

1 Introduced by Committee on Ways and Means

2 Date:

3 Subject: Taxation; corporate income tax; unitary combined reporting;
4 worldwide combined reporting

5 Statement of purpose of bill as introduced: This bill proposes to require
6 worldwide combined reporting for corporate income taxpayers.

7 An act relating to worldwide combined reporting for corporate income tax

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

9 Sec. 1. 32 V.S.A. § 5811 is amended to read:

10 § 5811. DEFINITIONS

11 As used in this chapter unless the context requires otherwise:

12 * * *

13 (18) “Vermont net income” means, for any taxable year and for any
14 corporate taxpayer:

15 (A) the taxable income of the taxpayer for that taxable year under the
16 laws of the United States, without regard to 26 U.S.C. § 168(k), and excluding
17 income that under the laws of the United States is exempt from taxation by the
18 states:

19 * * *

20 (ii) decreased by:

1 (I) the “gross-up of dividends” required by the federal Internal
2 Revenue Code to be taken into taxable income in connection with the
3 taxpayer’s election of the foreign tax credit;

4 (II) the amount of income that results from the required
5 reduction in salaries and wages expense for corporations claiming the Targeted
6 Job or WIN credits; ~~and~~

7 (III) any federal deduction or credit that the taxpayer would
8 have been allowed for the cultivation, testing, processing, or sale of cannabis
9 or cannabis products as authorized under 7 V.S.A. chapter 33 or 37, but for
10 26 U.S.C. § 280E-; and

11 (IV) the amount of income subject to federal taxation under
12 26 U.S.C. subpart F;

13 (B) ~~In~~ in the case of an “electing small business corporation”
14 (“Subchapter S Corporation”) under the laws of the United States, “Vermont
15 net income” ~~shall include~~ includes only the Vermont net income of the
16 corporation (as defined in this section) that is taxable to the corporation under
17 the provisions of the Internal Revenue Code-;

18 (C) ~~For~~ for a taxable corporation that is a member of an affiliated
19 group and that is engaged in a unitary business with one or more other
20 members of that affiliated group, “Vermont net income” includes the allocable
21 share of the combined net income of the group-; and

1 ~~other informational returns as the Commissioner shall require by rule. A~~
2 ~~unitary combined return shall include the income and apportionment factors of~~
3 ~~any taxable corporation incorporated in the United States or formed under the~~
4 ~~laws of any state, the District of Columbia, or any territory or possession of the~~
5 ~~United States and in a unitary relationship with the taxpayer. The income,~~
6 ~~gain, or losses from members of a combined group shall be combined to the~~
7 ~~extent allowed under the Internal Revenue Code for consolidated filing as if~~
8 ~~the combined group was a consolidated filing group, provided that a state tax~~
9 ~~credit shall not be combined and shall be limited to the member to which the~~
10 ~~credit is attributed. wherever incorporated or domiciled, that is a member of a~~
11 ~~unitary business shall be treated as a single taxpayer and shall file a combined~~
12 ~~return as a combined group. The return must include the income and~~
13 ~~apportionment factors, determined pursuant to sections 5832b and 5833 of this~~
14 ~~chapter, and other information required by the Commissioner for all members~~
15 ~~of the combined group wherever located or doing business. The combined~~
16 ~~return must be filed under the name and federal employer identification~~
17 ~~number of the parent corporation if the parent is a member of the combined~~
18 ~~group. If there is no parent corporation, or if the parent is not a group member,~~
19 ~~the members of the combined group shall choose a member to file the return.~~
20 ~~The filing member must remain the same in subsequent years unless the filing~~
21 ~~member is no longer the parent corporation or is no longer a member of the~~

1 combined group. The return must be signed by a responsible officer of the
2 filing member on behalf of the combined group members. Members of the
3 combined group are jointly and severally liable for the tax liability of the
4 combined group included in the combined return.

5 (1) The Commissioner, by rule, may require that the combined return
6 include the income and associated apportionment factors of persons that are
7 not included pursuant to subsection (d) of this section, but that are members of
8 a unitary business, in order to reflect proper apportionment of income of the
9 entire unitary business. Authority to require combination by regulation under
10 this subdivision includes authority to require combination of the income and
11 associated apportionment factors of persons that are not subject to the tax
12 imposed by this chapter, or would not be subject to the tax imposed by this
13 chapter if doing business in this State.

