

S.53 As Passed by Senate, House Amendment, Senate Strike-All Amendment

SUMMARY – 3/17/2022

Summary of Amendments

S.53 As Passed by Senate

Created a sales and use tax exemption for feminine hygiene products effective July 1, 2021. The exemption was ultimately enacted in another bill, Act 73 of 2021 (H.436).

House Amendment

In addition to the exemption for feminine hygiene products, the House proposes to:

- Change corporate income tax, including:
 - using single sales factor approach to corporate income apportionment
 - repealing throwback rule
 - repealing 80/20 rule for U.S. corporations overseas
 - changing from *Joyce* to *Finnigan* method of jurisdiction over unitary filing group members
 - restructuring corporate minimum tax
- Impose sales and use tax on vendor-hosted prewritten computer software (“cloud”)
- Create a \$10,000 military retirement income exemption
- Increase DFR mutual fund annual fee
- Change title of bill upon passage (enactment)

Senate Strike-All Amendment

Senate proposes certain corporate income tax changes.

- Senate amendment includes these corporate income tax changes:
 - repealing throwback rule
 - repealing 80/20 rule for U.S. corporations overseas
 - changing from *Joyce* to *Finnigan* method of jurisdiction over unitary filing group members
- Senate amendment does not include these corporate income tax changes:
 - single sales factor
 - restructuring corporate minimum tax

Senate amendment does not include the House proposals regarding:

- sales and use tax on “cloud”
- DFR mutual fund annual fee
- \$10,000 U.S. military retirement pay exemption without income thresholds

Senate amendment creates personal income tax exemptions for certain retirement income, including:

- (1) exemption for all U.S. military survivor benefit income.
- (2) \$10,000 exemption for income from Civil Service Retirement System (CSRS), other contributory government retirement systems, or U.S. military retirement, subject to income thresholds under the existing Social Security exemption. Taxpayer cannot take more than one exemption (either \$10,000 or Social Security exemption).

Senate amendment:

- Replaces description of sales and use tax-exempt products with more respectful language (“menstrual” rather than “feminine hygiene”)
- Changes title of bill upon passage (enactment).

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Side-by-Side Summary of Bill

Sec.	House Amendment	Senate Strike-All Amendment																				
1	<p>Statutory purpose for sales and use tax exemption for feminine hygiene products</p> <p>32 V.S.A. § 9706(nn)</p> <p>Adds a statutory purpose for new sales tax exemption for feminine hygiene products.</p>	Replaces description of exempt products with more respectful language. See, Sec. 9.																				
2	<p>Sales and use tax exemption for feminine hygiene products</p> <p>32 V.S.A. § 9741(56)</p> <p>Creates a sales and use tax exemption for feminine hygiene products following the Streamlined Sales and Use Tax Agreement definition.</p>	Replaces description of exempt products with more respectful language. See, Sec. 10.																				
3	<p>Repeal of 80/20 rule corporate income tax definitions</p> <p>32 V.S.A. § 5811(22) and (24)</p> <p>Subdiv. (22) In definition of affiliated group, deletes references to overseas business organizations.</p> <p>Subdiv. (24) Repeals definition of overseas business organization, which allows for 80/20 rule.</p> <p>80/20 rule is imposed in regulation and allows overseas business organizations that have 80% or more of property and payroll outside of U.S. to exclude their apportionment factors from the Vermont numerator.</p>	Same. See, Sec. 1.																				
4	<p>Corporate minimum tax change</p> <p>32 V.S.A. § 5832(2)</p> <p>Changes brackets and amounts for min. corporate income tax</p> <table style="margin-left: 40px; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Vermont gross receipts</u></th> <th style="text-align: left;"><u>Min. tax amount</u></th> </tr> </thead> <tbody> <tr> <td>\$0-100,000</td> <td>\$250</td> </tr> <tr> <td>\$100,001-\$1 million</td> <td>\$500</td> </tr> <tr> <td>Over \$1 million to \$5 million</td> <td>\$2,000</td> </tr> <tr> <td>Over \$5 million to \$300 million</td> <td>\$6,000</td> </tr> <tr> <td>Over \$300 million</td> <td>\$100,000</td> </tr> </tbody> </table> <p>Compared to current minimum corporate income tax</p> <table style="margin-left: 40px; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Vermont gross receipts</u></th> <th style="text-align: left;"><u>Min. tax amount</u></th> </tr> </thead> <tbody> <tr> <td>\$0-\$2 million</td> <td>\$300</td> </tr> <tr> <td>Over \$2 million to \$5 million</td> <td>\$500</td> </tr> <tr> <td>Over \$5 million</td> <td>\$750</td> </tr> </tbody> </table>	<u>Vermont gross receipts</u>	<u>Min. tax amount</u>	\$0-100,000	\$250	\$100,001-\$1 million	\$500	Over \$1 million to \$5 million	\$2,000	Over \$5 million to \$300 million	\$6,000	Over \$300 million	\$100,000	<u>Vermont gross receipts</u>	<u>Min. tax amount</u>	\$0-\$2 million	\$300	Over \$2 million to \$5 million	\$500	Over \$5 million	\$750	Deleted
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5	<p>Change to single sales factor apportionment, repeal of throwback rule, and reporting on property and payroll 32 V.S.A. § 5833</p> <p>Amends apportionment factors for taxable corporations with activity both inside and outside Vermont, so that only factor is sales factor (also known as “single sales factor”).</p> <p>Repeal of “throwback” rule</p> <ul style="list-style-type: none"> • Throwback occurs when there is “nowhere income,” which is income from sales of tangible personal property made from Vermont into another state that are not taxed in that state either because sales are made to federal government, or because corporation is not taxable in state where purchaser takes possession. • Currently, nowhere sales are “thrown back” to Vermont. <p>Requires taxable C corporations subject to apportionment to continue to report their property and payroll to Commissioner of Taxes when Vermont moves to a single sales factor.</p>	<p>Deleted single sales factor and reporting requirement.</p> <p>Same for repealing throwback rule. See, Sec. 2.</p>
6	<p>Change from Joyce to Finnigan 32 V.S.A. § 5862(d)</p> <p>Moves Vermont to Finnigan method of applying state jurisdiction to income of all corporations within a unitary combined filing group, even those that do not have nexus with Vermont. Supersedes 80/20 rule: requires income and apportionment factors of all taxable corporations incorporated in the U.S. that are part of a unitary combined filing group to be included in that group’s return.</p> <p>To determine apportionable income, income, gains, or losses from all members are combined, except state tax credits will not be combined and will be limited to the members holding the credits.</p>	<p>Same. See, Sec. 3.</p>
7	<p>Transition from Joyce to Finnigan</p> <p>Clarifies how the first year of Finnigan method of determining Vermont jurisdiction will work: if activities of any member of a unitary group create nexus with Vermont, then sales of tangible personal property into Vermont from outside State by all members will be included in Vermont sales factor.</p>	<p>Same but updated dates. See, Sec. 4.</p>
8	<p>Rulemaking and report by Dept. of Taxes</p> <p>Dept. of Taxes is required to adopt rules relating to new unitary combined reporting requirements and report back to General Assembly about rulemaking process and any proposed legislation by January 15, 2023.</p>	<p>Same, but updated dates. See, Sec. 5.</p>

