

HIGHLIGHTS OF 2013 TAX LEGISLATION

Administrative Provisions

The requirement of a witness or notary signature on a power of attorney form appointing an individual to represent a taxpayer before the Department of Taxes is eliminated. Act 73, Sec. 2. 14 V.S.A. § 3502(f).

The Department may file tax liens electronically with municipalities. Act 73, Sec. 7. 32 V.S.A. §3262(b).

The spending authority for Department's tax computer system modernization fund is expanded to cover information technology systems necessary for implementation and continued operation of the data warehouse project. Prior authorization was specific to the ETM system. The current appropriation of \$7,500,000 is carried forward through fiscal year 2018 and an additional appropriation of \$9,022,173 is authorized through 2018. Act 1, Secs. 65-67.

By August 1, 2013, the Commissioner and the Chief Fiscal Officer of the Joint Fiscal Office (JFO) shall enter into a memorandum of understanding in order to provide the JFO with state returns and return information. The MOU shall provide for:

- (a) Mechanisms to prevent the identification of individual taxpayers, including the redaction of any information that identifies a particular taxpayer;
- (b) Protocols for handling and transmitting returns and return information;
- (c) The designation of specific employees of the JFO with access to the information provided by the Department of Taxes;
- (d) The incorporation of unauthorized disclosures under subsections (a) and (h).

Act 73, Secs. 6, 6a. 32 V.S.A. §3102(l).

The commissioner may waive the requirement of a written declaration that a licensee applicant is good standing with respect to all taxes if the Commissioner deems it appropriate to facilitate the Department of Financial Regulation's participation in a national licensing or registration system for persons required to be licensed or registered by the Commissioner of Financial Regulation. Act 73, Sec. 58, 59. 32 V.S.A. §3113(b), 8 V.S.A. § 15(c).

The Department is directed to develop and pursue further strategies and redeploy resources to close the tax gap during fiscal year 2014 with the goal of increasing current collections by \$1,500,000. Act 73, Sec. 8.

Cigarettes and Tobacco

The prohibition on the sale of cigarette stamps during the period from June 15 through June 30 each year is repealed. This end-of-fiscal year black out period is no longer administratively necessary. Act 73, Sec. 9. 32 V.S.A. § 7772(b).

The period for the Department to assess additional tobacco products tax may be extended by consent of the taxpayer. This change parallels extension provisions relative to other taxes. Act 73, Sec. 10. 32 V.S.A. §7817.

Provisions unique to cigarette or tobacco products liability appeals to superior court are removed to conform to other tax appeals; specifically, the directive that such appeal be given preference on the superior court docket, the provision for interest at 6 percent rather than the rate established annually under 32 V.S.A. §3108, and the award of triple costs for appeals taken without probable cause, are removed from the statute. Act 73, Sec. 11. 32 V.S.A. §7783.

The definition of “manufacturer”, “wholesale dealer”, “wholesale outlet”, and “whole sale price” are updated to specifically reference the different types of tobacco subject to tax. The term “distributor” is removed because for purposes of administering the tax it is interchangeable with the term “wholesale dealer” and so was redundant. Accordingly, the term “distributor” was deleted throughout Chapter 205 (Cigarettes and Tobacco Products). References to “wholesale dealer” were amended to be prefaced by “licensed” through Chapter 219. The definition of “retail dealer” was amended to directly incorporate the definition of the same term in Title 7, where retail dealers are regulated. The adjective “moist” before snuff was removed from the definition of “other tobacco products”. Act 14, Sec.8. 32 V.S.A. §7702(4), (7), (10), (15), (16), (18) and (19).

The law requiring each licensed wholesale dealer to secure a license from the Commissioner before engaging in the business of selling cigarettes now expressly provides that licensed wholesale dealers shall sell these products only to other Vermont licensed wholesale dealers or to retailers licensed under Title 7. Act 14, Sec. 9. 32 V.S.A. § 7731.

There is a presumption that if a licensed wholesale dealer cannot produce proper evidence of cigarette stamps purchases to cover the dealer’s receipts that the product was sold without tax having been paid. This presumption is extended to roll-your-own tobacco. Act 14, Sec. 17. 32 V.S.A. §7777.

Statutes providing for imposition of the tobacco products tax and record keeping are amended to reflect the new tobacco types. Act 14, Secs. 19 and 21. 32 V.S.A. §7811.