14 (2) In addition, if the Commissioner determines that the reported income
15 or loss of a taxpayer engaged in a unitary business with a person not included
16 pursuant to subsection (d) of this section represents an avoidance or evasion of
17 tax by such taxpayer, the Commissioner may, on a case-by-case basis, require
18 all or part of the income and associated apportionment factors of such person
19 be included in the taxpayer's combined return.

20 Sec. 3. 32 V.S.A. § 5832b is added to read:

21 § 5832b. COMBINED GROUP; DETERMINATION OF INCOME

1 SUBJECT TO TAX; ALLOCATION AND APPORTIONMENT

2 (a) A combined group shall calculate Vermont taxable net income by
3 determining the total combined group income or loss, before net operating loss
4 deduction, as follows:

5 (1) Each member of the combined group determines its separate income
6 or loss, before net operating loss deduction, as follows:

7 (A) For a member incorporated in the United States, or included in a
8 consolidated federal corporate income tax return, the member’s income or loss
9 is the Vermont net income of the member on a separate entity basis.

10 (B) For a member not included in subdivision (A) of this subdivision
11 (a)(1), the member’s income or loss is determined from a profit and loss
12 statement prepared for that member on a separate entity basis in the currency in
13 which its books of account are regularly maintained, provided this profit and
14 loss statement is subject to an independent audit, adjusted to conform it to the
15 accounting principles generally accepted in the United States for the
16 preparation of such statements and further modified to take into account any
17 book-tax adjustments necessary to reflect federal and Vermont tax law.
18 Income or loss so computed includes all income wherever derived and is not
19 limited to items of U.S. source income or effectively connected income within
20 the meaning of the Internal Revenue Code. Items of income, expense, gain, or
21 loss and related apportionment factors that are denominated in a foreign

1 currency must also be translated into U.S. dollars on a reasonable basis
2 consistently applied year to year and entity by entity. Unrealized foreign
3 currency gains and losses are not recognized. Income apportioned to this State
4 is to be expressed in U.S. dollars.

5 (C) In lieu of the procedures set forth in subdivision (B) of this
6 subdivision (a)(1) or in any case where it is necessary to fairly and consistently
7 reflect the income or loss and apportionment factors of foreign operations
8 included in the unitary business, the Commissioner may provide for other
9 procedures to reasonably approximate the income or loss and apportionment
10 factors of members with foreign operations.

11 (2) Unless otherwise provided by this chapter, or by rule, income or loss
12 of the members as determined under subdivision (1) of this subsection (a) are
13 combined, eliminating items of income, expense, gain, and loss from
14 transactions between members of the combined group, applying the
15 consolidated filing rules under Internal Revenue Code and agency regulations
16 as if the combined group was a consolidated filing group.

17 (A) Dividends paid by one member of the combined group to another
18 member are excluded from that member's income to the extent those dividends
19 are paid out of the earnings and profits of the unitary business included in the
20 combined report in the current or an earlier year.

1 (B) A charitable expense incurred by a member of a combined group,
2 to the extent allowable as a deduction pursuant to Internal Revenue Code
3 Section 170, is subtracted first from the apportionable income of the combined
4 group subject to the income limitations of that section applied to the entire
5 apportionable income of the group, and any excess may be carried over as
6 provided in Section 170, subject to limitations in that section.

7 (b) Determine combined group ordinary apportionable income or loss by
8 eliminating from the amount determined in subsection (a) of this section:

9 (1) the amount of any net capital gain resulting from application of the
10 Internal Revenue Code, Subchapter P; and

11 (2) any other income or loss, or item of income, expense, gain, or loss,
12 that is nonapportionable.

13 (c) Determine Vermont share of combined group ordinary apportionable
14 income or loss by multiplying the amount determined under subsection (b) of
15 this section times the combined group apportionment factor as determined
16 under subsection (i) of this section.

17 (d) Determine the combined group Vermont net capital gain or loss from
18 the application of the Internal Revenue Code, Subchapter P, and the amount of
19 any Vermont net capital loss carryover, as follows:

1 (1) Each separate item of capital gain or loss for the combined group is
2 determined following Internal Revenue Code, Subchapter P, unless section
3 5834 of this chapter applies.

4 (2) Each separate item of apportionable capital gain or loss is then
5 apportioned using the combined group’s apportionment factor determined
6 under subsection (i) of this section, and each separate item of nonapportionable
7 capital gain or loss is allocated under 5833 of this chapter.

