Highlights of 2009 Tax Legislation

Introduction

The 2009 legislative session saw significant changes to the tax laws. Individual income tax rates were reduced while the pass-through of the federal deduction of state income tax was limited and the taxation of capital gains income was restructured to provide for two methods of excluding a portion of capital gain income from taxable income. Taxes were increased on cigarettes, tobacco products, gasoline, and spirituous liquor. A tax amnesty and two sales tax holidays were authorized. Several tax expenditures were authorized with the beneficiaries including the City of Burlington, the Town of Milton, the Town of Springfield, two recreational facilities (in Springfield and Derby), and recipients of federal research and development credits. An appropriation was made for increasing compliance staff at the Tax Department over the next three years. These and other legislative changes are described below.

Amnesty and Compliance

Amnesty: There will be a six week amnesty beginning July 20, 2009 and ending August 31, 2009 during which certain tax penalties will be forgiven upon payment of tax and interest. Rules pertaining to the amnesty are available on the Department's website. The amnesty will be followed by increased compliance efforts by the Department. Nine new employees will be hired in fiscal year 2010 (beginning July, 1, 2009); six additional employees in fiscal year 2011 and five additional employees in fiscal year 2012 to augment the current staff. H. 441, sec. H.1, H.2; H 313. sec. 76.

Good standing: Prior to being hired by the State of Vermont, new employees must certify that they are in good standing with respect to state taxes. A person is in good standing if: no taxes are due and payable from the person and all returns have been filed; the liability is on appeal; or the person is in compliance with a payment plan approved by the commissioner of Taxes. H. 441, sec. H. 19 (32 V.S.A. § 3113(i)).

Unclaimed property: Unclaimed property of a taxpayer may be used to pay state tax liabilities after the taxpayer is notified of the right to appeal the payment on the basis that the liability is not the owner's debt; the debt was paid; the debt was timely appealed after assessment and the appeal has not been determined; or the debt was discharged in bankruptcy. H. 441, sec. H.20 (32 V.S.A. § 3113a).

Cigarette Tax and Tobacco Products Tax

Cigarette tax rate: The tax on a pack of cigarettes will increase $0.25 when the rate goes from 99.5 mills per cigarette or little cigar to 112 mills per cigarette or little cigar on July 1, 2009. H. 441, sec. H. 37 (32 V.S.A. § 7771(c)).

Cigarette floor stocks tax: A floor stock tax is imposed on wholesalers and retailers in possession of more than 10,000 cigarettes or little cigars on July 1, 2009. The tax is the difference between the tax already paid and tax at the new rate. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of a wholesaler on July 1, 2009 that is not yet affixed to a cigarette package. The tax is $0.25 per stamp. The floor stock taxes are due together with a report on or before July 25, 2009. H. 441, sec. H. 39 (32 V.S.A. § 7814).

Tobacco products tax definitions: The definitions of "snuff", "tobacco products" and "new smokeless tobacco" are amended to ensure that all tobacco for consumption is subject to an excise tax, including new products coming on the market. H. 441, sec. H. 36 (32 V.S.A. § 7702(13), (15) and (20)).

Tobacco products tax rate: The tax on tobacco products is increased from 41 percent of the wholesale price to 92 percent except: (1) snuff, which continues to be taxed at $1.66 per ounce; and (2) "new smokeless tobacco", which will be taxed at the greater of $1.66 per ounce or, if packaged to contain less than 1.2 ounces, at $1.99 per package. H. 441, sec. H. 38 (32 V.S.A. § 7811).

Corporate Income Tax

Unrelated business income: Unrelated business income of nonprofits will be subject to corporate income tax effective for taxable years beginning on and after January 1, 2010. This will conform Vermont law to federal law. H. 441, sec. H. 25 (32 V.S.A. § 5811(3) and (18)).

