

1 Introduced by Committee on Ways and Means

2 Referred to Committee on

3 Date:

4 Subject: Taxation; income taxes; property transfer tax; administration

5 Statement of purpose of bill as introduced: This bill proposes to clarify that
6 the property transfer tax applies to enhanced life estate deeds in the same way
7 as conventional life estate deeds. Penalty provisions and filing due dates for
8 estimated tax payments are amended under this bill and the Vermont income
9 tax and the estate tax codes would be made to conform to federal tax statutes in
10 effect at the end of 2021. With regard to the income tax return checkoff for
11 donations to the Children’s Trust Fund, this bill would amend the Fund name
12 and change the recipient of checkoff donations to the Vermont Children’s
13 Trust Foundation. This bill further creates a new Vermont reporting
14 requirement for partnerships under federal audit.

15 An act relating to miscellaneous changes to Vermont’s tax laws

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

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

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

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

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

2 § 9601. DEFINITIONS

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

5 * * *

6 (3) “Title to property” includes:

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

11 * * *

12 (6) “Value” means:

13 * * *

14 (E) In the case of a life estate or an enhanced life estate, the grand list
15 value of the property at the time of the transfer, multiplied by a factor
16 published by the Internal Revenue Service for purposes of valuing life estates
17 and remainders pursuant to 26 U.S.C. § 7520. This factor is based on the
18 grantor’s age, published actuarial tables, and published interest rate in the
19 month of the transaction.

20 * * *

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

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

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

19 * * * Underpayment Penalties; Deadlines * * *

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

21 (b) Penalties.

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(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.

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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.

* * * Annual Link to Federal Statutes * * *

1 Sec. 6. 32 V.S.A. § 5824 is amended to read:

2 § 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

3 The statutes of the United States relating to the federal income tax, as in
4 effect on ~~March 31, 2021~~ December 31, 2021, but without regard to federal
5 income tax rates under 26 U.S.C. § 1, are hereby adopted for the purpose of
6 computing the tax liability under this chapter, and shall continue in effect as
7 adopted until amended, repealed, or replaced by act of the General Assembly.

8 Sec. 7. 32 V.S.A. § 7402(8) is amended to read:

9 (8) “Laws of the United States” means the U.S. Internal Revenue Code
10 of 1986, as amended through December 31, ~~2020~~2021. As used in this
11 chapter, “Internal Revenue Code” has the same meaning as “laws of the United
12 States” as defined in this subdivision. The date through which amendments to
13 the U.S. Internal Revenue Code of 1986 are adopted under this subdivision
14 shall continue in effect until amended, repealed, or replaced by act of the
15 General Assembly.

16 * * * Vermont Children’s Trust Foundation Checkoff * * *

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

18 § 5862b. ~~CHILDREN’S TRUST FUND ACCOUNT VERMONT~~

19 CHILDREN’S TRUST FOUNDATION CHECKOFF

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

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

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

20 (d) If amounts paid with respect to a return are insufficient to cover both
21 the amount owed on the return under this chapter and the amount designated

1 by the taxpayer as a contribution to the ~~Children's Trust Fund Account~~
2 Vermont Children's Trust Foundation, the payment shall first be applied to the
3 amount owed on the return under this chapter and the balance, if any, shall be
4 deposited in the account.

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

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

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

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

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

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

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

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

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

13 Sec. 10. REPEALS; CHILDREN’S TRUST FUND

14 33 V.S.A. § 3306 (Children’s Trust Fund) and 33 V.S.A. § 3307 (trust fund
15 programs) are repealed.

16 Sec. 11. TRANSITION; CHILDREN’S TRUST FUND; FY 2023

17 TRANSFERS

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

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

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

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

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

8 5866a. REPORTING ADJUSTMENTS TO FEDERAL TAXABLE INCOME
9 AND FEDERAL PARTNERSHIP AUDITS

10 (a) Definitions. As used in this section:

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

13 (2) “Audited partnership” means a partnership subject to a partnership-
14 level audit resulting in a federal adjustment.