8 (3) The capital gains or losses allocated or apportioned to this State are
9 then netted consistent with the provisions of the Internal Revenue Code,
10 Subchapter P.

11 (4) If the amount determined in subdivision (3) of this subsection (d) is a
12 net capital gain, that gain is included in combined group taxable net income or
13 loss before net operating loss deduction as computed under subsection (f) of
14 this section.

15 (5) If the amount determined in subdivision (3) of this subsection is a
16 net capital loss, that loss may not be deducted from other income but may be
17 carried over by the combined group and used to offset combined group capital
18 gains, but only to the extent that the amount or use of such capital loss
19 carryover is not subject to limitations under any provision of the Internal
20 Revenue Code or applicable federal regulations, or would not be subject to
21 such limitations applied as if the combined group was the consolidated group.

1 (6) If the combined group capital loss carryover must be attributed to
2 particular members of the group for purposes of determining limitations
3 applicable to the amount or use of the capital loss under subdivision (5) of this
4 subsection, then this will be done by multiplying the combined group net
5 capital loss generated for any applicable year times a fraction, the numerator of
6 which is the separate entity net capital loss of the member for that year, if any,
7 and the denominator of which is the total separate entity net capital losses for
8 all the members of the combined group that had net capital losses for that year.
9 A member’s separate entity net capital loss carryover will be determined as
10 follows:

11 (A) For each year in which the combined group recognized a net
12 capital loss, multiply the combined group net apportionable gains and losses
13 times the member’s separate entity apportionment factor determined under
14 subsection (i) of this section, netting the resulting apportioned gains and losses
15 as provided in this subsection (d), then adding any nonapportionable gains and
16 subtracting any losses allocated to this State that were generated by that
17 member.

18 (B) In no case shall members of the combined group be attributed
19 total capital losses under this subdivision (6) in excess of the combined group
20 net capital loss properly reported to this State in the tax year.

1 (C) In computing the net capital loss carryover for the member of the
2 combined group, the separate entity capital losses for all members computed
3 under this subdivision (6) will be deemed to be used to offset combined group
4 capital gains in other years, as allowed under federal law, on a prorate basis,
5 starting with the earliest year.

6 (e) Determine the amount of any combined group nonapportionable items
7 of income, expense, gain, or loss not allocated under subdivision (d)(2) of this
8 section that are allocable to this State under section 5833 of this chapter.

9 (f) Determine the combined group Vermont net income or loss before net
10 operating loss deduction by combining and netting the results from subsection
11 (c) of this section, subdivision (d)(3) of this section, and subsection (e) of this
12 section.

13 (g) Determine the combined group Vermont taxable net income after any
14 net operating loss deduction by deducting from the amount of combined group
15 Vermont net income computed under subsection (f) of this section an
16 allowable amount of the combined group’s net operating loss carryover.

17 (1) The allowable amount of the combined group net operating loss
18 carryover shall be determined as follows:

19 (A) the total of the combined group Vermont losses determined under
20 subsection (f) of this section for prior years to the extent such losses have not
21 been used to offset the combined group’s Vermont net income and to the

1 extent those losses are not otherwise limited by Vermont law or this subsection

2 (g); plus

3 (B) the net operating loss carryover of any members of the group
4 created before the member became a part of the group, but only to the extent
5 that the net operating loss carryover:

6 (i) represents net operating losses that were properly attributed to
7 the member under subdivision (2) of this subsection (g) if the member was part
8 of a separate combined group when the losses were created;

9 (ii) represents net operating losses properly allocated or
10 apportioned to this State in the year created;

11 (iii) has not been used to offset income of any taxpayer;

12 (iv) would not be subject to limitations as to the amount or use
13 applicable under any provision of the Internal Revenue Code or federal
14 regulations, or would not be subject to such limitations applied as if the
15 combined group was the consolidated group; and

16 (v) is not otherwise limited by Vermont law; minus

17 (vi) the net operating loss carryover of a member of the combined
18 group attributed to that member that has not been used to offset income and is
19 not otherwise limited by Vermont law as of the date that member is no longer
20 part of the combined group.

