

## Highlights of 2011 Tax Legislation

### Introduction

Most of the tax law changes summarized below are part of ACT 45, the so-called miscellaneous tax bill. That bill also included increased assessments on home health agencies hospitals, nursing homes, ICF/MRs and health care claims that are not administered by the Department of Taxes.

### Compliance

**Lottery winnings:** Allows lottery winnings to be set off against tax liabilities. Act 45, sec. 1.

**Power of attorney forms:** A power of attorney form that satisfies IRS requirements may also be used for Vermont tax purposes, eliminating the need for a notary signature. Act 45, sec. 31.

**Offer in compromise program:** Makes explicit the commissioner's authority to compromise tax liabilities if the commissioner has reason to doubt collectability or liability. The decision of the commissioner to reject an offer in compromise is not subject to review. Act 45, sec. 36f.

### Cigarettes and Tobacco Products

**Cigars:** The low price threshold on cigars that are taxed at the \$2.00 rate is increased from \$1.08 to \$2.17. Act 45, sec. 22.

**Cigarettes:** Effective July 1, 2011 the tax on cigarettes increases \$0.38 per pack. In terms of millage, the rate goes from 112 to 131. A floor stocks tax is imposed on wholesalers and retailers that have more than 10,000 cigarettes or little cigars or \$500,000 or more of wholesale value of roll-your-own tobacco in their control on July 1, 2011. Act 45, sec. 27, 27a.

### Education Property

**Rates:** For fiscal year 2012, the tax rate for homestead property is \$.87 per \$100.00 of equalized property value and the tax rate for nonresidential property is \$1.36 per \$100.00 of equalized property value. The "applicable percentage" for claims filed in 2012 will be 1.8 as it has been since 2007. Act 45, sec. 4.

**Glastenbury and Somerset budget approval:** Prior law provided that if the Tax Commissioner did not approve the budget of either Glastenbury or Somerset by September 10, then the budget and tax rate would remain the same as the prior year. The reference to "tax rate" was deleted because even with the same budget, the tax rate should change to reflect the current grand list which may be different than the prior year grand list. Act 45, sec. 10.

**Homestead Declaration:** The penalty language enacted last year is corrected so that the higher penalty applies only when the failure to declare a homestead (or the incorrect declaration of property that is not a homestead) benefitted the taxpayer in the form of a lower education property tax rate. Municipalities are given discretion regarding whether to impose the penalty. Also the penalty for failure to inform the commissioner within 30 days of a transfer of change of use of a homestead is eliminated (rather, that

information should be conveyed by means of a new declaration filed on or before April 15). Act 45, sec. 11.

**Recreation facilities and skating rinks:** Two recreation facilities – one designated by the Springfield Hospital and one by the North Country Hospital - were exempted from property tax in fiscal years 2009-2011. For fiscal year 2012 the exemption is reduced by 50 percent. Act 45, sec. 13e.

The property tax exemption for certain skating rinks used for public schools which has been in effect since fiscal year 2009 was step down to a 50 percent exemption for fiscal year 2012. Act 45, sec. 13f.

**Tax Increment Financing Districts (TIFs):** Effective for audits initiated after January 1, 2012 the cost of audits performed by the State Auditor of Accounts pursuant to 32 V.S.A. §5404a(l) shall be charged to the TIF municipality, but such audits will be performed every 4 years instead of 3 years. Session law was enacted reflecting the terms of the **Burlington** TIF, approved by the Joint Fiscal Committee in 2009. **Milton** may elect (retroactively to July 1, 2008) to treat the Husky and Catamount TIFs as a single district for accounting and reporting purposes. When considering a re-approval for the purpose of extending the period for incurring indebtedness, VEPC will only consider "material changes" in the TIF application and shall presume that the inability of a district to incur indebtedness was the result of the macro-economic conditions in the first 5 years after the creation of the district. This was enacted to benefit, but is not limited to, **Colchester**. Act 45, sec. 15, 15a, 15b, 16.