Digital corporations: Effective for tax years beginning on or after January 1, 2010, certain corporations may elect to be taxed under a new franchise tax instead of the corporate income tax. To qualify, the corporation may not be a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income tax; have any Vermont property, payroll, or sales; or perform any activities in Vermont which would constitute doing business for purposes of income taxation except for fulfillment operations and web page or internet site maintenance. In addition, the corporation must have used mainly computer, electronic, and telecommunications technology in its formation, in the conduct of its business meetings, in its interaction with shareholders, and in executing any other formal requirements. The franchise tax is graduated based on the value of assets or stock but in most cases will be $250.00. H. 441, sec. H. 51- 54 (32 V.S.A. §§5811(26), 5832(2), 5832a, 5838).

Credit: A new credit for research and development will take effect for eligible expenditures made on or after January 1, 2011. See **Tax Expenditures** section.

Current Use

At its November 9, 2009 meeting, the Joint Fiscal Committee will discuss strategies to achieve $1.6 million in savings or increased revenue in the Use Value Appraisal Program. H. 313, sec. 81.

Education Property Tax

Rates: Both the homestead and nonresidential education tax rates are reduced one penny for fiscal year 2010. The homestead rate will be $0.86 and the nonresidential rate will be $1.35 per $100.00 of equalized property value. The homestead rate is further adjusted for district spending. These rates will apply to an equalized grand list that will grow, on average, 6.9 percent in fiscal year 2010. H. 12, sec. 1.

Base education amount: The base education amount for fiscal years 2010 and 2011 is set at $8,544.00. (The fiscal year 2009 base education amount was $8,210.00.) H. 12, sec. 2.

TransCanada: Two hundred thousand dollars ($200,000.00) has been appropriated for the 2010 reappraisal of hydro electric plants and other property owned by TransCanada Hydro Northeast, Inc. in the State of Vermont. H. 441, sec. E. 141.

Glastenbury and Somerset: The state tax of $0.50 annually assessed upon the grand lists of the town of Glastenbury and the unorganized town of Somerset is replaced by a tax rate set through a budget process in which the supervisor proposes a budget and tax rate for the ensuing year that is reviewed by the Tax Commissioner. H. 438, sec. 91 (32 V.S.A. § 4961).

Also see the **Tax Expenditures** section for tax increment financing changes benefitting the City of Burlington and the Town of Milton; property tax exemptions for Southern Vermont Recreation Center in Springfield and the IROC in Derby; and legislation freezing the education property tax liability of Springfield’s J&L site for 7 years.

Fuel Gross Receipts Tax

Prior law imposed the tax on, among other fuel types, “heating oil and kerosene not used to propel a motor vehicle.” Effective July 1, 2009, “other dyed diesel fuel” was added to heating oil and kerosene. Stationary machinery such as compressors and generators that use new dyed fuels (low-sulfur off-road diesel and ultra low-sulfur off-road diesel) are now subject to the tax. The $0.5 Petroleum Distributor’s License Fee was similarly expanded to sellers of “other dyed diesel fuel." H. 83, sec. 9a as amended by S. 1, sec. 18 (33 V.S.A. § 2503); H. 83, sec. 5 (10 V.S.A. § 1942).

Gasoline Tax

In addition to the current 19 cent per gallon gasoline tax, a motor fuel transportation infrastructure assessment equal to 2 percent of the retail price exclusive of all state and federal taxes is imposed on each gallon of motor fuel sold by a distributor. The retail price will be based upon the average retail price for regular gasoline determined and published by the Department of Public Service. For June 2009, the average price is $2.03 per gallon. H. 438, sec. 24 (23 V.S.A. § 3106(a)).

Estate Tax

The Vermont estate tax exclusion amount will remain at $2 million and not follow the January 1, 2009 federal increase in the exclusion to $3.5 million. Estates between $2 million and $3.5 million that will not have to file a federal estate tax return will be required to file a *pro forma* federal return with its Vermont return. These provisions apply to estates of individuals dying on or after January 1, 2009. H. 441, secs. 31 – 35 (32 V.S.A. §§ 7442a, 7444, 7445, 7446, 7475).

