

HIGHLIGHTS OF TAX LEGISLATION PASSED IN 2008

Introduction

This document describes changes made to Vermont tax laws by the General Assembly in the 2008 session. Significantly, no major changes were made to the property tax adjustment program. For the second year, the adjustments will be a credit on the property tax bill that reduces education property taxes due to municipalities. Two important changes were made to income tax law. First, Vermont has decoupled from the federal accelerated bonus depreciation enacted by the Economic Stimulus Act of 2008 for individual income tax purposes.¹ Second, for tax years beginning in 2008 and after, the capital gains exclusion taken on the Vermont return may not exceed forty percent of federal taxable income. Other significant changes pertain to laws authorizing use of education tax increments to fund infrastructure costs. A number of exemptions from education property tax and income tax were added or expanded. There will be a two-day sales tax holiday in July for individuals purchasing tangible personal property; in the case of Energy Star appliances, the holiday will last one week.

Compliance

The commissioner may charge a **delinquent taxpayer** for the costs associated with serving a court complaint for the collection of delinquent taxes. This is generally the fee charged by a local sheriff. Act 190, Sec. 1 [32 V.S.A. § 3262].

Current Use

Each year, Property Valuation and Review (PVR) determines the eligibility of new and enrolled property for the Use Value Appraisal Program. Prior law prescribed various dates for this review to be completed and reported to towns. Now those notices will be combined into one, which PVR will send to towns by **March 15**. The other important deadline remains the same – towns must report back to PVR by **July 5** on whether the list is correct and on the fair market value of each parcel. PVR may notify an enrollee of discontinuance at any time that ineligibility is discovered. Act 190, Sec. 2 [32 V.S.A. § 3756].

Although the **transfer of ownership** alone will not affect the eligibility of the parcel, the law now provides that failure of an owner to provide information about the transfer, new maps or a new application within 30 days of a written request by PVR will result in removal from the program. Act 190, Sec. 3 and S. 311, Sec. 3 [32 V.S.A. § 3757 (e)].

Prior law allowed a decision by PVR regarding enrollment of use value of land to be appealed to the Director but did not specify the time in which such review could be sought. The law now

¹ Accelerated depreciation was already blocked from passing through to Vermont corporate income tax returns by prior legislation. See 2001(Adj. Sess.) Act No. 140.

specifically provides the aggrieved owner a **30-day appeal period**. Act 190, Sec. 4 [32 V.S.A. § 3758(a)].

A new owner of enrolled property is entitled to continue to have the eligible property taxed at use value provided the property remains eligible and the new owner **elects continued enrollment** on the property transfer tax return and, within 30 days of the transfer, applies to the Director of PVR and pays the required fees. The law directs the Commissioner of Taxes to redesign the transfer tax form to allow this election. S. 311, Secs. 2 and 4 [32 V.S.A. § 3756(e) and session law].

Applicants must pay a **\$30 fee** in addition to other fees. The fee will go into the existing special fund, which will now be available for making improvements to the management of the program as well as paying municipal clerk fees. S. 311, Secs. 2 [32 V.S.A. § 3756(e)].

The listers are not required to send a notice to the owner for a change to listed value made solely to reflect a **new use value** set by the Current Use Advisory Board and no grievance is allowed for this reason. S. 311, Sec. 8 [32 V.S.A. § 4111(e) and (g)].

A municipality may enroll land it owns that is located in another municipality in the use value appraisal program. However, if the use value appropriation for the year is insufficient to pay the full amount due to any municipality for enrolled property owned by another municipality, the municipality in which the property is located may assess the owner-municipality the difference. S. 311, Secs. 9 and 10 [32 V.S.A. §§ 3752(10) and 3760(a)].

Education Property Tax

For fiscal year 2009 only, homestead and nonresidential **education property tax rates** will be \$0.87 and \$1.36 respectively, and the “applicable percentage”² for property tax adjustments is 1.80 percent. Act 190, Sec. 5 [session law].

An alternative education property tax is imposed on buildings and fixtures used directly in the generation of **electrical energy from wind power**. The buildings and fixtures must be part of a facility certified by the Commissioner of Public Service as producing electric energy for resale, have an installed capacity of at least 5 megawatts and hold a valid certificate of public good issued under 30 V.S.A. § 248. The tax is imposed at a rate of \$0.003 per kilowatt hour produced. The tax is due twice a year to the Vermont Department of Taxes. Such buildings and fixtures will not be on the education grand list; however, municipal taxes are unaffected by this alternative tax. Act No. 92, Secs. 24, 25, 26 [32 V.S.A. §§ 5401(10)(J), 5402c, session law].

