No. 179. An act relating to technical and administrative changes to Vermont's tax laws.

(H.738)

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

* * * Enhanced Life Estates; Property Transfer Tax * * *

Sec. 1. 27 V.S.A. § 654(d) is added to read:

(d) An executed and recorded ELE deed shall be subject to the property transfer tax under 32 V.S.A. chapter 231.

Sec. 2. 32 V.S.A. § 9601 is amended to read:

§ 9601. DEFINITIONS

~~The following definitions shall apply throughout~~ As used in this chapter unless the context requires otherwise:

* * *

(3) "Title to property" includes:

(A) those interests in property that endure for a period of time the termination of which is not fixed or ascertained by a specific number of years, including an estate in fee simple, life estate, enhanced life estate, perpetual leasehold, and perpetual easement; and

* * *

(6) "Value" means:

* * *

(E) In the case of a life estate or an enhanced life estate, the grand list value of the property at the time of the transfer, multiplied by a factor

published by the Internal Revenue Service for purposes of valuing life estates and remainders pursuant to 26 U.S.C. § 7520. This factor is based on the grantor's age, published actuarial tables, and published interest rate in the month of the transaction.

* * *

Sec. 3. 32 V.S.A. § 9617(h) is amended to read:

(h)(1) At any time within three years after the date a property is transferred, a taxpayer may petition the Commissioner in writing for the refund of all or any part of the amount of tax paid. The Commissioner shall thereafter grant a hearing subject to the provisions of 3 V.S.A chapter 25 upon the matter and notify the taxpayer in writing of ~~his or her~~ the Commissioner's determination concerning the refund request. The Commissioner's determination may be appealed as provided in subsection (e) of this section. This shall be a taxpayer's exclusive remedy with respect to the refund of taxes under this chapter, except as provided under subdivision (2) of this subsection.

(2) If the transfer taxed by this chapter was an enhanced life estate interest and that interest is revoked or revised pursuant to 27 V.S.A. chapter 6, the person who paid the tax may petition for a refund, provided that the petition is made within eight years after the date of payment of the tax and within one year after the date of revocation or revision. No petition for a refund shall be granted for the revocation or revision of an interest that occurred eight years or more after the date of payment of the tax. In the case

of a revision, the revised enhanced life estate interest transfer shall be subject to tax under this chapter.

* * * Underpayment Penalties; Deadlines * * *

Sec. 4. 32 V.S.A. § 3202(b) is amended to read:

(b) Penalties.

* * *

(2) Failure to pay estimated tax. When a taxpayer fails to make payments as required by chapter 151, subchapter 5 or 5A of this title (estimations of nonwithheld income tax and quarterly filing and payment), the Commissioner may assess and the taxpayer shall then pay a penalty that shall be equal to one percent of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

(3) Failure to pay. When a taxpayer fails to pay a tax liability imposed by this title (other than a return required by chapter 151, subchapter 5 or 5A of this title for estimation of nonwithheld income tax and quarterly filing and payment) on the date prescribed therefor, then in addition to any interest payable pursuant to subsection (a) of this section, the Commissioner may assess and the taxpayer shall then pay a penalty that shall be equal to, for income tax under chapter 151, subchapters 2 and 3 of this title, one percent and, for all other taxes, five percent of the outstanding tax liability for each

month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

* * *

Sec. 5. 32 V.S.A. § 5859(b) is amended to read:

(b) Except as provided in subsection (c) of this section, the taxpayer shall be liable for interest and penalties pursuant to section 3202 of this title, with interest imposed at the rate per annum established from time to time by the Commissioner pursuant to section 3108 of this title upon the amount of any underpayment of estimated tax.

* * *

(2) The period of the underpayment for which interest and penalties shall apply shall commence on the date the installment was required to be paid and shall terminate on the earlier of the following dates:

(A) ~~the 15th day of the third month following the close of the taxable year~~ the date a U.S. income tax return is required to be filed for that year by that corporation under the laws of the United States; or

(B) with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of

the installment determined under subdivision (1)(A) of this subsection (b) for such installment date.

Sec. 6. [Deleted.]

Sec. 7. [Deleted.]

* * * Vermont Children's Trust Foundation Checkoff * * *

Sec. 8. 32 V.S.A. § 5862b is amended to read:

§ 5862b. ~~CHILDREN'S TRUST FUND ACCOUNT~~ VERMONT CHILDREN'S TRUST FOUNDATION CHECKOFF

(a) Returns filed by individuals shall include, on a form prescribed by the Commissioner of Taxes, an opportunity for the taxpayer to designate funds to the ~~Children's Trust Fund~~ Vermont Children's Trust Foundation.

(b) Amounts so designated shall be deducted from refunds due to, or overpayments made by, the designating taxpayers. All amounts so designated and deducted shall be deposited in an account by the Commissioner of Taxes for payment to the ~~Children's Trust Fund~~ Vermont Children's Trust Foundation. If at any time after the payment of amounts so designated to the ~~Account~~ account it is determined that the taxpayer was not entitled to all or any part of the amount so designated, the Commissioner may assess, and the account shall then pay to the Commissioner, the amount received, together with interest at the rate prescribed by section 3108 of this title, from the date the payment was made until the date of repayment.

(c) The Commissioner of Taxes shall explain to taxpayers the purposes of the ~~Account~~ account and how to contribute to it. The Commissioner shall make available to taxpayers the annual income and expense report of the ~~Children's Trust Fund~~ Vermont Children's Trust Foundation and shall provide notice in the instructions for the State individual income tax return that the report is available at the Tax Department.

