

Highlights of 2010 Tax Legislation

Introduction

The General Assembly made significant changes to the calculation of property tax adjustments and the taxation of capital gains. Changes were enacted affecting certain sales tax exemptions and the property transfer tax laws were updated to allow for a new on-line system of filing property transfer tax returns that will begin on January 1, 2011. The education property tax rates remain the same as last year - \$0.86 for homesteads and \$1.35 for nonresidential property. The requirement of filing a homestead declaration is eliminated for certain people and the renter rebate program is simplified. Finally, the valuation of hydroelectric facilities will not be reduced below the April 1, 2009 values on the 2010 and 2011 grand lists. These and other changes to the tax laws are summarized below.

Compliance

Audit expenses: The commissioner may charge travel expenses and a reasonable per diem to companies that are unable or unwilling to provide books or records for audit at either the department's Montpelier office or an in-state location of the company. Act 160, sec. 4. 32 V.S.A. § 3201(a)(4).

Debt offset: Beginning July 1, 2010, the fee the department charges for setting off debts owed to state agencies against tax refunds, will be charged to the debtor and not to the claimant agency. The department will determine the per-offset fee annually to reflect the actual cost to the department. Act 160, sec. 6. 32 V.S.A. § 5938.

The commissioner is authorized to enter into agreements with other states to set-off the amount of a certified tax debt to that state against a Vermont tax refund. Act 160, sec. 7. 32 V.S.A. § 5942.

Staffing: Six additional compliance positions will be added in fiscal year 2011 and 5 positions in fiscal year 2012. Revenue targets are established for these years. Act 156, Sec. 107.

Education Property Tax

Rates: For fiscal year 2011, the tax rate for nonresidential property will be \$1.35 per \$100.00 of equalized property value and the tax rate for homestead property will be \$0.86 multiplied by the district spending adjustment for the municipality per \$100.00 of equalized property value. These are the same as the fiscal year 2010 rates. The “applicable percentage” for claims filed in 2011 will be 1.8 percent as it has been since 2007. Act 160, sec. 28.

Effective July 1, 2010, incentives for voluntary school district mergers include a decrease of the education property tax rate in the first 4 years after the merger. The rate decrease is \$0.08 in year 1; \$0.06 in year 2 ; \$0.04 in year 3 and \$0.02 in year 4. It is applied to the tax rate of the newly created district, but the rate for each town within the district cannot increase or decrease by more than 5% in a single year. The common level of appraisal will continue to be calculated independently for each town within the new district. Act 153, sec. 4.

Homestead Declaration: A person who acquires a homestead or owns a property that is made a homestead must file a homestead declaration by the next April 15. The declaration shall remain in effect until the earlier of (1) the transfer of title of all or a portion of the homestead; or (2) the time at which the property or any portion of the property ceases to qualify as a homestead. If the property is transferred or any portion ceases to be a homestead, the owner must notify the commissioner within 30 days. A person who files a declaration for a nonresidential property, fails to file a required declaration or fails to file the notification is subject to a penalty equal to either 3 or 8 percent of the education tax on the property depending upon which rate (homestead or nonresidential) is higher in the municipality. Act 160, sec. 47. 32 V.S.A. § 5410(b) and (g).

*****This change does not eliminate the ANNUAL requirement to file a property tax adjustment claim (HS-122) and household income schedule (HS-144) in order to receive an adjustment on a property tax bill*****

Clarendon/Rutland City tax sharing agreement: A 1981 Act relating to an agreement to split the value of an industrial park between the municipalities’ grand

lists is repealed effective June 4, 2010. The agreement is inconsistent with the education tax provisions of Chapter 135 of Title 15. Act 160, sec. 51(e).

Skating rinks: The education property tax exemption for a skating rink used by a school is extended for another year (FY 2011). Such facilities are not exempt under 32 V.S.A. § 3802 (public, pious and charitable uses), but are temporarily exempt as the result of session law enacted in 2008. Act 160, sec. 22.