1 (2) If the combined group net operating loss carryover must be
2 attributed to particular members of the group for purposes of determining
3 limitations applicable to the amount or use of the net operating loss carryover
4 under this subsection (g), then this will be done by multiplying the combined
5 group net loss generated for any applicable year times a fraction, the numerator
6 of which is the separate entity net loss of the member for that year, if any, and
7 the denominator of which is the total separate entity net losses for all the
8 members of the combined group that had net losses for that year. A member's
9 separate entity net loss will be determined as follows:

10 (A) the amount of combined group ordinary apportionable income
11 determined under subsection (b) of this section multiplied times the member's
12 separate entity apportionment factor as determined under subsection (i) of this
13 section; plus

14 (B) the amount of any combined group net gain determined under
15 subsection (d) of this section multiplied times the member's separate entity
16 apportionment factor as determined under subsection (i) of this section; plus or
17 minus

18 (C) the amount of any nonapportionable items of income, expense,
19 gain, or loss allocated to this State under subsection (e) of this section that
20 were generated by the member; plus or minus

1 (D) any adjustments to properly reflect the member’s separate entity
2 loss.

3 (3) In no case shall members be attributed total losses under subdivision
4 (2) of this subsection in excess of the combined group loss properly reported to
5 this State in the tax year.

6 (4) In computing the net operating loss carryover for the member of the
7 combined group, the separate entity net operating losses for all members
8 computed under subdivision (d)(6) of this section will be deemed to be used to
9 offset combined group net income in other years, as allowed under federal law,
10 on a pro rata basis, starting with the earliest year.

11 (h) For any Vermont tax credit limited to the Vermont tax attributed to a
12 member of a combined group, then the tax that may be offset by the credit is
13 calculated as follows:

14 (1) the amount of combined group ordinary apportionable income
15 determined under subsection (b) of this section multiplied times the member’s
16 separate entity apportionment factor as determined under subsection (i) of this
17 section; plus

18 (2) the amount of any combined group net gain determined under
19 subsection (d) of this section. multiplied times the member’s separate entity
20 apportionment factor as determined under subsection (i) of this section; plus or
21 minus

1 (3) the amount of any nonapportionable items of income, expense, gain,
2 or loss allocated to this State under subsection (e) of this section that were
3 generated by the member; plus or minus

4 (4) any adjustments to properly reflect the member’s separate entity
5 loss; multiplied by

6 (5) the applicable tax rate.

7 (i) Unless otherwise provided in this section, section 5833 of this chapter
8 determines how income or loss, or items making up income or loss, are
9 allocated and apportioned to this State.

10 (1) The combined group apportionment factor is a percentage
11 determined under section 5833 of this chapter where the numerator of the
12 factor includes amounts sourced to Vermont for the combined group’s unitary
13 business, regardless of the separate entity to which those factors may be
14 attributed, and the denominator of the factor includes amounts associated with
15 the combined group’s unitary business wherever located.

16 (2) The separate entity apportionment factor for a member of the
17 combined group is a percentage determined under section 5833 of this chapter
18 where the numerator of the factor includes amounts sourced to this State for
19 the member, and the denominator of the factor includes amounts associated
20 with the combined group’s unitary business wherever located.

1 (3) If a member of the combined group holds a partnership interest from
2 which it derives apportionable income, the share of the partnership's
3 apportionment factor to be included in the apportionment factor of the group is
4 determined by multiplying the partnership's factor by a ratio, the numerator of
5 which is the amount of the partnership's apportionable income properly
6 included in the member's income, whether received directly or indirectly, and
7 including any guaranteed payments, and the denominator of which is the
8 amount of the partnership's total apportionable income. If a member of the
9 combined group directly or indirectly receives an allocation of a partnership
10 tax item, such as an item of loss or expense, so that it is not possible to
11 determine the member's share of apportionable income, the Commissioner
12 may provide rules for inclusion of particular partnership factors, or portions of
13 factors, in the combined group's factors.

14 Sec. 4. 32 V.S.A. § 5831 is amended to read:

15 § 5831. NAME OF TAX; LEGISLATIVE INTENT

16 The tax imposed by this subchapter shall be known as the Vermont Corporate
17 Income Tax. It is the intent of the General Assembly that the interpretation of
18 this subchapter shall follow the unitary business principle as recognized by the
19 Supreme Court of the United States.

20 Sec. 5. EFFECTIVE DATE

- 1 Notwithstanding 1 V.S.A. § 214, this act shall take effect retroactively on
- 2 January 1, 2024 and apply to taxable years on and after January 1, 2024.