

1 H.159

2 Senators Sirotkin and Brock move that the Senate proposal of amendment
3 be further amended as follows:

4 First: By adding a reader assistance heading and three new sections to be
5 Secs. 17a–17c to read as follows:

6 * * * SALT Deduction Cap Workaround * * *

7 Sec. 17a. 32 V.S.A. chapter 151, subchapter 10C is added to read:

8 Subchapter 10C. Elective Pass-Through Entity Business Income Tax

9 § 5921a. DEFINITIONS

10 As used in this subchapter:

11 (1) “Distributive proceeds” means the net income, dividends, royalties,
12 interest, rents, guaranteed payments, and gains of a pass-through entity derived
13 from or connected with sources within the State and upon which tax is
14 imposed and due from a member of the pass-through entity pursuant to this
15 subchapter during a taxable year.

16 (2) “Member” means a member of a limited liability company; a partner
17 in a general, limited, or limited liability partnership; or a shareholder of an S
18 corporation, provided the member is a natural person.

19 (3) “Pass-through entity” means a limited liability company, a
20 partnership, or an S corporation.

1 (4) “Pass-through entity business income tax” means the tax imposed
2 under this subchapter.

3 (5) “Share of distributive proceeds” means the portion of distributive
4 proceeds attributable to a member of a pass-through entity during a taxable
5 year.

6 (6) “Taxed at the business entity level” means taxed pursuant to an
7 election made under this subchapter.

8 § 5921b. PASS-THROUGH ENTITY BUSINESS INCOME TAX;

9 ELECTION

10 (a) A pass-through entity may elect to be liable for and pay a pass-through
11 entity business income tax during the taxable year, provided:

12 (1) at least one member of the entity is liable for income tax under this
13 chapter on that member’s share of distributive proceeds of the pass-through
14 entity during a taxable year;

15 (2) each member of the pass-through entity is a natural person and no
16 member is a C corporation or a pass-through entity; and

17 (3) consent is given by:

18 (A) each member of the electing entity who is a member at the time
19 the election is filed; or

1 (B) any officer, manager, or member of the electing entity who is
2 authorized, under law or the entity’s organizational documents, to make the
3 election and who represents having such authority under penalties of perjury.

4 (b) The tax imposed on a pass-through entity under this section shall be
5 equal to the sum of each member’s share of taxable distributive proceeds
6 attributable to the pass-through entity for the taxable year, multiplied by the
7 second-highest marginal tax rate in section 5822 of this title.

8 (c) The election under this section shall be made annually, on or before the
9 due date for filing the entity’s return as established by the Commissioner, and
10 shall not apply retroactively. If the members decide to revoke an election, that
11 revocation shall occur on or before the due date for filing the entity’s return.

12 (d) Each pass-through entity that makes an election for a taxable year under
13 this section shall annually report to each of its members the member’s share of
14 distributive proceeds for the taxable year.

15 (e) A pass-through entity that elects under this section to pay the pass-
16 through entity business income tax shall be included in a unitary combined
17 group as provided under this chapter, except that a pass-through entity that
18 elects to pay the pass-through entity business income tax shall be excluded
19 from a unitary combined group if all members of the pass-through entity are
20 taxpayers otherwise liable for the income tax under this chapter.

1 (f) Each pass-through entity that makes an election for a taxable year under
2 this section shall file an entity tax return and make payments on or before the
3 15th day of the third month following the close of each entity’s taxable year as
4 determined for federal income tax purposes. A pass-through entity shall make
5 estimated entity tax payments as provided under subchapter 5 of this chapter.

6 § 5921c. REFUNDABLE INCOME TAX CREDIT; INDIVIDUAL

7 MEMBERS OF PASS-THROUGH ENTITIES

8 An individual taxpayer of this State shall be entitled to a refundable credit
9 against the income tax paid under this chapter for the taxable year, provided
10 the individual is a member of a pass-through entity that elects under section
11 5921b of this title to be liable for and pay the pass-through entity business
12 income tax during the taxable year. For each pass-through entity of which the
13 individual is a member, the amount of the credit shall equal 90 percent of the
14 individual’s pro rata share of the tax paid under section 5921b of this title for
15 the taxable year, and that credit shall be available to the member during the
16 same taxable year. The credit under this section shall be available after the
17 application of all other credits allowed by law and claimed by the individual
18 during the taxable year.

1 Sec. 17b. 32 V.S.A. § 5825 is amended to read:

2 § 5825. CREDIT FOR TAXES PAID TO OTHER STATES AND
3 PROVINCES

4 * * *

5 (c) The credit claimed under this section shall include the amount of tax
6 imposed by other states on a pass-through entity, provided the tax is
7 substantially similar to the tax imposed under subchapter 10C of this chapter
8 with respect to the direct and indirect distributive proceeds from a pass-through
9 entity. The credit under this subsection shall equal the taxpayer's pro rata
10 share of tax owed on distributive proceeds that could be taxed under
11 subchapter 10C of this chapter. The amount of the credit allowed under this
12 subsection shall not exceed the amount that would have been allowed if the
13 income were taxed at the individual level and not taxed at the entity level. As
14 used in this subsection, "distributive proceeds" and "pass-through entity" have
15 the same meanings as under section 5921a of this title.

16 Sec. 17c. CONSENSUS ESTIMATE; REPORT TO JOINT FISCAL
17 COMMITTEE AND EMERGENCY BOARD

18 (a) On or before July 15, 2022, the Commissioner of Taxes, in consultation
19 with the Joint Fiscal Office, shall conduct a fiscal analysis and reach a
20 consensus estimate of the revenue impact of the elective pass-through entity
21 business income tax and credits created under this act.

1 (b) On or before July 25, 2022, the Commissioner of Taxes shall submit a
2 written report to the Joint Fiscal Committee and the Emergency Board
3 detailing the consensus estimate conducted under subsection (a) of this section.
4 Based on the consensus estimate, the Commissioner’s report shall provide a
5 recommendation in favor of or against implementing the tax and credits
6 created under this act.

7 Second: In Sec. 21, effective dates, by inserting a new subsection (g) to
8 read as follows:

9 (g) Secs. 17a and 17b (SALT deduction cap work-around) shall take effect
10 either:

11 (1) notwithstanding 1 V.S.A. § 214, retroactively on January 1, 2022
12 and shall apply to taxable years beginning on and after January 1, 2022,
13 provided the Commissioner’s recommendation required pursuant to Sec. 17c is
14 in favor of implementing the tax and credits created under this act; or

15 (2) on January 1, 2023 and shall apply to taxable years beginning on and
16 after January 1, 2023, provided the Commissioner’s recommendation required
17 pursuant to Sec. 17c is against implementing the tax and credits created under
18 this act.

19 and by relettering the remaining subsections to be alphabetically correct.