Clarendon: Due to an error on the Town of Clarendon's 2009 grand list that the Town did not discover until after the grand list filing deadline, its education payment amount was lower than it would have been had Clarendon filed a correct grand list. This section provides that the town's fiscal year 2011 education tax liability will be reduced by the difference. Act 160, sec. 21.

Tax increment financing: The fair market value of TIF property, not the original taxable value, is included in the equalization study. Act 160, sec. 14. 32 V.S.A. § 5405(a).

Hydroelectric Generating Facilities: 2010 and 2011 grand list values of hydroelectric generating facilities will not be lower than their 2009 values. This law does not amend existing agreements between municipalities and owners or prohibit tax stabilization agreements in effect as of September 1, 2009 that do not reduce the grand list value below the 2009 valuation. The grand list value may be changed pursuant to a townwide reappraisal conducted after April 1, 2009. Act 160, sec. 59.

Estate tax

Excluded amount: For estates of decedents dying after December 31, 2010, Vermont is decoupled from the federal exclusion amount. Instead, estates will calculate the Vermont estate tax as though the applicable exclusion amount under the Internal Revenue Code were \$2,750,000. Act 160, secs. 33a, 33b. 32 V.S.A. §§ 7442a(c), 7475.

Refunds: Refunds of estate tax bear interest from 45 days after the date of the amended return. Act 160, sec. 32. 32 V.S.A. § 7488.

Fuel Gross Receipts

Imposition of the fuel gross receipts tax to heating oil, kerosene, and dyed diesel fuel was clarified effective July 1, 2010; those fuels are subject to fuel gross receipts tax when they are delivered to a residence or business. Act 160, sec. 44. 33 V.S.A. § 2503(a). The petroleum distributor's licensing fee imposed on sellers of heating oil, kerosene or other dyed diesel fuel sold in Vermont and not used to propel a motor vehicle is increased from one-half cent per gallon to one cent per gallon. This fee is deposited into the petroleum clean-up fund. Act 160, sec. 43. 10 V.S.A. § 1942(b).

Income Tax

Capital gains: Vermont's treatment of capital gains is changed again effective for taxable years 2011 and after. Individuals may reduce taxable income by *either*:

- (1) the first \$5000 of adjusted net capital gain income or
- (2) 40 percent of adjusted net capital income from the sale of assets held by the taxpayer for more than 3 years *except* from sale of the following:
 - any real estate or portion of real estate used by the taxpayer as a primary or nonprimary residence
 - depreciable personal property other than farm property and standing timber
 - stocks or bonds publicly traded or traded on an exchange or any other financial instruments.

As under current and prior law, the total amount of decrease due to capital gains exclusions cannot exceed 40 percent of federal taxable income. Act 160, sec. 60. 32 V.S.A. § 5811(21).

Check-off boxes: There will be a new check-off box on the 2010 individual income tax return form for contributions to the Vermont Veterans' Fund. The check-off box for campaign contributions will be removed from the 2010 return. Act 160, secs. 49, 51(c). 32 V.S.A. § 5862e.

Solar tax credits: Certain deadlines pertaining to investments that qualify for solar tax credits were amended. The credits, which may be taken against the individual and corporate income taxes, must be certified by the Clean Energy Development Board to the Department of Taxes. The Board cannot certify more than \$9.4 million in total and no taxpayer's award can exceed the amount awarded as the federal credit amount. There are two categories of investments that may be certified.¹

1) Investments made after January 1, 2010 that pertain to a solar energy plant with a capacity of 2.2 MW or less for which the owner has filed a complete petition for a certificate of public good. These plants must be commissioned or ready to be commissioned by September 1, 2011. The taxpayer must provide all information necessary to determine its eligibility to the public service board by July 15, 2010.

2) Investments made after January 1, 2010 and before December 31, 2010 that pertain either to a system that constitutes energy property as defined in 26 U.S.C. 48(a)(3)(A)(i) that does not require a certificate of public good or to a net metering system of no more than 150 kilowatts (AC) capacity. The taxpayer must provide all information necessary to determine its eligibility to the board by December 15, 2010.

Act 159, sec.11. 32 V.S.A. § 5930z.

