

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

2 § 5811. DEFINITIONS

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

4 * * *

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

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

11 * * *

12 (ii) decreased by:

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

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

19 (III) any federal deduction or credit that the taxpayer would
20 have been allowed for the cultivation, testing, processing, or sale of cannabis

1 or cannabis products as authorized under 7 V.S.A. chapter 33 or 37, but for
2 26 U.S.C. § 280E-; and

3 (IV) the amount of income subject to federal taxation under
4 26 U.S.C. subpart F; and

5 * * *

6 (20) “Person” shall include an individual, firm, partnership, general
7 partner of a partnership, limited liability company, registered limited liability
8 partnership, foreign limited liability partnership, association, joint stock
9 company, corporation, trust, estate, or other entity. As used in this subchapter
10 3 and sections 5862 and 5862b of this chapter, “person” also means a
11 combined group.

12 * * *

13 (30) “Combined group” means the group of all persons that must file a
14 combined return as required by section 5862 of this chapter.

15 (31) “Combined return” means a tax return required to be filed for the
16 combined group containing information as provided in sections 5862 and
17 5862b of this chapter or required by the Commissioner.

18 Sec. 2. 32 V.S.A. § 5862(d) is amended to read:

19 (d) A taxable corporation, ~~that is part of an affiliated group engaged in a~~
20 ~~unitary business shall be treated as a single taxpayer and shall file a group~~

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

1 The filing member must remain the same in subsequent years unless the filing
2 member is no longer the parent corporation or is no longer a member of the
3 combined group. The return must be signed by a responsible officer of the
4 filing member on behalf of the combined group members. Members of the
5 combined group are jointly and severally liable for the tax liability of the
6 combined group included in the combined return.

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

16 (2) In addition, if the Commissioner determines that the reported income
17 or loss of a taxpayer engaged in a unitary business with a person not included
18 pursuant to subsection (d) of this section represents an avoidance or evasion of
19 tax by such taxpayer, the Commissioner may, on a case-by-case basis, require

1 all or part of the income and associated apportionment factors of such person
2 be included in the taxpayer's combined return.

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

4 § 5832b. COMBINED GROUP; DETERMINATION OF INCOME

5 SUBJECT TO TAX; ALLOCATION AND APPORTIONMENT

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

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

11 (A) For a member incorporated in the United States, or included in a
12 consolidated federal corporate income tax return, the member's income or loss
13 is the Vermont net income of the member on a separate entity basis.

14 (B) For a member not included in subdivision (A) of this subdivision
15 (a)(1), the member's income or loss is determined from a profit and loss
16 statement prepared for that member on a separate entity basis in the currency in
17 which its books of account are regularly maintained, provided this profit and
18 loss statement is subject to an independent audit, adjusted to conform it to the
19 accounting principles generally accepted in the United States for the
20 preparation of such statements and further modified to take into account any

1 book-tax adjustments necessary to reflect federal and Vermont tax law.
2 Income or loss so computed includes all income wherever derived and is not
3 limited to items of U.S. source income or effectively connected income within
4 the meaning of the Internal Revenue Code. Items of income, expense, gain, or
5 loss and related apportionment factors that are denominated in a foreign
6 currency must also be translated into U.S. dollars on a reasonable basis
7 consistently applied year to year and entity by entity. Unrealized foreign
8 currency gains and losses are not recognized. Income apportioned to this State
9 is to be expressed in U.S. dollars.

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

16 (2) Unless otherwise provided by this chapter, or by rule, income or loss
17 of the members as determined under subdivision (1) of this subsection (a) are
18 combined, eliminating items of income, expense, gain, and loss from
19 transactions between members of the combined group, applying the

1 consolidated filing rules under Internal Revenue Code and agency regulations
2 as if the combined group was a consolidated filing group.

3 (A) Dividends paid by one member of the combined group to another
4 member are excluded from that member’s income to the extent those dividends
5 are paid out of the earnings and profits of the unitary business included in the
6 combined report in the current or an earlier year.

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

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

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

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

19 (c) Determine Vermont share of combined group ordinary apportionable
20 income or loss by multiplying the amount determined under subsection (b) of

1 this section times the combined group apportionment factor as determined
2 under subsection (i) of this section.

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

6 (1) Each separate item of capital gain or loss for the combined group is
7 determined following Internal Revenue Code, Subchapter P, unless section
8 5834 of this chapter applies.

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

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

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

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

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

18 (A) For each year in which the combined group recognized a net
19 capital loss, multiply the combined group net apportionable gains and losses
20 times the member's separate entity apportionment factor determined under

1 subsection (i) of this section, netting the resulting apportioned gains and losses
2 as provided in this subsection (d), then adding any nonapportionable gains and
3 subtracting any losses allocated to this State that were generated by that
4 member.

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

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

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

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

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

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

7 (A) The total of the combined group Vermont losses determined
8 under subsection (f) of this section for prior years to the extent such losses
9 have not been used to offset the combined group’s Vermont net income and to
10 the extent those losses are not otherwise limited by Vermont law or this
11 subsection (g); plus

12 (B) The net operating loss carryover of any members of the group
13 created before the member became a part of the group, but only to the extent
14 that the net operating loss carryover:

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

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

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

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

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

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

10 (2) If the combined group net operating loss carryover must be
11 attributed to particular members of the group for purposes of determining
12 limitations applicable to the amount or use of the net operating loss carryover
13 under this subsection (g), then this will be done by multiplying the combined
14 group net loss generated for any applicable year times a fraction, the numerator
15 of which is the separate entity net loss of the member for that year, if any, and
16 the denominator of which is the total separate entity net losses for all the
17 members of the combined group that had net losses for that year. A member's
18 separate entity net loss will be determined as follows:

19 (A) the amount of combined group ordinary apportionable income
20 determined under subsection (b) of this section multiplied times the member's

1 separate entity apportionment factor as determined under subsection (i) of this
2 section; plus

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

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

10 (D) any adjustments to properly reflect the member's separate entity
11 loss.

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

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

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

4 (1) the amount of combined group ordinary apportionable income
5 determined under subsection (b) of this section multiplied times the member’s
6 separate entity apportionment factor as determined under subsection (i) of this
7 section; plus

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

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

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

17 (5) the applicable tax rate.

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

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

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

12 (3) If a member of the combined group holds a partnership interest from
13 which it derives apportionable income, the share of the partnership’s
14 apportionment factor to be included in the apportionment factor of the group is
15 determined by multiplying the partnership’s factor by a ratio, the numerator of
16 which is the amount of the partnership’s apportionable income properly
17 included in the member’s income, whether received directly or indirectly, and
18 including any guaranteed payments, and the denominator of which is the
19 amount of the partnership’s total apportionable income. If a member of the
20 combined group directly or indirectly receives an allocation of a partnership

1 tax item, such as an item of loss or expense, so that it is not possible to
2 determine the member’s share of apportionable income, the Commissioner
3 may provide rules for inclusion of particular partnership factors, or portions of
4 factors, in the combined group’s factors.

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

6 § 5831. NAME OF TAX; LEGISLATIVE INTENT

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