SENATE PROPOSAL OF AMENDMENT

H. 436

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions

The Senate proposes to the House to amend the bill as follows;

First: In Sec. 1, 32 V.S.A. § 3113b, in the last sentence, by striking out the word "second" and inserting in lieu thereof the word third, and after the following: "15 V.S.A. § 792" by inserting the following: and the offset of lottery winnings for restitution pursuant to 13 V.S.A. § 7043

Second: By inserting a new section to be Sec. 3a to read as follows:

Sec. 3a. 32 V.S.A. § 5823(a)(8) is added to read:

(8) The amount paid by the state of Vermont pursuant to chapter 181 of Title 20 to the extent that such amount is included in the federal adjusted gross income of the taxpayer for the taxable year.

Third: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 8 to read as follows:

Sec. 8. STATE REVENUE SYSTEM REVIEW COMMISSION

(a) There is hereby established a state revenue system review commission consisting of five members to be appointed as follows:

(1) The speaker of the house and the committee on committees shall each appoint two members; and

(2) The governor shall appoint one additional member with experience in and understanding of the current education finance system to be the chair of the commission.

(3) No member of the General Assembly shall be appointed to the commission.

(b) The commission members shall be appointed on or before July 1, 2011.

(c) The commission shall prepare a structural analysis and offer recommendations for improvements and modernization of the state revenue system. In doing so, the commission shall review the report of the Blue Ribbon Tax Structure Commission and the data upon which that report was based. The commission shall integrate the analysis and recommendations of the Blue Ribbon Tax Structure Commission into evaluation of the state's revenue system, including Vermont education finance system. The commission shall offer recommendations based on its analysis, with particular emphasis on recommendations related to Vermont's education finance system.

The commission shall engage in public hearings and other activities for public involvement.

(d) The commission shall receive technical support from the department of taxes, the department of education, the joint fiscal office, and consultants.

(e) The joint fiscal office with the assistance of the legislative council, the department of education, and the department of taxes may contract with one or more consultants to provide assistance with achieving the goals for the commission. The consultants shall have experience working in a public policy development process.

(f) Members of the commission shall be entitled to compensation as provided under 32 V.S.A. § 1010.

(g) The commission shall report its analysis and recommendations to the house and senate committees on education and on appropriations, the house committee on ways and means, and the senate committee on finance on or before January 15, 2012.

Fourth: By striking out Sec. 9 (authorization to spend) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. AUTHORIZATION TO SPEND

The joint fiscal office is authorized to expend up to a total of $210,000.00 for the commission established by Sec. 8 of this act and related expenses by using funds from its existing budget, and, if necessary, the joint fiscal committee is authorized to transfer additional funds from other legislative departments to the joint fiscal office to cover the amount of the commission's expenses.

Fifth: In Sec. 12, Examination of Renewable Energy Property Tax Issues, in subsection (b), by striking the designation "(1)" in subdivision (1) and by striking out subdivisions (2)–(7) in their entirety.

Sixth: By inserting a new section to be numbered Sec. 13a to read as follows:

Sec. 13a. 32 V.S.A. § 3757(a) is amended to read:

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax either upon the development of that land, as defined in section 3752 of this chapter, or two years after the issuance of all permits legally required for any action constituting development. Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the

fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

Seventh: By inserting a new section to be numbered Sec. 13b to read as follows:

Sec. 13b. 32 V.S.A. § 6066(i) is added to read:

(i) Adjustments under subsection (a) of this section shall be calculated without regard to any exemption under section 3802(11) of this title.

Eighth: By inserting a new section to be numbered Sec. 13c to read as follows:

Sec. 13c. 32 V.S.A. § 5401(12) is amended to read:

(12) "Excess spending" means:

(A) the per equalized pupil amount of~~:~~

~~(i)~~ the district's education spending, as defined in 16 V.S.A. § 4001(6), plus any amount required to be added from a capital construction reserve fund under 24 V.S.A. § 2804(b); ~~minus~~

~~(ii) the portion of education spending which is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. § 2804 to pay future approved school capital construction costs, including that portion of tuition paid to an independent school designated as the public high school of the school district pursuant to 16 V.S.A. § 827 for capital construction costs by the independent school which has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to 16 V.S.A. § 3448(a)(2); and minus~~

~~(iii) the portion of education spending attributable to the district's share of special education spending in excess of $50,000.00 for any one student in the fiscal year occurring two years prior; and minus~~

~~(iv) a budget deficit in a district that pays tuition to a public school for all of its students in one or more grades in any year in which the deficit is solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed;~~

(B) in excess of 125 percent of the statewide average district education spending per equalized pupil in the prior fiscal year, as determined

by the commissioner of education on or before November 15 of each year based on the passed budgets to date.

