

1 S.53

2 The Committee on Ways and Means to which was referred Senate Bill
3 No. 53 entitled “An act relating to exempting feminine hygiene products from
4 the Vermont Sales and Use Tax” respectfully reports that it has considered the
5 same and recommends that the House propose to the Senate that the bill be
6 amended as follows:

7 First: Before Sec. 1, exemption statutory purpose, by inserting a reader
8 assistance heading to read as follows:

9 * * * Sales and Use Tax; Feminine Hygiene Products * * *

10 Second: By striking out Sec. 3, effective date, in its entirety and inserting in
11 lieu thereof:

12 * * * Corporate Income Tax * * *

13 Sec. 3. 32 V.S.A. § 5811 is amended to read:

14 § 5811. DEFINITIONS

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

17 * * *

18 (22) “Affiliated group” means a group of two or more corporations in
19 which more than 50 percent of the voting stock of each member corporation is
20 directly or indirectly owned by a common owner or owners, either corporate or
21 noncorporate, or by one or more of the member corporations, but shall exclude

1 ~~overseas business organizations or~~ foreign corporations and corporations
2 taxable under 8 V.S.A. § 6014.

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

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 [Repealed.]~~

10 * * *

11 Sec. 4. 32 V.S.A. § 5832(2)(C)–(E) are amended to read:

12 (C) For C corporations with Vermont gross receipts from \$0–
13 ~~\$2,000,000.00~~ \$100,000.00, the greater of the amount determined under
14 subdivision (1) of this section or ~~\$300.00~~ \$250.00; or

15 (D) For C corporations with Vermont gross receipts from
16 \$100,001.00–\$1,000,000.00, the greater of the amount determined under
17 subdivision (1) of this section or \$500.00; or

18 (E) For C corporations with Vermont gross receipts from
19 \$1,000,001.00–\$5,000,000.00, the greater of the amount determined under
20 subdivision (1) of this section or \$2,000.00; or

1 (F) For C corporations with Vermont gross receipts from
2 ~~\$2,000,001.00~~ ~~\$5,000,000.00~~ \$5,000,001.00–\$300,000,000.00, the greater of
3 the amount determined under subdivision (1) of this section or ~~\$500.00~~
4 \$6,000.00; or

5 ~~(E)~~(G) For C corporations with Vermont gross receipts greater than
6 ~~\$5,000,000.00~~ \$300,000,000.00, the greater of the amount determined under
7 subdivision (1) of this section or ~~\$750.00~~ \$100,000.00.

8 Sec. 5. 32 V.S.A. § 5833 is amended to read:

9 § 5833. ALLOCATION AND APPORTIONMENT OF INCOME

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

20 ~~(1) The average of the value of all the real and tangible property within~~
21 ~~this State (A) at the beginning of the taxable year and (B) at the end of the~~

1 taxable year ~~(but the Commissioner may require the use of the average of such~~
2 ~~value on the 15th or other day of each month, in cases where he or she~~
3 ~~determines that such computation is necessary to more accurately reflect the~~
4 ~~average value of property within Vermont during the taxable year), expressed~~
5 ~~as a percentage of all such property both within and outside this State;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (6) A taxable corporation subject to apportionment under this section
18 shall report to the Commissioner of Taxes:

19 (A) the average of the value of all the real and tangible property
20 within this State at the beginning of the taxable year and at the end of the
21 taxable year, provided the Commissioner may require the use of the average of

1 such value on the 15th or other day of each month in cases where the
2 Commissioner determines that such computation is necessary to more
3 accurately reflect the average value of property within Vermont during the
4 taxable year, expressed as a percentage of all such property both within and
5 outside this State; and

6 (B) the total wages, salaries, and other personal service compensation
7 paid to employees within this State during the taxable year, expressed as a
8 percentage of all such compensation paid, whether within or outside this State.

9 * * *

10 Sec. 6. 32 V.S.A. § 5862(d) is amended to read:

11 (d) A taxable corporation ~~which~~ that is part of an affiliated group engaged
12 in a unitary business shall be treated as a single taxpayer and shall file a group
13 return containing the combined net income of the affiliated group and such
14 other informational returns as the Commissioner shall require by rule. A
15 unitary combined return shall include the income and apportionment factors of
16 any taxable corporation incorporated in the United States or formed under the
17 laws of any state, the District of Columbia, or any territory or possession of the
18 United States and in a unitary relationship with the taxpayer. The income,
19 gain, or losses from members of a combined group shall be combined to the
20 extent allowed under the Internal Revenue Code for consolidated filing as if
21 the combined group was a consolidated filing group, provided that a state tax

1 credit shall not be combined and shall be limited to the member to which the
2 credit is attributed.

