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BILL AS INTRODUCED
2022

H.527
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H.527

2

Introduced by Representative Canfield of Fair Haven

3

Referred to Committee on

4

Date:

5

Subject: Taxation; income tax; property transfer tax; tax administration

6

Statement of purpose of bill as introduced: This bill proposes to expand

7

existing income tax credits for Vermonters, including the earned income tax

8

credit and the child care and dependent care credit, and create new income tax

9

credits and deductions for Vermonters, including a student loan interest

10

deduction, a workforce credit for industry shortages, and a first-time Vermont

11

homebuyer credit. This bill would also provide for a pass-through entity credit

12

in response to the federal state and local tax deduction cap. This bill would

13

amend penalty provisions and filing due dates for estimated tax payments and

14

create a new reporting requirement for partnerships under federal audit. This

15

bill would clarify that the property transfer tax applies to enhanced life estates

16

in the same way as conventional life estates. This bill would also expand the

17

sales and use tax exemption for manufacturing equipment.

18

An act relating to tax relief for Vermonters

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

2 * * * Income Tax * * *

3 Sec. 1. 32 V.S.A. § 5811(21) is amended to read:

4 (21) "Taxable income" means, in the case of an individual, federal
5 adjusted gross income determined without regard to 26 U.S.C. § 168(k) and:

6 * * *

7 (B) decreased by the following items of income (to the extent such
8 income is included in federal adjusted gross income):

9 * * *

10 (iv) the portion of federally taxable benefits received under the
11 federal Social Security Act that is required to be excluded under section 5830e
12 of this chapter; ~~and~~

13 * * *

14 (vi) the amount of interest paid in the taxable year by a resident
15 taxpayer as part of qualified student loan payments, not to exceed \$2,500.00.

16 As used in this subdivision:

17 (I) "Qualified student loan" means indebtedness incurred by the
18 taxpayer to pay educational expenses incurred by the taxpayer at a qualified
19 educational institution; and

20 (II) "Qualified educational institution" means a college,
21 university, vocational school, or other postsecondary educational institution

1 eligible to participate in a student aid program administered by the Federal
2 Department of Education; and

3 * * *

4 Sec. 2. 32 V.S.A. § 5822 is amended to read:

5 § 5822. TAX ON INCOME OF INDIVIDUALS, ESTATES, AND TRUSTS

6 (a) A tax is imposed for each taxable year upon the taxable income earned
7 or received in that year by every individual, estate, and trust, subject to income
8 taxation under the laws of the United States, in an amount determined by the
9 following tables, and adjusted as required under this section:

10 * * *

11 (6) ~~If the federal adjusted gross income of the taxpayer exceeds~~
12 ~~\$150,000.00, then the tax calculated under this subsection shall be the greater~~
13 ~~of the tax calculated under subdivisions (1) (5) of this subsection or three~~
14 ~~percent of the taxpayer's federal adjusted gross income. [Repealed.]~~

15 * * *

16 (d)(1) A taxpayer shall be entitled to a credit against the tax imposed under
17 this section of 24 percent of each of the credits allowed against the taxpayer's
18 federal income tax for the taxable year as follows: the credit for people who
19 are elderly or permanently totally disabled, and the investment tax credit
20 attributable to the Vermont-property portion of the investment, ~~and child care~~
21 ~~and dependent care credits.~~

* * *

Sec. 3. 32 V.S.A. § 5825 is amended to read:

§ 5825. CREDIT FOR TAXES PAID TO OTHER STATES AND
PROVINCES

* * *

(c) The credit claimed under this section shall include the amount of tax imposed by other states on a pass-through entity, provided the tax is substantially similar to the tax imposed under subchapter 10C of this chapter with respect to the direct and indirect distributive proceeds from a pass-through entity. The credit under this subsection shall equal the taxpayer's pro rata share of tax owed on distributive proceeds that could be taxed under subchapter 10C of this chapter. The amount of the credit allowed under this subsection shall not exceed the amount that would have been allowed if the income were taxed at the individual level and not taxed at the entity level. As used in this subsection, "distributive proceeds" and "pass-through entity" have the same meaning as under subchapter 10C of this chapter.

Sec. 4. 32 V.S.A. § 5828c is amended to read:

§ 5828c. ~~LOW INCOME~~ CHILD AND DEPENDENT CARE CREDIT

A resident of this State ~~with federal adjusted gross income less than \$30,000.00 (or \$40,000.00 for married, filing jointly)~~ shall be eligible for a refundable credit against the tax imposed under section 5822 of this title. The

1 credit shall be equal to 50 percent of the federal child and dependent care
2 credit allowed to the taxpayer for the taxable year for child or dependent care
3 services provided in this State ~~in a registered home or licensed facility certified~~
4 ~~by the Agency of Human Services as meeting national accreditation or national~~
5 ~~credential standards endorsed by the Agency. A credit under this section shall~~
6 ~~be in lieu of any child and dependent care credit available under subsection~~
7 ~~5822(d) of this title.~~

8 Sec. 5. 32 V.S.A. § 5828b(a) is amended to read:

9 (a) A resident individual or part-year resident individual who is entitled to
10 an earned income tax credit granted under the laws of the United States shall
11 be entitled to a credit against the tax imposed for each year by section 5822 of
12 this title. The credit shall be ~~36~~ 45 percent of the earned income tax credit
13 granted to the individual under the laws of the United States, multiplied by the
14 percentage that the individual's earned income that is earned or received
15 during the period of the individual's residency in this State bears to the
16 individual's total earned income.

17 Sec. 6. 32 V.S.A. § 5830f is added to read:

18 § 5830f. CREDIT FOR WORKFORCE SHORTAGES

19 (a) A taxpayer of this State who qualifies as a Vermont nurse or nursing
20 assistant or Vermont child care worker shall be eligible for a refundable credit
21 equal to \$1,000.00 against the tax imposed under section 5822 of this title.

