

Budget Adjustment Act—Correction of Transfer of Funds re Outdoor Wood Boilers

1. 2018 Acts and Resolves No. 194--Sales and Use Tax; Advanced Wood Boilers

Sec. 26. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(52) Advanced wood boilers, as defined in section 9701 of this title.

Sec. 26a. TRANSFER FROM CEDF TO GENERAL FUND; TAX

EXPENDITURE; ADVANCED WOOD BOILERS

(a) Beginning on July 1, 2018, the Clean Energy Development Fund quarterly shall calculate the forgone sales tax on advanced wood fired boilers resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers. Beginning on October 1, 2018, the Clean Energy Development Fund shall notify the Department of Taxes of the amount of sales tax forgone in the preceding calendar quarter resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers.

(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the General Fund the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. The Department of Taxes shall deposit 64 percent of the monies transferred from the Clean Energy Development Fund into the General Fund under 32 V.S.A. § 435 and 36 percent of the monies in the Education Fund under 16 V.S.A. § 4025.

Sec. 26b. REPEALS

(a) 32 V.S.A. § 9741(52) (sales tax exemption for advanced wood boilers) shall be repealed on July 1, 2021.

(b) Sec. 26a of this act (transfer from CEDF) shall be repealed on July 1, 2021.

2. 2018 Special Session Acts and Resolves Sec. H.8

Sec. H.8. 16 V.S.A. § 4025 is amended to read:

§ 4025. EDUCATION FUND

(a) The **Education Fund** is established to comprise the following:

(1) ~~All~~ all revenue paid to the State from the statewide education tax on nonresidential and homestead property under 32 V.S.A. chapter 135;

* * *

(6) ~~Thirty six percent of the revenues raised from the sales and use tax imposed by 32 V.S.A. chapter 233;~~ and

(7) Medicaid reimbursement funds pursuant to subsection 2959a(f) of this title.

* * *

Sec. H.9 32 V.S.A. § 435(b) is amended to read:

(b) The General Fund shall be composed of revenues from the following sources:

* * *

(7) ~~Meals~~ 75 percent of the meals and rooms taxes levied pursuant to chapter 225 of this title;

* * *

(11) ~~64 percent of the revenue from sales and use taxes levied pursuant to chapter 233 of this title;~~ [Repealed.]

* * *

3. 2019 Acts & Resolves No. 6, Sec. 82

Sec. 82. 2018 Acts and Resolves No. 194, Sec. 26a(b) is amended to read:

(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the **General Education** Fund the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. **The Department of Taxes shall deposit 64 percent of the monies transferred from the Clean Energy Development Fund into the General Fund under 32 V.S.A. § 435 and 36 percent of the monies in the Education Fund under 16 V.S.A. § 4025.**

4. 2019 Acts and Resolves No. 83, Sec. 15

Sec. 15. 2018 Acts and Resolves No. 194, Sec. 26a is amended to read:

Sec. 26a. TRANSFER FROM CEDF TO GENERAL FUND; TAX
EXPENDITURE; ADVANCED WOOD BOILERS

(a) Beginning on July 1, 2018, the Clean Energy Development Fund quarterly shall calculate the forgone sales tax on advanced wood fired boilers resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers. Beginning on October 1, 2018, the Clean Energy Development Fund shall notify the Department of Taxes of the amount of sales tax forgone in the preceding calendar quarter resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers.

(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the **General Fund** the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. **The Department of Taxes shall deposit 64 percent 100 percent of the monies transferred from the Clean Energy Development Fund into the General Fund under 32 V.S.A. § 435 and 36 percent of the monies in the Education Fund under 16 V.S.A. § 4025.**

5. Act 72 Statement of Legislative Intent Letter**Act 83 (S.160) An Act Relating to to Agricultural Development**

Sec. 15: Both Act 6 (FY19 BAA) and Act 83 amend Act 194 of 2018 sec 26a. It is the intent of the General Assembly that any contradiction between Act 6 and Act 83 be corrected in the FY 2020 BAA. Prior to enactment of FY 2020 BAA, it is the intent of the General Assembly that the Clean Energy Development Fund transfer to the Education Fund the amount of tax expenditure resulting from the sales tax exemption on advanced wood boilers.

6. FY2020 Proposed Budget Adjustment Language

Sec. XX. 2019 Acts and Resolves No. 83, Sec. 15 is repealed:

~~Sec. 26a. TRANSFER FROM CEDF TO GENERAL FUND; TAX EXPENDITURE;~~

~~————— ADVANCED WOOD BOILERS~~

~~(a) Beginning on July 1, 2018, the Clean Energy Development Fund quarterly shall calculate the forgone sales tax on advanced wood fired boilers resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers. Beginning on October 1, 2018, the Clean Energy Development Fund shall notify the Department of Taxes of the amount of sales tax forgone in the preceding calendar quarter resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers.~~

~~(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the General Fund the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. The Department of Taxes shall deposit 64 percent 100 percent of the monies transferred from the Clean Energy Development Fund into the General Fund under 32 V.S.A. § 435 and 36 percent of the monies in the Education Fund under 16 V.S.A. § 4025. [REPEALED]~~

EXPLANATION: Pursuant to the Act 72 Legislative Intent Letter, this technical change addresses a contradiction in amended language included in both Acts 6 and 83 of the 2019 session.

7. Later Enacted Legislation

- Under the last enactment rule, if there's a conflict or doubt, a statute enacted later in time generally governs over an earlier statute. *Central Vermont Hosp., Inc. v. Town of Berlin*, 164 Vt. 456 (1995)
- Act 6, Sec. 82 (Budget Adjustment) effective on passage; April 22, 2019.
- Act 83, Sec. 15 (Rural Development) effective July 1, 2019.

8. Potential BAA Language

- To repeal entirely the language regarding transfer from the Clean Energy Development Fund to the Education Fund, you could use the proposed BAA language from the Administration with tweak to the lead in language (see below).
- To retain the language regarding transfer from the Clean Energy Development Fund, but clarify deposit into the Education Fund, the following is likely the technically correct alternative:

Sec. XX. 2018 Acts and Resolves No. 194, Sec. 26a(b), as amended by 2019 Acts and Resolves No. 6, Sec. 82 and by 2019 Acts and Resolves No. 83, Sec. 15 is amended to read:

(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the ~~General Fund~~ Education Fund the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. ~~The Department of Taxes shall deposit 100 percent of the monies transferred from the Clean Energy Development Fund into the Education Fund under 16 V.S.A. § 4025.~~