Individual Income Tax

Capital gains: Beginning on and after July 1, 2009, the 40 percent exclusion of capital gains income is converted to a flat exclusion *except* for gains from the sale of a farm, the sale of standing timber, and sales by individuals aged 70 years or older as of the last day of the tax year. For farm and timber sales, the 40 percent exclusion will continue to be the rule. Sale of a farm means the disposition of real and personal property owned by a farmer as that term is defined in 32 V.S.A. § 3752(7) and used by the farmer in the business of farming as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986. Sale of standing timber means the disposition of standing timber by an owner of timber that would give rise to the owner recognizing a capital gain or loss as defined in Section 631(b) of the Internal Revenue Code. Over-70 taxpayers may choose the 40 percent or the flat exclusion. The over-70 carve-out ends January 1, 2011. For tax years 2009 and 2010, the exclusion amount is $2,500; then it goes to $5,000. Because the change is effective mid-year, the 40 percent exclusion applies to gains received in the first half of the year and the flat exclusion applies to gains received on and after July 1, 2009 (other than gains received by individuals over age 70 who opt for the percentage exclusion and farm and timber gains). H. 442, secs. 16a, 16b, 17 – 19; S. 1 (Special Sess.), sec. 22b.

State and local tax deduction: Beginning January 1, 2009, the pass-through of the deduction for state and local income taxes from federal adjusted gross income is limited to $5,000.00. The limitation of the state and local income tax deduction will require an addition to Vermont taxable income of the amount of the federal deduction in excess of $5,000.00. This add-back will be adjusted for the amount of taxable refund that was included in federal taxable income and not taken against Vermont income tax. H. 441, secs. 47 - 49 (32 V.S.A. §§ 5811(21).

Rates: For 2009, the tax rates are lowered on all taxpayers as follows:

2008 rate	2009 rate
3.60% reduced to	3.55%
7.20% reduced to	7.00%
8.50% reduced to	8.25%
9.00% reduced to	8.90%
9.50% reduced to	9.40%

For taxable years 2010 and after, the income tax rates for four brackets are lowered again as follow:

2009 rate	2010 rate
3.55% remains	3.55%
7.00% reduced to	6.80%
8.25% reduced to	7.80%

8.90% reduced to	8.80%
9.40% reduced to	8.95%

New vehicle credit: For taxable year 2009 only, taxpayers are required to add back to Vermont income tax the new federal deduction for taxes paid on the purchase of a new vehicle. H. 441, sec. H. 47b.

Research and development credit: See **Tax Expenditures** section.

Meals and Rooms Tax

A licensed manufacturer of wine may now serve wine and beer at events held on its premises. Meals tax must be collected on the beverage sold and use tax must be remitted on the product served without charge. Similarly, a licensed manufacturer of spirits, now authorized to sell and serve spirits on its premises, must collect meals tax on spirits sold by the glass, sales tax on spirits sold by the bottle and use tax on spirits served without charge. S. 27. Sec. 1 (7 V.S.A. § 2(15)).

Property Tax Adjustments

Property tax adjustments that are resolved after September 15 will be paid directly to the claimant by the Department of Taxes rather than to the municipality in which the homestead is located. Under prior law, the resolution date was December 31. H. 441, sec. 29 (32 V.S.A. § 6066a).

Property Transfer Tax

The Department of Taxes is required to submit its implementation plan for electronic filing and payment of property transfer tax with the Joint Fiscal Committee by August 1, 2009. H. 441, sec. H. 39.

Sales and Use Tax

Digital downloads: The sales and use tax is extended to “specified digital products transferred electronically to an end user” effective July 1, 2009. “Specified digital products” means digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically. This means that downloaded music, movies and books are subject to the six percent sales tax, but no transaction shall be taxed more than once. H. 441, secs. 40, 41, 43 (32 V.S.A. §§ 9701(45), (46) and (47), 9771, 9773)

Liquor: Spirituous liquor becomes subject to the six percent sales tax effective July 1, 2009. H. 441, sec. H. 44 (32 V.S.A. § 9743(1)).