1 (b) As used in this section:

2 (1) “Vermont nurse or nursing assistant” means:

3 (A) a resident or part-year resident individual who is licensed under
4 26 V.S.A. § 1572(2), (3), or (4); 1641(2); or 1642 and received wages:

5 (i) directly from a Vermont healthcare provider for services
6 constituting registered nursing, licensed practical nursing, advanced practice
7 registered nursing; or

8 (ii) as a nursing assistant.

9 (B) “Vermont nurse or nursing assistant” also means nursing
10 program faculty receiving wages from a Vermont nursing education program.

11 (2) “Vermont child care worker” means:

12 (A) a resident or part-year resident individual who received wages for
13 services as a prequalified private provider of pre-kindergarten education as
14 defined in 16 V.S.A. § 829(a)(3) in the State;

15 (B) a resident or part-year resident individual who received wages for
16 services as a child care provider as defined in 33 V.S.A. § 3511(3) in the State;
17 or

18 (C) a resident or part-year resident individual who received wages for
19 services constituting child care services as defined in 33 V.S.A. § 3511(4) in
20 the State.

1 Sec. 7. 32 V.S.A. § 5830g is added to read:

2 § 5830g. FIRST-TIME VERMONT HOMEBUYER CREDIT

3 A resident of this State shall be eligible for a refundable credit against the
4 tax imposed under section 5822 of this title for one of the two taxable years
5 following the claimant's first purchase of a primary residence. A credit
6 claimed under this section shall be limited to the purchase of a residence
7 qualifying as a homestead under subdivision 5401(7) of this title and declared
8 as a homestead under section 5410 of this title for the year in which the credit
9 is claimed. The amount of the credit shall be \$3,000.00.

10 Sec. 8. 32 V.S.A. § 5813 is amended to read:

11 § 5813. STATUTORY PURPOSES

12 * * *

13 ~~(c) The statutory purpose of the Vermont credit for child and dependent~~
14 ~~care in subsection 5822(d) of this title is to provide financial assistance to~~
15 ~~employees who must incur dependent care expenses to stay in the workforce in~~
16 ~~the absence of prekindergarten programming. [Repealed.]~~

17 * * *

18 (r) The statutory purpose of the Vermont ~~low-income~~ child and dependent
19 care tax credit in section 5828c of this title is to provide cash relief to ~~lower-~~
20 ~~income~~ employees who incur dependent care expenses ~~in certified centers~~ to
21 enable them to remain in the workforce.

* * *

(y) The statutory purpose of the workforce shortages credit in section 5830f of this title is to encourage and retain Vermonters who work in industry sectors experiencing a workforce shortage.

(z) The statutory purpose of the first-time Vermont homebuyer credit in section 5830g of this title is to enable more Vermonters to invest in their first purchase of a primary residence.

Sec. 9. 32 V.S.A. chapter 151, subchapter 10C is added to read:

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

§ 5921a. DEFINITIONS

As used in this subchapter:

(1) “Distributive proceeds” means the net income, dividends, royalties, interest, rents, guaranteed payments, and gains of a pass-through entity derived from or connected with sources within the State and upon which tax is imposed and due from a member of the pass-through entity pursuant to this chapter during a taxable year.

(2) “Member” means a shareholder of an S corporation; a partner in a general, limited, or limited liability partnership; or a member of a limited liability company.

1 (3) “Pass-through entity” means a partnership, an S corporation, or a
2 limited liability company with at least one member who is liable for tax on
3 distributive proceeds pursuant to this chapter during a taxable year.

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

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

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

11 § 5921b. PASS-THROUGH ENTITY BUSINESS INCOME TAX;

12 ELECTION

13 (a) A pass-through entity with at least one member who is liable for income
14 tax under this chapter on that member’s share of distributive proceeds of the
15 pass-through entity during a taxable year may elect to be liable for and pay a
16 pass-through entity business income tax during the taxable year, provided
17 consent is given by:

18 (1) each member of the electing entity who is a member at the time the
19 election is filed; or

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

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

8 (c) The election under this section shall be made annually, on or before the
9 due date for filing the entity's return as established by the Commissioner, and
10 shall not apply retroactively. If members decide to revoke an election, that
11 revocation shall occur on or before the due date for filing the entity's return.

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

15 (e) A pass-through entity that elects under this section to pay the pass-
16 through business entity income tax shall be included in a unitary combined
17 group as provided under this chapter, except that a pass-through entity that
18 elects to pay the pass-through business entity income tax shall be excluded
19 from a unitary combined group if:

20 (1) all of the members of the pass-through entity are taxpayers otherwise
21 liable for the tax under this chapter; and

1 (2) no business entity taxed as a corporation under this chapter has
2 direct, indirect, beneficial, or constructive ownership or control of the pass-
3 through entity.

4 (f) 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 subchapter 5 of this chapter.

9 § 5921c. REFUNDABLE INCOME TAX CREDIT; MEMBERS OF PASS-

10 THROUGH ENTITIES

11 A taxpayer shall be entitled to a refundable credit against the income tax
12 paid under this chapter for the taxable year, provided the taxpayer is a member
13 of a pass-through entity that elects under section 5921b of this title to be liable
14 for and pay the pass-through entity business income tax during the taxable
15 year. For each pass-through entity of which the taxpayer is a member, the
16 amount of the credit shall equal the member's pro rata share of the tax paid
17 under subsection 5921b(b) of this title for the taxable year, and that credit shall
18 be available to the member during the same taxable year. The credit under this
19 section shall be available after the application of all other credits allowed by
20 law and claimed by the taxpayer during the taxable year.

1 § 5921d. TAX CREDIT FOR CERTAIN CORPORATE MEMBERS

2 (a) When a pass-through entity that elects to be liable for and pay the pass-
3 through entity business income tax under subsection 5921b of this title is
4 owned by both corporate and noncorporate members, each corporate member
5 shall be allowed a credit against the tax imposed under section 5832 of this
6 title for the taxable year; provided, however, the credit shall not reduce the
7 corporate member's tax liability below the minimum tax imposed under
8 subdivision 5832(2) of this title for the taxable year. The credit under this
9 section shall equal the corporate member's share of the business income tax
10 paid by the pass-through entity for the taxable year pursuant to this subchapter,
11 and the credit shall apply against the corporate member's tax liability under
12 section 5832 of this title for the same taxable year.

