

H.442

An act relating to miscellaneous tax provisions

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

* * * Proposed Miscellaneous Tax Amendments * * *

Sec. 1. INCREASING THE NUMBER OF COMPLIANCE PERSONNEL IN
THE DEPARTMENT OF TAXES

(a) In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$535,000.00 in fiscal year 2010 for the purpose of hiring nine full-time limited service employees to augment the department's compliance division. The department shall use the funds so appropriated to hire four tax field examiners, two desk audit examiners, two collectors, and one desk audit supervisor.

(b) In addition to any other funds appropriated to the department of taxes in fiscal year 2011, there is appropriated from the general fund to the department \$935,000.00 in fiscal year 2011 for the purpose of retaining the nine full-time limited service employees hired pursuant to subsection (a) of this section and hiring six additional full-time limited service employees to further augment the department's compliance division. The department shall use the additional funds so appropriated to hire four tax field examiners and two desk audit examiners.

(c) It is the intent of the legislature to further augment the department's compliance efforts in fiscal year 2012 by appropriating additional funds for fiscal year 2012 for the purpose of retaining the 13 full-time limited service employees hired pursuant to subsections (a) and (b) of this section and hiring five additional limited service employees.

(d) The positions created pursuant to subsections (a) and (b) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(e) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

Sec. 2. ADDING COMPLIANCE PERSONNEL TO THE DEPARTMENT
OF LABOR

(a) In addition to any other funds appropriated to the department of labor in fiscal year 2010, there is appropriated from the general fund to the department \$308,212.00 in fiscal year 2010 for the purpose of hiring four full-time limited service employees as workers' compensation fraud staff who will investigate the classification of workers as either contractors or employees and enforce compliance of the proper classification by businesses.

(b) The positions created pursuant to subsection (a) of this section shall not be new state employee positions but instead shall be transferred and converted from the vacant position pool as and only when such positions in the vacant position pool become available.

(c) Notwithstanding any other provision of law, the positions created by this section shall be created as limited service positions and shall not be funded for a period in excess of three years.

* * * Tax Amnesty * * *

Sec. 3. TAX AMNESTY

(a) Notwithstanding any law to the contrary, the commissioner of taxes shall establish a tax amnesty program during which all penalties that could be assessed by the commissioner may be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect if the taxpayer, prior to the expiration of the amnesty period, files proper returns for any tax types and any period for which the taxpayer has or had a filing obligation and pays the full amount of tax shown on such return or an assessment made by the commissioner together with all interest due thereon. The amnesty program shall be established for a period of six consecutive weeks to be determined by the commissioner, such period to expire not later than October 2, 2009.

(b) The amnesty program shall not apply to a tax liability of any tax type for a period commencing on or after January 1, 2008, nor shall it apply to those penalties which the commissioner would not have the sole authority to waive, including fuel taxes administered under the International Fuel Tax Agreement or under the local option portions of taxes.

(c)(1) The commissioner shall maintain records of the amnesty provided under this section, including:

(A) the number of taxpayers provided with amnesty;

(B) the types of tax liability for which such amnesty was provided and, for each such type of liability:

(i) the amount of tax liability collected by the commissioner; and

(ii) the amount of penalties forgone by virtue of such amnesty; and

(iii) the total outstanding tax liability due to the state, for the period through June 30, 2009, after the collection of all funds under this section.

(2) The commissioner shall file a report detailing such information with the clerk of the house of representatives and the secretary of the senate, the joint fiscal committee, the house committee on ways and means, and the senate committee on finance not later than December 15, 2009; provided, however, that such report shall not contain information sufficient to identify an

individual taxpayer or the amnesty an individual taxpayer was provided under this section.

Sec. 4. APPROPRIATION

In addition to any other funds appropriated to the department of taxes in fiscal year 2010, there is appropriated from the general fund to the department \$132,000.00 in fiscal year 2010 for the purpose of marketing the tax amnesty program provided for in Sec. 3 of this act. In order to help stimulate the local economy, the legislature asks in determining what resources or marketing firms to use, the department give priority to Vermont-based firms.

* * * Sale of State-Owned Personal Property * * *

Sec. 5. SALE OF STATE-OWNED SURPLUS PERSONAL PROPERTY

In order to raise capital and to free space in buildings owned or leased by the state, the commissioner of buildings and general services is authorized and directed to conduct a "spring cleaning" to identify and sell surplus personal property of the state. Each department and agency of the state shall, in accordance with section 1556 of Title 29, transfer all surplus personal property to the commissioner, who is authorized to sell such surplus personal property pursuant to subdivision 1556(6). Notwithstanding section 1557 of Title 29, the proceeds of such sale, net of the commissioner's administrative costs, shall be deposited into the general fund.

