LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3404
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: NOVEMBER 30, 2021

SUMMARY

Synopsis: Allows certain restaurant owners to accelerate depreciation of certain expenditures under corporation business and gross income taxes.

Type of Impact: Annual State revenue loss to the General Fund and Property Tax Relief Fund.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	**FY 2022 & Thereafter**
State Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate revenue loss to the General Fund and the Property Tax Relief Fund. The inability to provide a detailed estimate of the fiscal impact is rooted in a lack of data concerning the section 168(k) expense deduction. The OLS does not have data on the total amount of tax obligations that may be reduced due to the application of the bonus depreciation allowance and the total value of eligible property expenditures for which a deduction may be claimed.

- The OLS anticipates that any State revenue loss will be temporally limited because taxpayers are permitted to take a bonus depreciation allowance only for eligible property placed in service before January 1, 2027. Additionally, the bonus depreciation allowance only applies for the first year the property is in service.

- The fiscal impact of coupling the corporation business tax (CBT) and the gross income tax (GIT) to section 168(k) in the limited manner provided under the bill will be driven by individual taxpayer decisions regarding how and when to accelerate the depreciation of qualified property.

BILL DESCRIPTION

The bill allows restaurant owners who have no more than 100 employees and are not chain restaurants to use a bonus depreciation allowance of up to $150,000 for eligible property expenditures incurred to comply with the health and safety requirements of the Governor's

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executive orders regarding the COVID-19 pandemic. These capital expenditures include, but are not limited to the purchase of heaters and overhangs.

Section 168(k) of the federal Internal Revenue Code allows businesses to claim an expensing (or bonus depreciation) allowance for eligible property placed in service after September 27, 2017 and before January 1, 2027. The bonus depreciation allowance does not alter the total amount of capital expenditures that businesses may deduct, only the timing of that deduction. The value of the bonus depreciation allowance is based on when the property is placed into service. New Jersey decoupled from the provisions of the federal Internal Revenue Code regarding bonus depreciation in 2002. The bill re-couples to the federal rules for certain small business owners for up to $150,000 of expenditures incurred to comply with the Governor's COVID-19 executive orders.

The bill takes effect immediately and is retroactive to March 9, 2020.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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The fiscal impact of coupling the CBT and the GIT to section 168(k) in the limited manner provided under the bill will be driven by individual taxpayer decisions regarding how and when to accelerate the depreciation of qualified property. Some taxpayers may elect to take the bonus depreciation allowance while others may choose to apply depreciation in the value of eligible property against their tax liability in accordance with other provisions of the Internal Revenue Code.

Under current State law, CBT and GIT taxpayers are not permitted to take the bonus depreciation allowance. Linking the CBT and the GIT to the section 168(k) expense deduction will allow taxpayers to deduct higher amount for depreciation in the value of property when determining entire net income (for the CBT) or income that is net of expenses (for the GIT). Application of this additional deduction will result in a lower amount of income that is subject to taxation, and in turn, reduce State revenue collections. The OLS anticipates that any State revenue loss will be temporally limited because taxpayers are permitted to take the bonus depreciation allowance only for capital expenditures to comply with the health and safety requirements imposed under the Governor's executive orders in response to the COVID-19 pandemic, and under current federal law, placed in service before January 1, 2027. Additionally, the bonus depreciation allowance only applies for the first year the property is in service.

The OLS anticipates that the State will experience a higher revenue loss in the near-term because section 168(k) allows taxpayers to take a 100 percent bonus depreciation allowance for property placed into service after September 27, 2017 and before January 1, 2023. Section 168(k) provides that the bonus deprecation allowance declines by 20 percent per year for property that is placed in service after December 31, 2022. For example, taxpayers are permitted to take an 80 percent bonus depreciation allowance for eligible property placed in service during calendar year 2023 and a 60 percent bonus depreciation allowance for eligible property placed in service during calendar year 2024. The bill does not alter the total amount of capital expenditures that businesses may deduct, only the timing of that deduction. Businesses may achieve overall tax savings over a multi-year period by shifting deductions to years in which their taxable income is greater, which will in turn reduce State revenue.

Although the bill allows taxpayers to deduct a higher amount of deprecation than allowed under current law, the bill's fiscal impact is likely to decline over time and eventually reach zero, as eligible capital expenditures must be incurred to comply with the Governor's executive orders concerning the COVID-19 pandemic. Future expenditures will become less necessary as restrictions on certain types of business activity are loosened over time. The phasing-out of the bonus depreciation allowance provided under current federal law will also limit the State's revenue loss.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Scott A. Brodsky* *Principal Fiscal Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

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.).