13 (b) An exempt corporate member that is a corporation exempt from tax
14 under this chapter shall be refunded the share of the tax paid by the pass-
15 through entity on the exempt corporate member's distributive proceeds of the
16 pass-through entity.

17 (c) As used in this section, "corporate member" means a corporation as
18 defined under subdivision 5811(3) of this title that is not exempt from tax
19 under this chapter and shall not include another pass-through entity.

* * * Underpayment Penalties; Deadlines * * *

Sec. 10. 32 V.S.A. § 3202(b) is amended to read:

(b) Penalties.

* * *

(2) Failure to pay estimated tax. When a taxpayer fails to make payments as required by chapter 151, subchapter 5 or 5A of this title (estimations of nonwithheld income tax and quarterly filing and payment), the Commissioner may assess and the taxpayer shall then pay a penalty that shall be equal to one percent of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

(3) Failure to pay. When a taxpayer fails to pay a tax liability imposed by this title (other than a return required by chapter 151, subchapter 5 or 5A of this title for estimation of nonwithheld income tax and quarterly filing and payment) on the date prescribed therefor, then in addition to any interest payable pursuant to subsection (a) of this section, the Commissioner may assess and the taxpayer shall then pay a penalty that shall be equal to, for income tax under chapter 151, subchapters 2 and 3 of this title, one percent and, for all other taxes, five percent of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided,

* * *

* * *

(B) with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of

1 the installment determined under subdivision (1)(A) of this subsection (b) for
2 such installment date.

3 * * * Annual Link to Federal Statutes * * *

4 Sec. 12. 32 V.S.A. § 5824 is amended to read:

5 § 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

6 The statutes of the United States relating to the federal income tax, as in
7 effect on ~~March 31, 2021~~ December 31, 2021, but without regard to federal
8 income tax rates under 26 U.S.C. § 1, are hereby adopted for the purpose of
9 computing the tax liability under this chapter, and shall continue in effect as
10 adopted until amended, repealed, or replaced by act of the General Assembly.

11 Sec. 13. 32 V.S.A. § 7402(8) is amended to read:

12 (8) “Laws of the United States” means the U.S. Internal Revenue Code
13 of 1986, as amended through December 31, ~~2020~~ 2021. As used in this
14 chapter, “Internal Revenue Code” has the same meaning as “laws of the United
15 States” as defined in this subdivision. The date through which amendments to
16 the U.S. Internal Revenue Code of 1986 are adopted under this subdivision
17 shall continue in effect until amended, repealed, or replaced by act of the
18 General Assembly.

* * * Enhanced List Estates; Property Transfer Tax * * *

Sec. 14. 27 V.S.A. § 654(d) is added to read:

(d) An executed and recorded ELE deed shall be subject to the property transfer tax under 32 V.S.A. chapter 231.

Sec. 15. 32 V.S.A. § 9601 is amended to read:

§ 9601. DEFINITIONS

~~The following definitions shall apply throughout~~ As used in this chapter
unless the context requires otherwise:

* * *

(3) “Title to property” includes:

(A) those interests in property that endure for a period of time the termination of which is not fixed or ascertained by a specific number of years, including an estate in fee simple, life estate, enhanced life estate, perpetual leasehold, and perpetual easement; and

* * *

(6) “Value” means:

* * *

(E) In the case of a life estate or an enhanced life estate, the grand list value of the property at the time of the transfer, multiplied by a factor published by the Internal Revenue Service for purposes of valuing life estates and remainders pursuant to 26 U.S.C. § 7520. This factor is based on the

1 grantor's age, published actuarial tables, and published interest rate in the
2 month of the transaction.

3 * * *

4 Sec. 16. 32 V.S.A. § 9617(h) is amended to read:

5 (h)(1) At any time within three years after the date a property is transferred,
6 a taxpayer may petition the Commissioner in writing for the refund of all or
7 any part of the amount of tax paid. The Commissioner shall thereafter grant a
8 hearing subject to the provisions of 3 V.S.A chapter 25 upon the matter and
9 notify the taxpayer in writing of ~~his or her~~ the Commissioner's determination
10 concerning the refund request. The Commissioner's determination may be
11 appealed as provided in subsection (e) of this section. This shall be a
12 taxpayer's exclusive remedy with respect to the refund of taxes under this
13 chapter, except as provided under subdivision (2) of this subsection.

14 (2) If the transfer taxed by this chapter was an enhanced life estate
15 interest and that interest is revoked or revised pursuant to 27 V.S.A. chapter 6,
16 the person who paid the tax may petition for a refund, provided that the
17 petition is made within eight years after the date of payment of the tax and
18 within one year after the date of revocation or revision. No petition for a
19 refund shall be granted for the revocation or revision of an interest that
20 occurred eight years or more after the date of payment of the tax. In the case

1 of a revision, the revised enhanced life estate interest transfer shall be subject
2 to tax under this chapter.

3 * * * Reporting Federal Audits and Adjustments; Partnerships * * *

4 Sec. 17. 32 V.S.A. § 5866(c) is added to read:

5 (c) If a change in federal tax liability results from the audit of a partnership
6 or an adjustment of a partnership's taxable income under 26 U.S.C. subtitle F,
7 chapter 63, subchapter C, the taxpayer shall file and amend returns and pay tax
8 owed pursuant to section 5866a of this title.

9 Sec. 18. 32 V.S.A. § 5866a is added to read:

10 5866a. REPORTING ADJUSTMENTS TO FEDERAL TAXABLE INCOME
11 AND FEDERAL PARTNERSHIP AUDITS

12 (a) Definitions. As used in this section:

13 (1) "Administrative adjustment request" means an administrative
14 adjustment request filed by a partnership under 26 U.S.C. § 6227.

15 (2) "Audited partnership" means a partnership subject to a partnership-
16 level audit resulting in a federal adjustment.

