



MULTISTATE INCOME/FRANCHISE TAX

Vermont adopts several corporate tax reform changes

Tax Alert

Overview

On May 31, 2022, Vermont [Senate Bill 53](#) (S.B. 53) was signed into law. Under the legislation, Vermont adopted single sales factor apportionment, repealed Vermont's sales factor "throwback" rule, repealed Vermont's 80/20 provisions related to overseas business organizations, moved from a *Joyce* to a *Finnigan* approach to determine nexus and in-state activity for unitary combined group taxpayers, and adjusted Vermont's current corporate minimum tax structure. These corporate tax reform changes take effect for tax years beginning on or after January 1, 2023. Additionally, Vermont updated its annual conformity date to the Internal Revenue Code as amended retroactive to January 1, 2022, and this applies to taxable years beginning on and after January 1, 2021.

This Tax Alert summarizes some of the provisions of S.B. 53.

Vermont corporate tax reform changes

Adoption of single sales factor apportionment

Effective for taxable years beginning on or after January 1, 2023, S.B. 53 provides that a corporation subject to formulary apportionment is required to determine its Vermont net income by multiplying that net income by the percentage of its gross sales performed within Vermont over its total sales performed both within and outside of Vermont.

Repeal of sales factor "throwback" rule

Effective for taxable years beginning on or after January 1, 2023, S. B. 53 provides that Vermont will no longer require a corporation to determine its "throwback sales" when calculating its sales factor for corporate apportionment purposes. Currently, sales of tangible personal property shipped from a location in Vermont to a purchaser which is either: (a) the U.S. government or (b) a corporation not taxable in the state where the purchaser takes possession of the tangible personal property are considered sales made

in Vermont.

Repeal of 80/20 rule

Effective for taxable years beginning on or after January 1, 2023, S.B. 53 repeals the definition of an “oversees business organization” which previously included domestic companies with 80% or more of their property and payroll outside of the US. Under the amended rule, only actual foreign organized corporations are excluded from the affiliated group.

Adoption of federal consolidated return filing rules

While Vermont has required combined filing since 2007, its current regulations require the calculation of income separately by each member. To derive combined group income, the regulations adopt Treas. Reg. 1.1502-13 but do not generally adopt other federal consolidated return rules. S.B. 53 states that “the income, gain, or losses from members of a combined group shall be combined... as if the combined group was a consolidated filing group” except for tax credits.

Transition from *Joyce* to *Finnigan* method

Effective for taxable years beginning on or after January 1, 2023, for purposes of determining whether sales are included in the numerator of the sales factor, S.B. 53 provides that if the activities of any member of a unitary group create nexus with the state, then sales of tangible personal property into the state by all members of the unitary group shall be included in the Vermont sales factor numerator. Note that this section of the statute begins by referring to the treatment of “sales” generally but then specifically describes the treatment of “sales of tangible personal property.” It is not clear whether non-tangible sales under Vermont’s market sourcing regime are also affected.

Under current Vermont law, sales of tangible personal property attributable to Vermont by an individual corporation protected by P.L. 86-272 in another state are not includable in the numerator of the sales factor of the combined unitary group, even if a member of the group has Vermont nexus. S.B. 53 provides that the Vermont Department of Taxes (the “Department”) shall adopt rules related to Vermont’s new unitary combined reporting requirements, including the transition from the Joyce method to the Finnigan method. The Department shall report any proposed rules and legislative recommendations to the Vermont Senate Committee on Finance on or before January 15, 2024.

Revision of corporate minimum tax structure

Effective for tax years beginning on or after January 1, 2023, S.B. 53 adjusts the corporate minimum tax structure as follows:

- Vermont C corporations with Vermont gross receipts of \$500,000.00 or less, shall pay the greater of the minimum amount of tax due under § 32 V.S.A. 5832(1) or \$100;
- Vermont C corporations with Vermont gross receipts between \$500,001.00 and \$1,000,000.00, shall pay the greater of the minimum amount of tax due under § 32 V.S.A. 5832(1) or \$500;
- Vermont C corporations with Vermont gross receipts between \$1,000,001.00 and \$5,000,000.00, shall pay the greater of the minimum amount of tax due under § 32 V.S.A. 5832(1) or \$2,000;
- Vermont C corporations with Vermont gross receipts between \$5,000,001.00 and \$300,000,000.00, shall pay the greater of the amount determined under § 32 V.S.A. 5832(1) or \$6,000;

- Vermont C corporations with Vermont gross receipts greater than \$300,000,000.00, shall pay the greater of § 32 V.S.A. 5832(1) or \$100,000.

Conformity to the Internal Revenue Code

Vermont now conforms to the Internal Revenue Code as amended through December 31, 2021. Conformity took effect retroactively on January 1, 2022 and applies to taxable years beginning on and after January 1, 2021.

Get in touch

[Michael Degulis](#)

[Alexis Morrison-Howe](#)



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30 Rockefeller Plaza
New York, NY 10112-0015
United States

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