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

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

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

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

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

14 (8) “Federal partnership representative” means the person that the
15 partnership designates for the taxable year as the partnership’s representative
16 or the person that the Internal Revenue Service appoints to act as the federal
17 partnership representative pursuant to 26 U.S.C. § 6223(a).

18 (9) “Final determination date” means the following:

19 (A) Except as provided in subdivisions (B) and (C) of this
20 subdivision (a)(9), if the federal adjustment arises from an audit or other action
21 by the Internal Revenue Service, “final determination date” means the first day

1 on which no federal adjustments arising from that audit or other action remain
2 to be finally determined, whether by Internal Revenue Service decision with
3 respect to which all rights of appeal have been waived or exhausted, by
4 agreement, or, if appealed or contested, by a final decision with respect to
5 which all rights of appeal have been waived or exhausted. For agreements
6 required to be signed by the Internal Revenue Service and the taxpayer, the
7 “final determination date” means the date on which the last party signed the
8 agreement.

9 (B) For federal adjustments arising from an audit or other action by
10 the Internal Revenue Service, if the taxpayer filed as a member of an affiliated
11 group electing to file a consolidated return under subsection 5862(c) of this
12 title or filed as a member of a unitary combined group under subsection
13 5862(d) of this title, the “final determination date” means the first day on
14 which no related federal adjustments arising from that audit remain to be
15 finally determined, as described in subdivision (A) of this subdivision (a)(9),
16 for the entire group.

17 (C) If the federal adjustment results from filing an amended federal
18 return, a federal refund claim, or an administrative adjustment request, or if it
19 is a federal adjustment reported on an amended federal return or other similar
20 report filed pursuant to 26 U.S.C. § 6225(c), the “final determination date”

1 means the day on which the amended return, refund claim, administrative
2 adjustment request, or other similar report was filed.

3 (10) “Final federal adjustment” means a federal adjustment after the
4 final determination date for that federal adjustment has passed.

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

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

17 (13) “Nonresident partner” means an individual, trust, or estate partner
18 that is not a resident partner.

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

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

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

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

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

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

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

20 (21) “Taxpayer” means any person or entity required to file a return or
21 pay tax under this chapter and, unless the context clearly indicates otherwise,

1 includes a partnership, including a tiered partner of a partnership, subject to a
2 partnership-level audit and a partnership, including a tiered partner of a
3 partnership, that has made an administrative adjustment request.

4 (22) “Tiered partner” means any partner that is a partnership or pass-
5 through entity.

6 (23) “Unrelated business taxable income” has the same meaning as in
7 26 U.S.C. § 512.

8 (b)(1) Reporting adjustments to federal taxable income; general rule.
9 Except in the case of final federal adjustments that are required to be reported
10 by a partnership and its partners using the procedures in subsection (c) of this
11 section, a taxpayer shall report and pay any Vermont tax due with respect to
12 the following final federal adjustments:

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

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

18 (C) a federal claim for refund.

19 (2) A taxpayer shall report and pay any tax due under this subsection by
20 filing a federal adjustments report with the Commissioner for the reviewed

1 year and, if applicable, paying the additional Vermont tax owed not later than
2 180 days after the final determination date.

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

11 (1) State partnership representative.

12 (A) With respect to an action required or permitted to be taken by a
13 partnership under this subsection and a petition for a hearing under sections
14 5883, 5884, or 5885 of this title with respect to that action, the State
15 partnership representative for the reviewed year shall have the sole authority to
16 act on behalf of the partnership, and the partnership's direct partners and
17 indirect partners shall be bound by those actions.

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

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

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

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

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

14 (I) Identify each partner during the reviewed year.