17 (3) "Corporate partner" means a partner that is subject to tax under
18 chapter 151, subchapter 3 of this title.

19 (4) "Direct partner" means a partner that holds an interest directly in a
20 partnership or pass-through entity.

1 (5) “Exempt partner” means a partner that is exempt from taxation under
2 this chapter but not an entity with federal exempt status having taxable income
3 under subdivision 5811(18) of this title.

4 (6) “Federal adjustment” means a change to an item or amount
5 determined under the Internal Revenue Code that is used by a taxpayer to
6 compute tax owed, whether that change results from action by the Internal
7 Revenue Service, including a partnership-level audit, or the filing of an
8 amended federal return, federal refund claim, or an administrative adjustment
9 request by the taxpayer. A federal adjustment is positive to the extent that it
10 increases State taxable income as determined under this chapter and is negative
11 to the extent that it decreases State taxable income as determined under this
12 chapter.

13 (7) “Federal adjustments report” includes methods or forms required by
14 the Commissioner for use by a taxpayer to report final federal adjustments,
15 including an amended tax return, information return, or uniform multistate
16 report.

17 (8) “Federal partnership representative” means the person that the
18 partnership designates for the taxable year as the partnership’s representative
19 or the person that the Internal Revenue Service appoints to act as the federal
20 partnership representative pursuant to 26 U.S.C. § 6223(a).

21 (9) “Final determination date” means the following:

1 (A) Except as provided in subdivisions (B) and (C) of this
2 subdivision (a)(9), if the federal adjustment arises from an audit or other action
3 by the Internal Revenue Service, “final determination date” means the first day
4 on which no federal adjustments arising from that audit or other action remain
5 to be finally determined, whether by Internal Revenue Service decision with
6 respect to which all rights of appeal have been waived or exhausted, by
7 agreement, or, if appealed or contested, by a final decision with respect to
8 which all rights of appeal have been waived or exhausted. For agreements
9 required to be signed by the Internal Revenue Service and the taxpayer, the
10 “final determination date” means the date on which the last party signed the
11 agreement.

12 (B) For federal adjustments arising from an audit or other action by
13 the Internal Revenue Service, if the taxpayer filed as a member of an affiliated
14 group electing to file a consolidated return under subsection 5862(c) of this
15 title or filed as a member of a unitary combined group under subsection
16 5862(d) of this title, the “final determination date” means the first day on
17 which no related federal adjustments arising from that audit remain to be
18 finally determined, as described in subdivision (A) of this subdivision (a)(9),
19 for the entire group.

20 (C) If the federal adjustment results from filing an amended federal
21 return, a federal refund claim, or an administrative adjustment request, or if it

1 is a federal adjustment reported on an amended federal return or other similar
2 report filed pursuant to 26 U.S.C. § 6225(c), the “final determination date”
3 means the day on which the amended return, refund claim, administrative
4 adjustment request, or other similar report was filed.

5 (10) “Final federal adjustment” means a federal adjustment after the
6 final determination date for that federal adjustment has passed.

7 (11) “Indirect partner” means a partner in a partnership or pass-through
8 entity that itself holds an interest directly, or through another indirect partner,
9 in a partnership or pass-through entity.

10 (12) “I.R.C.” means the Internal Revenue Code of 1986, as codified
11 under 26 U.S.C. subtitles A–K, and applicable regulations as promulgated by
12 the U.S. Department of the Treasury. To the extent that the terms used in this
13 section are not defined under this section, it is the intent of the General
14 Assembly to conform to the definitions and terminology used in the
15 amendments to the I.R.C., subtitle F, chapter 63 pertaining to the
16 comprehensive partnership audit regime contained in the Bipartisan Budget
17 Act of 2015, Pub. L. No. 114-74, as amended, and this section shall be
18 interpreted accordingly.

19 (13) “Nonresident partner” means an individual, trust, or estate partner
20 that is not a resident partner.

1 (14) “Partner” means a person that holds an interest, directly or
2 indirectly, in a partnership or other pass-through entity.

3 (15) “Partnership” means an entity subject to taxation under 26 U.S.C.
4 subtitle A, chapter 1, subchapter K.

5 (16) “Partnership-level audit” means an examination by the Internal
6 Revenue Service at the partnership level pursuant to 26 U.S.C. subtitle F,
7 chapter 63, subchapter C that results in federal adjustments.

8 (17) “Pass-through entity” means an entity other than a partnership that
9 is not subject to tax under section 5822 or 5832 of this title.

10 (18) “Reallocation adjustment” means a federal adjustment resulting
11 from a partnership-level audit or an administrative adjustment request that
12 changes the shares of one or more items of partnership income, gain, loss,
13 expense, or credit allocated to direct partners. A positive reallocation
14 adjustment means the portion of a reallocation adjustment that would increase
15 federal income for one or more direct partners, and a negative reallocation
16 adjustment means the portion of a reallocation adjustment that would decrease
17 federal income for one or more direct partners.

18 (19) “Resident partner” means an individual, trust, or estate partner that
19 is a resident under section 5811 of this title for the relevant tax period.

20 (20) “Reviewed year” means the taxable year of a partnership that is
21 subject to a partnership-level audit from which federal adjustments arise.

1 (21) “Taxpayer” means any person or entity required to file a return or
2 pay tax under this chapter and, unless the context clearly indicates otherwise,
3 includes a partnership, including a tiered partner of a partnership, subject to a
4 partnership-level audit and a partnership, including a tiered partner of a
5 partnership, that has made an administrative adjustment request.

6 (22) “Tiered partner” means any partner that is a partnership or pass-
7 through entity.

8 (23) “Unrelated business taxable income” has the same meaning as in 26
9 U.S.C. § 512.

10 (b)(1) Reporting adjustments to federal taxable income; general rule.
11 Except in the case of final federal adjustments that are required to be reported
12 by a partnership and its partners using the procedures in subsection (c) of this
13 section, a taxpayer shall report and pay any Vermont tax due with respect to
14 the following final federal adjustments:

15 (A) arising from an audit or other action by the Internal Revenue
16 Service;

17 (B) reported by the taxpayer on a timely filed amended federal
18 income tax return, including a return or other similar report filed pursuant to 26
19 U.S.C. § 6225(c)(2); or

20 (C) a federal claim for refund.