² The applicable percentage is the percentage of household income, when adjusted for district spending, that a claimant must pay for property taxes before a property tax adjustment is available.

Several **federally-subsidized affordable housing projects** that were subject to tax stabilization agreements were exempted from the statewide education tax by Act 60 for a ten-year period. This transitional exemption was subsequently extended for an additional year. During this period any foregone education tax revenue was made up by the State's other taxpayers. Now that the exemption is expiring, the underlying law is simplified to allow a town to vote directly to exempt, in whole or in part, affordable housing. If the town votes an exemption, any foregone revenue must be made up by the town's other taxpayers - just as before Act 60. The transition rule is that any agreement made prior to April 1, 2008, will continue in effect, but beginning in fiscal year 2010, the foregone education tax revenue must be made up by the town's other taxpayers. Act 190, Secs. 6-8 [32 V.S.A. §§ 3843, 3844].

The last payment of education taxes by municipalities to the education fund is on June 1.³ The Tax Commissioner calculates each municipality's education tax and the law now specifies that the calculation will be based on grand list information received by the Commissioner no later than the **March 15** prior to the June 1 net payment. Act 190, Sec. 11 [32 V.S.A. § 5402(c)].

The way towns are compensated for having to reissue a property tax bill due to a late-filed adjustment claim is changed. Instead of receiving a payment from the State of \$15 for each reissued bill, the town is permitted to **retain \$15** from education taxes collected. Act 190, Secs. 11, 15 [32 V.S.A. §§ 5402, 6066a].

Prior legislation increased the amount towns could retain for collection of the statewide education tax from one-eighth to 0.225 of one percent of the education taxes collected. This year, the Legislature has made a parallel change with respect to education taxes collected on new or corrected property tax bills. Act 190, Sec. 12 [32 V.S.A. § 5410(h)].

The law allows **recalculation of a town's education tax liability** if a property tax appeal results in a reduction of one percent or more. This relief is expanded to allow recalculation if the value is reduced as the result of declaratory judgment or other type of legal proceeding that changes the value of the property. The amendment also provides that in the case of a settlement between the town and a taxpayer, the town's education tax liability will only be recalculated if the Commissioner determines that the settlement amount represents fair market value. Act 190, Sec. 13 [32 V.S.A. § 5412].

The 2007 common level of appraisal for the **Town of Essex**, which underwent a reappraisal in 2007, will be retroactively increased to 100 percent. This cost to the education fund of approximately \$1,000,000, will be a credit against the town's fiscal year 2009 education tax liability. Act 190, Sec. 31 [session law].

³ Education taxes are paid on a fiscal year in two installments. The first payment is due December 1 and the second on June 1.

Effective for 2008 and 2009 grand lists only, **skating rinks**, owned and operated on a nonprofit basis, which provide facilities to local public schools for a sport officially recognized by the Vermont Principals' Association, are exempt from education property taxes. This is expected to exempt four or five skating rinks in the State. Act 190, Sec. 40 [session law].

Holton Home, a nonprofit elder residential care facility in Brattleboro, will be exempt from education tax on \$500,000 of value. An old law had exempted it from property tax on \$50,000 of value. The law does not increase the exemption from municipal tax. The increased exemption is effective for the facility's fiscal year 2009 tax liability. Act 190, Sec. 46 [session law].

For fiscal year 2009, two **health, recreation and fitness facility** properties are exempt from education property tax. One will be designated by the Springfield Hospital and the other by the North Country Hospital. Act 190, Sec.101 [session law notwithstanding 32 V.S.A. § 3832(7)].

Provisions Affecting Tax Increment Financing Districts (TIF districts):

The **type of debt** a municipality may use to pay for improvements in a TIF district is expanded. Prior law authorized only bonded debt; effective upon passage, municipalities may also use Housing and Urban Development Section 108 financing instruments; interfund loans within a municipality; State of Vermont revolving loan funds; and United States Department of Agriculture loans. However, all types of TIF district financing must be approved by the legal voters of the municipality. VEPC must assure the "viability and reasonableness" of any proposed financing other than bonding and least-cost financing. Act 190, Secs. 54, 61 [24 V.S.A. §§ 1891⁴ ; 32 V.S.A. § 5404a(k)].

