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H.168

Introduced by Representative Ancel of Calais

Referred to Committee on

Date:

Subject: Taxation; property transfer tax; controlling interest

Statement of purpose of bill as introduced: This bill proposes to clarify that the property transfer tax applies to property transfers that occur when there is a transfer of a controlling interest in a corporation or legal entity that holds real property in Vermont.

An act relating to the property transfer tax

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

Sec. 1. 32 V.S.A. § 9601 is amended to read:

§ 9601. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

* * *

(2) "Person" means every natural person, association, trust, ~~or~~ corporation, partnership, or limited liability company.

* * *

1 (5) "Transfer" includes a grant, assignment, conveyance, will, trust,
2 decree of court, transfer or acquisition of a direct or indirect controlling interest
3 in any person with title to property, or any other means of transferring title to
4 property or vesting title to property in any person.

5 (6) "Value" means:

6 (A) ~~in~~ In the case of any transfer of title to property ~~which that~~ that is not
7 a gift and ~~which that~~ that is not made for a nominal consideration, the amount of
8 the full actual consideration for such transfer, paid or to be paid, including the
9 amount of any liens or encumbrances on the property existing before the
10 transfer and not removed thereby;

11 (B) ~~in~~ In the case of a gift, or a transfer for nominal consideration,
12 "~~value~~" means the fair market value of the property transferred.

13 (C) In the case of a controlling interest in any person that has title to
14 property, the fair market value of the property, apportioned based on the
15 percentage of the ownership interest transferred or acquired in the person.

16 (D) "Value" shall not include the fair market value of private
17 alternative energy sources as defined in section 3845 of this title.

18 * * *

19 (12) "Controlling interest" means:

20 (A) In the case of a corporation, either 50 percent or more of the total
21 combined voting power of all classes of stock of such corporation, or

1 50 percent or more of the capital, profits, or beneficial interest in such voting
2 stock of such corporation.

3 (B) In the case of a partnership, association, trust, or other entity,
4 50 percent or more of the capital, profits, or beneficial interest in such
5 partnership, association, trust, or other entity.

6 (C) For purposes of the tax imposed pursuant to section 9602 of this
7 title, all acquisitions of persons acting in concert are aggregated for purposes of
8 determining whether a transfer or acquisition of a controlling interest has taken
9 place; provided, however, interests in any partnership, association, or other
10 entity originally purchased in connection with the federal low-income housing
11 tax credit program under 26 U.S.C. § 42 shall not be counted in determining a
12 change in the “controlling interest.” The Commissioner shall adopt standards
13 by regulation to determine when persons are acting in concert. In adopting a
14 regulation for this purpose, the Commissioner shall consider the following:

15 (i) Persons must be treated as acting in concert when they have a
16 relationship with each other such that one person influences or controls the
17 actions of another through common ownership.

18 (ii) When persons are not commonly owned or controlled, they
19 must be treated as acting in concert only when the unity with which the
20 purchasers have negotiated and will consummate the transfer of ownership
21 interest supports a finding that they are acting as a single person. If the

1 acquisitions are completely independent, with each purchaser buying without
2 regard to the identity of the other purchasers, the acquisitions must be
3 considered separate acquisitions.

4 Sec. 2. 32 V.S.A. § 9602 is amended to read:

5 § 9602. TAX ON TRANSFER OF TITLE TO PROPERTY

6 A tax is hereby imposed upon the transfer ~~by deed~~ of title to property
7 located in this State. The amount of the tax equals one and one-quarter percent
8 of the value of the property transferred, or \$1.00, whichever is greater, except
9 as follows:

10 * * *

11 Sec. 3. 32 V.S.A. § 9603 is amended to read:

12 § 9603. EXEMPTIONS

13 The following transfers are exempt from the tax imposed by this chapter:

14 * * *

15 (6) Transfers to effectuate a mere change of identity or form of
16 ownership or organization where there is no change in beneficial ownership;

17 * * *

18 (25) Transfer made by a limited liability company to a member in
19 connection with a complete dissolution of the limited liability company,
20 pursuant to which transfer no gain or loss is recognized under the Internal

1 Revenue Code, except where the Commissioner finds that a major purpose of
2 such dissolution is to avoid the property transfer tax;

3 (26) Transfers of controlling interests in a person with a fee interest in
4 property if the transfer of the property would qualify for exemption if
5 accomplished by deed of the property between the parties to the transfer of the
6 controlling interest.

7 Sec. 4. 32 V.S.A. § 9606(a) is amended to read:

8 (a) A property transfer return complying with this section shall be delivered
9 to a town clerk;

10 (1) In the case of property transfer by deed, at the time a deed
11 evidencing a transfer of title to property is delivered to the clerk for recording.

12 (2) In the case of transfer or acquisition of a controlling interest in a
13 person with title to property for which a deed is not given, within 30 days of
14 the transfer or acquisition.

15 Sec. 5. 32 V.S.A. § 9607 is amended to read:

16 § 9607. ACKNOWLEDGMENT OF RETURN AND TAX PAYMENT

17 Upon the receipt by a town clerk of a property transfer return and certificate
18 and the fee required under subdivision 1671(a)(6) of this title, the clerk shall
19 forthwith mail or otherwise deliver to the transferee of title to property with
20 respect to which such return was filed a signed and written acknowledgment of
21 the receipt of that return and certificate. A copy of that acknowledgment, or

1 any other form of acknowledgment approved by the Commissioner, shall be
2 affixed to the deed evidencing the transfer of property or the document
3 evidencing the transfer or acquisition of a direct or indirect controlling interest
4 in any person with title to property with respect to which the return and
5 certificate was filed. The acknowledgment so affixed to a deed or document,
6 however, shall not disclose the amount of tax paid with respect to any return or
7 transfer.

8 Sec. 6. 32 V.S.A. § 9608(a) is amended to read:

9 (a) Except as to transfers ~~which~~ that are exempt pursuant to subdivision
10 9603(17) of this title, no town clerk shall record, or receive for recording, any
11 deed or document evidencing the transfer or acquisition of a direct or indirect
12 controlling interest in any person with title to property to which is not attached
13 a properly executed transfer tax return, complete and regular on its face, and a
14 certificate in the form prescribed by the Natural Resources Board and the
15 Commissioner of Taxes that the conveyance of the real property and any
16 development thereon by the seller is in compliance with or exempt from the
17 provisions of 10 V.S.A. chapter 151. The certificate shall indicate whether or
18 not the conveyance creates the partition or division of land. If the conveyance
19 creates a partition or division of land, there shall be appended the current “Act
20 250 Disclosure Statement,” required by 10 V.S.A. § 6007. A town clerk who
21 violates this section shall be fined \$50.00 for the first such offense and \$100.00

1 for each subsequent offense. A person who purposely or knowingly falsifies
2 any statement contained in the certificate required is punishable by fine of not
3 more than \$500.00 or imprisonment for not more than one year, or both.

4 Sec. 7. 32 V.S.A. § 9618 is amended to read:

5 § 9618. DUTY TO REPORT STOCK ACQUISITIONS

6 Each person who acquires a controlling interest in a corporation, whether by
7 one or more than one transfer of stock, shall, if the fair market value of all real
8 property held in this State by the corporation exceeds \$500,000.00, report to
9 the Commissioner of Taxes, within 30 days after the acquisition, the fair
10 market value of all real property held in this State by the corporation at the
11 time of the acquisition of the controlling interest. ~~As used in this section, a~~
12 ~~“controlling interest” means 50 percent or more of the total combined voting~~
13 ~~power of all classes of stock of the corporation.~~

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2019.