, Murphy, Innis and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill alters the definition of gross business profits in determining additions and deductions allowed under the business profits tax.

Sponsors:

Sen. Lang

Sen. Gendreau

Sen. Gannon

Sen. Innis

Sen. Pearl

Rep. Moffett

Who supports the bill: Sen. Lang, Dave Juvet (BIA), Sen. Gendreau, Sen. Innis, Eric Kropp

Who opposes the bill: no one

Who is neutral on the bill: Keen Meng Wong (DRA), Frederick Coolbroth (DRA)

Summary of testimony presented in support:

Sen. Lang

- This bill was a request from a constituent.
- In 2018, the federal tax code was changed so that interest can only be deducted at the business level at 30% for the purpose of determining profits and taxation.
- This bill seeks to go back to the way it was before when a NH business that had a capital expenditure with a loan was able to deduct 100% of the interest on that capital expense.
- This is mostly important to the manufacturing industry.
- Manufacturers that operate in multiple states like Freudenberg or Anheuser Busch, valueate where it is most cost effective to do a capital expenditure.
- He gave an example of a business wanting to do a capital expenditure that might cut down energy expenses. Under current law, they could only deduct 30% of the interest on that expenditure off of their profits. They would take 30% of that interest and apply it to their profits to deduct from their business profits tax (BPT) liability.
- This bill would allow them to take 100% of that interest and apply it to their profits to offset their BPT liability.
- It is clear that interest on a loan is a business expense and should not be taxed.

- This will make NH more competitive with other states.

Dave Juvet – BIA

- They are in favor.
- The most important concept about this issue is the things that happened at federal level as part of tax reform in 2017. There were parts that were beneficial to businesses and parts that were less beneficial. They were designed to balance out the fiscal impact of that tax reform.
- The parts that were beneficial did not flow down to the state level. Because NH is in conformity on this issue, the less beneficial parts do flow down to the state level.
- This bill is intended to go back to the way it was before 2017 in NH when businesses could deduct 100% of interest on those business expenses.

Summary of testimony presented in opposition:

None

Neutral Information Presented:

Fred Coolbroth, Director of Audit and Keen Meng Wong, Tax Policy Counsel - DRA

- The Dept. of Revenue Administration has no position on the bill.
- Not able to determine monetary fiscal impact because they don't have info to determine the business interest deductions that would be taken by taxpayers.
- It would accelerate the claim of the deduction from being spread out over the years to the year the business interest occurred.
- This is effective for tax year 2024 onwards.
- We will see the impact happening in the year that the business interest was incurred. The impact to revenues will be a decrease in that year. The full deduction will be taken in year one.

Sen Lang said businesses can deduct 100% but it takes 4 years to get there. They are ultimately getting this deduction. The problem with that is the credit carryforward puts the state at risk every year. It is a question of whether the state would want the pain spread out over four years or just taken in the first year and be done with it. If the deduction was taken in the first year, then the state won't have a liability going forward. This protects the state from carryforward liability.

Mr. Wong said the credit carryforward issue Sen. Lang mentioned is the amount of money the state is holding from the actual cash payments being made. The current statute allows for it to be carried forward, whereas this bill accelerates it all to the first year.

Sen. Rosenwald said she understands this provision only applies to businesses that have under \$27 million of gross receipts. She asked how many filers in NH have less than \$27 million of gross receipts.

Mr. Wong said that was accurate in terms of the application of the 30% cap. He doesn't have the number of taxpayers but said he could look into it and get that information to the committee.

Sen. Rosenwald said it would be helpful for the committee to have good data to make a decision. Sen. Rosenwald went on to say some other states have done this and she can understand why businesses would think it would be helpful. She said it would be helpful to the committee to have some sense of the revenue impact that this may have. She asked if he could ask other states or

organizations. She also asked if there are other provisions of the Tax Cut and Jobs Act conformity that the department has already decoupled or that they are looking at decoupling.

Mr. Wong said DRA is not looking to decouple from any other parts of the TCJA. Mr. Wong said that with regard to the potential revenue impact, there could be a timing concern in terms of revenue recognition if the deduction is taken over four years vs. in year one itself.

Sen. Lang said his understanding was that over four years it's a net zero to the state. The same amount of revenue is collected. If the deduction is all taken in the first year, then the business would be paying 100% of their profits in subsequent years.

Mr. Wong said that was correct.

Sen. Rosenwald said that assumes a business doesn't take on any other expense that incurs interest.

Mr. Wong said that was correct.

Sen. Rosenwald asked if they assume businesses only invest once every four years.

Mr. Wong said that is something DRA cannot answer.

Mr. Wong said under the current language of the bill, there is the potential for businesses to not be able to carryover interest that was not deducted prior to 2024. Some taxpayers might be harmed by that. If the intention was to allow that, DRA can work with the committee to amend the bill.