1 (2) A taxpayer shall report and pay any tax due under this subsection by
2 filing a federal adjustments report with the Commissioner for the reviewed
3 year and, if applicable, paying the additional Vermont tax owed not later than
4 180 days after the final determination date.

5 (c) Reporting federal adjustments; partnership-level audit and
6 administrative adjustment request. Except for negative federal adjustments
7 required under federal law or regulations to be taken into account by the
8 partnership in the partnership return for the adjustment or other year, and the
9 distributive share of adjustments reported as required under subsection (b) of
10 this section, partnerships and partners shall report final federal adjustments
11 arising from a partnership-level audit or an administrative adjustment request
12 and make payments as required under this subsection (c).

13 (1) State partnership representative.

14 (A) With respect to an action required or permitted to be taken by a
15 partnership under this subsection and a petition for a hearing under sections
16 5883, 5884, or 5885 of this title with respect to that action, the State
17 partnership representative for the reviewed year shall have the sole authority to
18 act on behalf of the partnership, and the partnership's direct partners and
19 indirect partners shall be bound by those actions.

1 (B) The State partnership representative for the reviewed year is the
2 partnership's federal partnership representative unless the partnership
3 designates in writing another person as its State partnership representative.

4 (C) The Commissioner may establish reasonable qualifications and
5 procedures for designating a person, other than the federal partnership
6 representative, to be the State partnership representative.

7 (2) Reporting and payment requirements for partnerships subject to a
8 final federal adjustment and their direct partners. Final federal adjustments
9 subject to the requirements of this subsection, except for those subject to an
10 election that is properly made under subdivision (3) of this subsection, shall be
11 reported as follows:

12 (A) Not later than 90 days after the final determination date, the
13 partnership shall:

14 (i) File a completed federal adjustments report with the
15 Commissioner, including any other information required by the Commissioner.
16 The federal adjustments report shall:

17 (I) Identify each partner during the reviewed year.
18 (II) Specify each item addressed by, and the amount included
19 in, the final federal adjustment.

1 (III) Explain how the final federal adjustment needs to be
2 modified for State tax purposes to reflect relevant differences between federal
3 and State law.

4 (IV) Provide any other information related to the final
5 determination or modification as the Commissioner may require. If the audited
6 partnership has received an approved modification, the audited partnership
7 shall notify the Commissioner of this approval not later than 90 days after the
8 date of approval. An audited partnership that fails to meet the filing
9 requirements under this subsection (c) shall be subject to the penalties for
10 failure to file under section 3202 of this title. The statute of limitations for
11 assessing a partner or an audited partnership pursuant to this section shall be
12 tolled in any instance in which the audited partnership has not provided the
13 Commissioner with the notice and filing required by this subsection (c).

14 (ii) Notify each of its direct partners of their distributive share of
15 the final federal adjustments.

16 (iii) File an amended composite return for direct partners as
17 required under subsections 5914(a) and (b) and 5920(a) and (b) of this title
18 and, as applicable, an amended withholding return for direct partners as
19 required under subchapter 4 of this chapter and pay the additional tax that
20 would have been due had the final federal adjustments been reported properly.

1 (B) Not later than 180 days after the final determination date, each
2 direct partner that is taxed under sections 5822 and 5832 of this title shall:

3 (i) file a federal adjustments report reporting their distributive
4 share of the adjustments reported to them under subdivision (A)(ii) of this
5 subdivision (c)(2) as required under this chapter; and

6 (ii) pay any additional amount of tax that would have been due if
7 final federal adjustments had been reported properly, plus any penalty and
8 interest due under section 3202 of this title, and less any credit for related
9 amounts paid or withheld and remitted on behalf of the direct partner under
10 subdivision (A)(iii) of this subdivision (c)(2).

11 (3) Election; partnership pays. Subject to the limitations under
12 subdivision (C) of this subdivision (3), an audited partnership making an
13 election under this subdivision (3) shall do the following:

14 (A) Not later than 90 days after the final determination date, file a
15 completed federal adjustments report as required by subdivision (2) of this
16 subsection (c) and notify the Commissioner that it is making the election under
17 this subdivision (3).

18 (B) Not later than 180 days after the final determination date, pay an
19 amount, determined as follows, in lieu of taxes owed by its direct and indirect
20 partners:

1 (i) Exclude from final federal adjustments the distributive share of
2 these adjustments reported to a direct exempt partner not subject to tax under
3 this chapter.

4 (ii) For the total distributive shares of the remaining final federal
5 adjustments reported to direct corporate partners subject to tax under section
6 5832 of this title, apportion and allocate the adjustments as provided under
7 section 5833 of this title, and multiply the result by the highest tax rate
8 imposed under section 5832 of this title.

9 (iii) For the total distributive shares of the remaining final federal
10 adjustments reported to nonresident direct partners subject to tax under this
11 chapter, determine the amount of the adjustments that is Vermont-source
12 income, and multiply the result by the highest tax rate imposed under section
13 5822 of this title.

14 (iv) For the total distributive shares of the remaining final federal
15 adjustments reported to tiered partners:

16 (I) Determine the amount of the adjustments that is of a type
17 that it would be subject to sourcing to Vermont under this chapter, and then
18 determine the portion of the amount that would be sourced to Vermont.

19 (II) Determine the amount of the adjustments that is of a type
20 that it would not be subject to sourcing to Vermont by a nonresident partner
21 under this chapter.

1 (III) Determine the portion of the amount determined in
2 subdivision (iv)(II) of this subdivision (3)(B) that can be established as
3 properly allocable to nonresident indirect partners or other partners not subject
4 to tax on the adjustments or that can be excluded under procedures for
5 modified reporting and payment method allowed under subdivision (5) of this
6 subsection (c).