(d) If amounts paid with respect to a return are insufficient to cover both the amount owed on the return under this chapter and the amount designated by the taxpayer as a contribution to the ~~Children's Trust Fund Account~~ Vermont Children's Trust Foundation, the payment shall first be applied to the amount owed on the return under this chapter and the balance, if any, shall be deposited in the account.

(e) Nothing in this section shall be construed to require the Commissioner to collect any amount designated as a contribution to the ~~Children's Trust Fund Account~~ Vermont Children's Trust Foundation.

(f) The Vermont Children's Trust Foundation shall use the revenue received under this section to provide funds for community-based primary prevention programs that have been shown to be effective for juveniles. The Foundation shall solicit proposals for grant awards from public and private persons and agencies and shall evaluate the proposals on the basis of the following criteria:

(1) the demonstrated effectiveness of the program upon which the proposal is based;

(2) the need for such services within the community;

(3) other resources available to meet the need for primary prevention services; and

(4) the ability of the applicant to obtain funding from another source to cover a portion of the program costs.

(g) To the extent that funds permit, the Vermont Children's Trust Foundation shall award and administer grants to applicants of proposals that the Foundation determines to have met the criteria established in subsection (f) of this section. The Foundation shall monitor expenditures by grantees and evaluate the effectiveness of the programs, assistance, or services financed by the revenue received under this section. The Foundation shall develop guidelines for the coordination of community-based primary prevention programs, the application process, and the distribution of grants under this section.

Sec. 9. 33 V.S.A. § 3303(b) is amended to read:

(b) ~~The Council shall administer the Children's Trust Fund as provided in sections 3306 and 3307 of this title.~~ [Repealed.]

Sec. 10. REPEALS; CHILDREN'S TRUST FUND

33 V.S.A. § 3306 (Children's Trust Fund) and 33 V.S.A. § 3307 (trust fund programs) are repealed.

Sec. 11. TRANSITION; CHILDREN'S TRUST FUND; FY 2023 TRANSFERS

On July 1, 2022 and December 30, 2022, all revenue and interest in the Children's Trust Fund created under 33 V.S.A. § 3306 shall be transferred to the Vermont Children's Trust Foundation to be used for the purposes established under subsections (f) and (g) of 32 V.S.A. § 5862b.

* * * Reporting Federal Audits and Adjustments; Partnerships * * *

Sec. 12. 32 V.S.A. § 5866(c) is added to read:

(c) If a change in federal tax liability results from the audit of a partnership or an adjustment of a partnership's taxable income under 26 U.S.C. subtitle F, chapter 63, subchapter C, the taxpayer shall file and amend returns and pay tax owed pursuant to section 5866a of this title.

Sec. 13. 32 V.S.A. § 5866a is added to read:

5866a. REPORTING ADJUSTMENTS TO FEDERAL TAXABLE INCOME AND FEDERAL PARTNERSHIP AUDITS

(a) Definitions. As used in this section:

(1) "Administrative adjustment request" means an administrative adjustment request filed by a partnership under 26 U.S.C. § 6227.

(2) "Audited partnership" means a partnership subject to a partnership-level audit resulting in a federal adjustment.

(3) "Corporate partner" means a partner that is subject to tax under chapter 151, subchapter 3 of this title.

(4) "Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.

(5) "Exempt partner" means a partner that is exempt from taxation under this chapter but not an entity with federal exempt status having taxable income under subdivision 5811(18) of this title.

(6) "Federal adjustment" means a change to an item or amount determined under the Internal Revenue Code that is used by a taxpayer to compute tax owed, whether that change results from action by the Internal Revenue Service, including a partnership-level audit, or the filing of an amended federal return, federal refund claim, or an administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases State taxable income as determined under this chapter and is negative to the extent that it decreases State taxable income as determined under this chapter.

(7) "Federal adjustments report" includes methods or forms required by the Commissioner for use by a taxpayer to report final federal adjustments, including an amended tax return, information return, or uniform multistate report.

(8) "Federal partnership representative" means the person that the partnership designates for the taxable year as the partnership's representative or the person that the Internal Revenue Service appoints to act as the federal partnership representative pursuant to 26 U.S.C. § 6223(a).

(9) "Final determination date" means the following:

(A) Except as provided in subdivisions (B) and (C) of this subdivision (a)(9), if the federal adjustment arises from an audit or other action by the Internal Revenue Service, "final determination date" means the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by Internal Revenue Service decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the Internal Revenue Service and the taxpayer, the "final determination date" means the date on which the last party signed the agreement.

(B) For federal adjustments arising from an audit or other action by the Internal Revenue Service, if the taxpayer filed as a member of an affiliated group electing to file a consolidated return under subsection 5862(c) of this title or filed as a member of a unitary combined group under subsection 5862(d) of this title, the "final determination date" means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in subdivision (A) of this subdivision (a)(9), for the entire group.

(C) If the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, or if it

is a federal adjustment reported on an amended federal return or other similar report filed pursuant to 26 U.S.C. § 6225(c), the "final determination date" means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed.

(10) "Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

(11) "Indirect partner" means a partner in a partnership or pass-through entity that itself holds an interest directly, or through another indirect partner, in a partnership or pass-through entity.

(12) "I.R.C." means the Internal Revenue Code of 1986, as codified under 26 U.S.C. subtitles A–K, and applicable regulations as promulgated by the U.S. Department of the Treasury. To the extent that the terms used in this section are not defined under this section, it is the intent of the General Assembly to conform to the definitions and terminology used in the amendments to the I.R.C., subtitle F, chapter 63 pertaining to the comprehensive partnership audit regime contained in the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, as amended, and this section shall be interpreted accordingly.