Senator D'Allesandro said this change was made a couple of years ago. He said that Norm Major has had concerns about credit carryforwards and where NH stands with regard to the enormity of the amount of credit that is still out there and hasn't been taken.

Mr. Wong said under current statute the credit carryover concern is being addressed with the limitation to taxpayers having to keep an amount of credit carryforward up to 500% of their taxable income.

Sen. Lang said we have a provision that would slowly take that down from 500% to 250% to 100% so the state doesn't have a liability hanging over its head that is unreasonable, He was not sure what the timeline was for that drawdown but said the state will be writing checks back to taxpayers that have paid too much.

Mr. Wong said that the 500% total tax liability is for tax periods ending on or after December 31, 2022. That goes down to 250% for tax years ending on or after 2025 and then 100% for December 21, 2027. In terms of whether the state would be writing checks for refunds depends on if taxpayers are aware of the situation and are using the credit for estimated tax payments. It all depends on taxpayer behavior.

Sen. Rosenwald reiterated that she wants to know the number of filers that fall into that category and what the experience in other states has been.

Sen. Lang said he had an amendment to fix the interest credit carryforward so that taxpayers won't be stranded.

Speakers

Senate Remote Testify

Ways and Means Committee Testify List for Bill SB189 on 2023-02-08

Support: 3 Oppose: 0

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Gendreau, Senator Carrie	An Elected Official	Senate District 1	Support
Innis, Senator Dan	An Elected Official	Myself	Support
Kropp, Eric	A Member of the Public	Myself	Support

Testimony

Sonja Caldwell

From: Meredith Beeson <mbeeson@globalbusiness.org>
Sent: Monday, February 6, 2023 4:35 PM
To: Timothy Lang; Lou D'Allesandro; Keith Murphy; Daniel Innis; Cindy Rosenwald
Cc: Alan Pasetky; Sonja Caldwell
Subject: Global Business Alliance Supports SB 189 to Allow for Increased Deductibility of Business Interest Expense
Attachments: GBA Letter in Support of SB 189.pdf; New Hampshire Fact Sheet.pdf; Corporate Income Tax_Business Interest Deduction Talking Points_FINAL.pdf; SB 189 Leave Behind.pdf

Caution! This message was sent from outside your organization.

Chair Lang, Vice Chair D'Allesandro and Members of the Senate Ways and Means Committee,

I am reaching out on behalf of the Global Business Alliance (GBA) to express our support for SB 189 which decouples from interest expense deduction limitations. By allowing for the deductibility of interest expense, New Hampshire can help keep the cost of capital down for companies already investing in the state and remain competitive for future growth.

GBA proudly represents nearly 200 American companies with a global heritage. Over 500 international companies in New Hampshire employ more than 50,000 workers with nearly half of those jobs in the manufacturing sector. Growth in employment at these firms rose by 22 percent over the past five years, while the state's overall private-sector employment decreased by 1.2 percent. Nationally, these international companies pay American workers an average compensation of \$84,800 annually in wages and benefits. See our factsheet attached for more information about how international companies support New Hampshire's economy.

For further background on how most states inadvertently increased taxes on companies after the federal Tax Cut and Jobs Act (TCJA), see the interest deduction talking points provided. Also, information is provided in the leave behind on why SB 189 will help spur investment in New Hampshire.

Thank you for the consideration and please let me know if you have any questions.

Meredith Beeson

Senior Director, State Government Affairs

Global Business Alliance

M 202-770-5141

99 M Street SE, Suite 200, Washington, DC 20003



GLOBAL
BUSINESS
ALLIANCE

Investing in America



February 8, 2023

The Honorable Chair Timothy Lang
Senate Ways and Means Committee
State House, Room 107
107 North Main Street
Concord, NH 03301

Subject: GBA Supports SB 189 to Allow for Increased Deductibility of Business Interest Expense

Dear Chair Lang, Vice Chair D'Allesandro and Members of the Senate Ways and Means Committee:

On behalf of the Global Business Alliance (GBA), I want to express support for SB 189 to decouple from interest expense deduction limitations. By allowing for the deductibility of interest expense, New Hampshire can help keep the cost of capital down for companies already investing in the state and remain competitive for future growth.

As the premier voice of international companies in the United States, GBA actively promotes and defends an open economy that welcomes international companies to invest in America. Our members are American companies with a global heritage and an indispensable part of our nation's economic success. With over 535 international companies operating in New Hampshire, foreign direct investment (FDI) supports over 50,200 high-quality jobs in the state. Over the past five years, employment from international companies has grown by 22 percent.¹

The ability to deduct interest as an ordinary and necessary business expense is a longstanding principle of New Hampshire tax policy. Interest expense typically results from a company's investment in its operations. While interest expense has always been permitted as a subtraction from income for companies, it has been severely limited since 2018.