Current Use

A lessee with a perpetual lease could enroll land in the current use program. That provision of law has been amended to specify that in this context, a “perpetual lease” means a lease that endures for more than 999 years. Act 73, Sec. 12. 32 V.S.A. § 3752.

The Commissioner is authorized to subordinate current use liens and to charge a fee of \$179.00 for reviewing a subordination request. Act 72, Sec. 14. 32 V.S.A. §3777.

The current use appeal statute is clarified to provide that appeal from a decision of the Commissioner or Director goes to superior court in the county in which the land is located and the period for appeals to the Commissioner of the Department of Forests, Parks and Recreation from an adverse inspection report is sixty days. Act 73, Sec. 13. 32 V.S.A. §3758.

The provision that enrolled land is considered developed if a wastewater system permit has been issued for the land pursuant to 10 V.S.A. 32 V.S.A. §1973 and the Commissioner of Forests, Parks and Recreation has made a certification to the Director is repealed in response to the practical problem of tracking local permits. Act 73, Sec. 14. 32 V.S.A. §3752(5).

Estate Tax

The link to the federal estate tax law is updated to incorporate changes adopted through December 31, 2012. Act 73, Sec. 15. 32 V.S.A. §7475.

Interest paid to taxpayers on estate tax is changed slightly so that it is computed from the *latest of* 45 days after the date the return was filed or was due, including any extensions of time thereto or, if the taxpayer filed an amended return or otherwise requested a refund, 45 days after the date the petition or amended return was filed. Act 73, Sec. 16. 32 V.S.A. §7488(b).

Fuel Gross Receipts Tax

The exemption for sellers of receiving \$10,000 or less annually from fuel sales is repealed. Act 73, Sec. 56. 33 V.S.A. §2503.

Health Care Claims Tax

Effective July 1, 2013, administration of this tax is moved to the Department of Taxes and it is re-codified as Chapter 243 of Title 32. The tax is imposed annually on health insurers in the amount of 0.999 of one percent of all health insurance claims paid by health insurers for its Vermont members in the previous fiscal year ending June 30. It is due in one installment by January 1. The revenues are deposited into the Health IT-Fund (0.199 percent) and the State Health Care Resources Fund (0.8 percent). On July 1, 2017, the tax is reduced to 0.8 percent and the deposit into the Health IT-Fund ceases. Former Health Care Claims Assessment (8 V.S.A. §4089l) and Health Care Information Technology Reinvestment Fee (8 V.S.A. §4089k) are repealed and sunset respectively. The Commissioner may disclose these returns or return information to the Commissioners of Vermont Health Access and Financial Regulation. Act 73, Secs. 48-53. Title 32, Chapter 243, 32 V.S.A. §3102(e), 32 V.S.A. §10301, 32 V.S.A. §10402.

Income Tax

The wood products manufacturer tax credit is extended for another six months. It now is repealed effective January 1, 2014 and no credit is available for tax years beginning on or after January 1, 2014. Act 73, Sec. 24. 32 V.S.A. §5930y, 2005 Spec. Sess. Acts and Resolves No. 2, as amended by 2006 Acts and Resolves No. 212, Sec. 9 and 2008 Acts and Resolves No. 190, Sec. 29, and as further amended by 2011 Acts and Resolves No. 45, Sec. 17.

The link to the Internal Revenue Code is updated to incorporated changes in effect for taxable year 2012. Act 73, Sec. 20. 32 V.S.A. §5824.

A technical correction is made that conforms the definition of “Vermont net income” with the adoption of Vermont net operating losses and decoupling from federal net operating losses 3 years ago. Act 73, Sec. 17. 32 V.S.A. §5811(18).

The reference to “applicable percentage” in 32 V.S.A. §5822 has been changed to 24 percent because the term was a holdover from when Vermont piggybacked to federal income tax liability. Act 73, Sec. 21. 32 V.S.A. §5822.

An amendment the definition of “taxable income” clarifies that “qualified dividend income” is not treated as capital gain income for purposes of the capital gains exclusion. Act 73, Sec. 18. 32 V.S.A. §5811(18)(A)(i).

Local Option Tax

The charters of the Cities of St. Albans and of Winooski were amended to allow the imposition of a one percent meals and alcoholic beverage tax, a one percent rooms tax, and a one percent sales tax if approved by the voters of the City. The taxes will be collected under general state law (24 V.S.A. § 138). Act M00, Sec. 2; H. 534, Sec. 3. 24 App. V.S.A chapter 150, §3; 24 App. V.S.A. chapter 19, Article 7, §719.

