Corporate Income Tax:

Include income from foreign tax havens as part of affiliated group income subject to Vermont corporate tax.

Currently income from "overseas business organizations" is excluded from taxation in Vermont. The changes below would "exclude from the exclusion" income earned in jurisdictions that do not tax the income, or under-tax it, and where there is no significant economic activity related to the unitary enterprise.

Approach #1: West Virginia and Washington D.C. This approach relies on model language from the Multistate Tax Commission rules on tax havens and incorporates the same criteria used by the Organization of Economic Co-operation and Development.

Sec. 1. 32 V.S.A. § 5811(24) is amended to read:

(24) "Overseas business organization" means a business organization that ordinarily has 80 percent or more of its payroll and property outside the 50 states and the District of Columbia<u>, but not located in a tax haven</u>.

Sec. 2. 32 V.S.A. § 5811(28) is added to read:

<u>(28) "Tax haven" means a jurisdiction that, during the tax year in question has no or nominal effective tax on corporate income and</u>

(A) has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;

(B) has tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available;

(C) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

(D) explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or

(E) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

Approach #2: Montana and Oregon. Use the same criteria as above, or similar criteria, and have the Tax Department identify a list of tax haven jurisdictions.

Sec. 1. 32 V.S.A. § 5811(24) is amended to read:

(24) "Overseas business organization" means a business organization that ordinarily has 80 percent or more of its payroll and property outside the 50 states and the District of Columbia, but not located in a tax haven.

Sec. 2. 32 V.S.A. § 5811(28) is added to read:

(28)(A) “Tax haven” means the following jurisdictions: XXX, YYY, ZZZ.

(B) Annually, by January 15, the Department of Taxes shall recommend whether to add or subtract any jurisdictions to the list in this subdivision by considering the whether the jurisdiction:

(i) during the tax year in question has no or nominal effective tax on corporate income;

(ii) has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;

(iii) has tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer’s correct tax liability, such as accounting records and underlying documentation, is not adequately available;

(iv) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

(v.) explicitly or implicitly excludes the jurisdiction’s resident taxpayers from taking advantage of the tax regime’s benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction’s domestic market; or

(vi.) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

Approach #3. Alaska approach. A more specific definition.

Sec. 1. 32 V.S.A. § 5811(24) is amended to read:

(24) "Overseas business organization" means a business organization that ordinarily has 80 percent or more of its payroll and property outside the 50 states and the District of Columbia. However, an “overseas business organization” shall not include a corporation:

(A) incorporated in or doing business in a country that does not impose an income tax, or that imposes an income tax at a rate lower than 90 percent of the United States income tax rate on the income tax base of the corporation in the United States;

(B) where 50 percent or more of the sales, purchases, or payments of income or expenses, exclusive of payments for intangible property, of the corporation are made directly or indirectly to one or more members of a group of corporations otherwise filing under the chapter; and

(C) the corporation does not conduct significant economic activity.

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