

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.

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

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

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

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

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

6           § 5921b. PASS-THROUGH ENTITY BUSINESS INCOME TAX;

7                   ELECTION

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

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

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

15           (3) consent is given by:

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

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

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

5        (c) The election under this section shall be made annually, on or before the  
6        due date for filing the entity’s return as established by the Commissioner, and  
7        shall not apply retroactively. An election made under this section shall be  
8        binding on all members of the pass-through entity for the year in which the  
9        election is made. If the members decide to revoke an election, that revocation  
10       shall occur on or before the due date for filing the entity’s return.

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

14       (e) Each pass-through entity that makes an election for a taxable year under  
15       this section shall file an entity tax return and make payments on or before the  
16       15th day of the third month following the close of each entity’s taxable year as  
17       determined for federal income tax purposes. A pass-through entity shall make  
18       estimated entity tax payments as provided under subchapter 5 of this chapter.

19       § 5921c. REFUNDABLE INCOME TAX CREDIT; INDIVIDUAL

20                    MEMBERS OF PASS-THROUGH ENTITIES



1 amount of the credit does not exceed the amount of pass-through entity  
2 business income tax owed under subchapter 10C of this chapter. As used in  
3 this subsection, “distributive proceeds” and “pass-through entity” shall have  
4 the same meanings as under section 5921a of this title.

5 Sec. 17c. CONSENSUS ESTIMATE; REPORT TO JOINT FISCAL

6 COMMITTEE AND EMERGENCY BOARD

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

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

20 (2) the Commissioner determines that implementation of the tax and  
21 credits created under this act for the calendar year 2023 income tax filing

1 season (taxable year 2022) will not impose undue administrative burden on the  
2 Department of Taxes.

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

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

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

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

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