* * * Department of Revenue * * *

Sec. 6. DEPARTMENT OF TAXES; DEPARTMENT OF REVENUE;

TRANSITION

(a) In accordance with the report of the commissioner of taxes dated January 22, 2007, the department of taxes shall be converted into a department of revenue no later than June 30, 2012.

(b) To accomplish the requirement set out in subsection (a) of this section, there is hereby established a revenue transition committee to review and approve the commissioner's plan to transition the department of taxes to a department of revenue, which shall be responsible for collecting taxes, fees, levies, and other assessments as determined pursuant to subsection (c) of this section. The revenue transition committee shall be composed of the following seven members:

(1) The commissioner of finance and management or designee;

(2) The state treasurer or designee;

(3) A member of the house committee on ways and means, appointed by the speaker of the house;

(4) A member of the house committee on government operations, appointed by the speaker of the house;

(5) A member of the senate committee on finance, appointed by the committee on committees;

(6) A member of the senate committee on government operations, appointed by the committee on committees;

(7) The court administrator or designee.

(c) The commissioner shall review each state revenue source and determine whether the management of such revenue source should:

(1) remain substantially as is;

(2) be transferred to the treasurer's lockbox services contract;

(3) be transferred to the department of taxes, which shall ultimately be redesignated the department of revenue; or

(4) be transferred to another entity.

(d) The revenue transition committee shall meet as needed to review and approve the commissioner's implementation plan for the transition to a revenue department. The commissioner shall report to the revenue transition committee the findings and recommendations required pursuant to subsection (c) of this section, and the commissioner will implement any changes upon the approval of the revenue transition committee.

(e) No later than February 15 of each of the three years following the effective date of this act, the committee shall issue a report to the general assembly on its findings and containing specific recommendations concerning the implementation of the transition, efficiencies, technology, staffing issues, and recommendations with respect to subsection (c) of this section.

(f) The legislative members shall be entitled to per diem compensation and reimbursement of necessary expenses as provided to members of standing committees under 2 V.S.A. § 406 for attendance at a meeting when the general assembly is not in session.

Sec. 7. STATUTORY REVISION

After June 30, 2012, the legislative council is directed to revise the Vermont Statutes Annotated to reflect the redesignation of the department of taxes as the department of revenue. When applicable, the term “commissioner of taxes” shall be substituted with the term “commissioner of revenue”; and when applicable, the term “department of taxes” shall be substituted with the term “department of revenue.”

* * * Blue Ribbon Tax Structure Study Committee * * *

Sec. 8. TAX STRUCTURE STUDY

(a) Composition of committee. There is hereby established a tax structure study committee composed of the following five members:

(1) The governor or designee;

(2) A member of the house committee on ways and means, appointed by the speaker of the house;

(3) A member of the senate committee on finance, appointed by the committee on committees;

(4) A member of the community representing local business interests jointly selected by the governor and the legislature; and

(5) A member of the community representing local labor interests jointly selected by the governor and the legislature.

(b) Purpose and goals. The tax structure study committee shall study the state's revenue system with the goal of determining whether the current system:

(1) Raises enough revenue to sustain spending needs now and in the future;

(2) Provides equity among the state's diverse taxpayers;

(3) Provides incentives that further the state's goals; and

(4) Enhances the state's competitiveness by attracting labor, capital, and entrepreneurs, including the possibility of adjusting marginal income tax rates and brackets.

(c) Tax incidence study. As a first step in fulfilling the goals of the tax structure study committee, the joint fiscal office shall, with the approval of the joint fiscal committee, hire one or more consultants to conduct a thorough and independent review and analysis of tax incidence in Vermont and report to the tax structure study committee by October 15, 2009. The consultants shall have the assistance of the department of taxes and the joint fiscal office.

Specifically, the report to the tax structure study committee shall provide

information regarding the distribution of state and local taxes, including income taxes, sales and use taxes, and property taxes, in relation to taxpayer income and provide the tax structure study committee information on the equity of the overall distribution. Additionally, the report shall include information on how the total state and local tax burden on Vermont households varies by income range and how the burden of each component of the overall state and local tax system is distributed across Vermont households. The report shall also include information on taxes with an initial impact on businesses, such as the corporate franchise tax and the sales tax on business purchases.