Improvements paid for with education tax revenue (increment) no longer have to be even partly within the district, they only have to "**serve**" the district. The increment used for the debt must be proportional⁵ to the use of the improvement for the district. Act 190, Secs. 55, 58 [24 V.S.A. §§ 1893, 1897].

It is clarified that education tax revenues may not be retained by a municipality in excess of twenty years; however, a municipality has five years after approval of a TIF district to incur debt that may be paid in part with education taxes. The **twenty-year retention period** begins with the initial date of the first debt incurred within the first five years. Act 190, Sec. 56 [24 V.S.A. § 1894]. It was also clarified that the municipal tax increment must be used in equal proportion to education tax increment. Act 190, Sec. 58 [24 V.S.A. § 1897].

⁴ Conforming changes - replacing "bonds" with "financing"- were made throughout Chapter 53 of Title 24. H.888, Secs. 54- 60.

⁵ The proportionality test also applies to "related costs".

If the tax increment collected is in **excess of the amount pledged** for financing in a particular tax year, the excess education portion and the excess municipal portion must be treated the same way. Three uses are permitted: prepayment of the financing instrument; placement in escrow, or distribution on a proportional basis to the education fund and municipal budgets. Act 190, Sec. 65 [24 V.S.A. §1900].

Municipalities with TIF districts are subject to **additional reporting requirements** and effective upon passage, the **State Auditor of Accounts** shall review and audit all active TIFs every three years. Act 190, Sec. 61, 62 [32 V.S.A. § 5404a(k); 24 V.S.A. § 1901;].

The provisions of Title 32 regarding **allocations** (retention of tax increment on new economic development) are repealed. There are no existing allocations and the provisions were unnecessary in light of other TIF provisions. Act 190, Sec. 63, 64 [32 V.S.A. § 5404a(e) and (g)].

Prior law allowed VEPC to approve ten new TIF districts within a five-year period beginning July 1, 2006. That was changed to allow approval of **six new districts in a five year period** beginning July 1, 2008. Act 190, Sec. 67 [session law].

Special provisions were enacted for three municipalities with TIF districts:

- **Milton** does not have to follow the proportionality rule for debt obligation incurred prior to April 1, 2009 with respect to improvements that serve two TIF districts known as Husky Campus and Catamount Industrial Park. Milton, however, is required to use the municipal tax increment in equal proportion to the education tax increment if these TIF districts are extended beyond the initial ten years, just as other towns are required to use equal proportions of educational and municipal increments. Act 190, Sec. 68 [session law]. Finally, Milton was given one more year before it has to comply with TIF district location criteria for any new TIF application. Act 190, Sec.69 [session law].
- **Winooski's** fiscal year 2008 education property tax liability will be retroactively calculated using a common level of appraisal factor of 1.0952. This recalculation will result in the City receiving approximately \$300,000 from the education fund as a credit against its fiscal year 2009 education tax liability. Act 190, Sec. 70 [session law]. The Joint Fiscal Office and the Tax Department have been charged with analyzing whether the law should be amended to adopt a recalculation method that includes all property within a TIF district for equalization purposes. Act 190, Sec. 65[session law]. Also, a technical correction was made to the Winooski TIF legislation. Prior law had required 5 percent of the education tax increment imposed on residential property within the district to be paid to the education fund. Since there was no definition of "residential" in this context, that qualifier was deleted and the percentage was lowered to 2. Act 190, Sec. 71 [amending Sec. 38 of No. 159 of the Acts of 1999 Adj. Sess.].

- **Burlington**, which had been using non-bond financing for its TIF, was given retroactive authority to use two forms of alternative financing, HUD section 108 financing instruments and certificates of participation. Act 190, Sec.75 [session law].

Income Tax

As stated above, Vermont has decoupled from the **bonus depreciation** provisions of the federal Economic Stimulus Act of 2008 and so accelerated bonus depreciation taken at the federal level will not pass through to the Vermont individual income tax. This means that businesses that utilize the federal depreciation will be required to keep separate depreciation schedules for federal and Vermont tax purposes. Federal bonus depreciation was already blocked with respect to C corporations. Act 190, Sec. 36 [32 V.S.A. § 5811(21)].