Ninth: By inserting a new section to be numbered Sec. 13d to read as follows:

Sec. 13d. 16 V.S.A. § 4001(6) is amended to read:

(6) "Education spending" means the amount of the school district budget, any assessment for a joint contract school, technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) which is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental fund raising, federal funds, nongovernmental grants, or other state funds such as special education funds paid under chapter 101 of this title.

* * *

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12~~,~~), "education spending" shall not include:

(i) Spending during the budget year for approved school capital construction for a project that received preliminary approval under section 3448 of this title, including interest paid on the debt; provided the district shall not be reimbursed or otherwise receive state construction aid for the approved school capital construction.

(ii) For a project that received final approval for state construction aid under chapter 123 of this title:

(I) Spending for approved school capital construction during the budget year that represents the district's share of the project, including interest paid on the debt;

(II) Payment during the budget year of interest on funds borrowed under subdivision 563(21) of this title in anticipation of receiving state aid for the project.

(iii) Spending that is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. § 2804 to pay future approved school capital construction costs, including that portion of tuition paid to an independent school designated as the public high school of the school district pursuant to section 827 of this title for capital construction costs by the independent school that has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to subdivision 3448(a)(2) of this title.

(iv) Spending attributable to the cost of planning the merger of a small school, which for purposes of this subdivision means a school with an average grade size of 20 or fewer students, with one or more other schools.

(v) Spending attributable to the district's share of special education spending in excess of $50,000.00 for any one student in the fiscal year occurring two years prior.

(vi) A budget deficit in a district that pays tuition to a public school or an approved independent school or both for all of its resident students in any year in which the deficit is solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed.

(vii) For a district that pays tuition for all of its resident students and into which additional students move after the end of the census period defined in subdivision (1)(A) of this section, the number of students that exceeds the district's most recent average daily membership and for whom the district will pay tuition in the subsequent year multiplied by the district's average rate of tuition paid in that year.

Tenth: By inserting a new section to be numbered Sec. 13e to read as follows:

Sec. 13e. HEALTH CARE REFORM PROPERTY TAX EXEMPTION

In fiscal year 2012, the following two properties shall be exempt from education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply, notwithstanding the provisions of 32 V.S.A. § 3832(7).

Eleventh: By inserting a new section to be numbered Sec. 13f to read as follows:

Sec. 13f. Sec. 40 of No. 190 of the Acts of 2007 Adj. Sess. (2008), as amended by Sec. 22 of No. 160 of the Acts of 2009 Adj. Sess. (2010), is further amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR SKATINGRINKS USED FOR PUBLIC SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt

from education property taxes for fiscal years 2009, 2010, ~~and~~ 2011, and 2012 only.

Twelfth: By striking out Sec. 15, 24 V.S.A. § 1894(a)(2) in its entirety and inserting in lieu thereof a new Sec. 15 to read as follows:

Sec. 15. 32 V.S.A. § 5404a(l) is amended to read:

(l) ~~The state auditor of accounts shall review and audit all active tax increment financing districts every three years.~~

(1) Audits of a tax increment financing district under this subsection shall be performed only if the total value of the education tax increment is projected to exceed $1,000,000. Notwithstanding this threshold, the department of taxes or the Vermont economic progress council shall retain the authority to require an independent audit firm to conduct an audit of any tax increment financing district.

(2) An audit of a tax increment financing district under this subsection shall be conducted by an independent audit firm hired by a municipality and paid for by the municipality, and the amount paid for the audit shall be considered a "related cost" as defined in 24 V.S.A. § 1981(6). An audit of a tax increment financing district may be incorporated into a regular comprehensive municipal audit conducted by an independent firm. Any audit conducted under this subsection shall comply with generally accepted government auditing standards.