(13) "Nonresident partner" means an individual, trust, or estate partner that is not a resident partner.

(14) "Partner" means a person that holds an interest, directly or indirectly, in a partnership or other pass-through entity.

(15) "Partnership" means an entity subject to taxation under 26 U.S.C. subtitle A, chapter 1, subchapter K.

(16) "Partnership-level audit" means an examination by the Internal Revenue Service at the partnership level pursuant to 26 U.S.C. subtitle F, chapter 63, subchapter C that results in federal adjustments.

(17) "Pass-through entity" means an entity other than a partnership that is not subject to tax under section 5822 or 5832 of this title.

(18) "Reallocation adjustment" means a federal adjustment resulting from a partnership-level audit or an administrative adjustment request that changes the shares of one or more items of partnership income, gain, loss, expense, or credit allocated to direct partners. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal income for one or more direct partners, and a negative reallocation adjustment means the portion of a reallocation adjustment that would decrease federal income for one or more direct partners.

(19) "Resident partner" means an individual, trust, or estate partner that is a resident under section 5811 of this title for the relevant tax period.

(20) "Reviewed year" means the taxable year of a partnership that is subject to a partnership-level audit from which federal adjustments arise.

(21) "Taxpayer" means any person or entity required to file a return or pay tax under this chapter and, unless the context clearly indicates otherwise, includes a partnership, including a tiered partner of a partnership, subject to a

partnership-level audit and a partnership, including a tiered partner of a partnership, that has made an administrative adjustment request.

(22) "Tiered partner" means any partner that is a partnership or pass-through entity.

(23) "Unrelated business taxable income" has the same meaning as in 26 U.S.C. § 512.

(b) Reporting adjustments to federal taxable income; general rule.

(1) Except in the case of final federal adjustments that are required to be reported by a partnership and its partners using the procedures in subsection (c) of this section, a taxpayer shall report and pay any Vermont tax due with respect to the following final federal adjustments:

(A) arising from an audit or other action by the Internal Revenue Service;

(B) reported by the taxpayer on a timely filed amended federal income tax return, including a return or other similar report filed pursuant to 26 U.S.C. § 6225(c)(2); or

(C) a federal claim for refund.

(2) A taxpayer shall report and pay any tax due under this subsection by filing a federal adjustments report with the Commissioner for the reviewed year and, if applicable, paying the additional Vermont tax owed not later than 180 days after the final determination date.

(c) Reporting federal adjustments; partnership-level audit and administrative adjustment request. Except for negative federal adjustments required under federal law or regulations to be taken into account by the partnership in the partnership return for the adjustment or other year, and the distributive share of adjustments reported as required under subsection (b) of this section, partnerships and partners shall report final federal adjustments arising from a partnership-level audit or an administrative adjustment request and make payments as required under this subsection (c).

(1) State partnership representative.

(A) With respect to an action required or permitted to be taken by a partnership under this subsection and a petition for a hearing under sections 5883, 5884, or 5885 of this title with respect to that action, the State partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners shall be bound by those actions.

(B) The State partnership representative for the reviewed year is the partnership's federal partnership representative unless the partnership designates in writing another person as its State partnership representative.

(C) The Commissioner may establish reasonable qualifications and procedures for designating a person, other than the federal partnership representative, to be the State partnership representative.

(2) Reporting and payment requirements for partnerships subject to a final federal adjustment and their direct partners. Final federal adjustments subject to the requirements of this subsection, except for those subject to an election that is properly made under subdivision (3) of this subsection, shall be reported as follows:

(A) Not later than 90 days after the final determination date, the partnership shall:

(i) File a completed federal adjustments report with the Commissioner, including any other information required by the Commissioner. The federal adjustments report shall:

(I) Identify each partner during the reviewed year.

(II) Specify each item addressed by, and the amount included in, the final federal adjustment.

(III) Explain how the final federal adjustment needs to be modified for State tax purposes to reflect relevant differences between federal and State law.

(IV) Provide any other information related to the final determination or modification as the Commissioner may require. If the audited partnership has received an approved modification, the audited partnership shall notify the Commissioner of this approval not later than 90 days after the date of approval. An audited partnership that fails to meet the filing requirements under this subsection (c) shall be subject to the penalties for

failure to file under section 3202 of this title. The statute of limitations for assessing a partner or an audited partnership pursuant to this section shall be tolled in any instance in which the audited partnership has not provided the Commissioner with the notice and filing required by this subsection (c).

(ii) Notify each of its direct partners of their distributive share of the final federal adjustments.

(iii) File an amended composite return for direct partners as required under subsections 5914(a) and (b) and 5920(a) and (b) of this title and, as applicable, an amended withholding return for direct partners as required under subchapter 4 of this chapter and pay the additional tax that would have been due had the final federal adjustments been reported properly.

(B) Not later than 180 days after the final determination date, each direct partner that is taxed under sections 5822 and 5832 of this title shall:

(i) file a federal adjustments report reporting their distributive share of the adjustments reported to them under subdivision (A)(ii) of this subdivision (c)(2) as required under this chapter; and

(ii) pay any additional amount of tax that would have been due if final federal adjustments had been reported properly, plus any penalty and interest due under section 3202 of this title, and less any credit for related amounts paid or withheld and remitted on behalf of the direct partner under subdivision (A)(iii) of this subdivision (c)(2).

