

CORPORATE INCOME TAX

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Entities Subject to Vermont Corporate Income Tax

32 V.S.A. § 5811(3) “Corporation” means any business entity **subject to income taxation as a corporation**, and any entity qualified as a small business corporation, **under the laws of the United States . . . [except some exempt entities].**”

Entities Subject to Vermont Corporate Income Tax

- U.S. resident C-corporations
- LLCs that elect to be taxed as corporations
- Certain nonprofit organizations

What is a C-Corp?

The taxpayer chooses to organize as a C corporation and follows a process involving:

- Filing articles of incorporation with a state.
- Appointing a board of directors.
- Drafting corporate bylaws.
- Issuing stock.
- Acquiring an employer identification number (EIN) from the IRS before operating.

When do LLCs file as C-corps?

Answer: Whenever they want. Often when the tax treatment is favorable.

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Nonprofits are taxed as C-Corps when they have “unrelated business income.”

32 V.S.A. § 5811(18)(D)

For a corporation with federal exempt status, “Vermont net income” means all income that is subject to federal income tax, including unrelated business income under 26 U.S.C. § 511 and any income arising from debt-financed property subject to taxation under 26 U.S.C. § 514.

Vermont Department of Taxes Technical Bulletin 59

Unrelated Business Income is income from a trade or business regularly carried on by an exempt organization and not substantially related to the performance by the organization of its exempt purpose or function, except that the organization uses the profits derived from this activity. IRC § 513; Internal Revenue Service Publication 598.

Vermont CIT Structure

- Tax Base: Vermont net income. 32 V.S.A. § 5811(18).
- Tax Rates: Progressive brackets, marginal tax rates, and a minimum tax based on Vermont gross receipts. 32 V.S.A. § 5832.
 - Highest marginal bracket is 8.5% on excess over \$25,000.
 - Highest minimum tax: \$100,000 if VT gross receipts are greater than \$300,000,000.
 - Gross receipts are all income gained from Vermont without any deductions.
- Tax Liability: Allocation and Apportionment. 32 V.S.A. § 5833.

Allocation and Apportionment

First

Vermont requires unitary combined reporting. 32 V.S.A. § 5862(d).

- Combined reporting treats affiliated companies that are part of a “unitary group” as one entity for tax purposes, so the group only files one return.
- Unitary combined reporting applies to:
 - Multi-state businesses that are part of a unitary group; and
 - the portion of the unitary business that occurs both within and outside (as of 2023) the U.S. borders.

Allocation and Apportionment

Second

Allocation and Apportionment. 32 V.S.A. § 5833.

- **Allocation:** When a C Corp's income is derived entirely from within Vermont, all the C Corp's Vermont net income is allocated to Vermont.
- **Apportionment:** When a C Corp's income is derived from both within and outside Vermont, Vermont law apportions a corporation's income that is allocated to the State based on a statutory formula. 32 V.S.A. § 5833(a).

Allocation and Apportionment

Third

Single sales factor. Act 148 of 2022.

Vermont only looks at sales into the state when apportioning net income to the state.

Property and payroll are not factored into it.

Allocation and Apportionment

Fourth

How to determine state jurisdiction over a corporation's income?

Vermont is team Finnigan (named after a California case).

- A “taxpayer” includes all members of a unitary group.
- Once one entity in a unitary group has nexus in the state, then the entire group has nexus and income from all entities is included in the apportionment formula.

80/20 and Throwback Rules Repealed

What to know:

Vermont does not exclude overseas corporations from apportionment. (80/20 business activity)

When a sale originates in Vermont but the state in which the sale is made does not tax the income, Vermont does not choose to tax it anyway. (Throwback Rule)