¹ All statistics in this testimony are the latest available data from the U.S. Department of Commerce, Bureau of Economic Analysis (BEA) data released August 2022.

In 2018, New Hampshire, like many states, unintentionally imposed a tax increase on companies because the state conformed to IRC Section 163(j), which limits interest expense deductions. With increasing interest rates, this limitation on interest expense deductibility has an even more pronounced impact now, making it much more costly and prohibitive to invest.

Tennessee, South Carolina, Connecticut, Georgia, Mississippi and Arkansas have already fully decoupled from these federal interest deduction limitations. Additionally, North Carolina has enacted legislation to phase out the corporate income tax completely.

Full interest deductibility - or decoupling from IRC Sec. 163(j) - as proposed under SB 189 would encourage businesses to devote more capital towards workforce training initiatives, research and development, and expansion of operations. SB 189 would not only help companies that took out loans to continue operations during the pandemic but help alleviate the growing inflationary pressures.

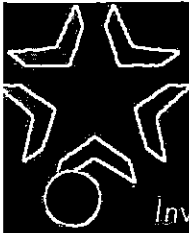
For these reasons, I urge the committee to pass SB 189 and ensure New Hampshire remains a competitive destination for international companies to create jobs. Please let me know if you have any questions at mbeeson@globalbusiness.org or 202-770-5141. Thank you for the time and consideration.

Sincerely,



Meredith Beeson
Director, State Affairs
Global Business Alliance

Cc Senator Lang, Senator D'Allesandro, Senator Murphy, Senator Innis, Senator Rosenwald, Sonja Caldwell.



**GLOBAL
BUSINESS
ALLIANCE**

Investing in America

Foreign Direct Investment Strengthens **NEW HAMPSHIRE'S ECONOMY**

HIGH QUALITY JOBS

50,200 workers in New Hampshire are employed as a result of international investment.

MANUFACTURING

23,100 workers in New Hampshire - **46 percent** of all FDI jobs in the state - are in the **manufacturing sector**.

GLOBALLY CONNECTED

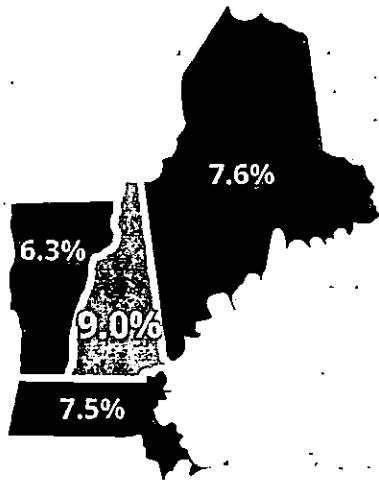
Among all international employers, those from the **United Kingdom**, the **Netherlands** and **Canada** support the largest number of jobs in New Hampshire.

MANY EMPLOYERS

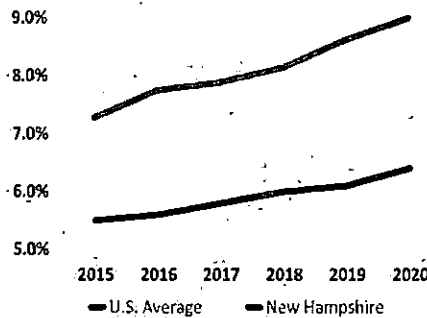
More than **535 international employers** have operations in New Hampshire.

INTERNATIONAL INVESTMENT CONTRIBUTES TO NEW HAMPSHIRE'S ECONOMY

New Hampshire vs. Its Neighbors
FDI Jobs as a % of Total Employment

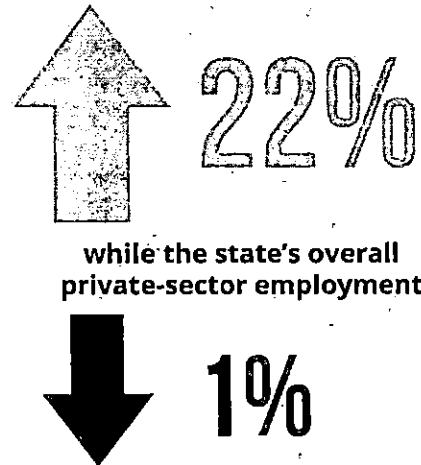


New Hampshire vs. USA
FDI Jobs as a % of Total Employment



New Hampshire beats the national average in its portion of jobs supported by international investment.

From 2015 to 2020, New Hampshire's FDI employment...