7 (v) Multiply the total of the amounts determined in subdivisions
8 (iv)(I) and (iv)(II) of this subdivision (3)(B) reduced by the amount determined
9 in subdivision (iv)(III) of this subdivision (3)(B) by the highest tax rate under
10 section 5822 of this title.

11 (vi) For the total distributive shares of the remaining final federal
12 adjustments reported to resident direct partners subject to tax under section
13 5822 of this title, multiply the amount reported by the highest tax rate under
14 section 5822 of this title.

15 (vii) Add the amounts determined in subdivisions (ii), (iii), (v),
16 and (vi) of this subdivision (3)(B), along with penalty and interest as calculated
17 under subsection 3202(a) and subdivisions 3202(b)(2) and (b)(3) of this title.

18 (C) Final federal adjustments subject to the election under this
19 subdivision (c)(3) exclude:

20 (i) the distributive share of final audit adjustments that, under
21 subsection 5862(d) of this title, must be included in the unitary combined

1 business income of any direct or indirect corporate partner, provided that the
2 audited partnership can reasonably determine this; and

3 (ii) any final federal adjustments resulting from an administrative
4 adjustment request.

5 (D) An audited partnership that is not otherwise subject to any
6 reporting or payment obligations to Vermont and that makes an election under
7 this subdivision (c)(3), consents to be subject to Vermont laws related to
8 reporting, assessment, payment, and collection of Vermont tax calculated
9 under the election.

10 (4) Tiered partners. The direct and indirect partners of an audited
11 partnership that are tiered partners, and all partners of those tiered partners that
12 are subject to tax under this chapter, are subject to the reporting and payment
13 requirements of subdivision (2) of this subsection, and the tiered partners are
14 entitled to make the elections provided in subdivisions (3) and (5) of this
15 subsection. The tiered partners or their partners shall make required reports
16 and payments not later than 90 days after the time for filing and furnishing
17 statements to tiered partners and their partners as established under 26 U.S.C.
18 § 6226 and the associated regulations. The Commissioner may adopt rules to
19 establish procedures and interim time periods for the reports and payments
20 required by tiered partners and their partners and for making the elections
21 under this subsection.

1 (5)(A) Alternative reporting and payment methods. Pursuant to any
2 procedures established by the Commissioner, an audited partnership or tiered
3 partner may request approval by the Commissioner to utilize alternative
4 reporting and payment methods, including modifying applicable time
5 requirements and any other requirement of this subsection (c), provided that:

6 (i) the audited partnership or tiered partner demonstrates to the
7 Commissioner's satisfaction that the requested method will reasonably provide
8 for the reporting and payment of taxes, penalties, and interest due under this
9 subsection (c); or

10 (ii) the audited partnership or tiered partner establishes to the
11 Commissioner's satisfaction that their direct partners have agreed to allow a
12 refund of the State tax to the entity.

13 (B) A request for approval of alternative reporting and payment
14 methods by the Commissioner shall be made by the audited partnership or
15 tiered partner within the time for election provided in subdivision (3) or (4) of
16 this subsection (c), as applicable.

17 (6) Effect of election by audited partnership or tiered partner and
18 payment of amount due.

19 (A) The election made pursuant to subdivision (3) or (5) of this
20 subsection (c) is irrevocable unless the Commissioner, at the Commissioner's
21 discretion, determines otherwise.

1 (B) If reported properly and paid by the audited partnership or tiered
2 partner, the amount determined under subdivision (3)(B) of this subsection (c)
3 or under an optional election under subdivision (5) of this subsection (c) shall
4 be treated as paid in lieu of taxes owed by its direct and indirect partners, to the
5 extent applicable, on the same final federal adjustments. The direct or indirect
6 partners shall not be eligible to take any deduction or credit for this amount or
7 claim a refund of the amount in this State. Nothing in this subdivision (6) shall
8 preclude a direct resident partner from claiming a credit against taxes paid or
9 any amounts paid by the audited partnership or tiered partner on the resident
10 partner's behalf to another state or local tax jurisdiction pursuant to section
11 5825 of this title.

12 (7) Failure of audited partnership or tiered partner to report or pay.
13 Nothing in this subsection prevents the Commissioner from using the best
14 information available to assess a direct or indirect partner for taxes owed by
15 those partners if a partnership or tiered partner fails, for any reason, to make
16 any report or payment required by this subsection in a timely manner.

17 (d) De minimis exception. The Commissioner may, at the Commissioner's
18 discretion, adopt rules to establish a de minimis amount below which a
19 taxpayer shall not be required to comply with subsections (b) and (c) of this
20 section.

1 (e) Assessments of additional tax, interest, and penalties arising from
2 adjustments to federal taxable income; statute of limitations. The
3 Commissioner shall assess additional tax, interest, and penalties arising from
4 final federal adjustments arising from an audit by the Internal Revenue
5 Service, including a partnership-level audit, as reported by the taxpayer on an
6 amended federal income tax return, or as part of an administrative adjustment
7 request, by the following dates:

8 (1) Timely reported federal adjustments. If a taxpayer files with the
9 Commissioner a federal adjustments report or an amended tax return as
10 required within the period prescribed in subsections (b) or (c) of this section,
11 the Commissioner may assess any amounts, including in-lieu-of amounts,
12 taxes, interest, and penalties arising from those federal adjustments, if a notice
13 of the assessment to the taxpayer is issued not later than:

14 (A) the expiration of the limitations period prescribed in section 5882
15 of this title; or

16 (B) the expiration of the one-year period following the date of filing
17 the federal adjustments report with the Commissioner.

18 (2) Untimely reported federal adjustments. If the taxpayer fails to file
19 the federal adjustments report within the period prescribed in subsections (b) or
20 (c) of this section, as appropriate, or if the federal adjustments report filed by
21 the taxpayer omits final federal adjustments or understates the correct amount

1 of tax owed, the Commissioner may assess amounts or additional amounts,
2 including in-lieu-of amounts, taxes, interest, and penalties arising from the
3 final federal adjustments, if the Commissioner mails a notice of the assessment
4 to the taxpayer by a date that is the latest of one of the following:

5 (A) the expiration of the limitations period prescribed in section 5882
6 of this title;

7 (B) the expiration of the one-year period following the date of filing
8 the federal adjustments report with the Commissioner; or

9 (C) absent fraud, the expiration of the six-year period following the
10 final determination date.