(d) Report to committee; follow-up. The tax structure study committee shall have the assistance of the department of taxes and the joint fiscal office and shall meet as needed to evaluate the tax incidence study and oversee the hiring of additional consultants, as needed, to evaluate the tax incidence study required by subsection (c) of this section and provide recommendations regarding the sustainability and stability of the state's revenue system to the general assembly no later than January 15, 2010. The tax structure study committee and any independent consultants it hires shall develop proposals for changes to the state's revenue system, if any, and provide the legislature with plans for implementation of any proposed changes.

(e) In preparation for the study required by subsection (c) of this section,

the department of taxes shall provide data to the joint fiscal office, which shall prepare reports on the following:

(1) Changes in personal income, arranged by decile, over the last five years;

(2) House site and homestead value arranged by adjusted gross income (AGI) and, where available, household income;

(3) Gross and net school taxes paid, arranged by adjusted gross income and, where available, by household income.

(f) For attendance at a meeting of the tax structure study committee when the general assembly is not in session, legislative members of the task force shall be entitled to per diem compensation and reimbursement of expenses as provided in 2 V.S.A. § 406(a).

Sec. 9. APPROPRIATION

In addition to any other funds appropriated to the joint fiscal committee, there is appropriated from the general fund to the joint fiscal committee \$200,000.00 in fiscal year 2010 for the purpose of hiring one or more independent consultants to conduct the tax incidence study required by Sec. 8 of this act, to hire any other consultants it deems necessary pursuant to Sec. 8 of this act, and to provide for the operations and expenses, if any, of the tax structure study committee.

* * * Tax Expenditure Reporting Requirement * * *

Sec. 10. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations for appropriations or other authorizations for expenditures from the state treasury appropriating tax expenditures as contained in the report provided for in section 312 of this chapter. The tax expenditure budget shall be provided to the members of the house committee on ways and means and the senate committee on finance, which committees will review the tax expenditures and recommend appropriations for the tax expenditures to their respective committees on appropriations.

Sec. 11. 32 V.S.A. § 307 is amended to read:

§ 307. FORM OF BUDGET

(a) The budget shall be arranged and classified so as to show separately the following estimates and recommendations:

(1) Expenses of state administration.

(2) Deficiencies, overdrafts, and unexpended balances in appropriations of former years.

(3) Bonded debt, loans and interest charges.

(4) All requests and proposals for expenditures for new projects, new construction, additions, improvements, and other capital outlay.

(5) With respect to the tax expenditure budget required under section 306(b) of this chapter, all requests and proposals for new, amended, or continued tax expenditures as reported under section 312 of this chapter.

* * *

* * * Repeal of Certain Tax Credits * * *

Sec. 12. REPEAL

(a) The following sections of Title 32 are repealed effective for tax years beginning on or after January 1, 2010:

(1) § 5830b (providing an income tax credit for contributions to the Vermont seed capital fund).

(2) § 5930v (providing an income tax credit for eligible venture capital investment).

(b) 32 V.S.A. § 3802(13) (exempting fallout shelters from property tax) is repealed for grand lists prepared for April 1, 2010 and after.

* * * Vermont State-Sponsored Credit Card Program * * *

Sec. 13. 32 V.S.A. § 584 is added to read:

§ 584. VERMONT STATE-SPONSORED CREDIT CARD PROGRAM

(a) The state treasurer is hereby authorized to sponsor and participate in a financial institution credit card program for the benefit of the residents of this state, upon his or her determination that such a program is feasible and may be procured at rates and terms in the best interest of the residents of this state. In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state and shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card, including consumer-friendly terms, favorable interest rates, annual fees, and other fees for using the card.

(b) The treasurer shall consult with other state agencies about potential public purpose projects to be designated for the program and shall bring the recommendations to the general assembly for approval. The net proceeds of the state fees generated by this program shall be transmitted to the state and shall be deposited in a state-sponsored credit card fund and subsequently

transferred to various designated state programs and purposes as selected by the cardholders. The funds received shall be held by the treasurer until transferred for the purposes directed by participating Vermont credit card holders in accordance with the trust fund provisions of section 462 of this title.

(c) All program balances at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the program. The treasurer's annual financial report to the governor and the general assembly shall contain an accounting of receipts, disbursements, and earnings of the program.