Machinery and equipment tax credit: A credit against corporate income tax is available to a manufacturer of tangible personal property operating as a C corporation that: was in business on January 1, 2010 in a Rural Economic Area Partnership (REAP) zone in Vermont; employed at least 200 people in full-time jobs; and proposes to make at least \$20 million of qualified capital expenditures in a REAP zone that will contribute substantially to the REAP zone's economy. The credit equals 10 percent of the total qualified tax expenditures up to \$1 million a year and a total of \$8 million. The credit applies to taxable years beginning on and

¹ The legislation references several definitions and provisions found in Title 30.

after January 1, 2012 and is repealed July 1, 2026. H.789, secs. H.1-3. 32 V.S.A. § 5930ll.

Electronic filing of W-2 data: The commissioner may require businesses and payroll service providers to file withholding tax information by electronic means. H. 792, sec. B7. 32 V.S.A. § 5842(c).

Local Option Taxes

Administrative fee: The department's per return administrative fee for administration and collection of the local option tax for municipalities is set at \$9.52 and will be reviewed every third year. Act 160, sec. 8. 24 V.S.A. § 138(c).

Property Tax Adjustments

Claims made for 2010, 2011 and 2012: Interest and dividends greater than \$10,000.00 will be included twice in household income (all interest and dividends are included once in household income). Act 160, secs. 23, 51. 32 V.S.A. § 6061(5).

No adjustment is available for equalized housesite value over \$500,000.00; education property tax at the homestead rate (adjusted for local spending and the common level of appraisal) is due on that portion of equalized value. Act 160, secs. 25, 51. 32 V.S.A. § 6066(a)(1)(B).

Claims made for 2010 and after: The additional acreage adjustment (\$10.00 per acre, up to a maximum of 5 acres, for each additional acre of homestead property in excess of the 2-acre housesite) is repealed.

Claims made for 2011 and after: Household income will not be reduced by adjustments to "total income" that are enumerated on Federal Form 1040 *except* certain business expenses of reservists, one-half of self-employment tax paid, alimony paid and deductions for tuition and fees. Current law allows all the adjustments between total income and adjusted gross income to reduce household income. Act 160, sec. 24. 32 V.S.A. § 6061(5).

The limitation that modified adjusted gross income cannot go below zero applies individually to household members as well as to total household income. Act 160, sec. 24. 32 V.S.A. § 6061(4).

Property Transfer Tax (Eff. Jan. 1, 2011)

Payment: Beginning January 1, 2011, the property transfer tax is payable to the commissioner of taxes instead of to the town clerk of the town in which the property is located. The tax is due upon transfer rather than at the time of recording. Act 160, secs. 16, 18. 32 V.S.A. §§ 9605(a), 9607.

Return: A properly executed return, complete and regular on its face, must accompany the deed when delivered to the town clerk for recording. The recording fee for the return is set pursuant to 32 V.S.A. § 1671(a)(6); the current fee is \$10.00. Act 160, secs. 17, 19. 32 V.S.A. §§ 9606, 9608(a).

Electronic transmission of acknowledged return: Town clerks are required to file the return in the land records and forward an electronic copy of the acknowledged return to the commissioner no later than 30 days after receiving a return. However, if the return was filed in paper format with the town, the commissioner may allow the town to forward a paper copy of the acknowledged return to the department. Act 160, sec. 20. 32 V.S.A. § 9619(a).

Renter Rebates

Calculation: For claims filed in 2011 and after, renter rebates will be based on 21 percent of gross rent. There will no longer be an option to use the allocable portion of property tax. The definition of “gross rent” is unchanged. Act 160, sec. 24. 32 V.S.A. § 6061(7).

Household income: For 2011 and 2012 claims, interest and dividends greater than \$10,000.00 will be included twice in household income (all interest and dividends are included once in household income). Act 160, secs. 23, 51. 32 V.S.A. § 6061(5).