11 (f) Estimated tax payments made during a pending federal audit. A
12 taxpayer may make estimated payments, according to the process prescribed
13 by the Commissioner, of the tax expected to result from a pending Internal
14 Revenue Service audit and prior to the due date of the federal adjustments
15 report, without filing the report with the Commissioner. The estimated tax
16 payments shall be credited against the final Vermont tax liability and shall
17 limit the accrual of further statutory interest on that amount. If the estimated
18 tax payments exceed the final Vermont tax liability and statutory interest
19 ultimately determined to be due, the taxpayer is entitled to a refund or credit
20 for the excess, provided the taxpayer files a federal adjustments report or claim
21 for refund or credit of tax paid pursuant to section 5884 of this title, not later

1 than one year following the final determination date. As used in this
2 subsection, “final Vermont tax liability” means the amount of any Vermont tax
3 liability ultimately found to be due to the State.

4 (g)(1) Claims for refund or credits of tax paid arising from final federal
5 adjustments made by the Internal Revenue Service or by administrative
6 adjustment request. Except for negative federal adjustments required by
7 federal law to be taken into account by the partnership in the partnership return
8 for the adjustment or other year, a taxpayer may file a claim for refund or
9 credit of tax paid arising from final federal adjustments on or before the later
10 of:

11 (A) the expiration of the last day for filing a claim for refund or credit
12 of tax paid pursuant to section 5884 of this title, including any extensions; or

13 (B) one year from the date a federal adjustments report prescribed in
14 subsections (b) or (c) of this section, as applicable, was due to the
15 Commissioner, including any extensions pursuant to subsection (h) of this
16 section.

17 (2) The federal adjustments report shall serve as the means for the
18 taxpayer, including a partnership and its tiered partners, direct partners, and
19 indirect partners, to report additional tax due, report a claim for refund or credit
20 of tax paid, and make other adjustments, including to its net operating losses,
21 resulting from adjustments to the taxpayer’s federal taxable income. Any

1 refund granted to the partnership under subsection (c) of this section shall be in
2 lieu of State tax paid that may be owed to the partners.

3 (h) Scope of adjustments and extensions of time.

4 (1) Unless otherwise agreed in writing by the taxpayer and the
5 Commissioner, any adjustments made by the Commissioner or the taxpayer
6 after the expiration of the limitations periods prescribed in sections 5882 and
7 5884 of this title are limited to changes to the taxpayer's tax liability arising
8 from federal adjustments.

9 (2) The time periods provided for in this subsection may be extended:

10 (A) automatically by 60 days for an audited partnership or tiered
11 partner that has 10,000 or more direct partners, upon written notice to the
12 Commissioner; or

13 (B) by written agreement between the taxpayer and the
14 Commissioner.

15 (3) Any extension granted under this subsection for filing the federal
16 adjustments report extends the last day prescribed by law for assessing any
17 additional tax arising from the adjustments to federal taxable income and the
18 period for filing a claim for refund or credit of taxes.

19 (i) The Commissioner may adopt rules or issue other guidance to
20 implement or explain the provisions of this section. The rules adopted or
21 guidance issued with regard to this section may apply the principles set forth in

1 26 U.S.C. subtitle F, chapter 63, subchapter C; federal regulations; and other
2 related guidance issued by the U.S. Department of the Treasury in order to
3 prevent the omission or duplication of State tax due as the result of a
4 partnership-level audit and to account for differences between federal and State
5 law.

6 * * * Sales Tax; Exemption; Manufacturing Machinery and Equipment * * *

7 Sec. 19. 32 V.S.A. § 9741(14) is amended to read:

8 (14)(A) Tangible personal property that becomes an ingredient or
9 component part of, or is consumed or destroyed or loses its identity in the
10 manufacture of tangible personal property for sale;

11 (B) machinery Machinery and equipment for use or consumption
12 directly and exclusively, except for isolated or occasional uses, used in or
13 consumed as an integral or essential part of an integrated production operation
14 by a manufacturing or processing plant or facility engaged in the manufacture
15 of tangible personal property for sale, or in the manufacture of other machinery
16 or equipment, parts, or supplies for use in the manufacturing process; and
17 devices used to monitor manufacturing machinery and equipment or the
18 product during the manufacturing process. Machinery and equipment used in
19 administrative, managerial, sales, or other nonproduction activities, or used
20 prior to the first production operation or subsequent to the initial packaging of
21 a product, shall not be exempt from tax, unless such uses are merely isolated or

1 ~~occasional or unless the machinery used for initial packaging is also used for~~
2 ~~secondary packaging as part of an integrated process. Machinery and~~
3 ~~equipment shall not include buildings and structural components thereof. As~~
4 ~~used in this subdivision, it shall be rebuttably presumed that uses are not~~
5 ~~isolated or occasional if they total more than four percent of the time the~~
6 ~~machinery or equipment is operated. For the purposes of this subsection~~
7 subdivision (14), “manufacture” includes extraction of mineral deposits, the
8 entire printing and bookmaking process, and the entire publication process.

9 (C) As used in this subdivision (14):

10 (i) “Integrated production operation” means an integrated series of
11 operations at a manufacturing or processing plant or facility to process,
12 transform, or convert tangible personal property by physical, chemical, or other
13 means into a different form, composition, or character from that in which it
14 originally existed. Integrated production operations begin when raw material
15 is first changed physically, chemically, or otherwise in form, composition, or
16 character, including being removed from storage or introduced for this
17 manipulation, and end when the product is placed in initial packaging and shall
18 include production line operations, including initial packaging operations, and
19 waste, pollution, and environmental control operations.