DISCOVER THE FULL LIST OF GBA MEMBERS

Nearly 200 international companies comprise GBA's membership, representing a slice of the U.S. economy that provides eight million high-quality jobs that pay an average of 10 percent higher compensation than the economy-wide average. Our members are some of the largest international employers in the country. Browse through our membership list using the QR code.





**GLOBAL
BUSINESS
ALLIANCE**

Investing in America

Foreign Direct Investment Strengthens

AMERICA'S ECONOMY

MANUFACTURING

In the last five years, international companies created **nearly 400,000** new manufacturing jobs while the U.S. overall sadly **lost 223,000**.

INNOVATION

International companies spend more than **\$71 billion** on U.S. R&D activities, or **13%** of all R&D performed by U.S. companies.

EXPORTS

U.S. workers of international companies produce **24%** of U.S. exports, shipping **\$347 billion** in goods to customers around the world.

SUPPLY CHAINS

For every U.S. job at an international company, **three more** are supported in the U.S. economy.

TAX

International companies pay **18%** of all federal corporate income taxes.

Record Number of FDI Jobs

7.9 MILLION

Nationally, 7.9 million U.S. workers are employed by international companies.

Good Paying Jobs

\$84,836

Across the nation, U.S. workers at international companies earn 10 percent higher compensation than the economy-wide average - making \$84,836 annually.

Current Employers Drive Growth

50%

Last year, FDI in the U.S. was driven largely - 50 percent - by reinvesting earnings from current employers, above the historic trend.

From 2015 to 2020, America's FDI employment...