For claims made in 2011 and after, household income will not be reduced by adjustments to “total income” that are enumerated on Federal Form 1040 *except*

certain business expenses of reservists, one-half of self-employment tax paid, alimony paid and deductions for tuition and fees. Current law allows all the adjustments between total income and adjusted gross income to reduce household income. Act 160, sec. 24. 32 V.S.A. § 6061(5).

Landlord certificates: Beginning in 2011, an owner of a rental property that consists of more than *one* rented homestead is required to provide a certificate of rent to each person who rented a homestead from the owner during the preceding calendar year regardless of whether the tenant requested a certificate or waived the right to receive a certificate. The penalty for knowingly failing to furnish a certificate is increased from \$100.00 to \$200.00. Likewise, the minimum penalty for reporting rent in excess of the actual amount paid is increased to \$200.00. Act 160, sec. 26. 32 V.S.A. § 6069.

Sales and Use Tax

Use tax: Individuals must report either the actual amount of their use tax or a percentage of their Vermont adjusted gross income as use tax on the Vermont income tax return. Effective for taxable years beginning on or after 2010, the percentage increases from 0.04 to 0.08. H.783, sec. 37. 32 V.S.A. § 5870.

Schools and municipalities: When schools or municipalities hold events such as ski and skate sales, vendors who are required to register with the commissioner under 32 V.S.A. § 9707 and who receive a share of the proceeds from the sale of property must collect and remit tax on the total sale price regardless of who is the direct recipient of the payment. Act 160, sec. 41. 32 V.S.A. § 9743(6).

Exempt organizations: Effective for charges made on or after April 1, 2011, the law which required 501(c)(3) organizations to collect sales tax on performances that are jointly produced or presented with another person or entity is repealed and replaced with a rule that requires collection of the tax if the organization's gross sales of entertainment charges in the prior calendar year exceeded \$50,000.00. Act 160, secs. 38, 39, 41.

Such organizations do not have to collect tax on charges for performances that are jointly produced or presented which occur after December 31, 2009 and before

April 1, 2011, or which arise out of a written contract offer, or contract entered into after December 31, 2009 and before June 1, 2010. Taxes, interest and penalties assessed after January 1, 2010 under the joint production rule are legislatively abated. Act 160, secs. 40a, 40b.

Tax Expenditures

Downtown and village tax credits: These credits may now be transferred to an insurance company that can use them to reduce its insurance premiums tax. The applicant may request an insurance credit certificate in the amount of the unused credit that the insurance company may accept in return for cash. The credit is available to reduce the company's tax liability in the first tax year in which the qualified building is placed back in service or in the subsequent 9 years. Act 160, secs. 30, 31. 32 V.S.A. §§ 5930dd(f), 5930ff.

For fiscal year 2011, \$100,000 is appropriated to the downtown and village center tax credit program, which amount is in addition to the statutory cap of \$1.7 million. Act No. 78, sec. 10a.

Repeals: Two underutilized expenditures, the exclusion from Vermont income of support payments of a developmentally disabled person to the extent that amount is included in federal adjusted gross income and the credit for income received for a dramatic performance in a commercial film, are repealed for tax years beginning on and after January 1, 2013. Regarding the exclusion, the express legislative intent is to appropriate the estimated \$5000 savings to the Department of Disabilities, Aging, and Independent Living. In addition, the exclusion from nonresident individual income of income received for a dramatic performance in a commercial film to the extent such income would be excluded from personal income taxation in the state of residence is repealed for taxable years 2013 and after. Act 160, secs. 51(a), 52, 53. 32 V.S.A. §§ 5823(a)(6) and (b)(3), 5826

Sales tax reallocation: The Vermont Downtown Development Board is authorized to certify an additional \$600,000 - above the current limit of \$1,700,000 – for sales tax reallocation under 32 V.S.A. 5930ee. Act 160, sec. 54.

Other expenditures:

See **machinery and equipment credit, capital gains and solar tax credits** under Income Tax.

See **skating rinks** and **Clarendon** under Education Property Tax.

See **schools and municipalities** and **exempt organizations** under Sales and Use Tax.

