

1 Introduced by Committee on Ways and Means

2 Date:

3 Subject: Taxation; corporate income tax; apportionment; market-based
4 sourcing

5 Statement of purpose of bill as introduced: This bill proposes to change the
6 calculation of Vermont's corporate income tax apportionment sales factor from
7 a cost of performance rule to a market-based sourcing rule. The bill also
8 moves Vermont from three factor apportionment test to a single sales factor
9 test.

10 An act relating to the calculation of the sales apportionment factor for
11 Vermont's corporate income tax

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

13 Sec. 1. 32 V.S.A. § 5833 is amended to read:

14 § 5833. ALLOCATION AND APPORTIONMENT OF INCOME

15 (a) If the income of a taxable corporation is derived from any trade,
16 business, or activity conducted entirely within this State, the Vermont net
17 income of the corporation shall be allocated to this State in full. If the income
18 of a taxable corporation is derived from any trade, business, or activity
19 conducted both within and outside this State, the amount of the corporation's
20 Vermont net income ~~which~~ that shall be apportioned to this State, so as to

1 allocate to this State a fair and equitable portion of that income, shall be
2 determined by multiplying that Vermont net income by ~~the arithmetic average~~
3 ~~of the following factors, with the sales factor described in subdivision (3) of~~
4 ~~this subsection double-weighted:~~

5 ~~(1) The average of the value of all the real and tangible property within~~
6 ~~this State (A) at the beginning of the taxable year and (B) at the end of the~~
7 ~~taxable year (but the Commissioner may require the use of the average of such~~
8 ~~value on the 15th or other day of each month, in cases where he or she~~
9 ~~determines that such computation is necessary to more accurately reflect the~~
10 ~~average value of property within Vermont during the taxable year), expressed~~
11 ~~as a percentage of all such property both within and outside this State;~~

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

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

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

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

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

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

4 ~~(B)(ii)~~ the corporation is not taxable in the State in which the
5 purchaser takes possession. ~~Sales other than sales of tangible personal property~~
6 ~~are in this State if the income producing activity is performed in this State or~~
7 ~~the income producing activity is performed both in and outside this State and a~~
8 ~~greater proportion of the income producing activity is performed in this State~~
9 ~~than in any other state, based on costs of performance.~~

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

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

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

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

19 (D) in the case of intangible property,

20 (i) that is rented, leased, or licensed, if and to the extent the
21 property is used in this State, provided that intangible property utilized in

1 marketing a good or service to a consumer is “used in this State” if that good
2 or service is purchased by a consumer who is in this State; and

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

5 (I) a contract right, government license, or similar intangible
6 property that authorizes the holder to conduct a business activity in a specific
7 geographic area is “used in this State” if the geographic area includes all or
8 part of this State;

9 (II) receipts from intangible property sales that are contingent
10 on the productivity, use, or disposition of the intangible property shall be
11 treated as receipts from the rental, lease, or licensing of such intangible
12 property under subdivision (D)(i); and

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

15 (3) If the state or states of assignment under subdivision (2) of this
16 subsection cannot be determined, the state or states of assignment shall be
17 reasonably approximated.

18 (4) If the taxpayer is not taxable in a state to which a receipt is assigned
19 under subdivision (2) or (3) of this subsection, or if the state of assignment
20 cannot be determined under subdivision (2) of this subsection or reasonably

1 approximated under subdivision (3) of this subsection, such receipt shall be
2 excluded from the denominator of the receipts factor.

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

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

9 (1) ~~Separate~~ separate accounting;

10 (2) ~~The~~ the exclusion or modification of any or all of the sales factors
11 factor;

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

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

16 Sec. 2. EFFECTIVE DATE

17 This act shall take effect on January 1, 2020, and apply to tax years starting
18 after that date.