

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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