(d) The state shall not assume any liability for lost or stolen credit cards nor any other legal debt owed to the financial institutions.

(e) The state treasurer is authorized to adopt such rules as may be necessary to implement the Vermont state-sponsored consumer credit card program.

* * * Government Licenses and Employment * * *

Sec. 14. 32 V.S.A. § 3113 is amended to read:

§ 3113. REQUIREMENT FOR OBTAINING LICENSE ~~OR~~₂

GOVERNMENTAL CONTRACT, OR EMPLOYMENT

* * *

(c) Every agency shall, upon request of the commissioner, furnish a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to

certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists ~~should~~ shall include the name, address, ~~social security~~ Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

* * *

(i) No agency of the state shall hire any person as a full-time, part-time, temporary, or contractual employee unless the person shall first sign a written declaration under the pains and penalties of perjury that the person is in good standing with respect to or in full compliance with a plan to pay any and all taxes due as of the date such declaration is made. This requirement applies only to the initial hire of an individual into a position that is paid using the state of Vermont federal taxpayer identification number, other than as a county employee, and not to an employee serving in such position or who returns to any position in state government as a result of a placement right or reduction in force recall right.

* * * Unclaimed Property * * *

Sec. 15. 32 V.S.A. § 3113a is added to read:

§ 3113a. ABANDONED PROPERTY; SATISFACTION OF TAX

LIABILITIES

The commissioner may request from the office of the treasurer the names and Social Security or federal identification numbers of owners of unclaimed property prior to notice being given to such persons pursuant to section 1249 of Title 27. If any such owner owes taxes to the state, the commissioner, after notice to the owner, may request and the treasurer shall transfer the abandoned property of such owner to the department for setoff of the taxes owed. The notice shall advise the owner of the action being taken and the right to appeal the setoff if the tax debt is not the owner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy.

* * * Mapping Program * * *

Sec. 16. 32 V.S.A. § 3409 is amended to read:

§ 3409. PREPARATION OF PROPERTY MAPS

~~Consistent with available resources, the~~ Pursuant to a memorandum of understanding entered into between the director shall prepare and the Vermont center for geographic information, the center shall provide regional planning

commissions, state agencies, and the general public with orthophotographic maps of the state at a scale appropriate for the production and revision of town property maps. Periodically, such maps shall be revised and updated to reflect land use changes, new settlement patterns and such additional information as may have become available to the director or the center.

(1) The ~~director~~ center shall supply to the clerk and to the listers or assessors of each town such maps as have been prepared by ~~the director~~ it of the total area of that town. Any map shall be available, without charge, for public inspection both in the office of the ~~Vermont mapping program~~ center and in the office of the town clerk to whom the map was supplied.

(2) The director ~~may~~ shall retain the copyright of any map prepared ~~under this section~~ by the Vermont mapping program and the center and the Vermont mapping program shall jointly own the copyright to any map prepared on or after the effective date of this act.

(3) A person, who, without the written authorization of the director and the center, copies, reprints, duplicates, sells, or attempts to sell any map prepared under this chapter shall be fined an amount not to exceed \$1,000.00.

(4) At a reasonable charge to be established by the center and the director, the ~~director~~ center shall supply to any person or agency other than a town clerk or lister a copy of any map prepared under this section.

* * * Unorganized Towns and Gores and Unified Towns and Gores * * *

Sec. 17. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

(b) Ad hoc board for unorganized towns and gores and unified towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:

(1) the supervisor; and

(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor.

(c) The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil

authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority.

* * * Education Property Tax Information Insert * * *

Sec. 18. 32 VSA § 5402(b)(1) is amended to read:

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. ~~Each homestead property tax bill shall include a copy of the document entitled "About Your 20XX Taxes "The more you spend the more you pay", updated annually for each town by the commissioner of taxes.~~

* * * Unsigned Declaration of Homestead * * *

Sec. 19. 32 V.S.A. § 5410(c) is added to read:

(c) In the event that an unsigned but otherwise completed homestead declaration is filed at the same time as the declarant's signed state income tax return, the commissioner may treat such declaration as signed by the declarant.

