

No. 148. An act relating to changes to Vermont corporate income tax and conformity to federal tax laws.

(S.53)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. § 5811 is amended to read:

§ 5811. DEFINITIONS

~~The following definitions shall apply throughout~~ As used in this chapter
unless the context requires otherwise:

* * *

(22) “Affiliated group” means a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations, but shall exclude ~~overseas business organizations or~~ foreign corporations and corporations taxable under 8 V.S.A. § 6014.

(23) “Unitary business” means one or more related business organizations engaged in business activity both within and outside the State among which there exists a unity of ownership, operation, and use; or an interdependence in their functions.

(24) ~~“Overseas business organization” means a business organization that ordinarily has 80 percent or more of its payroll and property outside the 50 states and the District of Columbia.~~ [Repealed.]

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Sec. 2. 32 V.S.A. § 5832(2)(C)–(E) are amended to read:

(C) For C corporations with Vermont gross receipts from ~~\$0–\$2,000,000.00~~ \$0.00–\$500,000.00, the greater of the amount determined under subdivision (1) of this section or ~~\$300.00~~ \$100.00; or

(D) For C corporations with Vermont gross receipts from ~~\$2,000,001.00–\$5,000,000.00~~ \$500,001.00–\$1,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$500.00; or

(E) For C corporations with Vermont gross receipts from \$1,000,001.00–\$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$2,000.00; or

(F) For C corporations with Vermont gross receipts from \$5,000,001.00–\$300,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$6,000.00; or

~~(E)~~(G) For C corporations with Vermont gross receipts greater than ~~\$5,000,000.00~~ \$300,000,000.00, the greater of the amount determined under subdivision (1) of this section or ~~\$750.00~~ \$100,000.00.

Sec. 3. 32 V.S.A. § 5833(a) is amended to read:

(a) If the income of a taxable corporation is derived from any trade, business, or activity conducted entirely within this State, the Vermont net income of the corporation shall be allocated to this State in full. If the income of a taxable corporation is derived from any trade, business, or activity conducted both within and outside this State, the amount of the corporation's

Vermont net income that shall be apportioned to this State, so as to allocate to this State a fair and equitable portion of that income, shall be determined by multiplying that Vermont net income by ~~the arithmetic average of the following factors, with the sales factor described in subdivision (3) of this subsection double-weighted:~~

~~(1) the average of the value of all the real and tangible property within this State (A) at the beginning of the taxable year and (B) at the end of the taxable year (but the Commissioner may require the use of the average of such value on the 15th or other day of each month, in cases where he or she determines that such computation is necessary to more accurately reflect the average value of property within Vermont during the taxable year), expressed as a percentage of all such property both within and outside this State;~~

~~(2) the total wages, salaries, and other personal service compensation paid during the taxable year to employees within this State, expressed as a percentage of all such compensation paid whether within or outside this State;~~
and

~~(3) the gross sales, or charges for services performed, within this State, expressed as a percentage of such sales or charges whether within or outside this State.~~

~~(A)~~(1) Sales of tangible personal property are made in this State if:

~~(i)~~ the property is delivered or shipped to a purchaser, other than the U.S. government, who takes possession within this State, regardless of f.o.b. point or other conditions of sale; ~~or~~

~~(ii)~~ the property is shipped from an office, store, warehouse, factory, or other place of storage in this State; and

~~(I)~~ the purchaser is the U.S. government; ~~or~~

~~(II)~~ the corporation is not taxable in the State in which the purchaser takes possession.

~~(B)(2)~~ Sales, other than the sale of tangible personal property, are in this State if the taxpayer's market for the sales is in this State. The taxpayer's market for sales is in this State:

~~(i)(A)~~ in the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State;

~~(ii)(B)~~ in the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State;

~~(iii)(C)~~ in the case of sale of a service, if and to the extent the service is delivered to a location in this State; and

~~(iv)(D)~~ in the case of intangible property:

~~(i)~~ that is rented, leased, or licensed, if and to the extent the property is used in this State, provided that intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State; and

~~(H)~~(ii) that is sold, if and to the extent the property is used in this State, provided that:

~~(aa)~~(I) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is “used in this State” if the geographic area includes all or part of this State;

~~(bb)~~(II) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subdivision ~~(iv)~~~~(I)~~~~(D)~~(i) of this subdivision ~~(B)~~(2); and

~~(ee)~~(III) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

~~(C)~~(3) If the state or states of assignment under subdivision ~~(B)~~(2) of this subsection cannot be determined, the state or states of assignment shall be reasonably approximated.