(3) Election; partnership pays. Subject to the limitations under subdivision (C) of this subdivision (3), an audited partnership making an election under this subdivision (3) shall do the following:

(A) Not later than 90 days after the final determination date, file a completed federal adjustments report as required by subdivision (2) of this subsection (c) and notify the Commissioner that it is making the election under this subdivision (3).

(B) Not later than 180 days after the final determination date, pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect partners:

(i) Exclude from final federal adjustments the distributive share of these adjustments reported to a direct exempt partner not subject to tax under this chapter.

(ii) For the total distributive shares of the remaining final federal adjustments reported to direct corporate partners subject to tax under section 5832 of this title, apportion and allocate the adjustments as provided under section 5833 of this title, and multiply the result by the highest tax rate imposed under section 5832 of this title.

(iii) For the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners subject to tax under this chapter, determine the amount of the adjustments that is Vermont-source

income, and multiply the result by the highest tax rate imposed under section 5822 of this title.

(iv) For the total distributive shares of the remaining final federal adjustments reported to tiered partners:

(I) Determine the amount of the adjustments that is of a type that it would be subject to sourcing to Vermont under this chapter, and then determine the portion of the amount that would be sourced to Vermont.

(II) Determine the amount of the adjustments that is of a type that it would not be subject to sourcing to Vermont by a nonresident partner under this chapter.

(III) Determine the portion of the amount determined in subdivision (iv)(II) of this subdivision (3)(B) that can be established as properly allocable to nonresident indirect partners or other partners not subject to tax on the adjustments or that can be excluded under procedures for modified reporting and payment method allowed under subdivision (5) of this subsection (c).

(v) Multiply the total of the amounts determined in subdivisions (iv)(I) and (iv)(II) of this subdivision (3)(B) reduced by the amount determined in subdivision (iv)(III) of this subdivision (3)(B) by the highest tax rate under section 5822 of this title.

(vi) For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under section

5822 of this title, multiply the amount reported by the highest tax rate under section 5822 of this title.

(vii) Add the amounts determined in subdivisions (ii), (iii), (v), and (vi) of this subdivision (3)(B), along with penalty and interest as calculated under subsection 3202(a) and subdivisions 3202(b)(2) and (b)(3) of this title.

(C) Final federal adjustments subject to the election under this subdivision (c)(3) exclude:

(i) the distributive share of final audit adjustments that, under subsection 5862(d) of this title, must be included in the unitary combined business income of any direct or indirect corporate partner, provided that the audited partnership can reasonably determine this; and

(ii) any final federal adjustments resulting from an administrative adjustment request.

(D) An audited partnership that is not otherwise subject to any reporting or payment obligations to Vermont and that makes an election under this subdivision (c)(3), consents to be subject to Vermont laws related to reporting, assessment, payment, and collection of Vermont tax calculated under the election.

(4) Tiered partners. The direct and indirect partners of an audited partnership that are tiered partners, and all partners of those tiered partners that are subject to tax under this chapter, are subject to the reporting and payment requirements of subdivision (2) of this subsection, and the tiered partners are

entitled to make the elections provided in subdivisions (3) and (5) of this subsection. The tiered partners or their partners shall make required reports and payments not later than 90 days after the time for filing and furnishing statements to tiered partners and their partners as established under 26 U.S.C. § 6226 and the associated regulations. The Commissioner may adopt rules to establish procedures and interim time periods for the reports and payments required by tiered partners and their partners and for making the elections under this subsection.

(5) Alternative reporting and payment methods.

(A) Pursuant to any procedures established by the Commissioner, an audited partnership or tiered partner may request approval by the Commissioner to utilize alternative reporting and payment methods, including modifying applicable time requirements and any other requirement of this subsection (c), provided that:

(i) the audited partnership or tiered partner demonstrates to the Commissioner's satisfaction that the requested method will reasonably provide for the reporting and payment of taxes, penalties, and interest due under this subsection (c); or

(ii) the audited partnership or tiered partner establishes to the Commissioner's satisfaction that their direct partners have agreed to allow a refund of the State tax to the entity.

(B) A request for approval of alternative reporting and payment methods by the Commissioner shall be made by the audited partnership or tiered partner within the time for election provided in subdivision (3) or (4) of this subsection (c), as applicable.

(6) Effect of election by audited partnership or tiered partner and payment of amount due.

(A) The election made pursuant to subdivision (3) or (5) of this subsection (c) is irrevocable unless the Commissioner, at the Commissioner's discretion, determines otherwise.

(B) If reported properly and paid by the audited partnership or tiered partner, the amount determined under subdivision (3)(B) of this subsection (c) or under an optional election under subdivision (5) of this subsection (c) shall be treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same final federal adjustments. The direct or indirect partners shall not be eligible to take any deduction or credit for this amount or claim a refund of the amount in this State. Nothing in this subdivision (6) shall preclude a direct resident partner from claiming a credit against taxes paid or any amounts paid by the audited partnership or tiered partner on the resident partner's behalf to another state or local tax jurisdiction pursuant to section 5825 of this title.

(7) Failure of audited partnership or tiered partner to report or pay. Nothing in this subsection prevents the Commissioner from using the best

information available to assess a direct or indirect partner for taxes owed by those partners if a partnership or tiered partner fails, for any reason, to make any report or payment required by this subsection in a timely manner.

(d) De minimis exception. The Commissioner may, at the Commissioner's discretion, adopt rules to establish a de minimis amount below which a taxpayer shall not be required to comply with subsections (b) and (c) of this section.