### **Fuel Gross Receipts**

**Extension:** The fuel gross receipts tax is extended through June 30, 2016 (formerly the expiration date was June 30, 2011). Act 45, sec. 32.

### **Income**

**Withholding reconciliations:** Once the due date has passed, withholding reconciliation returns can only be amended for administrative error, which is an error that does not change the amount of tax withheld. Act 45, sec. 3.

**Emergency medical personnel survivor payments:** Payments made by the state to the survivors of emergency medical personnel who die in the line of duty or die from a work related illness are exempt from State income tax. According to the IRS, these payments are not taxable at the federal level in which case they would not be part of Vermont taxable income making this provision unnecessary. Act 45, sec. 3a.

**Wood products manufacture credit:** The credit (2 percent of the wages paid in the taxable year by employers in designated locations for services performed in the manufacture of finished wood products) was extended for 2 years - until July 1, 2013. Also, "finished wood products" was defined as "wood products that are manufactured into the form in which they are offered for sale to consumers". Act 45, sec. 17, 17a.

**Downtown and Village Center Tax Credit:** The State Board may allocate the credit awarded under the downtown and village center tax credit program as soon as a distinct phase of a qualified project is

complete. Also credit that has been rescinded is now available to the Board for award in subsequent years. Act 45, sec. 18, 19.

**Composite Filing:** The Commissioner may require composite filing and payment of tax by S corporations, partnerships and limited liability companies that have more than 50 nonresident shareholders, partners or members. Act 45, Sec. 20, 21.

**Repeal:** The wage deduction related to federal tax credit incentive work programs and an expense deduction related to the federal disabled access credit are repealed effective July 1, 2013. These deductions were under-utilized under the criteria of 32 V.S.A. §312. Act 45, sec. 36k.

**Veterans' credit:** A qualified employer is eligible for a \$2000 credit for each new full-time employee hired for a position at a Vermont business location and a recently deployed veteran is eligible for credit of \$2000 associated with a start-up business in Vermont. The employee must be hired and the business must be started after passage of the act but before December 31, 2012. The terms "expenses associated with a start-up business", "new full-time employee", "qualified employer" and "recently deployed veteran" are all defined in the legislation. Act 44.

### **Property Tax Adjustments**

**Household income:** Amounts paid by self-employed people for health insurance premiums are excluded from the definition of household income for purposes of property tax adjustment beginning with 2012 claims. Act 45, sec. 13.

**Veterans:** For claim years 2011 and after, property tax adjustments will be calculated without regard to any veteran's property tax exemption under 32 V.S.A. §3802(11). Act 45, sec.13b.

### **Property Transfer**

**Rate:** The preferential rate for land enrolled in use value appraisal is repealed so the general rate of 1.25 percent applies. The amount of property transfer tax revenue allocated to PVR is increased from 1 to 2 percent for 5 years with the increased revenue to be used to fund transition of the use value appraisal program to electronic administration. Act 45, sec. 33-35.

### **Sales and Use**

**Entertainment:** The \$50,000 exemption level for entertainment charges made by Section 501(c)(3) organizations is increased to \$100,000 effective July 1, 2011. Also effective on passage, the pre-2010 law is restored with respect to nonprofits organized under Sections 501(c)(4) – (13) and (19) of the Internal Revenue Code; these organizations may hold 4 events per year before being required to collect sales tax on charges for entertainment without also being subject to the \$100,000 limit. Act 45, sec. 36.

**Internet sales tax notification:** Out-of-state sellers, including internet sellers and auction houses, are required to notify in-state purchasers of their use tax liability. Act 45, sec. 36b.

**Affiliate nexus (delayed effective date):** A person making taxable sales is presumed to be soliciting business through an independent contractor, agent or other representative if the person enters into an

agreement with a Vermont resident under which the resident, for a commission or other consideration, directly or indirectly refers customers, whether by a link on an Internet website or otherwise, to the person if the cumulative gross receipts from sales by the person to customers in the state who are referred to the person by all residents with this type of an agreement with the person are in excess of \$10,000 during the preceding tax year. Act 45, sec.36a.