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

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

20 (IV) Provide any other information related to the final
21 determination or modification as the Commissioner may require. If the audited

1 partnership has received an approved modification, the audited partnership
2 shall notify the Commissioner of this approval not later than 90 days after the
3 date of approval. An audited partnership that fails to meet the filing
4 requirements under this subsection (c) shall be subject to the penalties for
5 failure to file under section 3202 of this title. The statute of limitations for
6 assessing a partner or an audited partnership pursuant to this section shall be
7 tolled in any instance in which the audited partnership has not provided the
8 Commissioner with the notice and filing required by this subsection (c).

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

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

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

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

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

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

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

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

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

19 (ii) For the total distributive shares of the remaining final federal
20 adjustments reported to direct corporate partners subject to tax under section
21 5832 of this title, apportion and allocate the adjustments as provided under

1 section 5833 of this title, and multiply the result by the highest tax rate
2 imposed under section 5832 of this title.

3 (iii) For the total distributive shares of the remaining final federal
4 adjustments reported to nonresident direct partners subject to tax under this
5 chapter, determine the amount of the adjustments that is Vermont-source
6 income, and multiply the result by the highest tax rate imposed under section
7 5822 of this title.

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

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

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

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

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

5 (vi) For the total distributive shares of the remaining final federal
6 adjustments reported to resident direct partners subject to tax under section
7 5822 of this title, multiply the amount reported by the highest tax rate under
8 section 5822 of this title.

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

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

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

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

20 (D) An audited partnership that is not otherwise subject to any
21 reporting or payment obligations to Vermont and that makes an election under

1 this subdivision (c)(3), consents to be subject to Vermont laws related to
2 reporting, assessment, payment, and collection of Vermont tax calculated
3 under the election.

4 (4) Tiered partners. The direct and indirect partners of an audited
5 partnership that are tiered partners, and all partners of those tiered partners that
6 are subject to tax under this chapter, are subject to the reporting and payment
7 requirements of subdivision (2) of this subsection, and the tiered partners are
8 entitled to make the elections provided in subdivisions (3) and (5) of this
9 subsection. The tiered partners or their partners shall make required reports
10 and payments not later than 90 days after the time for filing and furnishing
11 statements to tiered partners and their partners as established under 26 U.S.C.
12 § 6226 and the associated regulations. The Commissioner may adopt rules to
13 establish procedures and interim time periods for the reports and payments
14 required by tiered partners and their partners and for making the elections
15 under this subsection.

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

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

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

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

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

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

17 (B) If reported properly and paid by the audited partnership or tiered
18 partner, the amount determined under subdivision (3)(B) of this subsection (c)
19 or under an optional election under subdivision (5) of this subsection (c) shall
20 be treated as paid in lieu of taxes owed by its direct and indirect partners, to the
21 extent applicable, on the same final federal adjustments. The direct or indirect

1 partners shall not be eligible to take any deduction or credit for this amount or
2 claim a refund of the amount in this State. Nothing in this subdivision (6) shall
3 preclude a direct resident partner from claiming a credit against taxes paid or
4 any amounts paid by the audited partnership or tiered partner on the resident
5 partner's behalf to another state or local tax jurisdiction pursuant to section
6 5825 of this title.

7 (7) Failure of audited partnership or tiered partner to report or pay.
8 Nothing in this subsection prevents the Commissioner from using the best
9 information available to assess a direct or indirect partner for taxes owed by
10 those partners if a partnership or tiered partner fails, for any reason, to make
11 any report or payment required by this subsection in a timely manner.