(3) An audit of a tax increment financing district that exceeds the threshold established in subdivision (1) of this subsection shall be performed at three separate stages, may be incorporated into a regular comprehensive municipal audit conducted by an independent firm, and shall include the following:

(A) At completion of construction of public infrastructure improvements or five years after the commencement of construction, whichever is earlier, an audit shall be performed and the audit shall, at a minimum, validate that expenditures were for public infrastructure improvements approved by the Vermont economic progress council;

(B) Halfway through the debt repayment period, an audit shall be performed and shall, at a minimum, confirm that appropriate amounts of incremental tax revenue were retained and that those amounts were utilized to pay for authorized debt;

(C) Upon termination of the tax increment financing district, an audit shall be performed and shall, at a minimum, confirm that appropriate amounts of incremental tax revenue were retained for the second half of the debt repayment period and that those amounts were utilized to pay for authorized debt and shall validate that any excess education tax increment was distributed

to the education fund in accordance with 24 V.S.A. § 1900. Incremental tax revenue retained by the municipality that was not used to repay debt or to pay for improvements in the tax increment financing district shall be returned to the requisite taxing authority.

(4) The municipality shall share the results of the audits required under this subsection with the office of the auditor of accounts, the department of taxes, and the Vermont economic progress council.

(5) The provisions of this section shall not apply to audits initiated by the auditor of accounts prior to the passage of this act. Municipalities with tax increment financing districts that have been subject to audit by the auditor of accounts are responsible only for those parts of the audits under this subsection that were not addressed by the auditor of accounts.

Thirteenth: By inserting a new section to be numbered Sec. 17a to read as follows:

Sec. 17a. 32 V.S.A. 5930y(b) is amended to read:

(b) A credit against the income tax liability is available as follows:

(1) A credit of two percent of the wages paid in the taxable year by an employer for services performed in the designated counties associated with the manufacture of finished wood products. The credit shall be available to the employer in any year the counties qualify and for one year after a qualification ends. For purposes of this section, "finished wood products" means wood products that are manufactured into the form in which they are offered for sale to consumers.

* * *

Fourteenth: In Sec. 24, 33 V.S.A. § 1953(a), in subdivision (1), by striking out the word "budgeted" and removing the striking from the word "full", and by striking out the words "approved by" and removing the striking from the words "reported to"

Fifteenth: In Sec. 27, 32 V.S.A. § 7771(d), by striking out the following: "125.5" and inserting in lieu thereof the following: 138.5, and in Sec. 27a, 32 V.S.A. § 7814(b), by striking out the following: "$0.25" and inserting in lieu thereof the following: $0.53

Sixteenth: In Sec. 28, 8 V.S.A. § 4089l(a)(1), by striking out the following: "0.80" and inserting in lieu thereof the following: 0.90

Seventeenth: In Sec. 28, 8 V.S.A. § 4089l, in subsection (c)(1), after the following: "hospital indemnity," in the third sentence, by striking out the following: "dental care,"

Eighteenth: By inserting a new section to be numbered Sec. 32a to read as follows:

Sec. 32a. 33 V.S.A. § 2503(e) is amended to read:

(e) Fuel sellers, which are regulated "companies" as defined in ~~subsection~~ 30 V.S.A. § 201(a) ~~of Title 30~~, which provide conservation programs that meet the goals of the weatherization program in a manner approved by the public service board, and which enhance the weatherization program's capacity to serve low income households may be eligible for rebates from the fuel gross receipts tax imposed under this section. To establish rebate eligibility, such a company shall file with the public service board, on or before August 15 of each year, a request for approval of rebates based on the company's activities during the prior fiscal year. The public service board shall make a determination of the amount of rebate for each applicant on or before January 15 of each year, and such amount shall be rebated by the state economic opportunity office under the provisions of subsection (g) of this section. The public service board shall authorize rebates equal to the expenditures undertaken by the regulated utilities provided that such expenditures were prudently incurred and cost-effective, that they provided weatherization services following a comprehensive energy audit and work plan, except in cases where the fuel seller and weatherization staff jointly conclude that the need for weatherization services can be determined without a comprehensive energy audit, and that they were targeted to households ~~at or below 150 percent of the federally established poverty guidelines~~ that meet the eligibility criteria for low income weatherization services as determined by the office of economic opportunity.