(e) Assessments of additional tax, interest, and penalties arising from adjustments to federal taxable income; statute of limitations. The Commissioner shall assess additional tax, interest, and penalties arising from final federal adjustments arising from an audit by the Internal Revenue Service, including a partnership-level audit, as reported by the taxpayer on an amended federal income tax return, or as part of an administrative adjustment request, by the following dates:

(1) Timely reported federal adjustments. If a taxpayer files with the Commissioner a federal adjustments report or an amended tax return as required within the period prescribed in subsections (b) or (c) of this section, the Commissioner may assess any amounts, including in-lieu-of amounts, taxes, interest, and penalties arising from those federal adjustments, if a notice of the assessment to the taxpayer is issued not later than:

(A) the expiration of the limitations period prescribed in section 5882 of this title; or

(B) the expiration of the one-year period following the date of filing the federal adjustments report with the Commissioner.

(2) Untimely reported federal adjustments. If the taxpayer fails to file the federal adjustments report within the period prescribed in subsections (b) or (c) of this section, as appropriate, or if the federal adjustments report filed by the taxpayer omits final federal adjustments or understates the correct amount of tax owed, the Commissioner may assess amounts or additional amounts, including in-lieu-of amounts, taxes, interest, and penalties arising from the final federal adjustments, if the Commissioner mails a notice of the assessment to the taxpayer by a date that is the latest of one of the following:

(A) the expiration of the limitations period prescribed in section 5882 of this title;

(B) the expiration of the one-year period following the date of filing the federal adjustments report with the Commissioner; or

(C) absent fraud, the expiration of the six-year period following the final determination date.

(f) Estimated tax payments made during a pending federal audit. A taxpayer may make estimated payments, according to the process prescribed by the Commissioner, of the tax expected to result from a pending Internal Revenue Service audit and prior to the due date of the federal adjustments report, without filing the report with the Commissioner. The estimated tax payments shall be credited against the final Vermont tax liability and shall

limit the accrual of further statutory interest on that amount. If the estimated tax payments exceed the final Vermont tax liability and statutory interest ultimately determined to be due, the taxpayer is entitled to a refund or credit for the excess, provided the taxpayer files a federal adjustments report or claim for refund or credit of tax paid pursuant to section 5884 of this title, not later than one year following the final determination date. As used in this subsection, "final Vermont tax liability" means the amount of any Vermont tax liability ultimately found to be due to the State.

(g) Claims for refund or credits of tax paid arising from final federal adjustments made by the Internal Revenue Service or by administrative adjustment request.

(1) Except for negative federal adjustments required by federal law to be taken into account by the partnership in the partnership return for the adjustment or other year, a taxpayer may file a claim for refund or credit of tax paid arising from final federal adjustments on or before the later of:

(A) the expiration of the last day for filing a claim for refund or credit of tax paid pursuant to section 5884 of this title, including any extensions; or

(B) one year from the date a federal adjustments report prescribed in subsection (b) or (c) of this section, as applicable, was due to the Commissioner, including any extensions pursuant to subsection (h) of this section.

(2) The federal adjustments report shall serve as the means for the taxpayer, including a partnership and its tiered partners, direct partners, and indirect partners, to report additional tax due, report a claim for refund or credit of tax paid, and make other adjustments, including to its net operating losses, resulting from adjustments to the taxpayer's federal taxable income. Any refund granted to the partnership under subsection (c) of this section shall be in lieu of State tax paid that may be owed to the partners.

(h) Scope of adjustments and extensions of time.

(1) Unless otherwise agreed in writing by the taxpayer and the Commissioner, any adjustments made by the Commissioner or the taxpayer after the expiration of the limitations periods prescribed in sections 5882 and 5884 of this title are limited to changes to the taxpayer's tax liability arising from federal adjustments.

(2) The time periods provided for in this subsection may be extended:

(A) automatically by 60 days for an audited partnership or tiered partner that has 10,000 or more direct partners, upon written notice to the Commissioner; or

(B) by written agreement between the taxpayer and the Commissioner.

(3) Any extension granted under this subsection for filing the federal adjustments report extends the last day prescribed by law for assessing any

additional tax arising from the adjustments to federal taxable income and the period for filing a claim for refund or credit of taxes.

(i) The Commissioner may adopt rules or issue other guidance to implement or explain the provisions of this section. The rules adopted or guidance issued with regard to this section may apply the principles set forth in 26 U.S.C. subtitle F, chapter 63, subchapter C; federal regulations; and other related guidance issued by the U.S. Department of the Treasury in order to prevent the omission or duplication of State tax due as the result of a partnership-level audit and to account for differences between federal and State law.

* * * Taxation of Land Underlying Solar Plant or Energy Storage Facility * * *

Sec. 14. 32 V.S.A. § 8701(d) is amended to read:

(d) The existence of a renewable energy plant or energy storage facility subject to tax under subsection (b) of this section shall not:

(1) alter the exempt status of any underlying property under section 3802 or subdivision 5401(10)(F) of this title; or

(2) alter the taxation of the underlying property under ~~chapter 135~~ chapters 121–135 of this title.

* * * Fishing, Hunting, and Trapping Licenses * * *

Sec. 15. 10 V.S.A. § 4255(c)(7) is amended to read:

(7) A certified citizen of a Native American Indian tribe that has been recognized by the State pursuant to 1 V.S.A. chapter 23 may receive ~~a free~~

~~permanent fishing license or, if the person qualifies for a hunting license, a free permanent combination hunting and fishing license~~ free of charge one or all of the permanent fishing, hunting, or trapping licenses set forth in subdivisions (1)(A)–(D) of this subsection if qualified for the license and upon submission of a current and valid tribal identification card.