Tax holidays: There will be two sales tax holidays, the first on August 22, 2009 and the second on March 6, 2010. On these days no sales tax is imposed on sales of items of tangible personal property to individuals for personal use sold for $2,000.00 or less. H. 442, sec. 24.

Springfield site: Sales of building materials, machinery, equipment or trade fixtures purchased by the qualified redeveloper for incorporation into the J&L redevelopment site in Springfield are exempt from tax for seven years. A sales tax exemption certificate must be presented to a vendor in order to obtain the tax exemption. H. 313, sec. 84. See **Tax Expenditures** section below.

Cancelled accounts: An annual filer that cancels its sales and use tax account must now file the final return no later than 60 days after the cancellation (rather than waiting until after the end of the year). H. 441, sec. H. 45 (32 V.S.A. § 9775).

Tax Expenditures: Credits, Exemptions and Tax Increment Financing

a. Credits

Downtown credits: Beginning in 2010, the amount of tax credits that may be awarded annually by the Vermont Downtown Development Board for historic rehabilitation, façade improvement and code improvement is increased from $1.6 million to $1.7 million. H. 313, sec. 29.

Investment tax credit: An investment tax credit may only be taken for the *Vermont-property* portion of the investment. This applies to credits related to investments made on and after January 1, 2009. H. 446, sec. 9 (32 V.S.A. § 5822(d)).

Research & Development credit: A new research and development credit is authorized for eligible expenses made on or after January 1, 2011. The credit is equal to 30 percent of the amount of federal tax credit allowed in the taxable year for research and development expenditures eligible under Section 41(a) of the Internal Revenue Code and which are made within Vermont. H. 442, secs. 22, 23 (32 V.S.A. § 5930ii).

Seed Capital Fund: The Vermont Seed Capital Fund is renamed the Vermont Entrepreneur's Seed Capital Fund and the initial capitalization is increased from $5 million to $7.15 million. Effective upon passage, the credit may be applied against the tax imposed on captive insurance companies under 8 V.S.A. § 6014 in addition to income taxes, bank franchise tax and insurance premiums tax. H. 313, sec. 27.

Solar credit: The rules for claiming a business solar energy tax credit were clarified:

- Effective January 1, 2009, a taxpayer who receives a grant or similar funding from the Clean Energy Development Fund under 10 V.S.A. § 6523 for a project is not eligible to claim the business solar energy tax credit for the same project. For investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from a public or private program that assists in providing capital for renewable energy projects. H. 446, sec. 9, 9a (32 V.S.A. §§ 5822(d), 5930z(a)).

- An unused business solar energy investment tax credit may be carried forward for no more than five years following the year in which the credit was first claimed. H. 446, sec. 9, 9d (32 V.S.A. § 5822(d), session law).

- The business solar energy investment tax credit is repealed for investments made on or after January 1, 2011. H. 446, secs. 9b, 9c, 16(2)(32 V.S.A. § 5822(d)).
- The cost of the business solar energy income tax credit will be paid by the Clean Energy Development Fund. H. 446, 9e; H. 446, sec. 9e (10 V.S.A. § 6523(d)(6)).

Underutilized credits: Two credits were repealed:

1. An income tax credit for eligible venture capital investment is repealed for tax years beginning on or after January 1, 2010. (32 V.S.A. § 5930v).
2. A property tax exemption for fallout shelters is repealed for grand lists prepared for April 1, 2010 and after. (32 V.S.A. § 3802(13)).

H. 441, sec. H. 28.

b. Exemptions

Digital corporation exemption from corporate income tax. S**ee** **<u>Corporate Income Tax</u> section.**

Recreation facilities: A "one-year" exemption from education property tax for two recreation centers enacted for fiscal year 2009 in the last session has been extended for two more years. The beneficiaries of the exemption are the Southern Vermont Recreation Center in Springfield and the IROC facility in Derby. This exemption applies notwithstanding the provisions of subdivision 3832(7) of Title 32. H. 441, sec. H. 49.