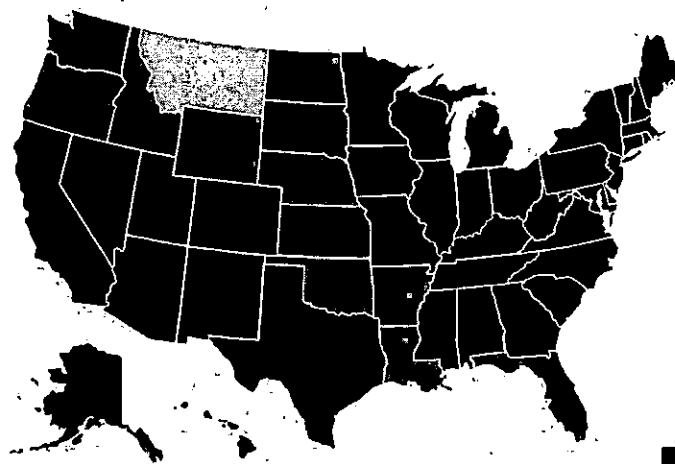


15%

while the country's overall private-sector employment remained

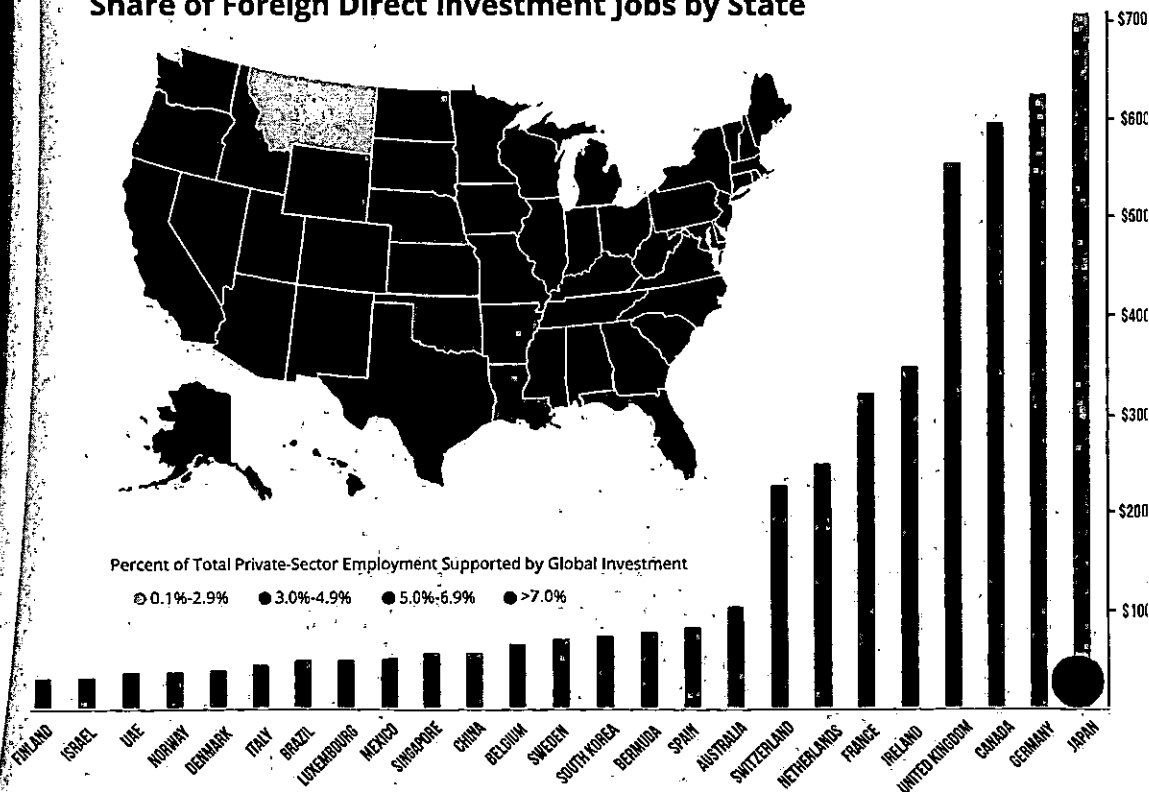
FLAT

Share of Foreign Direct Investment Jobs by State



Percent of Total Private-Sector Employment Supported by Global Investment

○ 0.1%-2.9% ● 3.0%-4.9% ● 5.0%-6.9% ● >7.0%



Foreign Direct Investment in America by Country

Figures based on the Bureau of Economic Analysis (BEA), Survey of Current Business, U.S. International Transactions, released September 2022; Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2020, released August 2022



Business Interest Expense Deductibility

States that look to decouple from federal IRC Section 163(j) and allow full deductibility of interest expense will remain competitive for investment. Interest expense for companies typically results from debt incurred to grow and maintain investments as well as support employment and operations.

Taxable Income for Corporations and Deductions

- For federal and state income tax purposes, corporations determine their taxable income by calculating gross income minus any allowable deductions.
- Corporations can subtract certain expenses like interest related to debt or loans to calculate their taxable income.
- Interest expense has always been permitted as a subtraction from the gross income for companies, however, deductibility has been severely limited since 2018.
- The amount of taxes owed is then determined by multiplying taxable income by the relevant tax rate.

Common Interest Expense Deductions and Federal Tax Changes Under Tax Cut Jobs Act ("TCJA")

- For individuals, interest is generally not deductible but there are some exceptions. For example, subject to some limitations, individuals can deduct the interest on their home mortgages and interest on their student loans.
- Although interest expense is generally treated as a business expense deductible by corporations, there are multiple limitations on the amount of the deduction in the tax code, including Section 163(j).
- Section 163(j), however, was transformed by TCJA effective in 2018 to significantly limit a corporation's interest expense deduction. Additionally, one of the changes made by TCJA to Section 163(j) did not take effect until 2022, even further limiting the amount of interest deductions for corporations.
- Under TCJA, the federal corporate income tax rate also decreased from 35% to 21%. There were also changes in the bill to allow for an immediate tax deduction for the purchase of business assets like machinery and equipment (often called "bonus depreciation").

Most States Automatically Increased Taxes on Companies Without Legislative Action

- The 2018 and 2022 changes to Section 163(j) automatically applied to reduce the amount of interest expense corporations could deduct on their state income tax returns because most states follow the federal tax deduction rules.
- However, states typically do not follow the bonus depreciation rules and did not enact tax rate decreases like TCJA did.
- Because states typically follow the Section 163(j) changes but not the bonus depreciation rules, the modifications resulted in a state income tax increase on companies.

Deductibility of Interest Expense Helps Drive Economic Growth and Investment

- Interest expense typically results from debt incurred by companies to grow and maintain investments and supports employment and operations.
- Full interest deductibility without the limitations imposed by Section 163(j) would reverse the tax increase imposed on companies.
- "Decoupling" from federal Section 163(j) would keep a state competitive for business investment and help ensure it remains a competitive destination for international companies to create jobs and employ Americans.



Investing in America

Decoupling from Business Interest Expense Limitations Will Spur Investment in New Hampshire

The Global Business Alliance (GBA) supports SB 189, which would decouple from the interest expense limitations of Internal Revenue Code (IRC) Section 163(j). The ability to deduct interest as an ordinary and necessary business expense is a longstanding principle of New Hampshire tax policy.

SB 189 must be passed this legislative session so New Hampshire can:

Reverse the Inadvertent Tax Increase on Businesses

- New Hampshire unintentionally imposed a tax increase on companies back in 2018 without enacting legislation because the state conformed to IRC Section 163(j).
- With increasing interest rates, this limitation on interest expense deductibility has an even more pronounced impact on investment decisions in New Hampshire.
- Beginning in 2022, the impact is also harsher as companies will be able to deduct less interest due to a change in the federal IRC Section 163(j) calculation.

