

1 S.53

2 **XX** moves that the House propose to the Senate that the bill be amended as
3 follows:

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

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

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

9 * * * Corporate Income Tax * * *

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

11 § 5811. DEFINITIONS

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

14 * * *

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

1 the amount determined under subdivision (1) of this section or ~~\$500.00~~
2 ~~\$6,000.00~~; or

3 ~~(E)~~(G) For C corporations with Vermont gross receipts ~~greater than~~
4 ~~\$5,000,000.00~~ ~~\$300,000,000.00~~, the greater of the amount determined under
5 subdivision (1) of this section or ~~\$750.00~~ ~~\$100,000.00~~.

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

7 § 5833. ALLOCATION AND APPORTIONMENT OF INCOME

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

18 ~~(1) The average of the value of all the real and tangible property within~~
19 ~~this State (A) at the beginning of the taxable year and (B) at the end of the~~
20 ~~taxable year (but the Commissioner may require the use of the average of such~~
21 ~~value on the 15th or other day of each month, in cases where he or she~~

1 ~~determines that such computation is necessary to more accurately reflect the~~
2 ~~average value of property within Vermont during the taxable year), expressed~~
3 ~~as a percentage of all such property both within and outside this State;~~

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

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

10 ~~(A)(1) Sales of tangible personal property are made in this State if;~~
11 ~~(i) the property is delivered or shipped to a purchaser, other than~~
12 ~~the U.S. government, who takes possession within this State, regardless of~~
13 ~~f.o.b. point or other conditions of sale; or~~

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

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

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

19 ~~(B)(2) Sales, other than the sale of tangible personal property, are in~~
20 ~~this State if the taxpayer's market for the sales is in this State. The taxpayer's~~
21 ~~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 ~~(ee)~~(III) all other receipts from a sale of intangible property
2 shall be excluded from the numerator and denominator of the receipts factor.

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

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

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

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

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

1 taxable year, expressed as a percentage of all such property both within and
2 outside this State; and

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

6 * * *

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

8 (d) A taxable corporation ~~which~~ that is part of an affiliated group engaged
9 in a unitary business shall be treated as a single taxpayer and shall file a group
10 return containing the combined net income of the affiliated group and such
11 other informational returns as the Commissioner shall require by rule. A
12 unitary combined return shall include the income and apportionment factors of
13 any taxable corporation incorporated in the United States or formed under the
14 laws of any state, the District of Columbia, or any territory or possession of the
15 United States and in a unitary relationship with the taxpayer. The income,
16 gain, or losses from members of a combined group shall be combined to the
17 extent allowed under the Internal Revenue Code for consolidated filing as if
18 the combined group was a consolidated filing group, provided that a state tax
19 credit shall not be combined and shall be limited to the member to which the
20 credit is attributed.

21 Sec. 7. TRANSITION FROM JOYCE TO FINNIGAN METHOD

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

7 (b) For taxable years beginning on January 1, 2021 and before January 1,
8 2022:

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

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

17 Sec. 8. RULEMAKING; REPORT

18 The Department of Taxes shall adopt rules relating to the unitary combined
19 reporting requirements imposed under this act. The rules required under this
20 section shall include a change from the *Joyce* to the *Finnigan* approach to
21 applying Vermont jurisdiction to corporations within a unitary group. The

1 Department shall report to the House Committee on Ways and Means and the
2 Senate Committee on Finance, on or before January 15, 2022, on the
3 Department’s proposed rules and any recommendations for legislation with
4 respect to unitary combined reporting.

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

6 Sec. 9. 32 V.S.A. § 9701(60) and (61) are added to read:

7 (60)(A) “Vendor-hosted prewritten computer software” means
8 prewritten computer software that is accessed through the Internet or a vendor-
9 hosted server or platform, including where possession of the software is
10 maintained by the vendor or a third party, regardless of:

11 (i) the method of delivery or transfer, including whether any
12 downloading occurs;

13 (ii) whether the access is permanent or temporary; and

14 (iii) whether the charge for the right of access and for the service
15 is on a per use, is on a per use, per user, per license, subscription, or some
16 other basis.

17 (B) For the purposes of this subdivision, “data processing services”
18 means the systematic performance of operations on data to extract the required
19 information in an appropriate form or to convert the data to usable information.

20 “Data processing services” also means check processing, image processing,

1 form processing, survey processing, payroll processing, claim processing, and
2 similar activities.

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

4 § 9771. IMPOSITION OF SALES TAX

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

9 * * *

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

13 (8) specified digital products transferred electronically to an end user
14 regardless of whether for permanent use or less than permanent use and
15 regardless of whether or not conditioned upon continued payment from the
16 purchaser; or

17 (9) vendor-hosted prewritten computer software and the right to access
18 and use vendor-hosted prewritten computer software to perform data
19 processing services.

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

2 § 9773. IMPOSITION OF COMPENSATING USE TAX

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

7 * * *

8 (4) specified digital products transferred electronically to an end user;

9 ~~and~~

10 (5) telecommunications service except coin-operated telephone service,
11 private telephone service, paging service, private communications service, or
12 value-added non-voice data service; and

13 (6) 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. 12. REPEAL

17 2015 Acts and Resolves No. 51, Sec. G.8 (prewritten software accessed
18 remotely) is repealed.

19 * * * Fees * * *

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

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

5 * * * Effective Dates * * *

6 Sec. 14. EFFECTIVE DATES

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

8 (1) Notwithstanding 1 V.S.A. § 214, Secs. 3 (80/20 rule definitions), and
9 6–7 (Finnigan method and 80/20 rule) shall take effect retroactively on January
10 1, 2021 and apply to taxable years beginning on and after January 1, 2021.

11 (2) Secs. 4 (minimum corporate income tax) and 5 (single sales factor
12 and repeal of throwback) shall take effect on January 1, 2022 and apply to
13 taxable years beginning on and after January 1, 2022.

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