

HB 1531-FN - AS INTRODUCED

2024 SESSION

24-2539

05/10

HOUSE BILL

1531-FN

AN ACT relative to allowing a business profits tax adjustment for the depreciation deduction permitted under Internal Revenue Code Section 168(k).

SPONSORS: Rep. Janigian, Rock. 25; Rep. Ulery, Hills. 13; Rep. Schamberg, Merr. 6; Rep. Plett, Hills. 29

COMMITTEE: Ways and Means

ANALYSIS

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

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Four

AN ACT relative to allowing a business profits tax adjustment for the depreciation deduction permitted under Internal Revenue Code Section 168(k).

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

1 1 New Section; Business Profits Tax; Special Allowance for Depreciation under Section 168(k) of
2 the Internal Revenue Code. Amend RSA 77-A by inserting after section 3-d the following new
3 section:

4 77-A:3-e Special Allowance for Depreciation under Section 168(k) of the Internal Revenue Code.
5 In determining gross business profits before net operating loss and special deductions, a business
6 organization shall calculate the additional allowance as permitted under Section 168(k) of the
7 Internal Revenue Code as provided in RSA 77-A:1, XX only for qualified property placed in service
8 after December 31, 2024. The applicable percentage as provided in Section 168(k)(6) shall mean 100
9 percent.

10 2 Repeal. RSA 77-A:3-b, I, relative to exclusion of the depreciation deduction under section
11 168(k) of the Internal Revenue Code is repealed.

12 3 Applicability. This act shall apply to all taxable periods ending after December 31, 2024.

13 4 Effective Date. This act shall take effect 60 days after its passage.

HB 1531-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to allowing a business profits tax adjustment for the depreciation deduction permitted under Internal Revenue Code Section 168(k).

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Revenue Fund(s)</i>	General Fund and Education Trust Fund			
Expenditures	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ See Below
- Does this bill authorize new positions to implement this bill? ☒ No

METHODOLOGY:

This bill would amend RSA 77-A to permit businesses to calculate a deduction as permitted under Internal Revenue Code (IRC) Section 168(k), which New Hampshire has decoupled from and currently disallows the deduction, only for qualified property placed in service after December 31, 2024. This bill is effective for taxable periods ending after December 31, 2024.

The Department of Revenue Administration states New Hampshire conforms to the IRC in effect on December 31, 2018. 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.

This bill will decrease General Fund and Education Trust Fund revenue by an indeterminable amount starting in FY 2025. The Department 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 Business Profits Tax (BPT) purposes. The Department 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 Department is unable to determine a meaningful amount for the fiscal impact for this bill.

In theory, the fiscal impact of this proposed legislation is likely a timing issue for revenue recognition. This bill enables the acceleration of the depreciation claim of qualifying assets, as opposed to depreciating the asset over a longer stretch of time. The Department is unable to isolate the depreciation amount over the years compared to the immediate deduction under of IRC §168(k). The Department is not able to predict the future activities business organizations, therefore it is not certain the fiscal impact is simply a timing issue.

The Department would need to update all necessary tax return forms and electronic management systems to reflect the changes contained in this bill; however, it is not anticipated this will result in any additional administrative costs that could not be absorbed in the Department's operating budget.

AGENCIES CONTACTED:

Department of Revenue Administration