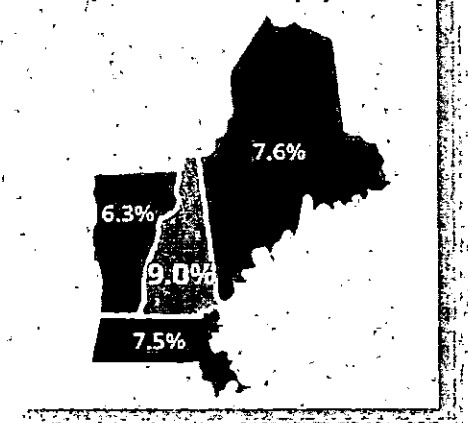
Ensure the State Remains Competitive

- Connecticut, Georgia, Mississippi, Tennessee, South Carolina and Arkansas have already decoupled from the federal interest deduction limitations of IRC Section 163(j).
- Additionally, North Carolina has passed legislation to phase out the corporate income tax completely.

Spur Investment and Economic Growth

- SB 189 would keep New Hampshire competitive for business investment and help ensure it remains a competitive destination for international companies to create jobs.
- Allowing for deductibility of interest would encourage businesses to devote more capital towards workforce training initiatives, research and development and expansion of operations.

New Hampshire vs. Its Neighbors
FDI Jobs as a % of Total Employment



How International Companies Contribute to New Hampshire's Economy

- More than 535 companies employ over 50,200 workers in New Hampshire and have grown their employment in the state by 22 percent over the last five years.
- GBA is the premier voice of international companies operating in the U.S. and represents nearly 200 American companies with a global heritage.
- Learn more about how international companies are benefiting U.S. workers and communities by visiting <https://globalbusiness.org/in-your-state>.



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pnair@cost.org

February 8, 2023

Honorable Timothy Lang, Chair
Honorable Lou D'Allesandro, Vice-Chair
Senate Ways and Means Committee
The General Court of New Hampshire

Via email

Re: COST's Support for S.B. 189 – Decoupling from Federal Interest Limitation

Dear Chair Lang, Vice-Chair D'Allesandro, and Members of the Committee:

On behalf of the Council On State Taxation (COST), we are writing in support of S.B. 189, which would decouple New Hampshire from the federal business interest expense deduction limitations under IRC § 163(j). These limitations are part of a collective package in the federal Tax Cuts and Jobs Act (TCJA) used to partly offset a significant federal corporate tax rate decrease intended to make the United States more competitive internationally. These federal rate reductions, however, do not flow through to the states.¹ As a result, New Hampshire's current conformity to the IRC § 163(j) limitations is misaligned with the federal tax policies creating the limitations. S.B. 189 would fix that problem.

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members that own property, employ workers, make substantial sales, and are incorporated in New Hampshire.

Maintaining New Hampshire's conformity to the federal business interest expense deduction limitations results in a substantial State corporate income tax increase. This arbitrary outcome is solely based on New Hampshire's mechanical conformity to the IRC § 163(j) limitations, while not also following the federal corporate tax rate cuts.

The impact on New Hampshire taxpayers is compounded due to the TCJA's automatic

¹ The TCJA reduced the corporate tax rate from 35 percent to 21 percent for tax years beginning after 2017.

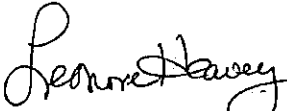
reduction of the cap on business interest expense deductions starting in 2022. This change narrows the “adjusted taxable income” base upon which the interest expense deduction limitation is calculated from earnings before interest, taxes, depreciation and amortization (EBITDA) to simply earnings before interest and taxes (EBIT).


Furthermore, the IRC § 163(j) provisions are not tailored to limit abusive or distortive intercompany lending. Rather, the provisions limit interest expenses across the board, for both intercompany and third-party borrowing, and impact all borrowing by New Hampshire taxpayers for both business operations and investment and expansion. This harms New Hampshire’s competitiveness.

By decoupling from the federal interest expense deduction limitations, S.B. 189 will help make New Hampshire more competitive by facilitating business expansion in the State and encouraging businesses to locate in New Hampshire by reducing the costs for borrowing.

For the foregoing reasons, we respectfully support S.B. 189 and we urge the members of the Committee to approve it.