Property Tax

Both the homestead and nonresidential education tax rates are increased for fiscal year 2014 over fiscal year 2013. The homestead rate will be \$0.94 up from \$0.89 and the nonresidential rate will be \$1.44 up from \$1.38 per \$100.00 of equalized property value. The homestead rate is further adjusted for district spending. The base education amount for fiscal year 2014 is \$9,151.00; it was \$8,723 for fiscal year 2014. Act 52, secs. 1 and 2.

The temporary exemption for skating rinks that are used by a public school for a sport has been extended again for fiscal years 2013 and 2014. Act 73, Sec. 43. 2008 Acts and Resolves No. 190, Sec. 40, as amended by 2010 Acts and Resolves No. 160, Sec. 22, as amended by 2011 Acts and Resolves 45, Sec. 13f.

Owners of properties exempt under 32 V.S.A. §3802(4)-(6), and (12)-(15) and §5401(10)(D), (F), (G), and (J) must provide to their listers the insurance replacement cost or a written explanation of why the property is not insured before April 1 each year. The listers must include that value on the grand list if provided and also identify whether the value is the insurance replacement cost provided under 3802a or the full listed value under 4152(a)(6). Act 73, Secs. 29, 30. 32 V.S.A. §§3802a, 4152(a)(6), 4152(c).

When a certificate of exemption for land held by a qualified environmental conservation organization is granted by the Commissioner, it becomes effective for the April 1 grand list the follows the Commissioner's receipt of all information necessary for a determination on qualification. Act 73, Sec. 26. 10 V.S.A. § 6306(b)(3).

A new exemption, effective January 1, 2014, is enacted for the land owned by the Town Hardwick located in the Town of Greensboro that provides public access to Caspian Lake and land owned by the Town of Thetford and located in Fairlee and West Fairlee that provides public access to Lake Fairlee. Act 73, Sec. 28. 32 V.S.A. §3802(11)(B).

The sum of \$150,000 is appropriated for payment of expenses associated with a reappraisal as of April 1, 2012 of the hydroelectric plants and other property owned by TransCanada Hydro Northeast, Inc on the Connecticut River. Act 1, Sec. 75. In addition, \$50,000 was appropriated for payment of legal expenses incurred by towns in defense of grand list appeals of the assessment of TransCanada hydroelectric property. The Attorney General will review and approve reasonable reimbursement up to the appropriation. Act 50, Sec. E. 139.

Property tax valuation appeals from local boards of civil authority may be taken to either to Superior Court or to State Appraisers, who are appointed by the Director of Property Valuation and Review to act as hearing officers in such cases. Their title is changed from "State Appraiser" to "Hearing Officer" to more accurately reflect the role of these appointees in tax disputes. Act 73, Secs. 32- 34. 32 V.S.A. §§4465, 4466, 4467.

Several obsolete statutes concerning reporting of delinquent taxes to the Director of Property Valuation and Review are repealed. Act 73, Secs. 35-37. 32 V.S.A. §5165, 5166, 5167.

The reference to the repealed tax on steamboat, car and transportation companies is deleted from the definition of "nonresidential property". Act 73, Sec. 38. 32 V.S.A. §5401(10)(B).

Beginning with the study of the 2013 grand list, the Unified Towns and Gores of Essex County may be treated as a uniform assessment district for equalization purposes if they are determined to have a common grand list for valuation. Act 73, Sec. 39. 32 V.S.A. § 29.

Property Tax Adjustments

The requirement that a renter must have rented property during the entire claim year is added to the subdivision containing other eligibility conditions. This requirement already existed in 32 V.S.A. §6062(a). Act 73, Sec. 40. 32 V.S.A. §6066(b) and (c).

Property Transfer Tax

The Commissioner may dispense with the requirement of signatures on the property transfer tax. This will enhance taxpayers' ability to file transfer tax returns electronically using the Department's EPTTR system. However, the return will include a notice that the property may be subject to regulations governing potable water supplies and wastewater systems under 10 V.S.A. Chapter 64 and to building zoning and subdivision regulations and that parties have an obligation to investigate and disclose his or her knowledge regarding flood regulation affecting the property. Act 73, Sec. 44. 32 V.S.A. §9606.

