

DRAFT MISCELLANEOUS TAX BILL, DR 22-0617

Section-by-section summary – 2/22/2022

Sec.	Topic	Notes
Enhanced List Estates; Property Transfer Tax		
1	<p>27 V.S.A. § 654(d)</p> <p>Clarifies that property transfer tax applies to enhanced life estate deeds in the same way as to conventional life estates.</p>	
2	<p>32 V.S.A. § 9601</p> <p>Defines the value of life estate or enhanced life estate deeds to which the property transfer tax applies.</p>	
3	<p>32 V.S.A. § 9617(h)</p> <p>Current law allows a written petition for refund of property transfer tax within 3 years after date property is transferred.</p> <p>New enhanced life estate deed language allows the person who paid tax (grantee) to petition for a refund if, after the enhanced life estate transfer is taxed:</p> <p>(1) ELE is revoked or revised; and</p> <p>(2) petition is made:</p> <p style="padding-left: 40px;">(a) within 8 years after date of tax payment; and</p> <p style="padding-left: 40px;">(b) within 1 year after date of revocation or revision.</p> <p>No petition for a refund is allowed for revocation or revision of an interest that occurred 8 years or more after date of tax payment. If revision occurs, revised ELE transfer is taxed.</p>	
Corporate Estimated Payment and Filing Deadlines; Underpayment Penalties		
4-5	<p>32 V.S.A. §§ 3202(b) and 5859(b)</p> <p>Fixes date mismatch between due date for corporate estimated tax payments and returns, and date when underpayment sanctions end (one month before due date for returns); and clarifies that penalties apply to underpayments of corporate estimated tax payments in the same way that they apply to individual estimated tax payments.</p>	
Annual Link Up		
6	<p>32 V.S.A. §§ 5824</p> <p>Annual link to federal income tax statutes in effect as of Dec. 31, 2021 (applied to taxable year 2021 in effective dates section)</p>	
7	<p>32 V.S.A. § 7402(8)</p> <p>Annual link to federal estate tax statutes in effect as of Dec. 31, 2021 (applied to taxable year 2021 in effective dates section)</p>	

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Vermont Children’s Trust Foundation Checkoff		
8	<p>32 V.S.A. § 5862b</p> <p>Replaces all references to Children’s Trust Fund with Vermont Children’s Trust Foundation for purposes of the income tax return checkoff box for individuals to elect to donate a portion of their income tax refund.</p> <p>Adds requirement that Vermont Children’s Trust Foundation use the revenue received from income tax refunds to provide funds for community-based primary prevention programs that have been shown to be effective for juveniles, through competitive grant-making process.</p>	
9	<p>33 V.S.A. § 3303(b)</p> <p>Repeals reference to sections repealed under bill.</p>	
10	<p>REPEALS; CHILDREN’S TRUST FUND</p> <p>33 V.S.A. § 3306 (Children’s Trust Fund) and 33 V.S.A. § 3307 (Trust Fund Programs) are repealed (effective on Dec. 31, 2022).</p> <p>Repeals Children’s Trust Fund and section requiring the Secretary of Human Services and the Children and Family Council for Prevention Programs to solicit and award grants to community-based primary prevention programs that have been shown to be effective for juveniles. The Vermont Children’s Trust Foundation under the bill in 32 V.S.A. § 5862b will take over and be required to carry out these functions.</p>	
11	<p>TRANSITION; CHILDREN’S TRUST FUND; FY 2023 TRANSFERS</p> <p>Transfers all revenue out of Children’s Trust Fund and to Vermont Children’s Trust Foundation on July 1, 2022 and Dec. 30, 2022 (date when Fund is repealed).</p>	
Partnership Reporting of Federal Audits and Adjustments		
12	<p>32 V.S.A. § 5866(c)</p> <p>Requires a taxpayer to file and amend returns and pay tax owed if a change in federal tax liability results from the audit of a partnership or an adjustment of a partnership’s taxable income according to new 32 V.S.A. § 5866a.</p> <p>In 2015, the I.R.S. was authorized by the federal Bipartisan Budget Act, as amended by the PATH Act, to conduct partnership audits at the partnership level and to bill the partnership rather than the individual partners for any tax liability. This applied to all partnerships. Within the partnership agreement, partners decide how to allocate up tax, rather than requiring the I.R.S. to bill each individual partner.</p> <p>Like other states that haven’t adopted similar rules, Vermont does not currently have authority to require reporting or to assess tax on partnerships following</p>	