20 (ii) “Manufacturing or processing business” means a business that
21 utilizes an integrated production operation to manufacture, process, fabricate,

1 or finish items for wholesale and retail distribution as part of what is
2 commonly regarded by the general public as an industrial manufacturing or
3 processing operation or an agricultural commodity processing operation.
4 “Manufacturing or processing business” does not include nonindustrial
5 businesses whose operations are primarily retail and that produce or process
6 tangible personal property as an incidental part of conducting the retail
7 business, such as retailers who bake, cook, or prepare food products in the
8 regular course of their retail trade; the assembling of product by retailers for
9 sale; grocery stores, meat lockers, and meat markets that butcher or dress
10 livestock or poultry in the regular course of their retail trade; contractors who
11 alter, service, repair, or improve real property; and retail businesses that clean,
12 service, or refurbish and repair tangible personal property for its owner. The
13 examples provided in this subdivision (ii) shall not be construed as exclusive.
14 (iii) “Manufacturing or processing plant or facility” means a
15 single, fixed location owned or controlled by a manufacturing or processing
16 business that consists of one or more structures or buildings in a contiguous
17 area where integrated production operations are conducted to manufacture or
18 process tangible personal property to be ultimately sold at retail. A business
19 may operate one or more manufacturing or processing plants or facilities at
20 different locations to manufacture or process a single product of tangible
21 personal property to be ultimately sold at retail.

1 (iv) “Primary” or “primarily” means more than 50 percent of the
2 time.

3 (v) “Production line” means the assemblage of machinery and
4 equipment at a manufacturing or processing plant or facility where the actual
5 transformation or processing of tangible personal property occurs.

6 (D) For the purposes of this subdivision (14), machinery and
7 equipment shall be deemed to be used as an integral or essential part of an
8 integrated production operation when used during the integrated production
9 operation:

10 (i) to transport, convey, handle, or store the property undergoing
11 manufacturing or processing at any point from the beginning of the production
12 line until it is placed into initial packaging;

13 (ii) to act upon, effect, promote, or otherwise facilitate a physical
14 change to the property undergoing manufacturing or processing;

15 (iii) to guide, control, or direct the movement of property
16 undergoing manufacturing or processing;

17 (iv) to test or measure materials, the property undergoing
18 manufacturing or processing, or the finished product during the manufacturer’s
19 integrated production operations;

20 (v) to plan, manage, control, or record the receipt and flow of
21 property while undergoing manufacturing or processing;

1 (vi) to lubricate, control the operating of, or otherwise enable the
2 functioning of other production machinery and equipment and the continuation
3 of production operations;

4 (vii) to transmit or transport electricity, gas, water, steam, or
5 similar substances used in production operations from the point of generation,
6 if produced by the manufacturer or processor at the plant site, to that
7 manufacturer's production operation or, if purchased or delivered from off-
8 site, from the point where the substance enters the site of the plant or facility to
9 that manufacturer's production operations;

10 (viii) to package the property being manufactured or processed in
11 any container or wrapping in which such property is normally sold or
12 transported, even if the machinery operates after the point of initial packaging;

13 (ix) to cool, heat, filter, refine, or otherwise treat water, steam,
14 acid, oil, solvents, or other substances that are used in production operations;

15 (x) to provide and control an environment required to maintain
16 certain levels of air quality, humidity, or temperature in special and limited
17 areas of the plant or facility where such regulation of temperature or humidity
18 is part of and essential to the production process;

19 (xi) to treat, transport, or store waste or other byproducts of
20 production operations at the plant or facility and to clean manufacturing
21 machinery and equipment;

1 (xii) to control pollution at the plant or facility where the pollution
2 is produced by the manufacturing or processing operation; or

3 (xiii) to inspect or conduct quality control on the product, even if
4 the inspection or quality control machinery operates after the point of initial
5 packaging.

6 (E) “Machinery and equipment used as an integral or essential part of
7 an integrated production operation” does not mean:

8 (i) machinery and equipment used for nonproduction purposes,
9 including machinery and equipment used for plant security, fire prevention,
10 first aid, accounting, administration, record keeping, advertising, marketing,
11 sales or other related activities, plant cleaning, plant communications, and
12 employee work scheduling;

13 (ii) machinery, equipment, and tools used primarily in maintaining
14 and repairing any type of machinery and equipment or the building and plant;

15 (iii) transportation, transmission, and distribution equipment not
16 primarily used in a production, warehousing, or material handling operation at
17 the plant or facility, including the means of conveyance of natural gas,
18 electricity, oil, or water, and related equipment, located outside the plant or
19 facility;

1 (iv) office machines and equipment, including computers and
2 related peripheral equipment, not used directly and primarily to control or
3 measure the manufacturing process;

4 (v) furniture and other furnishings;

5 (vi) buildings, other than exempt machinery and equipment that is
6 permanently affixed to or becomes a physical part of the building, and any
7 other part of real estate that is not otherwise exempt;

8 (vii) building fixtures that are not integral to the manufacturing
9 operation, such as utility systems for heating, ventilation, air conditioning,
10 communications, plumbing, or electrical;

11 (viii) machinery and equipment used for general plant heating,
12 cooling, and lighting; or

13 (ix) motor vehicles that are registered for operation on public
14 highways.

15 (F) Subdivisions (D) and (E) of this subdivision (14) shall not be
16 construed as exclusive lists of the machinery and equipment that qualify or do
17 not qualify as an integral or essential part of an integrated production
18 operation. When machinery or equipment is used as an integral or essential
19 part of production operations part of the time and for nonproduction purposes
20 at other times, the primary use of the machinery or equipment shall determine
21 the qualification of the machinery or equipment for the exemption.

* * * Effective Dates * * *

Sec. 20. EFFECTIVE DATES

Notwithstanding 1 V.S.A. § 214, this act shall take effect retroactively on January 1, 2022 and shall apply to taxable years beginning on and after January 1, 2022, except that:

(1) Secs. 12–13 (annual link to federal statutes) shall apply to taxable years beginning on and after January 1, 2021;

(2) Sec. 18 (federal partnership audit reporting) shall apply to any adjustments to a taxpayer's federal taxable income with a final determination date occurring on and after July 1, 2022; and

(3) Sec. 19 (sales tax exemption) shall take effect on passage.