~~(D)~~(4) If the taxpayer is not taxable in a state to which a receipt is assigned under subdivision ~~(B)~~(2) or ~~(C)~~(3) of this subsection, or if the state of assignment cannot be determined under subdivision ~~(B)~~(2) of this subsection or reasonably approximated under subdivision ~~(C)~~(3) of this subsection, such receipt shall be excluded from the denominator of the receipts factor.

~~(E)(5)~~ The Commissioner of Taxes shall adopt regulations as necessary to carry out the purposes of this section.

(6) A taxable corporation subject to apportionment under this section shall report to the Commissioner of Taxes:

(A) the average of the value of all the real and tangible property within this State at the beginning of the taxable year and at the end of the taxable year, provided the Commissioner may require the use of the average of the value on the 15th or other day of each month in cases where the Commissioner determines that the computation is necessary to more accurately reflect the average value of property within Vermont during the taxable year, expressed as a percentage of all property both within and outside this State; and

(B) the total wages, salaries, and other personal service compensation paid to employees within this State during the taxable year, expressed as a percentage of all compensation paid, whether within or outside this State.

Sec. 4. 32 V.S.A. § 5862(d) is amended to read:

(d) A taxable corporation that is part of an affiliated group engaged in a unitary business shall be treated as a single taxpayer and shall file a group return containing the combined net income of the affiliated group and such other informational returns as the Commissioner shall require by rule. A unitary combined return shall include the income and apportionment factors of any taxable corporation incorporated in the United States or formed under the

laws of any state, the District of Columbia, or any territory or possession of the United States and in a unitary relationship with the taxpayer. The income, gain, or losses from members of a combined group shall be combined to the extent allowed under the Internal Revenue Code for consolidated filing as if the combined group was a consolidated filing group, provided that a state tax credit shall not be combined and shall be limited to the member to which the credit is attributed.

Sec. 5. TRANSITION FROM JOYCE TO FINNIGAN METHOD

For taxable years beginning on and after January 1, 2023, for purposes of determining whether sales are in Vermont and are included in the numerator of the sales apportionment factor, if the activities of any member of a unitary group create nexus with this State, then sales of tangible personal property into Vermont from outside the State by all members of the unitary group shall be included in the Vermont sales factor numerator.

Sec. 6. RULEMAKING; REPORT

The Department of Taxes shall adopt rules relating to the unitary combined reporting requirements imposed under this act. The rules required under this section shall include a change from the Joyce to the Finnigan approach to applying Vermont jurisdiction to corporations within a unitary group. The Department shall report to the House Committee on Ways and Means and the Senate Committee on Finance on or before January 15, 2024 on the

Department's proposed rules and any recommendations for legislation with respect to unitary combined reporting.

Sec. 7. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect on ~~March 31, 2021~~ December 31, 2021, but without regard to federal income tax rates under 26 U.S.C. § 1, are hereby adopted for the purpose of computing the tax liability under this chapter, and shall continue in effect as adopted until amended, repealed, or replaced by act of the General Assembly.

Sec. 8. 32 V.S.A. § 7402(8) is amended to read:

(8) "Laws of the United States" means the U.S. Internal Revenue Code of 1986, as amended through December 31, ~~2020~~ 2021. As used in this chapter, "Internal Revenue Code" has the same meaning as "laws of the United States" as defined in this subdivision. The date through which amendments to the U.S. Internal Revenue Code of 1986 are adopted under this subdivision shall continue in effect until amended, repealed, or replaced by act of the General Assembly.

Sec. 9. EFFECTIVE DATES

(a) This section shall take effect on passage.

(b) Secs. 1–6 (corporate income tax) shall take effect on January 1, 2023 and shall apply to taxable years beginning on and after January 1, 2023.

(c) Notwithstanding 1 V.S.A. § 214, Secs. 7 and 8 (annual link to federal statutes) shall take effect retroactively on January 1, 2022 and shall apply to taxable years beginning on and after January 1, 2021.

Date Governor signed bill: May 31, 2022