

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. An election made under this section shall be
11 binding on all members of the pass-through entity for the year in which the
12 election is made. If the members decide to revoke an election, that revocation
13 shall occur on or before the due date for filing the entity’s return.

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

17 (e) Each pass-through entity that makes an election for a taxable year under
18 this section shall file an entity tax return and make payments on or before the
19 15th day of the third month following the close of each entity’s taxable year as
20 determined for federal income tax purposes. A pass-through entity shall make
21 estimated entity tax payments as provided under subchapter 5 of this chapter.

1 § 5921c. REFUNDABLE INCOME TAX CREDIT; INDIVIDUAL

2 MEMBERS OF PASS-THROUGH ENTITIES

3 An individual taxpayer of this State shall be entitled to a refundable credit
4 against the income tax paid under this chapter for the taxable year, provided
5 the individual is a member of a pass-through entity that elects under section
6 5921b of this title to be liable for and pay the pass-through entity business
7 income tax during the taxable year. For each pass-through entity of which the
8 individual is a member, the amount of the credit shall equal 90 percent of the
9 individual's pro rata share of the tax paid under section 5921b of this title for
10 the taxable year, and that credit shall be available to the member during the
11 same taxable year. The credit under this section shall be available after the
12 application of all other credits allowed by law and claimed by the individual
13 during the taxable year.

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

15 § 5825. CREDIT FOR TAXES PAID TO OTHER STATES AND

16 PROVINCES

17 * * *

18 (c) The credit claimed under this section shall include an amount of the tax
19 paid to another state that imposes a tax on the distributive proceeds of a pass-
20 through entity, provided the other state's tax is substantially similar to the pass-
21 through entity business income tax imposed under subchapter 10C of this

1 chapter. The nonrefundable credit under this subsection shall equal 90 percent
2 of the taxpayer's pro rata share of tax paid to another state, provided the
3 amount of the credit does not exceed the amount of income tax owed under
4 this chapter. As used in this subsection, "distributive proceeds" and "pass-
5 through entity" shall have the same meanings as under section 5921a of this
6 title.

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

9 The Commissioner of Taxes, in consultation with the Joint Fiscal Office,
10 shall conduct a fiscal analysis and reach a consensus estimate of the revenue
11 impact to this State of the elective pass-through entity business income tax and
12 credits created under this act. On or before July 25, 2022, the Commissioner
13 of Taxes shall submit a written report to the Joint Fiscal Committee and the
14 Emergency Board detailing the consensus estimate conducted under this
15 section. Based on the consensus estimate, the Commissioner's report shall
16 provide a recommendation in favor of or against implementing the tax and
17 credits created under this act in taxable year 2022. The Commissioner shall
18 make a favorable recommendation if:

19 (1) the consensus estimate under subsection (a) of this section
20 demonstrates that the tax and credits created under this act are projected to
21 have a neutral impact on the revenues of this State; and

1 (2) the Commissioner determines that implementation of the tax and
2 credits created under this act for the calendar year 2023 income tax filing
3 season (taxable year 2022) will not impose undue administrative burden on the
4 Department of Taxes.

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

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

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

12 (2) on January 1, 2023 and shall apply to taxable years beginning on and
13 after January 1, 2023.

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