Reports

The tax expenditure report shall contain the statutory purpose explaining the policy goal behind the exemption, exclusion, deduction or credit. A tax expenditure listed in the report that lacks a statutory purpose in statute shall not be implemented or enforced until a statutory purpose is provided. This shall take effect July 1, 2014. The Joint Fiscal Committee will draft the statutory purpose of each tax expenditure listed in the report. Act 73, Secs. 4, 5. 32 V.S.A. §312(d).

A committee shall study the public, pious and charitable property tax exemption and make recommendations related to the definitions, listing, valuation, and tax treatment of properties within this exemption. The Director of Property Valuation and Review is a member. The Committee shall report to the Senate Finance and House Ways and Means Committees by January 15, 2014. Act 73, Sec. 42

The date on which VEPC and the Tax Department must report to the General Assembly on TIFs is changed from January 15 to April 15 and additional reporting requirements are added, including on the date of creation, a profile and map of the district, the original taxable value, the scope and value of projected and actual improvements and developments, projected and actual incremental revenue amounts and division of the increment revenue between district debt, the Education Fund, the special account required by 24 V.S.A. §1896 and the municipal general fund, projected and actual financing, and a set of performance indicators developed by VEPC. S. 37, Sec. 13.

A report on compliance program revenue targets, collection trends, and program activities is due from the Tax Commissioner to the House and Senate Committees on Appropriations, the House Committee on Ways and Means, and the Senate Committee on Finance on January 15, 2014. The report shall include program outcomes and measures to evaluate program activity. Act 50, Sec. E. 111.

Sales and Use Tax

The sale, purchase, installation, or transfer, or possession of "automated sales suppression device" – also known as "zappers" – is prohibited and violations are punishable by imprisonment for not less than one year and not more than five years and fined not more than \$100,000, or both. Zappers are devices that falsify transaction data, transaction reports, or any other electronic record of electronic cash registers and other point-of-sale systems. Act 13. 13 V.S.A. §2032.

Durable medical equipment used in *diagnosis* intended to alleviate human suffering as well as such equipment used in *treatment* is exempt from sales tax. Act 73, Sec. 45. 32 V.S.A. §9741(2).

Property must be used outside the State before being brought into the State to qualify for exemption from use tax. Act 73, Sec. 46. 32 V.S.A. §9744(a)(2).

Interest paid on a claimed refund of sales and use tax will be calculated from 45 days after the date of the refund claim rather than the date of the overpayment. Act 73, Sec. 49. 32 V.S.A. §9781(c).

The temporary moratorium on enforcement of sales tax on prewritten software accessed remotely (“cloud” software) is allowed to expire on June 30, 2013 in accordance with law enacted last session.

Solar Tax

Clarifying language is added to the solar tax providing that the existence of a solar plant does not make the underlying land subject to property tax if it is otherwise exempt from property tax. Act 73, Sec. 41. 32 V.S.A. § 8701(d).

Tax Increment Financing

In 2011 and 2012, the State Auditor performed audits of the four existing tax increment financing districts and concluded that collectively they had underpaid the Education Fund by \$6 million dollars. The law contained no specific remedy to recover the underpayment from the municipalities. In order to resolve all disputes with the municipalities, only the following amounts will have to be repaid:

The City of Burlington will remit \$200,000 out of the increment over a 5 year period.

The Town of Milton will remit \$22,000 from municipal revenues other than the increment over a 2 year period; \$160,000 to the Catamount Husky Increment Fund over a 5 year period from municipal nonincrement revenues; and \$17,000 to the Catamount Husky Tax Increment Fund for repayment of debt from the Town Core Tax Increment Financing Fund no later than December 15, 2013.

The City of Winooski will remit \$1,300 to the Education Fund from municipal nonincremental revenues by July 1, 2013 and \$62,000 to the Tax Increment Financing Fund from municipal nonincremental revenues over a 5 year period.

Payments that are not remitted within 60 of the scheduled payment date may be withheld from any funds otherwise payable by the State to the municipality. If the legislative body of the municipality does not approve the payment(s), the underpayments identified by the Auditor are considered owed to the Education Fund. S. 37, Sec. 1.

The definition of “improvements “ was broadened to include infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts as stated in 24 V.S.A. § 1893. It includes utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation. It does not include soft costs. S. 37, Sec. 2. 24 V.S.A. § 1891(4).