Sec. 16. DEPARTMENT OF FISH AND WILDLIFE REPORT; LICENSES

On or before January 15, 2024, the Commissioner of Fish and Wildlife shall report to the House Committees on Natural Resources, Fish, and Wildlife and on Ways and Means and the Senate Committees on Natural Resources and Energy and on Finance the number of fishing, hunting, and trapping licenses issued by the Commissioner of Fish and Wildlife to a certified citizen of a Native American Indian tribe pursuant to 10 V.S.A. § 4255(c)(7).

* * * Legislative Expense Reimbursement * * *

Sec. 17. 32 V.S.A. § 1052(b) is amended to read:

(b) During any session of the General Assembly, each member is entitled to receive expenses as follows:

(1) Mileage reimbursement. ~~An allowance~~ Reimbursement equal to the ~~cost of one round-trip each day between Montpelier and the member's home~~ actual mileage traveled for each day of session in which the member ~~did not rent lodging in Montpelier or the vicinity. If a member rents lodging in Montpelier or the vicinity for an entire week of session, the member is entitled to an allowance for the cost of one round-trip for that week~~ travels between

Montpelier and the member's home or from Montpelier or from the member's home to another site on officially sanctioned legislative business. ~~The allowance~~ Reimbursement of actual mileage traveled under this subdivision shall be at the rate per mile determined by the federal Office of Government-wide Policy and published in the Federal Register for the year of the session.

* * *

(4) ~~Intent. It is the intent of the General Assembly that only a member who is away from home and remains in Montpelier or the vicinity on the night preceding or following the day in which that member's chamber met shall receive reimbursement for expenses as provided in subdivision (1) of this subsection.~~ [Repealed.]

* * * 529 Plans; Student Loan Repayment; VHEIP Income Tax Credit * * *

Sec. 18. 32 V.S.A. § 5825a(b) is amended to read:

(b) A taxpayer who has received a credit under subsection (a) of this section shall repay to the Commissioner 10 percent of any distribution from a higher education investment plan account, up to a maximum of the total credits received by the taxpayer under subsection (a) of this section minus any amount of repayment of such credits in prior tax years except when the distribution:

(1) is used exclusively for costs of attendance at an approved postsecondary education institution as defined in 16 V.S.A. § 2822(6);

(2) is used for a qualifying expense associated with a registered apprenticeship program pursuant to 26 U.S.C. § 529(c)(8); ~~or~~

(3) is made after the death of the beneficiary or after the beneficiary becomes disabled pursuant to subdivisions (q)(2)(C) and (m)(7) of 26 U.S.C. § 72; or

(4) is used for qualified higher education expense loan repayment pursuant to 26 U.S.C. § 529(c)(9), provided the loan being repaid was used exclusively for costs of attendance at an approved postsecondary education institution as defined in 16 V.S.A. § 2822(6).

* * * Communications Union Districts * * *

Sec. 19. 30 V.S.A. § 8086(c)(3) is amended to read:

(3) establish standards for recouping grant funds and transferring ownership of grant-funded network assets ~~to the State~~ if a grantee materially fails to comply with the terms and conditions of a grant;

Sec. 19a. REPORT; GRANT-FUNDED BROADBAND NETWORK ASSETS

On or before January 15, 2023, the Vermont Community Broadband Board shall submit a written report to the Senate Committees on Finance, on Appropriations, and on Economic Development, Housing and General Affairs and the House Committees on Commerce and Economic Development, on Ways and Means, on Energy and Technology, and on Appropriations that analyzes 30 V.S.A. § 8086(c)(3), particularly with regard to the removal of the requirement that ownership of grant-funded network assets be transferred to the State if a grantee materially fails to comply with the terms and conditions

of a grant. The Board shall review all financing contracts or agreements entered into by a communications union district on or after May 11, 2022 and make a determination as to whether publicly funded network assets are at risk of privatization due to financial insolvency or default under the terms and conditions of such contracts or agreements and whether additional statutory requirements should be enacted to protect the State's broadband investments.

Sec. 20. 30 V.S.A. § 8086(h) is added to read:

(h)(1) The Board shall require a communications union district that borrows funds for the purpose of financing a broadband project to immediately provide written notice to the Board in the event the communications union district becomes aware that it is at risk of financial insolvency or of defaulting on the payment of principal or interest on a loan when due. The Board, in turn, shall promptly provide written notice to the Governor, the Treasurer, and the Joint Fiscal Committee of such risk of insolvency or default and shall include in its notification a description of any potential ramifications of the insolvency or default under the terms and conditions of the applicable loan.

(2) If a communications union district defaults on the payment of principal or interest on a loan secured by grant-funded network assets, such assets may not be transferred or sold for a period of 180 calendar days commencing on the day the loan became past due. To the extent reasonably practicable, it is the intent of the General Assembly that publicly owned network assets remain publicly owned assets.