Respectfully,


Leonore Heavey


Stephanie T. Do


Priya Nair

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

Voting Sheets

Senate Ways & Means Committee

EXECUTIVE SESSION RECORD

2023-2024 Session

Bill # SB189

Hearing date: 2-8-23

Executive Session date: 2-16-23

Motion of: A 0426s Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Lang, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro, VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Murphy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Innis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Rosenwald	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: GTP/A Vote: 3-2

Committee Member	Present	Made by	Second	Yes	No
Sen. Lang, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Murphy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Innis	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Rosenwald	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Lang, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro, VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Murphy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Innis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Rosenwald	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Murphy

Notes: _____

Senate Finance Committee

EXECUTIVE SESSION

Bill # SB 189-FW

Hearing date: N/A
 Executive session date: 03/07/23
 Motion of: OTP

Rosenwald
D'Allesandro
 VOTE: 5-2

<u>Made by</u> Gray <input type="checkbox"/>	<u>Seconded</u> Gray <input type="checkbox"/>	<u>Reported</u> Gray <input type="checkbox"/>
<u>Senator:</u> Innis <input checked="" type="checkbox"/>	<u>by Senator:</u> Innis <input type="checkbox"/>	<u>by Senator:</u> Innis <input checked="" type="checkbox"/>
Bradley <input type="checkbox"/>	Bradley <input type="checkbox"/>	Bradley <input type="checkbox"/>
Birdsell <input type="checkbox"/>	Birdsell <input type="checkbox"/>	Birdsell <input type="checkbox"/>
Pearl <input type="checkbox"/>	Pearl <input checked="" type="checkbox"/>	Pearl <input type="checkbox"/>
D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>

Motion of: _____ VOTE: _____

<u>Made by</u> Gray <input type="checkbox"/>	<u>Seconded</u> Gray <input type="checkbox"/>	<u>Reported</u> Gray <input type="checkbox"/>
<u>Senator:</u> Innis <input type="checkbox"/>	<u>by Senator:</u> Innis <input type="checkbox"/>	<u>by Senator:</u> Innis <input type="checkbox"/>
Bradley <input type="checkbox"/>	Bradley <input type="checkbox"/>	Bradley <input type="checkbox"/>
Birdsell <input type="checkbox"/>	Birdsell <input type="checkbox"/>	Birdsell <input type="checkbox"/>
Pearl <input type="checkbox"/>	Pearl <input type="checkbox"/>	Pearl <input type="checkbox"/>
D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>	D'Allesandro <input type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Gray, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Innis, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Bradley	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Birdsell	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Pearl	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator D'Allesandro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Rosenwald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Amendments: _____

Notes: _____

Committee Report

General Court of New Hampshire - Bill Status System

Docket of SB189

Docket Abbreviations

Bill Title: relative to the definition of gross business profits in determining taxable business profits.Official Docket of **SB189**.

Date	Body	Description
1/20/2023	S	Introduced 01/19/2023 and Referred to Ways and Means; SJ 5
1/31/2023	S	Hearing: 02/08/2023, Room 100, SH, 09:00 am; SC 9
2/16/2023	S	Committee Report: Ought to Pass with Amendment #2023-0558s , 02/22/2023; SC 11
2/22/2023	S	Committee Amendment #2023-0558s , AA, VV; 02/22/2023; SJ 8
2/22/2023	S	Ought to Pass with Amendment 2023-0558s, DIV 15Y-9N, MA; Refer to Finance Rule 4-5; 02/22/2023; SJ 8
3/8/2023	S	Committee Report: Ought to Pass, 03/16/2023; SC 13
3/16/2023	S	Ought to Pass: MA, VV; OT3rdg; 03/16/2023; SJ 10
3/21/2023	H	Introduced (in recess of) 03/16/2023 and referred to Ways and Means
4/19/2023	H	Public Hearing: 04/26/2023 10:00 am LOB 202-204
4/19/2023	H	==RECESSED== Executive Session: 04/26/2023 01:30 pm LOB 202-204
4/27/2023	H	==RECESSED== Executive Session: 05/03/2023 10:45 am LOB 202-204
5/4/2023	H	==CONTINUED== Executive Session: 05/09/2023 10:00 am LOB 202-204
5/10/2023	H	Committee Report: Ought to Pass with Amendment #2023-1628h 05/09/2023 (Vote 19-0; CC)
5/18/2023	H	Amendment #2023-1628h: AA VV 05/18/2023 HJ 14 P. 10
5/18/2023	H	Ought to Pass with Amendment 2023-1628h: MA VV 05/18/2023 HJ 14 P. 10
6/1/2023	S	Sen. Lang Moved to Concur with the House Amendment, MA, VV; 06/01/2023; SJ 16
6/30/2023	H	Enrolled (in recess of) 06/29/2023 HJ 17 P. 16
6/30/2023	S	Enrolled Adopted, VV, (In recess 06/29/2023); SJ 20
8/1/2023	S	Signed by the Governor on 07/28/2023; Chapter 0169; Effective 01/01/2024

NH House

NH Senate

SB189-FN

Bill Details

Title: relative to the definition of gross business profits in determining taxable business profits.