**Auctioneers:** An exemption for licensed auctioneers is created under which a licensed auctioneer may receive payment for auction sales without being required to collect sales tax, but if property of different owners is comingled at one auction sales tax must be collected. Act 45, sec. 36g.

### **Spirituos Liquor**

**Rate:** Effective July 1, 2011, the tax changes from a uniform 25 percent of gross revenues to a graduated tax – from 5 to 25 percent - based on the amount of sales. Act 45, sec. 36d.

### **Use Value Appraisal**

**Land use change tax:** In addition to development, the tax can be triggered by the passage of 2 years after the issuance of all permits legally required by a municipality for any action constituting development or the issuance of a wastewater system and potable water supply permit under 10 V.S.A. §1973. Act 45, sec. 13a.

### **Vermont Economic Growth Incentive (VEGI)**

**Administrative changes:** The date that VEGI claims must be filed is changed from the last day of February to the last day of April; the commissioner may allow additional time for the completion of timely filed but incomplete claims; that the consequence of failure to file a claim in each year of the utilization period is the recapture of previously paid installments is clarified. Act 45, sec. 14.

### **Reports, Studies, Recommendations and Evaluations**

**Education funding:** Mandate for Blue Ribbon Tax Structure Commission to evaluate Vermont's education financing system is repealed and replaced with another study of Vermont's education financing system. The Joint Fiscal Office is authorized to spend \$210,000 for the study. The report must be submitted to the Governor, the President Pro Tempore of the Senate, the Speaker of the House, and the Joint Fiscal Committee by January 18, 2012. Act 45, sec. 7 - 9.

**Renewable energy property:** Director of Property Valuation and Review and Commissioner of Public Service are directed to study property tax issues related to renewable energy plants. Their findings and analysis must be reported to the House Committees on Ways and Means, Commerce and Development, Housing and Natural Resources and Energy and the Senate Committees on Finance, Economic Development, Housing and General Affairs and Natural Resources and Energy by January 15, 2012. Act 45, sec. 12.

**State billing and collection of education property tax:** A report on the feasibility of developing an electronic system for the Department of Taxes' administration, billing and collection of education property tax will now also include a report on the application of the common level of appraisal separate

from the tax rate. This report is due July 15, 2011 from the Department of Taxes to the Joint Fiscal Committee. Act 45, sec. 6 (amending sec. 45 of No. 160 of the Acts of the 2009 Adj. Sess.).

**Tax expenditure budget:** The budget will be reported in 3 parts. The part covering tax expenditures related to nonprofits and charitable organizations and miscellaneous expenditures is due in January 2012 and every 3 years thereafter. The part covering tax expenditures related to economic development is due in January 2013 and every 3 years thereafter. The part relating to human service is due in January 2014 and every third year thereafter. The requirement that the Department of Taxes recommend repeal of under-utilized credits is repealed. Act 45, sec. 36i, 36j, 36k.

**Taxpayer Advocate:** The taxpayer advocate, whose position is now codified, is charged with various education and reporting responsibilities. The Advocate's report is due to the Senate Finance Committee and House Ways and Means Committee by January 15 each year. Act 45, sec. 36e.

**Outreach recommendations:** The Department of Taxes will make recommendations to the Senate Finance and House Ways and Means committees by January 18, 2012 regarding ways in which it can improve education outreach to taxpayers, its appeals system and protocols for tracking taxpayer inquiries and responses. Act 45, sec. 36h.

**Link-based use tax returns:** The Department shall evaluate – and then report to the Senate Finance and House Ways and Means committees by January 15, 2012 – on the feasibility of providing a volunteer link-based use tax reporting system that can be accessed via the notice required by out-of-state sellers to buyers regarding use tax responsibilities. Act 45, sec. 36m.