TO THE HOUSE OF REPRESENTATIVES:

The Committee on Ways and Means to which was referred House Bill No. 514 entitled “An act relating to miscellaneous tax provisions” moves that the House concur in the Senate Proposal of Amendment with a further amendment as follows:

First: by inserting a Sec. 7a and 7b to read as follows:

Sec. 7a. 32 V.S.A. § 5833 is amended to read:

§ 5833. ALLOCATION AND APPORTIONMENT OF INCOME

(a) If the income of a taxable corporation is derived from any trade, business, or activity conducted entirely within this State, the Vermont net income of the corporation shall be allocated to this State in full. If the income of a taxable corporation is derived from any trade, business, or activity conducted both within and outside this State, the amount of the corporation’s Vermont net income ~~which~~ that shall be apportioned to this State, so as to allocate to this State a fair and equitable portion of that income, shall be determined by multiplying that Vermont net income by the arithmetic average of the following factors, with the sales factor described in subdivision (3) of this subsection double-weighted:

(1) The average of the value of all the real and tangible property within this State (A) at the beginning of the taxable year and (B) at the end of the taxable year (but the Commissioner may require the use of the average of such

value on the 15th or other day of each month, in cases where he or she determines that such computation is necessary to more accurately reflect the average value of property within Vermont during the taxable year), expressed as a percentage of all such property both within and outside this State;

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

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

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

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

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

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

~~(B)~~(II) the corporation is not taxable in the State in which the purchaser takes possession. ~~Sales other than sales of tangible personal property are in this State if the income producing activity is performed in this State or the income producing activity is performed both in and outside this State and a~~

~~greater proportion of the income producing activity is performed in this State than in any other state, based on costs of performance.~~

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

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

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

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

(iv) in the case of intangible property:

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

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

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

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

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

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

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

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

(b) If the application of the provisions of this section does not fairly represent the extent of the business activities of a corporation within this State, the corporation may petition for, or the Commissioner may require, with respect to all or any part of the corporation's business activity, if reasonable:

(1) ~~Separate~~ separate accounting;

(2) ~~The~~ the exclusion or modification of any or all of the factors;

(3) ~~The~~ the inclusion of one or more additional factors ~~which~~ that will fairly represent the corporation's business activity in this State; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the corporation's income.

Sec. 7b. REPORT

As part of the General Assembly's continuing effort to modernize Vermont's corporate income tax code, the Department of Taxes, with the assistance of the Joint Fiscal Office and the Office of Legislative Council, shall provide the General Assembly with a report, not later than December 15, 2019, analyzing the following issues related to Vermont's corporate income tax. The report shall:

(1) identify and analyze any fiscal, legal, distributional, and administrative issues related to moving Vermont from its current apportionment formula under 32 V.S.A. § 5833 to a single sales factor;

(2) evaluate the impact of the current exclusion of overseas business organizations from an affiliated group, and identify and analyze any fiscal,

legal, distributional, and administrative issues related to eliminating that exclusion;

(3) compare the impact of the current bank franchise tax to the impact of a taxing regime where there is no bank franchise tax, and financial institutions pay the Vermont corporate tax based on Vermont's current apportionment factors with the market-based sourcing changes made in this act; and

(4) examine alternatives to Vermont's corporate income tax which could more accurately capture corporate economic activity within Vermont, focusing particularly on corporations who conduct business in the State, but who have little or no taxable income.

Second: In Sec. 38 (effective dates) by adding a subdivision (5) to read:

(5) Sec. 7a (market-based sourcing) shall take effect on January 1, 2020, and apply to tax years starting after that date.

(Committee vote: ___________)

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Representative ___________

FOR THE COMMITTEE