Nineteenth: In Sec. 36, 32 V.S.A. § 9743, in subdivision (7), by striking out the following: "subdivisions (3) and (5)" and inserting in lieu thereof the following: subdivision (3)

Twentieth: By inserting a new section to be numbered Sec. 36a to read as follows:

Sec. 36a. 32 V.S.A. § 9783 is added to read:

§ 9783. NOTICE OF USE TAX DUE

(a) As used in this section:

(1) "De minimis online auction website" means an online auction website that facilitated total gross sales in Vermont in the prior calendar year of less than $100,000.00 and reasonably expects to facilitate total gross sales in Vermont in the current calendar year of less than $100,000.00.

(2) "De minimis retailer" means any noncollecting retailer that made total gross sales in Vermont in the prior calendar year of less than $100,000.00

and reasonably expects total gross sales in Vermont in the current calendar year to be less than $100,000.00.

(3) "Noncollecting retailer" means any retailer not currently registered to collect and remit Vermont sales and use tax who makes sales of tangible personal property, services, and products transferred electronically from a place of business outside Vermont to be shipped to Vermont for use, storage, or consumption and who is not required to collect Vermont sales or use taxes.

(4) "Online auction website" means a collection of web pages on the Internet that allows any person to display tangible personal property, services, or products transferred electronically for sale which is purchased through a competitive process in which a participant places a bid, with the highest bidder purchasing the property, service, or product when the bidding period ends.

(5) "Vermont purchaser" means any purchaser who purchases tangible personal property, services, or products transferred electronically to be shipped or transferred to Vermont.

(b) Each noncollecting retailer shall give notice that Vermont use tax is due on nonexempt purchases of tangible personal property, services, or products transferred electronically and shall be paid by the Vermont purchaser. The notice in this subsection shall be readily visible and contain the information as follows:

(1) The noncollecting retailer is not required and does not collect Vermont sales and use tax;

(2) The purchase is subject to state use tax unless it is specifically exempt from taxation;

(3) The purchase is not exempt merely because the purchase is made over the Internet, by catalogue, or by other remote means;

(4) The state requires each Vermont purchaser to report any purchase that was not taxed and to pay tax on the purchase. The tax may be reported and paid on the Vermont use tax form; and

(5) The use tax form and corresponding instructions are available on the department of taxes website.

(c) Notice requirements.

(1) The notice required by subsection (b) of this section to be displayed on a website shall occur on a page necessary to facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The prominent linking notice shall direct the purchaser to the principal notice information required by subsection (b) of this section.

(2) The notice required in a catalogue by subsection (b) of this section shall be part of the order form. The notice shall be sufficient if the noncollecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont on page __." The notice on the order form shall direct the purchaser to the page that includes the principal notice required by subsection (b) of this section.

(3) For any Internet purchase made pursuant to this section, the invoice notice shall occur on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The invoice notice link shall direct the purchaser to the principal notice required by subsection (b) of this section. If the noncollecting retailer does not issue an electronic order confirmation, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) For any catalogue or telephone purchase made pursuant to this section, the complete notice required by subsection (b) of this section shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(5) For any Internet purchase made pursuant to this section, notice on the check-out page fulfills simultaneously both the website and invoice notice requirements of subdivisions (1) and (3) of this subsection. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The check-out page notice link shall direct the purchaser to the principal notice required by subsection (b) of this section.

(d) Exemptions and limitations.

(1) If a retailer is required to provide a similar notice for another state in addition to Vermont, the retailer may provide a consolidated notice so long as the notice includes the information contained in subsection (b) of this section, specifically references Vermont, and meets the placement requirements of this section.

(2) A noncollecting retailer may not state or display or imply that no tax is due on any Vermont purchase unless the display is accompanied by the notice required by subsection (b) of this section each time the display appears. If a summary of the transaction includes a line designated "sales tax" and shows the amount of sales tax as zero, this constitutes a display implying that no tax is due on the purchase. This display shall be accompanied by the notice required by subsection (b) of this section each time it appears.

(3) Notwithstanding the limitation in this section, if a noncollecting retailer knows that a purchase is exempt from Vermont tax pursuant to Vermont law, the noncollecting retailer may display or indicate that no sales or use tax is due even if the display is not accompanied by the notice required by subsection (b) of this section.

(4) With the exception of notification on an invoice, the provisions of this section apply to online auction websites.

(5) A de minimis retailer and a de minimis online auction website are exempt from the notice requirements provided by this section.

(6) No criminal penalty or civil liability may be applied or assessed for failure to comply with the provisions of this section.