* * * Unrelated Business Income of Nonprofit Corporations * * *

Sec. 20. 32 V.S.A. § 5811(3) is amended to read:

(3) "Corporation" means any business entity subject to income taxation as a corporation, and any entity qualified as a small business corporation, under the laws of the United States, with the exception of the following entities which are exempt from taxation under this chapter:

(A) Railroad and insurance, ~~surety and guaranty~~ companies, ~~mutual or otherwise~~ that are taxed under chapter 211 of this title;

(B) ~~Life, fire and marine insurance companies and mutual life, fire and marine insurance companies;~~

~~(C) Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water, mutual or cooperative telephone companies or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company;~~

~~(D)~~ Farmers', fruit growers', or like associations organized and operated on a cooperative basis:

~~(i)~~ for the purpose of processing, preparing for market, handling or marketing the farm products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses, on the basis of either quantity or the value of the products furnished by them;

~~(ii)~~ for the purpose of purchasing supplies and equipment for the use of the members and other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; or

~~(iii)~~ for the purpose of processing, preparing for market, or marketing handcraft products as defined in section 991 of Title 11 of members or other producers and turning back to them the proceeds of sales, less the necessary marketing, handling and processing expenses;

~~(E)~~ Credit unions organized under chapter 71 of Title 8 and federal credit unions;

~~(F)~~(C) Nonprofit hospital service corporations organized under chapter 123 of Title 8;

~~(G)~~(D) Nonprofit medical service corporations organized under chapter 125 of Title 8;

~~(H) Free public library corporations organized under chapter 3 of Title 22;~~

~~(I) Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to any member or stockholder;~~

~~(J) Sanitary corporations and corporations organized for religious, charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(K) Business organizations, chambers of commerce or boards of trade and area development organizations not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member;~~

~~(L) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;~~

~~(M) Clubs organized and operated exclusively for pleasure and recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member; or~~

~~(N) Any political organization which is exempt from or does not owe any federal income taxes as provided in the federal internal revenue code.~~

Sec. 21. 32 V.S.A. § 5811(18) is amended to read:

(18) “Vermont net income” means, for any taxable year and for any corporate taxpayer:

* * *

(D) For a corporation with federal exempt status, “Vermont net income” means all income that is subject to federal income tax, including unrelated business income under Section 511 of the Internal Revenue Code and any income arising from debt-financed property subject to taxation under Section 514 of the Internal Revenue Code.

* * * Annual Update of Links to Federal Law * * *

Sec. 22. 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 for taxable year ~~2007~~ 2008, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

* * * Digital Business Entities * * *

Sec. 23. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning digital business entities is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont

companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. 23a. IMPLEMENTATION WORKING GROUP

(a) There is hereby established a digital business entity implementation working group to ensure that the implementation of Secs. 24–28 of this act generate the expected benefits to the state. The working group shall be composed of the following five members:

(1) The commissioner of taxes or designee;

(2) The secretary of state or designee;

(3) A member of the joint fiscal office appointed by the house committee on ways and means;

(4) A member of the house committee on ways and means appointed by the chair; and

(5) A member of the state's legal community with knowledge and expertise in tax, corporate, and business law appointed by the house committee on ways and means.

(b) The working group shall meet as needed to develop consensus operational procedures and rule-making that guard against unintended consequences in the implementation of Secs. 24–28 of this act and shall report to the house committee on ways and means and the senate committee on finance its recommendations prior to September 1, 2009. The house

committee on ways and means and the senate finance committee shall review the working group's recommendations and collaborate with the working group to ensure a smooth implementation upon the effective date of Secs. 24–28 of this act. After the effective date of Secs. 24–28, the working group shall continue to provide technical assistance to the commissioner until such time as the general assembly deems appropriate.

(c) For attendance at a meeting of the working group when the general assembly is not in session, the legislative member of the task force shall be entitled to per diem compensation and reimbursement of expenses as provided in 2 V.S.A. § 406(a).

Sec. 24. 32 V.S.A. § 5811(26) is added to read:

(26) “Digital business entity” means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not have any Vermont property, payroll, or sales and did not perform any activities in this state which would constitute doing business for purposes of income taxation except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of this section; and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. 25. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) \$250.00 for all other corporations.

Sec. 26. 32 V.S.A. § 5911 is amended to read:

§ 5911. TAXATION OF AN S CORPORATION AND ITS
SHAREHOLDERS

(a) An S corporation shall not be subject to the tax imposed by section 5832 of this title, except to the extent of income taxable to the corporation under the provisions of the Internal Revenue Code.

(b) For the purposes of section 5823 of this title, each shareholder's pro rata share of the S corporation's income attributable to Vermont and each resident shareholder's pro rata share of the S corporation's income not attributable to Vermont shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(c) An S corporation and its shareholders shall not be subject to the tax imposed by section 5832 of this title or to the provisions of this subchapter if the S corporation qualifies as and elects to be taxed as a digital business for the taxable year.

