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H.61

Introduced by Representatives Harrison of Chittenden and Ode of Burlington
Referred to Committee on
Date:
Subject: Taxation; income tax; pass-through entity tax and credit
Statement of purpose of bill as introduced: This bill proposes to create an
elective, entity-level income tax on pass-through businesses, such as S
corporations and partnerships, that do business or have income derived from or
connected with sources in Vermont. The pass-through businesses would be
able to deduct the full amount of Vermont tax paid from the pass-throughs'
federal taxable income under the federal deduction for state and local taxes
paid. This bill would provide an offsetting Vermont income tax credit to the
individual taxpayer-member of the pass-through business, in the amount of 90
percent of the entity-level Vermont tax paid by the pass-through. Furthermore,
this bill would allow a credit against the tax paid to another state that imposes a
pass-through entity income tax that is substantially similar to the Vermont tax.

An act relating to an elective pass-through entity income tax and credit

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 32 V.S.A. chapter 151, subchapter 10C is added to read:

3 Subchapter 10C. Elective Pass-Through Entity Income Tax

4 § 5921a. DEFINITIONS

5 As used in this subchapter:

6 (1) “Distributive proceeds” means the net income, dividends, royalties,
7 interest, rents, guaranteed payments, and gains of a pass-through entity derived
8 from or connected with sources within the State.

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

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

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

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

19 § 5921b. PASS-THROUGH ENTITY INCOME TAX; ELECTION

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

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

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

6 (3) consent is given by:

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

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

12 (b) The tax imposed on a pass-through entity under this section shall be
13 equal to the sum of each member's share of taxable distributive proceeds
14 attributable to the pass-through entity for the taxable year, multiplied by the
15 second-highest marginal tax rate in section 5822 of this chapter.

16 (c) The election under this section shall be made annually, on or before the
17 due date for filing the entity's return as established by the Commissioner, and
18 shall not apply retroactively. An election made under this section shall be
19 binding on all members of the pass-through entity for the year in which the
20 election is made. If the members decide to revoke an election, that revocation
21 shall occur on or before the due date for filing the entity's return.

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

4 (e) Each pass-through entity that makes an election for a taxable year under
5 this section shall file an entity tax return and make payments on or before the
6 15th day of the third month following the close of each entity's taxable year as
7 determined for federal income tax purposes. A pass-through entity shall make
8 estimated entity tax payments as provided under subchapters 10A and 10B of
9 this chapter except that a pass-through entity shall make the estimated entity
10 tax payments for residents and nonresidents alike.

11 (f) A member of a pass-through entity shall not be liable for the individual
12 income tax imposed under section 5822 of this chapter and shall not be
13 required to file an individual income tax return as prescribed under section
14 5861 of this chapter, provided:

15 (1) the member is a nonresident of this State; and

16 (2) the member's only Vermont income during the taxable year is
17 derived from a pass-through entity that has paid the tax imposed under this
18 section on the member's Vermont income.

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 chapter to be liable for and pay the pass-through entity income
7 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 chapter
10 for 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. 2. 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 income tax imposed under subchapter 10C of this chapter. The

1 nonrefundable credit under this subsection shall equal 90 percent of the
2 taxpayer's pro rata share of tax paid to another state, provided the amount of
3 the credit does not exceed the amount of pass-through entity business income
4 tax owed or that would have been owed if the pro rata share of tax paid were
5 subject to the pass-through entity income tax under subchapter 10C of this
6 chapter. As used in this subsection, "distributive proceeds" and "pass-through
7 entity" have the same meanings as under section 5921a of this chapter.

8 Sec. 3. EFFECTIVE DATE

9 Notwithstanding 1 V.S.A. § 214, this act shall take effect retroactively on
10 January 1, 2023 and shall apply to taxable years beginning on and after
11 January 1, 2023.