Springfield site: A redevelopment site in the Town of Springfield (J&L site) is eligible for three unique tax expenditures for the redevelopment period (7 years):

1. Stabilization of the education property tax liability of the site at its 2009 level.

2. An income tax credit equal to three percent of the total wages and slaries paid by a qualified business or redeveloper during the taxable year for services performed within the site.
3. Exemption from sales and use tax for materials and trade fixtures purchased by the qualified redeveloper for incorporation into the site. H. 313, sec. 84.

c. Tax increment financing

Special provisions were enacted for two municipalities.

- City of Burlington. The authority of the City of Burlington to incur indebtedness for its currently-existing TIF is extended for 5 years beginning January 1, 2010, contingent on Joint Fiscal Committee approval. Burlington's authority to incur debt on its TIF - and therefore divert additional education taxes from the education fund to pay the debt - had expired but for this act. H. 313, sec. 83.

- Town of Milton. Retroactive legislation allows Milton to use financing types other than those specified in 24 V.S.A. § 1891(7). These additional types of financing are conventional bank loans and, if approved by the State Treasurer, certificates of participation, lease-purchase, and revenue notes. Milton is also granted the authority to incur debt up to 10 years after the creation of the TIF district; the usual rule is 5 years. H. 313, sec. 82, as amended by S. 1 (Spec. Sess.), sec. 10.

Vermont Economic Growth Incentive Program

Two technical changes were made to the program:

1. Clarified that an initial approval of an incentive may be granted followed by final approval before December 31 of the calendar year in which the economic activity commences. H. 313, secs. 12, 13 (32 V.S.A. § 5930b(b)(2)).

2. Conformed language in 32 V.S.A. § 5930a and 5930b to a statutory change made in the 2008 session eliminating allocation of property tax value under 32 V.S.A. § 5404a(e). H. 313, secs. 14, 15.

The Vermont Economic Incentive Review Board may require a third party financial and technical analysis as part of a municipality's application for tax increment financing and if so the municipality must cover the cost of the analysis. H. 136, sec. 6 (32 V.S.A. § 5404a(k)).

The Vermont Economic Incentive Review Board is renamed the Vermont Economic Progress Council (the former Vermont Economic Progress Council ceased to exist on April 1, 2009 when its duties were assumed by the newly created Economic Incentive Review Board pursuant to 2005, No.184 (Adj. Sess.), §13). H. 313, secs. 64, 65.

Department and Other Changes

Mapping: Responsibility for creating and distributing orthophotographic maps is transferred from the Department of Taxes to the nonprofit Vermont Center for Geographic Information under a memorandum of understanding with the Department. The Center shall provide to the clerk and to the listers or assessors of each town such maps as have been prepared by it of the total area of that town. These maps shall also be provided to Regional Planning Commissions, State Agencies, and the general public at a scale appropriate for the production and revision of town property maps as resources allow. H. 4411, sec. H. 21 (32 V.S.A. § 3409).

Revenue Department: The Department of Taxes will be converted to the Department of Revenue no later than June 30, 2012. To accomplish this transition, the Tax Commissioner will review each state revenue source and determine whether the management of the source should: (1) remain substantially as it is; (2) be transferred to the Treasurer's lockbox system; (3) be transferred to the Department of Taxes; or (4) be transferred to another entity. The Commissioner's recommendations shall be reviewed by a Revenue Transition Committee, which will report its findings and recommendations to the General Assembly by February 15 of 2010, 2011 and 2012. H. 441, sec. H.6.

Lien Filing Fee: Effective July 1, 2009, the fee charged by town clerks to record any public document is increased from $8 to $10 per page. This means that the increased cost of filing a tax lien in the land records will be passed on to the delinquent taxpayer. The recording fee for a property transfer tax return will continue to be charged on a per-document rather than per-page basis. H. 138, sec. 13 (32 V.S.A. § 1671(a)(6) and (8).