3 Sec. 7. TRANSITION FROM JOYCE TO FINNIGAN METHOD

4 (a) For taxable years beginning on and after January 1, 2022, 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, 2022 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. 8. RULEMAKING; REPORT

1 The Department of Taxes shall adopt rules relating to the unitary combined
2 reporting requirements imposed under this act. The rules required under this
3 section shall include a change from the *Joyce* to the *Finnigan* approach to
4 applying Vermont jurisdiction to corporations within a unitary group. The
5 Department shall report to the House Committee on Ways and Means and the
6 Senate Committee on Finance, on or before January 15, 2023, on the
7 Department’s proposed rules and any recommendations for legislation with
8 respect to unitary combined reporting.

9 * * * Sales and Use Tax; Prewritten Computer Software * * *

10 Sec. 9. 32 V.S.A. § 9701(60) is added to read:

11 (60) “Vendor-hosted prewritten computer software” means prewritten
12 computer software that is accessed through the Internet or a vendor-hosted
13 server or platform, including where possession of the software is maintained
14 by the vendor or a third party, regardless of:

15 (A) the method of delivery or transfer, including whether any
16 downloading occurs;

17 (B) whether the access is permanent or temporary; and

18 (C) whether the charge for the right of access and for the service is on
19 a per use, per user, per license, subscription, or some other basis.

20 Sec. 10. 32 V.S.A. § 9771 is amended to read:

21 § 9771. IMPOSITION OF SALES TAX

1 Except as otherwise provided in this chapter, there is imposed a tax on retail
2 sales in this State. The tax shall be paid at the rate of six percent of the sales
3 price charged for but in no case shall any one transaction be taxed under more
4 than one of the following:

5 * * *

6 (7) tangible personal property to an advertising agency for its use in
7 providing advertising services or creating advertising materials for transfer in
8 conjunction with the delivery of advertising service; ~~or~~

9 (8) specified digital products transferred electronically to an end user
10 regardless of whether for permanent use or less than permanent use and
11 regardless of whether or not conditioned upon continued payment from the
12 purchaser; or

13 (9) vendor-hosted prewritten computer software and the right to access
14 and use vendor-hosted prewritten computer software to perform data
15 processing services.

16 Sec. 11. 32 V.S.A. § 9773 is amended to read:

17 § 9773. IMPOSITION OF COMPENSATING USE TAX

18 Unless property or telecommunications service has already been or will be
19 subject to the sales tax under this chapter, there is imposed on every person a
20 use tax at the rate of six percent for the use within this State, except as
21 otherwise exempted under this chapter:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

* * *

- (4) specified digital products transferred electronically to an end user;
- ~~and~~
- (5) telecommunications service except coin-operated telephone service, private telephone service, paging service, private communications service, or value-added non-voice data service; and
- (6) vendor-hosted prewritten computer software and the right to access and use vendor-hosted prewritten computer software to perform data processing services.

Sec. 12. REPEAL

2015 Acts and Resolves No. 51, Sec. G.8 (prewritten software accessed remotely) is repealed.

* * * Fees * * *

Sec. 13. 9 V.S.A. § 5302(f) is amended to read:

(f) Investment companies subject to 15 U.S.C. § 80a-1 et seq. shall pay to the Commissioner an initial notice filing fee of \$2,000.00 and an annual renewal fee of ~~\$1,500.00~~ \$1,750.00 for each portfolio or class of investment company securities for which a notice filing is submitted.

1 * * * Income Tax; Military Retirement Exclusion * * *

2 Sec. 14. 32 V.S.A. § 5811(21)(B) is amended to read:

3 (B) Decreased by the following items of income (to the extent such
4 income is included in federal adjusted gross income):

5 * * *

6 (iii) recapture of State and local income tax deductions not taken
7 against Vermont income tax; ~~and~~

8 (iv) the portion of federally taxable benefits received under the
9 federal Social Security Act that is required to be excluded under section 5830e
10 of this chapter; ~~and~~

11 (v) [Reserved.]

12 (vi) the first \$10,000.00 of federally taxable U.S. military
13 retirement pay; and

14 * * *

15 Sec. 15. 32 V.S.A. § 5813(y) is added to read:

16 (y) The statutory purpose of the exclusion of the first \$10,000.00 of
17 federally taxable U.S. military retirement pay in subdivision 5811(21)(B)(vi)
18 of this title is to recognize the military service of Vermonters who derive part
19 of their income from military retirement pay.

1
2
3
4
5
6
7
8
9
10
11
12

* * * Effective Dates * * *

Sec. 16. EFFECTIVE DATES

This act shall take effect on July 1, 2021, except:

(1) Secs. 3 (80/20 rule definitions), 4 (minimum corporate income tax), 5 (single sales factor and repeal of throwback), and 6–7 (Finnigan method and 80/20 rule) shall take effect on January 1, 2022 and apply to taxable years beginning on and after January 1, 2022.

(2) Secs. 9–12 (prewritten computer software) shall take effect on June 1, 2022.

(3) Notwithstanding 1 V.S.A. § 214, Secs. 14–15 (military retirement exemption) shall take effect on January 1, 2021 and shall apply to taxable years beginning on and after January 1, 2021.