LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 535
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: DECEMBER 17, 2020

SUMMARY

Synopsis: Allows taxpayers to deduct cost of certain depreciable assets under corporation business and gross income taxes.

Type of Impact: Indeterminate net fiscal impact on State General Fund and Property Tax Relief Fund.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	**FY 2021 and Thereafter**
State Fiscal Impact	Indeterminate

- The Office of Legislative Services (OLS) cannot determinate whether the bill will have a positive or negative fiscal impact on the State. The inability to determine the direction and magnitude of the fiscal impact is rooted in the unavailability of detailed data concerning the federal section 179 expense deduction.

- The overall effect of coupling the corporation business tax (CBT) and gross income tax (GIT) to current and future iterations of the section 179 expense deduction will be driven by individual taxpayer decisions regarding how and when to deduct depreciation from their income.

- Federal corporate tax return data published in an Internal Revenue Service (IRS) report indicate that taxpayers claimed section 179 expense deductions totaling $49.3 billion in tax year 2017, the most recent year for which data are not available. Disaggregated state data are not available in the report.

BILL DESCRIPTION

The bill revises the CBT and GIT statutes to allow taxpayers to elect the expenses the cost of certain depreciable business assets, placed in reserve on or after January 1, 2020, pursuant to section 179 of the federal Internal Revenue Code (IRC).

Section 179 permits taxpayers (in lieu of taking deductions for the depreciation of property over time) to elect to deduct from taxable income the full purchase price of certain qualified property that is purchased by a taxpayer for use in the active conduct of a trade or business for the taxable year in which the property is placed in service (subject to dollar and income limitations and other rules). The maximum section 179 expense deduction in 2020 is $1.040 million ($1.075 million for qualified enterprise zone property).

The dollar limitation provides that the maximum deduction that a taxpayer may claim in a taxable year is reduced by the amount by which the aggregate cost of the qualified property exceeds a phase-out limit. The 2020 phase-out limit is $2.590 million. The income limitation under section 179 bars a taxpayer from claiming a deduction that is greater than the taxpayer's taxable income from the active conduct of the taxpayer's trade or business. Any amount that a taxpayer cannot deduct for a taxable year because of the income limitation may be carried forward to a future year pursuant to section 179.

Since 2004, the CBT and GIT statues have provided that taxpayers cannot elect to deduct as an expense certain depreciable business assets, except as was allowed for federal income tax purposes by section 179 as it read on December 31, 2002, when determining entire net income for CBT purposes and the amount of a category of income pursuant to the GIT that is net of expenses. The bill amends current law to re-link the CBT and GIT with section 179 of the federal IRC.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that it is unclear whether the bill will have a positive or negative net fiscal impact on the State. The inability to determine the direction and magnitude of the fiscal net impact is rooted in the unavailability of detailed data concerning the section 179 expense deduction. The overall effect if coupling the CBT and GIT to current and future iterations of the section 179 expense deduction will be driven by individual taxpayer decisions regarding how and when to deduct depreciation from their income.

In the near-term the OLS anticipates that the bill will result in an indeterminate annual State revenue loss to the State General Fund and the Property Tax Relief Fund. Under current State law, CBT and GIT taxpayers are permitted to elect to deduct as an expense certain depreciable business assets in accordance with section 179 of the federal IRC as it read on December 31, 2002. At that time, the maximum section 179 expense deduction was $25,000 per year and the phase out limit was $200,000. The maximum section 179 expense deduction is now over $1 million and the phase-out limit is $2.590 million. Linking the CBT and GIT to the section 179 expense deduction will allow taxpayers to deduct a higher amount for the depreciation in the value of property when determining entire net income (for the CBT) or income that is net of expenses (for the GIT). This higher deduction will result in a lower amount of that is subject to taxation, an in turn, reduce State revenue collections on an annual basis.

The exercise of the section 179 expense deduction prevents the deduction of depreciation from income in future years and will result in taxpayers reporting a higher amount of income that is subject to taxation in the years after their exercise of the section 179 deduction. The higher deduction limits may also incentivize some taxpayers to make deductible investments into their

businesses they make not otherwise make. To the extent that these factors might contribute to higher business earnings and increased economic activity overall, State tax collections may increase by an indeterminate amount.

As part of its "Corporation Income Tax Returns Complete Report," the federal IRS publishes data from the tax returns of most active returns that elected expense certain property under section 179. According to the most recent report published, United States taxpayers claimed section 179 expense deductions totaling $49.3 billion in tax year 2017. In tax year 2017, the maximum section 179 expense deduction was $510,000 and the phase-out limit was $2.030 million. Thus, the fiscal impact of the bill is likely to be significantly greater than can be extrapolated from the tax year 2017 deduction amounts, since the deduction limit has more than doubled. Disaggregated state data are not available in the report.

Section:	*Revenue, Finance and Appropriations*
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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).