Sec. 27. 32 V.S.A. § 5921a is added to read:

§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A partnership or limited liability company and its partners or members shall not be subject to the tax imposed by section 5832 of this title or to provisions of this subchapter if the partnership or company qualifies as and elects to be taxed as a digital business entity for the taxable year.

Sec. 28. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or \$250.00, but in no case more than \$500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, \$250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, \$500.00; and the further sum of \$250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than \$500,000.00 or less than \$250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title.

* * * Trustee Process * * *

Sec. 29. 32 V.S.A. § 5892 is amended to read:

§ 5892. ACTION TO COLLECT TAXES; LIMITATIONS

(a) Action may be brought by the attorney general of the state at the instance of the commissioner in the name of the state to recover the amount of the tax liability of any taxpayer, if the action is brought within six years after the date the tax liability was collectible under section 5886 of this title. The action shall be returnable in the county where the taxpayer resides or has a place of business, and if the taxpayer neither resides nor has a place of business in this state, the action shall be returnable in Washington ~~county~~ County.

(b) Notwithstanding sections 3167 and 3168 of Title 12, a motion may be brought by the attorney general of the state at the instance of the commissioner in the name of the state for issuance of trustee process at the same time as an action is brought under subsection (a) of this section, and, if judgment is

granted in that action, the court may proceed immediately to hear and render a decision on the trustee process.

* * * Property Tax Adjustments * * *

Sec. 30. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT LIMITATIONS

Only one individual per household per taxable year shall be entitled to a benefit under this chapter. An individual who received a homestead exemption or adjustment with respect to property taxes assessed by another state for the taxable year shall not be entitled to receive an adjustment under this chapter.

No taxpayer shall receive total adjustments under this chapter in excess of ~~\$8,000.00~~ \$6,000.00 related to any one property tax year.

Sec. 31. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

* * *

(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any; provided, however, that towns will not be notified of any additional adjustment amounts after ~~December 31~~ September 15 of the claim year, and such amounts shall be paid to the claimant by the commissioner.

* * *

(f) Property tax bills.

* * *

(4) If the property tax adjustment amount as described in subsection ~~(b)~~(e) of this section exceeds the property tax, penalties and interest, due for the current and all prior years, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later.

* * *

* * * Estate Tax * * *

Sec. 32. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF
TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be a sum equal to the amount ~~by which~~ of the credit for state death taxes allowable to a decedent's estate under Section 2011, ~~as in effect on January 1, 2001,~~ of the Internal Revenue Code, ~~hereinafter sometimes referred to as the "credit," exceeds the lesser of as in effect on January 1, 2001.~~ This base amount shall be reduced by the lesser of the following:

(1) The total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

(b) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this state. The amount of this tax shall be a sum equal to the proportion of the ~~credit~~ base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this state bears to the value of the decedent's total gross estate for federal estate tax purposes.

(c) The Vermont estate tax shall not exceed the amount of the tax imposed by Section 2001 of the Internal Revenue Service Code calculated using the applicable credit amount under Section 2010 as in effect on January 1, 2008, with no deduction under Section 2058.

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. 33. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

In all cases where ~~the federal gross estate at the time of the death of the decedent exceeds the applicable federal exclusion amount or where the estate~~

~~is subject to federal estate tax~~ a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the commissioner such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. 34. 32 V.S.A. § 7445 is amended to read:

§ 7445. COPIES OF FEDERAL ESTATE TAX RETURNS TO BE FILED

It shall be the duty of the executor of every person who may die a resident of Vermont or a nonresident with real estate or tangible personal property having an actual situs in Vermont to file with the commissioner a duplicate of all federal estate tax returns which he or she is required to make to the federal authorities, or, if no federal estate tax return is required, a pro forma federal estate tax return for the estate of a decedent with a Vermont estate tax liability shall be filed with the commissioner.

Sec. 35. 32 V.S.A. § 7446 is amended to read:

§ 7446. WHEN RETURNS TO BE FILED

The estate tax return required under section 7444 of this title shall be filed ~~at the time the federal estate tax return is required to be filed under the laws of the United States, including any extensions of time for filing granted by the federal authorities~~ within nine months of the death of the decedent. Prior to expiration of the filing period, executors may apply for a six-month extension.