Twenty-first: By inserting a new section to be numbered Sec. 36b to read as follows:

Sec. 36b. LINK-BASED USE TAX RETURNS

The department of taxes shall evaluate the feasibility of providing a voluntary Internet-based use tax reporting and payment system in conjunction with the notice required under Sec. 36a of this act. The department of taxes shall communicate its findings to the senate committee on finance and the house committee on ways and means by memorandum no later than January 15, 2012.

Twenty-second: By inserting a new section to be numbered Sec. 36c to read as follows:

Sec. 36c. REPEAL

Sec. H.6 of No. 1 of the Acts of 2009 (Sp. Sess.) (transition to department of revenue) is repealed.

Twenty-third: By inserting a new section to be numbered Sec. 36d to read as follows:

Sec. 36d. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax ~~of 25 percent of the gross revenues~~ is assessed on the gross revenue on the retail sale of spirituous liquor, including fortified wine, sold by ~~or through~~ the liquor control board or sold by a manufacturer or rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the previous year:

(1) if the gross revenue of the seller is $250,000.00 or lower a year, the rate of tax is five percent;

(2) if the gross revenue of the seller is between $250,000.00 and $450,000.00, the rate of tax is $12,500.00 plus 15 percent of gross revenues over $200,000.00;

(3) if the gross revenue of the seller is over $450,000.00, the rate of tax is 25 percent.

Twenty-fourth: By adding two new sections to be numbered Secs. 36e and 36f to read as follows:

Sec. 36e. TAXPAYER OUTREACH EDUCATION

The department of taxes shall develop a plan for education outreach to taxpayers in specific industries or classes to ensure that taxpayers in those industries and classes are aware of their obligations under law and to ensure that the department of taxes is able to track and respond to industry- or class-wide concerns. The department of taxes shall report to the senate committee on finance and the house committee on ways and means no later than January 15, 2012 with specific recommendations for implementing the plan required under this section.

Sec. 36f. ABATEMENT OF PENALTIES AND INTEREST

(a) Any auctioneer licensed under chapter 89 of Title 26 who has been assessed a liability under chapter 233 of this title for failing to collect the required sales tax on the sale of tangible personal property on the premises of the owner of some of that property shall have any liability and related interest and penalties abated. This provision shall apply only to liabilities, interest, and penalties assessed for tax years 2008, 2009, and 2010.

(b) Any caterer engaged in the business of providing food or beverages for sale in this state who has been assessed a liability under chapter 225 of this title for failing to collect the required tax on the service charge associated with the catering sale shall have any liability and related interest and penalties abated. This provision shall apply only to liabilities, interest, and penalties assessed for tax years 2008, 2009, and 2010.

(c) It is the intent of the general assembly that for tax years 2011 and after the tax department shall implement its current regulations and interpretations related to the imposition of sales tax on auction sales under subdivision (a) or related to the imposition of meals tax on caterer service charges under subdivision (b), as those regulations and interpretations may be amended from time to time.

Twenty-fifth: By striking out Sec. 30, Data Collection for Provider Taxes, in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. DATA COLLECTION FOR PROVIDER TAXES

The secretary of administration shall develop systems to identify and collect the data necessary to administer any health-care-related tax under 42 C.F.R. part 433.50 et seq. that is permitted by federal law but that Vermont does not currently levy, including an analysis of the base to which such a tax would apply and mechanisms for collection.

Twenty-sixth: In Sec. 37 (Effective Dates), in subdivision (4), after "(definition of household income)" by inserting the following: and Sec. 13b (veteran's exemption adjustment), and by striking out the following: "tax year" and inserting in lieu thereof the following: claim year

Twenty-seventh: In Sec. 37 (Effective Dates), in subdivision (7), before "22" by striking out the following: "Sec." and inserting in lieu thereof the following: Secs., and after "(cigar tax)" by inserting the following: , 36a (sales and use tax notification), 36b (link-based use tax reporting), and 36d (tax in spirits)

Twenty-eighth: In Sec. 37 (Effective Dates) by adding a new subdivision (11) to read as follows:

(11) Sec. 13a shall take effect on January 1, 2012.

Twenty-ninth: In Sec. 37 (Effective Dates) by adding a new subdivision (12) to read as follows:

(12) Secs. 13c and 13d of this act shall take effect on passage and shall apply to tax rates calculated for fiscal year 2012 school budgets and after.