* * * Crime Insurance Coverage; Municipal Officer or Employee * * *

Sec. 21. 24 V.S.A. §§ 832 and 833 are amended to read:

§ 832. BONDS; REQUIREMENTS

Before the school directors, constable, road commissioner, collector of taxes, treasurer, assistant treasurer when appointed by the selectboard, clerk, and any other officer or employee of the town who has authority to receive or disburse town funds enter upon the duties of their offices, the selectboard shall require each to have crime insurance coverage or give a bond conditioned for the faithful performance of his or her duties: the school directors, to the town school district; the other named officers, to the town. The treasurer, assistant treasurer when appointed by the selectboard, and collector shall also be required to have crime insurance coverage or give a bond to the town school district for like purpose. All such crime insurance coverage or bonds shall be in sufficient sums and with sufficient sureties as prescribed and approved by the selectboard. If the selectboard at any time considers the crime insurance coverage or a bond of any such officer or employee to be insufficient, it may require, by written order, the officer or employee to give an additional bond in such sum as it deems necessary. If an officer or employee, so required, neglects for ten days after such request to give such original or additional bond, his or her office shall be vacant. A bond or crime insurance coverage furnished pursuant to the provisions of this section shall not be valid if signed by any other officer of the same municipality as surety thereon.

§ 833. APPROVAL; RECORD; EVIDENCE

On the approval of crime insurance coverage or a bond required by section 832 of this title, the selectboard of a town shall file the same in the office of the town clerk to be recorded by such clerk in a book kept for that purpose. Copies thereof duly certified by such clerk shall be evidence in court as if the original were produced.

Sec. 22. 24 V.S.A. § 835 is amended to read:

§ 835. PAYMENT OF PREMIUMS

Bonds or crime insurance coverage required of officers of a municipality shall be paid for by the municipality requiring the same.

Sec. 23. 24 V.S.A. § 1234 is amended to read:

§ 1234. OATH; BOND

Before entering upon ~~his or her~~ a manager's duties, ~~such~~ a manager shall be sworn to the faithful performance of ~~his or her~~ the manager's duties and shall have crime insurance coverage or give a bond to the town in ~~such~~ the amount and with ~~such~~ the sureties as the selectboard may require.

Sec. 24. 24 V.S.A. § 1306 is amended to read:

§ 1306. OATHS AND BONDS OF OFFICERS

The clerk, treasurer, and collector of such corporation shall be sworn. The treasurer and collector shall have crime insurance coverage or give a bond to the corporation in such sum and with such sureties as are prescribed and

approved by the trustees, conditioned for the faithful performance of their duties.

Sec. 25. 24 V.S.A. § 2433 is amended to read:

§ 2433. BONDS; ACTIONS

The trustees shall have crime insurance coverage or give bonds to the satisfaction of the selectboard, conditioned for the faithful performance of their duties. In the name of the town, they may prosecute and defend a suit or action for the recovery or protection of the estate entrusted to their care.

* * * City of Montpelier; Tax Increment Financing District * * *

Sec. 26. MONTPELIER TIF DISTRICT; ORIGINAL TAXABLE VALUE

(a) Notwithstanding any other provision of law, and upon approval by the Vermont Economic Progress Council as provided in subsection (b) of this section, the City of Montpelier may reset its original taxable value, as defined in 24 V.S.A. § 1891(5), to the grand list values as of April 1, 2023, provided that the reset:

(1) maintains the same parcels as the City's certified original taxable value;

(2) does not change the creation date of the district; and

(3) does not extend the City's period to incur indebtedness beyond March 31, 2030.

(b) The reset of the original taxable value in the City of Montpelier's tax increment financing district shall only become final upon approval by the

Vermont Economic Progress Council of the City's application for a five-year extension of the deadline to incur its first debt. Notwithstanding any other provision of law, the City may apply to the Vermont Economic Progress Council for an extension of the period to incur its first debt not later than 90 days after the final April 1, 2023 grand list is filed with the city clerk. The City's extension application shall include an updated tax increment financing plan that incorporates the proposed reset original taxable value.

* * * Sales and Use Tax Exemption; Manufacturing Machinery and Equipment * * *

Sec. 27. 32 V.S.A. § 9741(14) is amended to read:

(14)(A) Tangible personal property that becomes an ingredient or component part of~~,~~ or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale~~;~~.

(B) ~~machinery~~ Machinery and equipment ~~for use or consumption directly and exclusively, except for isolated or occasional uses,~~ used in or consumed as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility engaged in the manufacture of tangible personal property for sale, or in the manufacture of other machinery or equipment, parts, or supplies for use in the manufacturing process~~; and devices used to monitor manufacturing machinery and equipment or the product during the manufacturing process. Machinery and equipment used in administrative, managerial, sales, or other nonproduction activities, or used~~

~~prior to the first production operation or subsequent to the initial packaging of a product, shall not be exempt from tax, unless such uses are merely isolated or occasional or unless the machinery used for initial packaging is also used for secondary packaging as part of an integrated process. Machinery and equipment shall not include buildings and structural components thereof. As used in this subdivision, it shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated~~. For the purposes of this ~~subsection~~ subdivision (14), "manufacture" includes extraction of mineral deposits, the entire printing and bookmaking process, and the entire publication process.

(C) As used in this subdivision (14):

(i) "Integrated production operation" means an integrated series of operations at a manufacturing or processing plant or facility to process, transform, or convert tangible personal property by physical, chemical, or other means into a different form, composition, or character from that in which it originally existed. Integrated production operations begin when raw material is first changed physically, chemically, or otherwise in form, composition, or character, including being removed from storage or introduced for this manipulation, and end when the product is placed in initial packaging and shall include production line operations, including initial packaging operations, and waste, pollution, and environmental control operations.