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

16 (e) Assessments of additional tax, interest, and penalties arising from
17 adjustments to federal taxable income; statute of limitations. The
18 Commissioner shall assess additional tax, interest, and penalties arising from
19 final federal adjustments arising from an audit by the Internal Revenue
20 Service, including a partnership-level audit, as reported by the taxpayer on an

1 amended federal income tax return, or as part of an administrative adjustment
2 request, by the following dates:

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

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

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

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

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

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

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

7 (f) Estimated tax payments made during a pending federal audit. A
8 taxpayer may make estimated payments, according to the process prescribed
9 by the Commissioner, of the tax expected to result from a pending Internal
10 Revenue Service audit and prior to the due date of the federal adjustments
11 report, without filing the report with the Commissioner. The estimated tax
12 payments shall be credited against the final Vermont tax liability and shall
13 limit the accrual of further statutory interest on that amount. If the estimated
14 tax payments exceed the final Vermont tax liability and statutory interest
15 ultimately determined to be due, the taxpayer is entitled to a refund or credit
16 for the excess, provided the taxpayer files a federal adjustments report or claim
17 for refund or credit of tax paid pursuant to section 5884 of this title, not later
18 than one year following the final determination date. As used in this
19 subsection, “final Vermont tax liability” means the amount of any Vermont tax
20 liability ultimately found to be due to the State.

1 (g)(1) Claims for refund or credits of tax paid arising from final federal
2 adjustments made by the Internal Revenue Service or by administrative
3 adjustment request. Except for negative federal adjustments required by
4 federal law to be taken into account by the partnership in the partnership return
5 for the adjustment or other year, a taxpayer may file a claim for refund or
6 credit of tax paid arising from final federal adjustments on or before the later
7 of:

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

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

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

21 (h) Scope of adjustments and extensions of time.

1 (1) Unless otherwise agreed in writing by the taxpayer and the
2 Commissioner, any adjustments made by the Commissioner or the taxpayer
3 after the expiration of the limitations periods prescribed in sections 5882 and
4 5884 of this title are limited to changes to the taxpayer’s tax liability arising
5 from federal adjustments.

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

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

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

12 (3) Any extension granted under this subsection for filing the federal
13 adjustments report extends the last day prescribed by law for assessing any
14 additional tax arising from the adjustments to federal taxable income and the
15 period for filing a claim for refund or credit of taxes.

16 (i) The Commissioner may adopt rules or issue other guidance to
17 implement or explain the provisions of this section. The rules adopted or
18 guidance issued with regard to this section may apply the principles set forth in
19 26 U.S.C. subtitle F, chapter 63, subchapter C; federal regulations; and other
20 related guidance issued by the U.S. Department of the Treasury in order to
21 prevent the omission or duplication of State tax due as the result of a

1 partnership-level audit and to account for differences between federal and State
2 law.

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

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

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

7 (1) alter the exempt status of any underlying property under section
8 3802 or subdivision 5401(10)(F) of this title; or

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

11 * * * Effective Dates * * *

12 Sec. 15. EFFECTIVE DATES

13 (a) This section shall take effect on passage.

14 (b) Notwithstanding 1 V.S.A. § 214, Secs. 1–3 (enhanced life estates) and
15 4–5 (underpayment penalties; deadlines) shall take effect retroactively on
16 January 1, 2022 and shall apply to taxable years beginning on and after
17 January 1, 2022.

18 (c) Notwithstanding 1 V.S.A. § 214, Secs. 6–7 (annual link to federal
19 statutes) shall take effect retroactively on January 1, 2022 and shall apply to
20 taxable years beginning on and after January 1, 2021.

1 (d) Secs. 8 (32 V.S.A. § 5862b; Children’s Trust Fund Checkoff) and 11
2 (Transition; Children’s Trust Fund; FY 2023 transfers) shall take effect on July
3 1, 2022.

4 (e) Secs. 9 (33 V.S.A. § 3303(b); Children’s Trust Fund administration)
5 and 10 (Repeals; Children’s Trust Fund) shall take effect on December 31,
6 2022.

7 (f) Notwithstanding 1 V.S.A. § 214, Secs. 12–13 (reporting federal audits
8 and adjustments; partnerships) shall take effect retroactively on January 1,
9 2022 and shall apply to any adjustments to a taxpayer’s federal taxable income
10 with a final determination date occurring on and after July 1, 2022.

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