

# VERMONT DEPARTMENT OF TAXES

## Report of the Department on Implementation of Corporate Income Tax Rulemaking, Pursuant to Act 148 of 2022

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### Submitted To

House Committee on Ways and Means  
Senate Committee on Finance

### Submitted By

Office of the Commissioner  
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# I. Introduction and Charge

The Department submits this report pursuant to [Act 148 of 2022, Sec. 6 \(https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT148/ACT148%20As%20Enacted.pdf#page=6\)](https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT148/ACT148%20As%20Enacted.pdf#page=6). Act 148 implemented several revisions to the Vermont corporate income tax, effective for tax years starting on or after January 1, 2023. Sec. 6 requires the Department of Taxes to adopt rules relating revisions in the new law, and to report to the House Committee on Ways and Means and the Senate Committee on Finance “on the Department’s proposed rules and any recommendations for legislation with respect to unitary combined reporting.”

## II. Updated Rules

The Department has two existing rules relevant to the corporate income tax. The Allocation and Apportionment of Vermont Net Income by Corporations rule (last updated in 2021) describes how corporations operating in more than one state apportion their income to Vermont versus other states. The Unitary Combined Reporting Rule (last updated in 2006) describes how multiple corporations operating in Vermont and other states that have mutual ownership and act as a unitary business enterprise are joined in a unitary group, and how their income is apportioned to Vermont.

Both rules needed to be amended after the changes enacted in Act 148. These changes are:

- Move to Single Sales Factor
  - The apportionment factor, which mathematically calculates the income apportionable to Vermont, no longer compares the taxpayer’s sales, property, and payroll within the State versus elsewhere in the United States. The law now requires comparing only the sales within and outside the State in the apportionment factor.
- Repeal Throwback Rule
  - A taxpayer’s Vermont sales factor no longer includes sales originating in Vermont to the federal government or to a state where those sales are not taxable.
- Move from Joyce to Finnigan
  - “Joyce” and “Finnigan” represent two different jurisdictional methods to determine nexus and the calculation of in-state activity of unitary groups. The Finnigan approach looks at the unitary group as a whole and treats the group as one taxpayer – either having nexus with the state or not. The Joyce approach determined nexus and the calculation of in-state activity corporation by corporation and only included corporations with operations and/or sales within the State. The law now requires the Finnigan approach.
- Repeal Carve Out for 80/20 Companies
  - Under the prior law, U.S. corporations with most of their payroll or property outside of the United States were excluded from the unitary group subject to tax in Vermont. Now, all U.S. corporations are to be included in a unitary group, and the in-state versus out-of-state sales are included in the apportionment calculation.

The Department of Taxes has proposed amendments to the rules that are available for review and comment on the Department’s website in a strikethrough/underlined format at <http://tax.vermont.gov/public-comments>. The Department has provided the draft rules to the Department’s Governor’s liaison, which is the preliminary step to the rulemaking process requested by the Interagency Committee on Administrative Rules.

## III. Legislative Recommendations

The Department has no recommendations for legislation with respect to unitary combined reporting at this time.