A definition of “original taxable property” is replaced with a definition of “original taxable value”, which is determined on the date the TIF was created. A TIF is created on 12:01 a.m. on April 1 of the calendar year so voted by the municipality. This definition is cross-referenced with § 1892 to make it clear when taxable value is determined. S. 37, Sec. 2, 3. 24 V.S.A. §§1891(5), 1892(b).

The definition of “related costs” now allows municipalities to include personnel costs related to administering the district but only to the extent that they are paid from the tax increment realized from municipal and not education taxes and use only that portion of the municipal increment above the required percentage in serving the TIF debt. Municipalities may designate a coordinating agency from

outside the municipality's departments to administer the district and claim that as a related cost. S. 37, Sec. 2, 3. 24 V.S.A. §§1891(6), 1892(c).

Originally, bonds were the only permissible form of debt, then the law was expanded to include other types of debt such as Housing and Urban Development Section 108 financing instrument and "interfund loan" within a municipality. Now permissible financing includes any type of debt authorized by the voters of the municipality. However, municipalities will not be permitted to charge interest on intercompany loans (which would have had the effect of allowing one municipal department to borrow from and another municipal department and charge the Education Fund interest on the loan). Municipalities can also now pay for the cost of district improvements directly if approved by the voters and part of the municipality's tax increment plan. S. 37, Sec. 2. 24 V.S.A §1891(8).

A definition of "committed" is adopted and replaces the term "pledged". This is the increment that is generated and retained each year for payment of TIF district debt. S. 37, Sec. 2. 24 V.S.A. § 1891(8).

Vermont Economic Progress Council (VEPC) is not authorized to approve any TIF districts beyond those that have already been authorized to use education tax increment financing which are:

- (1) The City of Burlington, Downtown;
- (2) The City of Burlington, Waterfront;
- (3) The Town of Milton, North and South;
- (4) The City of Newport;
- (5) The City of Winooski;
- (6) The Town of Colchester;
- (7) The Town of Hartford;
- (8) The City of St. Albans;
- (9) The City of Barre; and
- (10) The Town of Milton, Town Core.

S. 37, Sec. 3. 32 V.S.A. §1892(d). Notwithstanding this section, VEPC is authorized to approve a TIF in South Burlington up until December 31, 2013. S. 37, Sec. 17. The City of Burlington is also authorized to extend its borrowing period by five years beginning January 1, 2015 (without extending its retention period). S. 37, Sec. 18.

Numerous other amendments to Chapter 53 of Title 24 and Chapter 135 or Title 32 were enacted including provisions that:

Allow districts a total of ten years from the creation date to incur additional debt if any debt is incurred within the first five years. If no debt is incurred in the first five years, the district shall terminate unless an extension is granted by VEPC.

Require municipalities to notify VEPC and the Tax Department when first debt is incurred.

Require VEPC approval of a TIF financing plan prior to public vote.

Specify that a TIF district will terminate when the debt is retired or within five years if no debt is incurred.

Establish that the retention period begins the year the first debt is incurred and is limited to 75 percent of the increment for 20 years.

Require more comprehensive notice and information to be provided to voters prior to a public vote.

Reaffirm that all property taxes assessed within a district must be used for financing and related costs. Designating, by charter or otherwise, an assessment as special or for a particular purpose does not change this result.

Repeal provision for adjustment upon reappraisal.

Require information reporting (including performance indicators) to VEPC and Department of Taxes and include TIF finances in municipal audit cycle.

S. 37, Secs. 4-10.

VEPC shall adopt a “single rule” for all tax increment financing districts that will further clarify the statutes and establish a process for municipalities to distribute excess increment to the Education Fund. However, TIFs in existence prior to January 2006 may be exempted from the “single rule” if specifically provided in the rule. S. 37, Sec. 14. 32 V.S.A. § 5404a(j).

The Secretary of Commerce and Community Affairs may issue decisions relating to the administration of TIFs and noncompliance. The Secretary may permit an interlocutory appeal for questions of law before issuing a final decision. If the Secretary issues a decision finding noncompliance, the Secretary may request the Treasurer to issue a bill for the underpayment and/or refer the matter to the Attorney General for civil action. The appeal to the Secretary is subject to the provisions 3 V.S.A. chapter 25 relating to contested cases. S. 37, Sec. 14. 32 V.S.A. §5404a(j).

The State Auditor no longer is required to audits TIFs every four years. Instead audits will occur in accordance with a schedule arrived at in consultation with VEPC. S. 37, Sec. 16. 32 V.S.A. §5404a(l).

June 10, 2013