

1 H.189

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

3 Ode of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Taxation; corporate income tax; apportionment; combined reporting;

7 water's edge; overseas business organizations; Finnigan method;

8 throwback rule

9 Statement of purpose of bill as introduced: This bill proposes to amend the
10 apportionment of a taxable corporation's Vermont net income by increasing
11 the sales factor over a three-year period. In 2023, the sales factor will become
12 the only factor for apportionment (also known as single sales factor).

13 Additionally, in 2023, the throwback rule for sales of tangible personal
14 property will be repealed. In regard to applying state taxing jurisdiction to
15 unitary, combined reporting groups, this bill changes Vermont's approach from
16 the *Joyce* entity-by-entity method to the *Finnigan* single-taxpayer method.

17 This bill also repeals the definition of overseas business organizations and
18 requires the income and apportionment factors of all taxable corporations that
19 are part of a unitary group and that are incorporated in the United States to be
20 reported on a combined return.

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

2 (a) If the income of a taxable corporation is derived from any trade,
3 business, or activity conducted entirely within this State, the Vermont net
4 income of the corporation shall be allocated to this State in full. If the income
5 of a taxable corporation is derived from any trade, business, or activity
6 conducted both within and outside this State, the amount of the corporation's
7 Vermont net income that shall be apportioned to this State, so as to allocate to
8 this State a fair and equitable portion of that income, shall be determined by
9 multiplying that Vermont net income by the arithmetic average of the
10 following factors, with the sales factor described in subdivision (3) of this
11 subsection ~~double-weighted~~ triple-weighted:

12 * * *

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

14 (a) If the income of a taxable corporation is derived from any trade,
15 business, or activity conducted entirely within this State, the Vermont net
16 income of the corporation shall be allocated to this State in full. If the income
17 of a taxable corporation is derived from any trade, business, or activity
18 conducted both within and outside this State, the amount of the corporation's
19 Vermont net income that shall be apportioned to this State, so as to allocate to
20 this State a fair and equitable portion of that income, shall be determined by
21 multiplying that Vermont net income by the arithmetic average of the

1 following factors, with the sales factor described in subdivision (3) of this
2 subsection ~~triple-weighted~~ quadruple-weighted:

3 * * *

4 Sec. 4. 32 V.S.A. § 5833 is amended to read:

5 § 5833. ALLOCATION AND APPORTIONMENT OF INCOME

6 (a) If the income of a taxable corporation is derived from any trade,
7 business, or activity conducted entirely within this State, the Vermont net
8 income of the corporation shall be allocated to this State in full. If the income
9 of a taxable corporation is derived from any trade, business, or activity
10 conducted both within and outside this State, the amount of the corporation's
11 Vermont net income that shall be apportioned to this State, so as to allocate to
12 this State a fair and equitable portion of that income, shall be determined by
13 multiplying that Vermont net income by ~~the arithmetic average of the~~
14 ~~following factors, with the sales factor described in subdivision (3) of this~~
15 ~~subsection quadruple-weighted:~~

16 ~~(1) The average of the value of all the real and tangible property within~~
17 ~~this State (A) at the beginning of the taxable year and (B) at the end of the~~
18 ~~taxable year (but the Commissioner may require the use of the average of such~~
19 ~~value on the 15th or other day of each month, in cases where he or she~~
20 ~~determines that such computation is necessary to more accurately reflect the~~

1 ~~average value of property within Vermont during the taxable year), expressed~~
2 ~~as a percentage of all such property both within and outside this State;~~

3 ~~(2) The total wages, salaries, and other personal service compensation~~
4 ~~paid during the taxable year to employees within this State, expressed as a~~
5 ~~percentage of all such compensation paid whether within or outside this State;~~

6 ~~(3) The the amount of gross sales, or charges for services performed,~~
7 ~~within this State, expressed as a percentage of such sales or charges whether~~
8 ~~within or outside this State.~~

9 ~~(A)(1) Sales of tangible personal property are made in this State if;~~

10 ~~(i) the property is delivered or shipped to a purchaser, other than~~
11 ~~the U.S. government, who takes possession within this State, regardless of~~
12 ~~f.o.b. point or other conditions of sale; or~~

13 ~~(ii) the property is shipped from an office, store, warehouse,~~
14 ~~factory, or other place of storage in this State; and~~

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

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

18 ~~(B)(2) Sales, other than the sale of tangible personal property, are in~~
19 ~~this State if the taxpayer's market for the sales is in this State. The taxpayer's~~
20 ~~market for sales is in this State:~~

1 ~~(i)~~(A) in the case of sale, rental, lease, or license of real property,
2 if and to the extent the property is located in this State;

3 ~~(ii)~~(B) in the case of rental, lease, or license of tangible personal
4 property, if and to the extent the property is located in this State;

5 ~~(iii)~~(C) in the case of sale of a service, if and to the extent the
6 service is delivered to a location in this State; and

7 ~~(iv)~~(D) in the case of intangible property:

8 ~~(i)~~(i) that is rented, leased, or licensed, if and to the extent the
9 property is used in this State, provided that intangible property utilized in
10 marketing a good or service to a consumer is “used in this State” if that good
11 or service is purchased by a consumer who is in this State; and

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

14 ~~(aa)~~(I) a contract right, government license, or similar
15 intangible property that authorizes the holder to conduct a business activity in a
16 specific geographic area is “used in this State” if the geographic area includes
17 all or part of this State;

18 ~~(bb)~~(II) receipts from intangible property sales that are
19 contingent on the productivity, use, or disposition of the intangible property
20 shall be treated as receipts from the rental, lease, or licensing of such intangible
21 property under subdivision ~~(iv)~~(I)(D)(i) of this subdivision ~~(B)~~(2); and

1 laws of any state, the District of Columbia, or any territory or possession of the
2 United States and in a unitary relationship with the taxpayer.

3 Sec. 6. TRANSITION FROM JOYCE TO FINNIGAN METHOD

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

10 (b) For taxable years beginning on January 1, 2021 and before January 1,
11 2023:

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

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

20 Sec. 7. RULEMAKING; REPORT