Sponsors: (Prime) Lang (r), Gendreau (r), Gannon (R), Innis (R), Pearl (r), Moffett (R)

LSR Number: **23-0764**

General Status: **PASSED**

House:

Committee: Ways and Means

Due Out: 6/1/2023

Status: PASSED/ADOPTED WITH AMENDMENT

Senate:

Committee: Finance

Floor Date: 6/1/2023

Status: CONCURRED

Body	Description
S	Introduced 01/19/2023 and Referred to Ways and Means; <u>SJ 5</u>
S	Hearing: 02/08/2023, Room 100, SH, 09:00 am; <u>SC 9</u>
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S	Ought to Pass with Amendment 2023-0558s, DIV 15Y-9N, MA; Refer to Finance Rule 4-5; 02/22/2023; <u>SJ 8</u>
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H	Committee Report: Ought to Pass with Amendment # 2023-1628h 05/09/2023 (Vote 19-0; CC)
H	Amendment # 2023-1628h: AA VV 05/18/2023 <u>HJ 14</u>
H	Ought to Pass with Amendment 2023-1628h: MA VV 05/18/2023 <u>HJ 14</u>
S	Sen. Lang Moved to Concur with the House Amendment. MA, VV; 06/01/2023; <u>SJ 16</u>
H	Enrolled (in recess of) 06/29/2023 <u>HJ 17</u>
S	Enrolled Adopted, VV, (In recess 06/29/2023); <u>SJ 20</u>

Docket of SB189**Bill Title:** relative to the definition of gross business profits in determining taxable business profits.*Official Docket of SB189.:*

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6/30/2023	S	Enrolled Adopted, VV, (In recess 06/29/2023); SJ 20

Other Referrals

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

23-0764

SB 189, *relative to the definition of gross business profits in determining taxable business profits.*

Senate Ways and Means

Under current law, the IRC section 163(j) limitation caps the business interest expense deduction to the sum of business interest income, 30% of the adjusted taxable income, and floor plan financing interest expense. The business interest expense in excess of the 163(j) limitation shall be carried forward to the following year.

The proposed legislation would allow business organizations to fully deduct, commencing on or after January 1, 2024, the portion of its business interest expense that exceeded the 163(j) limitation.

Federal deduction taken in tax years commencing on or after January 1, 2024 for business interest expense deduction disallowed due to the 163(j) limitation that was generated in tax years commencing before January 1, 2024 would be disallowed in determining New Hampshire's taxable business profits.

The proposed legislation shall take effect January 1, 2024 and shall apply for tax year commencing on or after January 1, 2024.

Under current law, the effects of the excess business interest expense above the 163(j) limitation would be spread out over the years in which the business organization may fall below the 163(j) limitation. The proposed legislation accelerates the effects of business interest expense deduction to the year in which the business organization incurred that expense.

The DRA is unable to provide an estimate of the fiscal impact to revenue because the DRA does not have sufficient information on all the federal calculations made by business organizations to arrive at their federal business interest expense deduction. The potential fiscal impact is dependent on the amount of business interest expense incurred by business organizations in tax year commencing on or after January 1, 2024 and if business organizations take a federal deduction in the tax year commencing on or after January 1, 2024 for carry over of business interest expense limited under section 163(j) generated in tax years commencing before January 1, 2024. In taxable years where there are no federal

deductions taken on the carried over limitations, the DRA expects an indeterminable decrease to the state revenues, reducing the General Fund and Education Trust Fund in the years when business organizations incur business interest expense deduction.

The proposed legislation disallows, for tax years commencing on or after January 1, 2024, a deduction on business interest expense deduction in excess section 163(j) limitation carry overs that were generated in tax years commencing before January 1, 2024. This, potentially, results in a permanent loss to the business organizations that do have excess carry overs generated from tax years commencing before January 1, 2024. The proposed legislation also did not address the treatment of excess section 163(j) limitation federal carry overs generated in tax years commencing on or after January 1, 2024. The DRA assumes that any federal deduction taken in taxable years commencing after January 1, 2024 for excess section 163(j) limitation federal carry overs generated in tax years commencing on or after January 1, 2024 will not be allowed in New Hampshire since those business interest expense would have been fully deducted in the year incurred.

Senate Inventory Checklist for Archives

Bill Number: SB 189-FN

Senate Committee: FINANCE - 2ND Comm
BILL

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate

as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Debra C. Martore
Committee Aide

07/24/23
Date

Senate Clerk's Office AK

Senate Inventory Checklist for Archives

Bill Number: SB189-FN

Senate Committee: Ways & Means

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

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- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # 0426s ___ - amendment # _____

___ - amendment # 0558s ___ - amendment # _____

- Executive Session Sheet
- ___ Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

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- ___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

- as amended by the senate ___ as amended by the house
- ___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

SLC
Committee Aide

7-25-23
Date

Senate Clerk's Office AK