H.189

Introduced by Representatives Beck of St. Johnsbury, Mattos of Milton, and Ode of Burlington

Referred to Committee on

Date:

Subject: Taxation; corporate income tax; apportionment; combined reporting; water's edge; overseas business organizations; Finnigan method; throwback rule

Statement of purpose of bill as introduced: This bill proposes to amend the apportionment of a taxable corporation's Vermont net income by increasing the sales factor over a three-year period. In 2023, the sales factor will become the only factor for apportionment (also known as single sales factor). Additionally, in 2023, the throwback rule for sales of tangible personal property will be repealed. In regard to applying state taxing jurisdiction to unitary, combined reporting groups, this bill changes Vermont's approach from the *Joyce* entity-by-entity method to the *Finnigan* single-taxpayer method. This bill also repeals the definition of overseas business organizations and requires the income and apportionment factors of all taxable corporations that are part of a unitary group and that are incorporated in the United States to be reported on a combined return.

An act relating to corporate income tax

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

Sec. 1. 32 V.S.A. § 5811 is amended to read:

§ 5811. DEFINITIONS

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

* * *

(22) "Affiliated group" means a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations, but shall exclude ~~overseas business organizations or~~ foreign corporations and corporations taxable under 8 V.S.A. § 6014.

(23) "Unitary business" means one or more related business organizations engaged in business activity both within and outside the State among which there exists a unity of ownership, operation, and use; or an interdependence in their functions.

(24) "~~Overseas business organization" means a business organization that ordinarily has 80 percent or more of its payroll and property outside the 50 states and the District of Columbia.~~ [Repealed.]

* * *

Sec. 2. 32 V.S.A. § 5833(a) is amended to read:

(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 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~~ triple-weighted:

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Sec. 3. 32 V.S.A. § 5833(a) is amended to read:

(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 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 ~~triple-weighted~~ quadruple-weighted:

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Sec. 4. 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 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 quadruple-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~~ the amount of 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)~~(1) Sales of tangible personal property are made in this State if~~:~~

~~(i)~~ the property is delivered or shipped to a purchaser, other than the 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~~

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

~~(II) the corporation is not taxable in the State in which the purchaser takes possession~~.

~~(B)~~(2) 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)~~(A) 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)~~(B) 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)~~(C) 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)~~(D) in the case of intangible property:

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

~~(aa)~~(I) 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)~~(II) 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)~~(D)(i) of this subdivision ~~(B)~~(2); and

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

~~(C)~~(3) If the state or states of assignment under subdivision ~~(B)~~(2) of this subsection cannot be determined, the state or states of assignment shall be reasonably approximated.

~~(D)~~(4) If the taxpayer is not taxable in a state to which a receipt is assigned under subdivision ~~(B)~~(2) or ~~(C)~~(3) of this subsection, or if the state of assignment cannot be determined under subdivision ~~(B)~~(2) of this subsection or reasonably approximated under subdivision ~~(C)~~(3) of this subsection, such receipt shall be excluded from the denominator of the receipts factor.

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

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Sec. 5. 32 V.S.A. § 5862(d) is amended to read:

(d) A taxable corporation ~~which~~ that is part of an affiliated group engaged in a unitary business shall be treated as a single taxpayer and shall file a group return containing the combined net income of the affiliated group and such other informational returns as the Commissioner shall require by rule. A unitary combined return shall include the income and apportionment factors of any taxable corporation incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States and in a unitary relationship with the taxpayer.

Sec. 6. TRANSITION FROM JOYCE TO FINNIGAN METHOD

(a) For taxable years beginning on and after January 1, 2021, for purposes of determining whether sales are in Vermont and are included in the numerator of the sales apportionment factor, if the activities of any member of a unitary group create nexus with this State, then sales of tangible personal property into Vermont from outside the State by all members of the unitary group shall be included in the Vermont sales factor numerator.

(b) For taxable years beginning on January 1, 2021 and before January 1, 2023:

(1) If any member of a unitary group is taxable in another state, then sales of tangible personal property from a Vermont location into that state by any member of the unitary group shall be excluded from the Vermont sales factor numerator.

(2) If no member of a unitary group is taxable in another state, then sales of tangible personal property from a Vermont location into that state by all members of the unitary group shall be included in the Vermont sales factor numerator.

Sec. 7. RULEMAKING; REPORT

The Department of Taxes shall adopt rules relating to the unitary combined reporting requirements imposed under this act. The rules required under this section shall include a change from the *Joyce* to the *Finnigan* approach to applying Vermont jurisdiction to corporations within a unitary group. The Department shall report to the House Committee on Ways and Means and the Senate Committee on Finance, on or before January 15, 2022, on the Department's proposed rules and any recommendations for legislation with respect to unitary combined reporting.

* * * Effective Dates * * *

Sec. 8. EFFECTIVE DATES

(a) This section shall take effect on passage.

(b) Notwithstanding 1 V.S.A. § 214, Secs. 1 (80/20 rule definitions), 2 (triple-weighted sales factor), and 5–7 (Finnigan method and 80/20 rule) shall take effect retroactively on January 1, 2021 and apply to taxable years beginning on and after January 1, 2021.

(c) Sec. 3 (quadruple-weighted sales factor) shall take effect on January 1, 2022 and apply to taxable years beginning on and after January 1, 2022.

(d) Sec. 4 (single sales factor and repeal of throwback) shall take effect on January 1, 2023 and apply to taxable years beginning on and after January 1, 2023.