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9	<p>Sales tax definition of vendor-hosted prewritten computer software</p> <p>32 V.S.A. § 9701(60)</p> <p>Creates new definition of “vendor-hosted prewritten computer software,” which applies to canned software accessed through the Internet or a vendor-hosted server or platform, including where possession of the software is maintained by the vendor or a third party.</p> <p>The definition applies to software regardless of the method of delivery or transfer, whether the access is permanent or temporary, and the basis for the charge for the right of access (per use, per user, per license, subscription or some other basis).</p>	
10	<p>Sales tax imposed on vendor-hosted prewritten computer software</p> <p>32 V.S.A. § 9771</p> <p>Imposes sales tax on vendor-hosted prewritten computer software and right to access that software to provide data processing services, as a separate category from tangible personal property.</p>	Deleted
11	<p>Use tax imposed on vendor-hosted prewritten computer software</p> <p>32 V.S.A. §9773</p> <p>Imposes use tax on vendor-hosted prewritten computer software and right to access that software to provide data processing services, as a separate category from tangible personal property.</p>	
12	<p>Repeal of exemption for sales of prewritten computer software accessed remotely</p> <p>2015 Acts and Resolves No. 51, Sec. G.8</p> <p>Repeals 2015 session law exemption for prewritten computer software accessed remotely.</p>	
13	<p>DFR Mutual Fund Fee</p> <p>9 V.S.A. § 5302(f)</p> <p>Increases annual renewal fee paid by investment companies from \$1,500.00 to \$1,750. Initial fee is maintained at \$2,000.</p>	Deleted

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14	<p>Military retirement income tax exemption</p> <p>32 V.S.A. § 5811(21)(B)</p> <p>Excludes \$10,000 of federally taxable U.S. military retirement pay from taxable income.</p>	Deleted
15	<p>Statutory purpose for military retirement income tax exemption</p> <p>32 V.S.A. § 5813(y)</p> <p>Adds a statutory purpose for the military retirement exclusion, which is to recognize the military service of Vermonters who derive part of their income from military retirement pay.</p>	For U.S. military retirement income and certain other retirement income exemptions, see, Secs. 6–8.
16	<p>Effective dates</p> <p>Default effective date is July 1, 2021</p> <p>(1) January 1, 2022</p> <ul style="list-style-type: none"> • Sec. 3 (80/20 rule definitions) • Sec. 4 (minimum corporate income tax) • Sec. 5 (single sales factor, repeal of throwback, report of property and payroll) • Secs. 6–7 (Finnigan method and 80/20 rule) <p>(2) June 1, 2022 for Secs. 9–12 (prewritten computer software)</p> <p>(3) January 1, 2021 for Secs. 14-15 (military retirement income tax exemption)</p>	<p>Effective dates</p> <p>Default effect date is on passage, which applies to:</p> <ul style="list-style-type: none"> • Sales and use tax exemption sections • Effective date section <p>January 1, 2023, which applies to taxable years 2023 and after</p> <ul style="list-style-type: none"> • Secs. 1–5 (corporate income tax changes) <p>January 1, 2022 (retroactive), which applies to taxable years 2022 and after</p> <ul style="list-style-type: none"> • Secs. 6–8 (retirement income exemptions). <p>See, Sec. 11.</p>
	<p>Title</p> <p>Changes title after passage to: “An act relating to tax changes affecting corporations, menstrual products, military retirement income, and prewritten computer software, and investment security company fees”</p>	<p>Title</p> <p>Changes title after passage to: “An act relating to changes to Vermont’s corporate income tax, personal income tax, and sales and use tax”</p>