(ii) "Manufacturing or processing business" means a business that utilizes an integrated production operation to manufacture, process, fabricate, or finish items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. "Manufacturing or processing business" does not include nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook, or prepare food products in the regular course of their retail trade; the assembling of product by retailers for sale; grocery stores, meat lockers, and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade; contractors who alter, service, repair, or improve real property; and retail businesses that clean, service, or refurbish and repair tangible personal property for its owner. The examples provided in this subdivision (ii) shall not be construed as exclusive.

(iii) "Manufacturing or processing plant or facility" means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. A business may operate one or more manufacturing or processing plants or facilities at

different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail.

(iv) "Primary" or "primarily" means more than 50 percent of the time.

(v) "Production line" means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs.

(D) For the purposes of this subdivision (14), machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used during the integrated production operation:

(i) to transport, convey, handle, or store the property undergoing manufacturing or processing at any point from the beginning of the production line until it is placed into initial packaging;

(ii) to act upon, effect, promote, or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(iii) to guide, control, or direct the movement of property undergoing manufacturing or processing;

(iv) to test or measure materials, the property undergoing manufacturing or processing, or the finished product during the manufacturer's integrated production operations;

(v) to plan, manage, control, or record the receipt and flow of property while undergoing manufacturing or processing;

(vi) to lubricate, control the operating of, or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(vii) to transmit or transport electricity, gas, water, steam, or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from off–site, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(viii) to package the property being manufactured or processed in any container or wrapping in which such property is normally sold or transported, even if the machinery operates after the point of initial packaging;

(ix) to cool, heat, filter, refine, or otherwise treat water, steam, acid, oil, solvents, or other substances that are used in production operations;

(x) to provide and control an environment required to maintain certain levels of air quality, humidity, or temperature in special and limited areas of the plant or facility where such regulation of temperature or humidity is part of and essential to the production process;

(xi) to treat, transport, or store waste or other byproducts of production operations at the plant or facility and to clean manufacturing machinery and equipment;

(xii) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation; or

(xiii) to inspect or conduct quality control on the product, even if the inspection or quality control machinery operates after the point of initial packaging.

(E) "Machinery and equipment used as an integral or essential part of an integrated production operation" does not mean:

(i) machinery and equipment used for nonproduction purposes, including machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(ii) machinery, equipment, and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(iii) transportation, transmission, and distribution equipment not primarily used in a production, warehousing, or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil, or water, and related equipment, located outside the plant or facility;

(iv) office machines and equipment, including computers and related peripheral equipment, not used directly and primarily to control or measure the manufacturing process;

(v) furniture and other furnishings;

(vi) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(vii) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical;

(viii) machinery and equipment used for general plant heating, cooling, and lighting; or

(ix) motor vehicles that are registered for operation on public highways.

(F) Subdivisions (D) and (E) of this subdivision (14) shall not be construed as exclusive lists of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purposes at other times, the primary use of the machinery or equipment shall determine the qualification of the machinery or equipment for the exemption.

* * * Sales and Use Tax Exemption; Menstrual Products * * *

Sec. 27a. 32 V.S.A. § 9706(oo) is amended to read:

(oo) The statutory purpose of the exemption for ~~feminine hygiene~~ menstrual products in subdivision 9741(56) of this title is to limit the cost of goods that are necessary for the health and welfare of Vermonters.

Sec. 27b. 32 V.S.A. § 9741(56) is amended to read:

(56) ~~Feminine hygiene~~ Menstrual products. As used in this subdivision, "~~feminine hygiene~~ menstrual products" means tampons, panty liners, menstrual cups, ~~sanitary~~ menstrual napkins, and other similar tangible personal property designed for ~~feminine hygiene~~ use in connection with the human menstrual cycle but does not include "grooming and hygiene products" as defined in this chapter.

* * * Effective Dates * * *

Sec. 28. EFFECTIVE DATES

(a) This section and Secs. 27a and 27b (sales and use tax exemption; menstrual products) shall take effect on passage.

(b) Notwithstanding 1 V.S.A. § 214, Secs. 1–3 (enhanced life estates; property transfer tax), 4 and 5 (underpayment penalties; deadlines), and 18 (529 plans; student loan repayment; VHEIP income tax credit) shall take effect retroactively on January 1, 2022 and shall apply to taxable years beginning on and after January 1, 2022.

(c) Secs. 8 (32 V.S.A. § 5862b; Children's Trust Foundation checkoff) and 11 (transition; Children's Trust Fund; FY 2023 transfers) shall take effect on July 1, 2022.

(d) Secs. 9 (33 V.S.A. § 3303(b); Children's Trust Fund administration) and 10 (repeals; Children's Trust Fund) shall take effect on December 31, 2022.

(e) Notwithstanding 1 V.S.A. § 214, Secs. 12 and 13 (reporting federal audits and adjustments; partnerships) shall take effect retroactively on January 1, 2022 and shall apply to any adjustments to a taxpayer's federal taxable income with a final determination date occurring on and after July 1, 2022.

(f) Notwithstanding 1 V.S.A. § 214, Sec. 14 (taxation of land underlying solar plant or energy storage facility) shall take effect retroactively on July 1, 2021.

(g) Secs. 15 and 16 (fishing, hunting, and trapping licenses) shall take effect on January 1, 2023.

(h) Sec. 17 (legislative expense reimbursement) shall take effect on January 1, 2023.

(i) Secs. 19–20 (communications union districts), 21–25 (crime insurance coverage; municipal officer or employee), 26 (City of Montpelier; tax increment financing district), and 27 (sales and use tax exemption) shall take effect on July 1, 2022.

Date Governor signed bill: June 7, 2022