Sec. 36. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, ~~2008~~ 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~with~~ the credit for state death taxes shall remain as provided for under ~~Section~~ Sections 2011 and 2604 of the Internal Revenue Code as in effect on January 1, 2001;

(2) the applicable credit amount shall remain as provided for under section 2010 of the Internal Revenue Code, as in effect on January 1, 2008;
and

(3) ~~without any~~ the deduction for state death taxes under Section 2058 of the Internal Revenue Code shall not apply.

* * * Tobacco Tax * * *

Sec. 37. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(13) “Snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked and is a type of smokeless tobacco that was available to consumers in the state on or before January 1, 2009.

* * *

(15) “Tobacco products” means ~~cigars; cheroots; stogies; periques; granulated, plug-cut, crimp-cut, ready-rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug-and-twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any product manufactured, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner; but shall not include cigarettes, little cigars, roll-your-own tobacco, snuff, or new smokeless tobacco as defined in this section.

* * *

(20) "New smokeless tobacco" means any tobacco product manufactured, derived from, or containing tobacco that is not intended to be smoked and was not available to consumers in the state on or before January 1, 2009.

Sec. 38. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax ~~on~~ is intended to be imposed only once upon any tobacco products product and shall be at the rate of 41 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at \$1.66 per ounce, or fractional part thereof, ~~and is intended to be imposed only once upon any tobacco product~~ and new smokeless tobacco, which shall be taxed at the greater of \$1.66 per ounce, or if packaged for sale to a consumer in

a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of \$1.99 per package. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

* * * Electronic Filing of Property Transfer Tax * * *

Sec. 39. DEVELOPMENT OF ELECTRONIC SYSTEM FOR FILING AND
PAYING PROPERTY TRANSFER TAXES

No later than January 15, 2010, the department of taxes shall file with the house committee on ways and means an implementation plan for the electronic filing of property transfer tax returns and the electronic payment of property transfer taxes.

* * * Sales and Use Tax on Digital Downloads * * *

Sec. 40. 32 V.S.A. § 9701(45), (46), and (47) are added to read:

(45) Transferred electronically: means obtained by the purchaser by means other than tangible storage media.

(46) Specified digital products: means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.

(A) Digital audio-visual works: means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(B) Digital audio works: means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones;

(C) Digital books: means works that are generally recognized in the ordinary and usual sense as “books.”

(D) Ringtones: means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(47) End user: means any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

Sec. 41. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this state. The tax shall be paid at the rate of six percent of the sales price charged for, but in no case shall any one transaction be taxed under more than one of, the following:

* * *

(8) Specified digital products transferred electronically to an end user.

Sec. 42. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this state, except as otherwise exempted under this chapter:

* * *

(2) Of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business, but the mere storage, keeping, retention or withdrawal from storage of tangible personal property or the use for demonstrational or instructional purposes of tangible personal property by the person who manufactured, processed or

assembled such property shall not be deemed a taxable use by him or her; and for purposes of this section only, the sale of electrical power generated by the taxpayer shall not be considered a sale by him or her in the regular course of business if at least 60 percent of the electrical power generated annually by the taxpayer is used by the taxpayer in his or her trade or business; ~~and~~

(3) Of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any taxable services described in subdivision 9771(3) of this title have been performed; and

(4) Specified digital products transferred electronically to an end user.

* * * Returns Upon Business Closing * * *

Sec. 43. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the entire year) \$500.00 or less, pay the tax imposed by this chapter in one annual payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating for the

entire year) more than \$500.00 but less than \$2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in ~~subsection~~ subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file returns. The return of a vendor of tangible personal property shall show such information as the commissioner may require.

* * *

(g) A person required to report sales and use tax annually who cancels his, her, or its sales and use tax account shall file a final return not later than 60 days after such cancellation.

* * * Land Gains Tax * * *

Sec. 44. 32 V.S.A. § 10009(b) is amended to read:

(b) All the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the commissioner of the withholding tax and the income tax, and of chapter 103, including those relating to interest and penalty charges, shall apply to the tax imposed by this chapter.

* * * Education Property Tax Rates * * *

Sec. 45. FISCAL YEAR 2010 EDUCATION PROPERTY TAX RATE

REDUCTION

(a) For fiscal year 2010 only, the education property tax imposed under subsection 5402(a) of Title 32 shall be reduced from the rate of \$1.59 and \$1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be \$1.34 per \$100.00;

and

(2) the tax rate for homestead property shall be \$0.85 multiplied by the district spending adjustment for the municipality, per \$100.00 of equalized property value as most recently determined under section 5405 of Title 32.