For taxable years 2008 and after, the **capital gains exclusion** taken on a Vermont return may not exceed forty percent of federal taxable income. Act 190, Sec. 19 [32 V.S.A. § 5811(21)(B)].

Beginning with the 2008 tax year, individuals, trusts, estates and corporations may claim a credit against income tax equal to 100 percent of the Vermont-property portion of the business **solar energy investment credit** component of the federal investment tax credit allowed against the taxpayer's federal tax. In prior years, 24 percent of the federal credit passed through to individual, trust and estates. This change allows those taxpayers the remaining 76 percent of the federal credit on the Vermont investment. The credit is new for corporations. If the federal credit is recaptured, the Vermont credit will be recaptured as well. Act 92, Secs. 27, 28, 29 [32 V.S.A. § 5822(c)(1)(B) and (d), 5930z, session law].

The **wood products manufacturer tax credit** was to expire July 1, 2008 with no further credit available for taxable years beginning after that date. Instead, the credit is extended to July 1, 2011. Act 190, Sec. 29 [Sec. 9 of No. 212 of the Acts of 2005 Adj. Sess. relating to 32 V.S.A. § 5930y].

The **credit for affordable housing** is expanded. It is now available for rental housing projects identified in 26 U.S.C. § 42(g) *and* certain owner-occupied housing that is eligible under VHFA "allocation plan" criteria. These criteria include ensuring that housing is maintained as affordable by subsidy covenant on a perpetual basis. VHFA may award up to \$100,000 per year for the new credit. The credit awarded to a taxpayer under this section is available for five consecutive tax years. This credit is in addition to \$400,000 of tax credit that VHFA may award for rental housing projects every year. These credits are also available to the taxpayer for five years. Act 176, Sec. 13 [32 V.S.A. § 5930u].

Technical changes were made to the refund provisions of Chapter 151, clarifying that when the Department denies a refund request, the taxpayer has 60 days to appeal to the Commissioner for a hearing and correcting references to the interest statute. The law also provides that if a notice of

deficiency is issued with respect to a refund paid in error, then notice given within the usual three-year period or one year after the date the erroneous refund was paid is timely. Act 190, Sec. 20 - 22 [32 V.S.A. §§ 3203, 5882, 5882].

Land Gains Tax

The transfer of undeveloped land in a “**Vermont neighborhood**”,⁶ which is the first transfer of that parcel following the original designation of the Vermont neighborhood, is exempt from land gains tax. Act 176, Sec. 12 [32 V.S.A. § 10002(p)].

Meals and Rooms Tax

The commissioner may petition a court to require a taxpayer file meals and rooms tax returns. This authority already existed with respect to sales tax and income tax. Act 190, Sec. 25 [32 V.S.A. § 9243].

Property Tax Adjustments

Under Act 185, if a property tax adjustment amount exceeded the current and prior year taxes, the town had to refund the excess to the taxpayer. Beginning with 2008 claims, if the adjustment amount **changes after December 31 of the claim year** (usually because household income has been amended or valuation has been lowered following appeal), the State, and not the town, will refund the excess to the taxpayer. Act 190, Sec. 14 [32 V.S.A. § 6066a(c)].

The law that allowed towns to decide how to apply property tax adjustment amounts to property taxes billed in installments is replaced with the requirement that the adjustment amount be applied **pro rata (in equal amounts) to each installment** that includes education tax. Act 190, Sec. 16 [32 V.S.A. § 6066a(f)].

When homestead property is transferred, the default rule is now specified in law and provides that the property tax adjustment amount shall be **allocated to the seller**. The parties may agree otherwise. Act 190, Sec. 17 [32 V.S.A. § 6063].

Claimants who filed **incomplete 2007 adjustment claims** before September 4, 2007 and failed to respond to requests for additional information will now get another chance to receive a 2007 property tax adjustment. This retroactive relief is available if: the complete claim is re-filed before August 1, 2008; the claimant files a written request for reconsideration of the claim; the written request is signed under pains and penalties of perjury; the first 2007 property tax bill issued in the claimant’s town was issued after September 4, 2007; the commissioner finds that

⁶ “Vermont neighborhood” is defined in 24 V.S.A. § 2791(15) as an area of land that is in a municipality with an approved plan, a confirmed planning process, zoning bylaws and subdivision regulations and is in compliance with all requirements set forth in new legislation passed in H. 863.

the claimant was unable to complete the filing or provide the missing information prior to December 1, 2007 as a result of sickness, absence, or other disability, or other good cause. Act 190, Sec. 37 [session law].

