

**SUMMARY OF PROPOSAL #23**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: To Adopt the Depreciation Schedules, Except Bonus Depreciation, as Amended by the Tax Cuts and Jobs Act**

**Summary of Proposal for Consideration**

To adopt the depreciation schedules, except bonus depreciation, as amended by the Tax Cuts and Jobs Act (TCJA), P.L. 115-97, effective for tax years beginning January 1, 2019.

**Fiscal Analysis**

According to the Department of Finance and Administration, the revenue loss of adopting only depreciation under 26 U.S.C § 179, as amended by the TCJA, beginning 2019 and after would be as follows: \$43 million for FY2020, \$24 million for FY2021, \$15 million for FY2022, \$12 million for FY2023, and \$9 million for FY2024.

**Legal Analysis**

***Background***

Arkansas Code § 26-51-428 adopts 26 U.S.C § 179, as in effect on January 1, 2009, which allows taxpayers to deduct a certain dollar amount of depreciable property in the year purchased rather than capitalizing and depreciating the property. Arkansas allows for 26 U.S.C § 179 depreciation deductions of assets up to \$25,000 with a phase out beginning at \$200,000. Arkansas has not adopted federal bonus depreciation under 26 U.S.C § 168(k), which allows a business to take an immediate first-year deduction on the purchase of eligible business property, in addition to other depreciation.

ACT 118 of 1929 created the Income Tax Act of 1929 and established the first definitions of depreciation and expensing for the purposes of Arkansas income tax, allowing for “[a] reasonable allowance for the depreciation and obsolescence of property used in the trade or business.” The method used to calculate reasonable allowance was set by the Commissioner of Revenue.

ACT 156 of 1957 amended the method upon which depreciation and expensing was calculated. For years after 1953, the term “reasonable allowance” was defined to include an allowance computed in accordance with the regulations prescribed by the Commissioner of Revenue under one of four methods:

- (1) The straight line method;
- (2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the straight line method;
- (3) The sum of the years-digits method; or
- (4) Any other method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer’s use of the property and

including the taxable year, does not during the first two-thirds (2/3) of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the declining balance method.

ACT 382 of 1987 repealed the earlier depreciation provisions and adopted 26 U.S.C § 179, as in effect on January 1, 1987. This act also stipulated that depreciation was to be calculated in accordance with depreciation claimed for federal income tax purposes by allowing twenty-five percent (25%) of the difference resulting from the depreciation adjustment to be taken as income or allowed as a deduction over four (4) years.

ACT 826 of 1989 adopted 26 U.S.C § 179, as in effect on January 1, 1989, which allowed a depreciation deduction up to \$10,000.

ACT 1160 of 1995 adopted 26 U.S.C § 179, as in effect on January 1, 1995, which allowed a depreciation deduction up to \$17,500.

ACT 951 of 1997 adopted 26 U.S.C § 179, as in effect on January 1, 1997, which allowed a depreciation deduction up to \$20,000.

ACT 1129 of 1999 adopted 26 U.S.C § 179, as in effect on January 1, 1999, which allowed a depreciation deduction up to \$25,000.

ACT 218 of 2007 and ACT 613 of 2007 adopted 26 U.S.C § 179, as in effect on January 1, 2007, which allowed a depreciation deduction up to \$25,000 with a phase out beginning at \$200,000. Arkansas has not adopted any federal changes to 26 U.S.C § 179 since 2007.

Under the TCJA, 26 U.S.C § 179 has been amended to provide for a depreciation deduction up to \$1,000,000 with a phase out beginning at \$2,500,000.

### ***Potential Legal Issues***

None.

### ***Other States***

- Iowa: Iowa is a static conformity state, which means that the state may adopt federal provisions as of a specific date, and changes in federal law are not automatically incorporated into state law. Earlier this month, Iowa passed a bill adopting 26 U.S.C § 179, as amended by the TCJA, subject to the following limitations: \$70,000 for tax year 2018 and \$100,000 for tax years beginning with 2019. (IA St. § 422.35)
- Louisiana: Louisiana is a rolling conformity state, which means that when federal law provisions are adopted by the state, any changes in federal law are automatically incorporated into state law. Louisiana has not specifically decoupled from federal depreciation provisions, and unless it decides to do so, Louisiana will

automatically conform to the depreciation schedules under 26 U.S.C § 179, as amended by the TCJA. (IA St. § 47:287.63)

- Mississippi: Mississippi is a non-conformity state, which means that the state adopts only selective parts of federal tax law; any future changes in federal law, even for the parts selectively adopted, are not automatically incorporated into state law. Mississippi has adopted federal depreciation law under 26 U.S.C. § 179. It is unclear whether Mississippi intends to adopt the changes to the depreciations provisions under 26 U.S.C. § 179, but the language of Mississippi's law does not explicitly limit the adoption of this provision to a certain date. (MS St. § 27-7-17; Miss. Admin. Code 35-III-5.04)
- Missouri: Missouri is a rolling conformity state, which means that when federal law provisions are adopted by the state, any changes in federal law are automatically incorporated into state law. Missouri has adopted the federal depreciation law under 26 U.S.C. § 179, and unless Missouri decouples from these provisions, it will automatically conform to the depreciation schedules under 26 U.S.C § 179, as amended by the TCJA. (MO St. § 143.121)
- Oklahoma: Oklahoma is a rolling conformity state, which means that when federal law provisions are adopted by the state, any changes in federal law are automatically incorporated into state law. Oklahoma has adopted the federal depreciation law under 26 U.S.C. § 179. Unless Oklahoma decouples from these provisions, it will automatically conform to the depreciation schedules under 26 U.S.C § 179, as amended by the TCJA. (68 OK St. §§ 2358)
- Tennessee: Tennessee is a rolling conformity state, which means that when federal law provisions are adopted by the state, any changes in federal law are automatically incorporated into state law. Tennessee has adopted the depreciation provisions of federal law, and unless it decouples from this provision, it will automatically conform to the depreciation schedules under 26 U.S.C § 179, as amended by the TCJA. (TN St. § 67-4-2006)
- Texas: Texas is a static conformity state, which means that the state may adopt federal provisions as of a specific date, and changes in federal law are not automatically incorporated into state law. Texas has adopted 26 U.S.C § 179, as in effect on January 1, 2017, and allows depreciation up to a \$25,000 maximum deduction with a \$200,000 investment limit. (TX St. §§ 171.0001 and 171.1011)