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	<p>federal audits and adjustments, when federal tax is assessed to and paid by the partnership or is “pushed-out” to the partners. This language allows Vermont to require reporting or assess tax on partnerships.</p>	
<p align="center">13</p>	<p>32 V.S.A. § 5866a</p> <p>Partnership elects to either pay adjusted tax itself or individual partner pays. If individual partner pays, regardless of tax type or taxpayer status (individual, corporation, direct or indirect partner in a tiered structure, resident or nonresident), the tax applies at highest marginal tax rate. Election is irrevocable.</p> <p>Allows for one individual to be the State partnership representative who will act on behalf of the partnership. By default, it is the federal representative unless the partnership designates another person in writing to be the Vermont representative.</p> <p>Provides for alternative reporting and payment methods, including modifying applicable deadline and other requirements, as approved by the Commissioner. Election is irrevocable.</p> <p>Credits: when a partnership elects to pay, direct or indirect partners are not eligible for any Vt deduction, credit, or refund of the amount paid by the partnership. A direct resident partner can still claim a credit against taxes or other amounts paid by the audited partnership or tiered partner on the resident partner’s behalf to another state or local tax jurisdiction.</p> <p>Assessments of additional tax, interest, and penalties arising from adjustments to federal taxable income; statute of limitations. Dept. of Taxes can assess generally either within 3 years or 1 year of partnership filing federal adjustments report with Commissioner; but if untimely filed report and no fraud, up to 6 years of partnership filing federal adjustments report with Commissioner.</p> <p>Estimated tax payments may be made during a pending federal audit without taxpayer being required to file federal adjustments report with Commissioner.</p> <p>Claims for refund or credits arising from adjustments to federal taxable income or by administrative adjustment request. Not allowed for negative federal adjustments that are required by federal law to be taken into account by the partnership in the partnership return for the adjustment or other year. Later of: typical deadlines for petitions for refund, which is the later of 3 years after return filing deadline; 6 months from the date a tax liability is paid or offset; or 6 months after a refund was received from U.S.; or 1 year of due date for partnership to file federal adjustments report with Commissioner.</p> <p>Provides for extensions and limits scope of changes to the taxpayer’s tax liability arising from federal adjustments after expiration of extensions, unless agreed to, in writing, by taxpayer and Commissioner.</p> <p>Grants Commissioner authority to adopt rules or issue other guidance to implement or explain the provisions of this section.</p>	

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Alternative Minimum Tax		
14	<p>32 V.S.A. § 5822(a)(6)</p> <p>Repeal of alternative minimum tax (AMT) for individuals, which was added in 2015 Act 57, Sec. 65.</p> <p>AMT applies when taxpayer has adjusted gross income over \$150K, in which case taxpayer pays the greater of (a) tax liability calculated on taxable income; or (b) 3% on adjusted gross income.</p> <ul style="list-style-type: none"> • Vermont taxable income is lower than federal adjusted gross income, because it includes personal exemptions, standard deduction, and the deduction for med. expenses. • 3% of adjusted gross income thus applies to a higher tax base than rate using brackets. <p>AMT was more relevant pre-Tax Cuts and Jobs Act (TCJA), when more itemized deductions were allowed and Vermont’s taxable income definition started with federal taxable income, thus pulled in those federal itemized deductions. Now, since Vermont taxable income definition starts with adjusted gross income (in reaction to TCJA), but decouples from bonus depreciation and only allows a medical deduction for certain expenses, the AMT mostly impacts taxpayers with high medical expenses or bonus depreciation (bonus depreciation is calculated before adjusted gross income).</p>	
Home Health Agency Assessment		
15	<p>Sec. 15. Session law effective date repealing Home Health Agency Assessment</p> <p>One-year extension of repeal of Home Health Agency Assessment from July 1, 2023 to July 1, 2024.</p>	
Effective Dates		
16	<p>Effective retroactively on January 1, 2022 and apply to taxable years beginning on and after January 1, 2022:</p> <ul style="list-style-type: none"> • Secs. 1–3 (enhanced life estates) • Secs. 4–5 (underpayment penalties; deadlines) • Sec. 14 (alternative minimum income tax) <p>Effective retroactively on January 1, 2022 and apply to taxable years beginning on and after January 1, 2021</p> <ul style="list-style-type: none"> • Secs. 6–7 (annual link to federal statutes) <p>July 1, 2022:</p> <ul style="list-style-type: none"> • Sec. 8, 32 V.S.A. § 5862b (Children’s Trust Checkoff) 	

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	<ul style="list-style-type: none">• Sec. 11 (Children’s Trust Checkoff transition)• Sec. 15 (home health agency assessment) <p>December 31, 2022:</p> <ul style="list-style-type: none">• Sec. 9, 33 V.S.A. § 3303(b) (Children’s Trust Fund administration)• Sec. 10 (Children’s Trust Fund repeals) <p>Effective retroactively on January 1, 2022 and apply to any adjustments to a taxpayer’s federal taxable income with a final determination date occurring on and after July 1, 2022:</p> <ul style="list-style-type: none">• Secs. 12–13 (reporting federal audits and adjustments; partnerships)	