(b) For claims filed in 2010 only, “applicable percentage” in subdivision 6066(a)(2) of Title 32 shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2010 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

Sec. 46. PERSONAL INCOME TAX SURCHARGES

(a) For taxable year 2009, there is imposed a surcharge on the rate of tax imposed under 32 V.S.A. § 5822(a)(1), (2), (3), and (4) as follows:

<u>For taxable income subject</u>	<u>There is a surcharge</u>
<u>to Vermont income tax at the</u>	<u>imposed on Vermont</u>
<u>following rate:</u>	<u>taxable income at the</u>
<u>3.60%</u>	<u>following rate:</u>
<u>7.20%</u>	<u>0.05%</u>
<u>8.50%</u>	<u>0.10%</u>
<u>9.00%</u>	<u>0.20%</u>
<u>9.50%</u>	<u>0.25%</u>
	<u>0.30%</u>

(b) For taxable year 2010, there is imposed a surcharge on the rate of tax imposed under 32 V.S.A. § 5822(a)(1), (2), (3), and (4) as follows:

<u>For taxable income subject</u>	<u>There is a surcharge</u>
<u>to Vermont income tax at the</u>	<u>imposed on Vermont</u>
<u>following rate:</u>	<u>taxable income at the</u>
<u>3.60%</u>	<u>following rate:</u>
<u>7.20%</u>	<u>0.10%</u>
<u>8.50%</u>	<u>0.40%</u>
<u>9.00%</u>	<u>0.50%</u>
<u>9.50%</u>	<u>0.50%</u>

(c) For taxable year 2011, there is imposed a surcharge on the rate of tax imposed under 32 V.S.A. § 5822(a)(1), (2), (3), and (4) as follows:

<u>For taxable income subject</u> <u>to Vermont income tax at the</u> <u>following rate:</u>	<u>There is a surcharge</u> <u>imposed on Vermont</u> <u>taxable income at the</u> <u>following rate:</u>
<u>3.60%</u>	<u>0.10%</u>
<u>7.20%</u>	<u>0.40%</u>
<u>8.50%</u>	<u>0.50%</u>
<u>9.00%</u>	<u>0.50%</u>
<u>9.50%</u>	<u>0.50%</u>

Sec. 47. WITHHOLDING AND ESTIMATED PAYMENTS; LIABILITY

No later than July 1, 2009 the commissioner shall publish tables providing employers and taxpayers who make estimated tax payments with updated information so that employers and taxpayers may adjust amounts withheld or paid in estimated payments to comply with Sec. 46 of this act. With respect to taxable year 2009 only, no penalties or interest shall be imposed on any person who has underpaid an estimated tax solely as a result of the surcharge imposed under Sec. 46 of this act.

* * * Effective Dates * * *

Sec. 48. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Sec. 17 (establishing an ad hoc board of civil authority for unorganized towns and gores and unified towns and gores) shall apply to appeals filed on or after July 1, 2009.

(2) Sec. 18 (repealing tax information insert) shall apply to homestead property tax bills mailed in 2009 and after.

(3) Sec. 19 (unsigned homestead declaration) shall apply to homestead declarations filed for tax year 2009 and after.

(4) Secs. 20 and 21 (taxation of unrelated business income of nonprofit corporations) shall take effect for taxable years beginning on and after January 1, 2010.

(5) Sec. 22 (update of link to federal income tax laws) shall apply to taxable years beginning on and after January 1, 2008.

(6) Secs. 23–28 (digital business entities) shall take effect on January 1, 2010.

(7) Sec. 30 (income sensitivity adjustment limit) shall apply to income sensitivity adjustments made in 2009 and after.

(8) Sec. 31 (deadline for notice from department to towns regarding adjustment amounts) shall apply to homestead declarations filed in 2009 and after.

(9) Secs. 32–36 (estate taxes) shall apply to estates of individuals dying on or after January 1, 2009.

(10) Secs. 37 and 38 (tobacco tax) shall take effect July 1, 2009.

(11) Secs. 40–42 (sales and use tax on digital downloads) shall take effect on July 1, 2009.

(12) Sec. 43 (cancellation of sales and use tax account) shall take effect with respect to cancellations on or after July 1, 2009.

(13) Sec. 44 (education property tax rates) shall apply to fiscal year 2010 education property tax rates.