If a claimant is required to pay back a property tax adjustment, interest does not begin to run until December 1. Act 190, Sec. 45 [32 V.S.A. § 6071(b)].

Property Transfer Tax

No tax is due on the first \$110,000 in value of the property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont Housing and Conservation Trust Fund or which the Vermont Housing Finance Agency or the U.S. Department of Agriculture and Rural Development has committed to make or purchase. The value of the property over \$110,000 is taxed at one and one-quarter percent. A similar exemption (on the first \$100,000 of value for properties with a VHFA commitment) had been in law since 1999. Act 176, Sec. 14 [32 V.S.A. § 9602(1)].

Sales and Use Tax

There will be a **sales tax holiday** on July 12 and 13, 2008. No State or local options sales tax will be charged on sales to individuals for personal use of items of tangible personal property with a sales price of \$2000 or less. For Energy Star appliances, the sales tax holiday extends through July 18, 2008. The \$2000 price cap also applies to Energy Star appliances. Vendors in good standing with respect to tax laws may claim reimbursement for reprogramming their cash registers and computers for the holiday. The reimbursement payments will not exceed the least of the following amounts: actual cost of reprogramming; \$50.00; or \$50,000.00 divided by the number of qualified vendor applicants. Claims must be filed on or before November 1, 2008. Any municipality with a local option sales tax affected by the holiday will receive an amount in addition to the local option sales tax payment made under 24 V.S.A. § 138(d). The Commissioner will develop a methodology for determining the amount of reimbursement. The deposit into the PILOT special fund will also be adjusted if there are sufficient funds from the appropriation for this section. Act 190, Sec. 73[session law].

The sales tax exemption for **airplane parts, machinery and equipment** installed in private airplanes was enacted in 2007 with an expiration date of 2011. The exemption now will not expire until 2018. Act 190, Sec. 43 [32 V.S.A. § 9741(29)].

The Town of Middlebury is authorized through charter amendment approved by the General Assembly to impose **local option taxes**. The following taxes may be imposed on the same base as the state taxes: a one percent sales tax; a one percent meals and alcoholic beverages tax; and a one percent rooms tax. If Middlebury chooses to impose the tax it will be imposed, collected and administered in accordance with the provisions of section 138 of Title 32. No. M-17.

Tax Expenditure Reporting

The Commissioner is required to recommend to the General Assembly that any expenditure that has cost less than \$50,000 or has been claimed by fewer than ten taxpayers in each of the three preceding years be repealed two years hence. Act 190, Sec. 24 [32 V.S.A. § 312(c)].

Vermont Economic Growth Incentive

In the first year of a Vermont Employment Growth Incentive (VEGI) plan, a business that does not meet its employment and wage requirements is given a **grace period**, similar to the grace period already allowed in the second and third years. Now, to the extent that the business reaches its first year award period targets within two calendar year reporting periods immediately succeeding year one, such business may claim incentives in five-year installments as otherwise provided in the law. Act 190, Sec. 28 [32 V.S.A. § 5930b].

An enhanced economic growth incentive is available for **environmental technology businesses** (so-called “green” businesses). To qualify, the economic activity of the business in Vermont must be certified by the Secretary of Commerce and Community Development to be primarily research, design, engineering, development, or manufacturing activity related to waste management, natural resource protection and management, energy efficiency or conservation, or clean energy. For qualified businesses, the incentive ratio is 90 percent instead of 80 percent and the payroll threshold is 20 percent of the expected average industry payroll growth. Act 190, Sec. 41 [32 V.S.A. § 5930b(g)].

The term “**full-time job**” is redefined to mean a permanent position filled by an employee who works at least 35 hours per week. Prior law specified 37 hours per week. The amendment also clarified that income from non-statutory stock options are not part of “**Vermont gross wages and salaries**” for purposes of calculating the incentive. Act 190, Sec. 42 [32 V.S.A. § 5930b(a)(9) and (23)].