Tobacco Taxes

Roll-your-own tobacco: The amount of roll-your-own tobacco that constitutes a cigarette for purposes of paying the cigarette tax is changed from 0.09 ounces to 0.0325 ounces effective July 1, 2010. Act 160, sec. 35. 32 V.S.A. § 7771.

Rates: On July 1, 2010, the tax on snuff increases from \$1.66 to \$1.87 per ounce; and the tax on new smokeless tobacco increases to the greater of \$1.87 per ounce or, if packaged to contain less than 1.2 ounces, the rate of \$2.24 per package (up from \$1.99 per package). A separate tax scheme on cigars is imposed as follows:

1. If the whole sale price of the cigar is \$1.08 or less, the tax will continue to be 92 percent of the whole sale price.
2. If the wholesale price of the cigar is greater than \$1.08 and less than \$10.00, the tax is \$2.00.
3. If the wholesale price of the cigar is more than \$10.00, the tax is \$4.00.

A definition of “cigar” is added which reads: “any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section or is a little cigar within the meaning of subdivision (6) of this section).” Act 160, secs. 34, 36. 32 V.S.A. §§ 7702 (21), 7811.

Use Value Appraisal Program

Development definition: The definition of “development” is amended to slightly expand an exception that exists to the rule that subdivision of land that creates a parcel of less than 25 acres constitute “development.” Under prior law, if the subdivision resulted from a transfer to a close relative (specified in the law) and the

transferee enrolled the newly created parcel, there was no “development” for program purposes. Now if it is the *transferor’s* parcel that is less than 25 acres following subdivision and the land is re-enrolled, the exception would also apply. Act 160, sec. 12. 32 V.S.A. § 3752(5).

Current Use Advisory Board: The board’s current method of calculating land use change values is deemed to have the force and effect of administrative rules and any modification of the method must go through administrative rulemaking. Act 160, sec. 13.

Vermont Economic Growth Incentives (VEGI)

Recapture: The recapture provision that applies to VEGI awards is amended as follows:

1. “Year” is changed to “period” to prevent businesses that would otherwise trigger a recapture of benefits due to elimination of workforce from avoiding the obligation to repay benefits due to the timing of the workforce reduction. Act 160, sec. 10. 32 V.S.A. § 5930b(d).
2. Application of recapture to start-up businesses is clarified.
3. The commissioner’s authority to assess penalty *at the time* recapture and interest is assessed is clarified.
4. The department may initiate recapture prior to notification by a business of a drop in payroll when the department discovers layoffs through other means, such as news reports.
5. The general withholding provisions, including personal liability for the recapture amount, apply to VEGI credits taken against wage withholding.

Act 160, sec. 10. 32 V.S.A. § 5930b(d).

Studies and Reports

Tax Expenditure Report: This biennial report is expanded to cover diesel fuel tax, gasoline tax and motor vehicle purchase and use tax in addition to personal and corporate income taxes, sales and use tax, meals and rooms tax, insurance

premium tax, bank franchise tax and education property tax. The next report is due on January 15, 2011 to the following standing committees: House Ways and Means; House Appropriations; Senate Finance; and Senate Appropriations. It will also include the pass-through of federal tax expenditures from personal income tax reported on Federal Schedule A to Form 1040. The January 2013 report will also include the recommendation of the Tax Department, the Joint Fiscal Office and Legislative Council as to what other federal expenditures should be included in the biennial report. Act 160, secs. 1, 2. 32 V.S.A. § 312 and session law.

VAST trails: The director of Property Valuation and Review will meet with representatives of the Vermont Association of Snow Travelers, the Vermont Assessors and Listers Association, the Town of Canaan, the Vermont League of Cities and Towns and other interested parties with respect to what are “appropriate factors in assessing the value of land that has or is in proximity to recreational trails such as the statewide snowmobile trails.” A report is due to the House Ways and Means and Senate Finance Committees on January 15, 2011. Act 160. Sec. 11.

State Collection of Education Property Tax: The Department of Taxes must provide to the Joint Fiscal Committee a feasibility report on developing an electronic system for the department’s administration, billing and collection of the education property tax. The report is due no later than July 15, 2011. Act 160, sec. 45.

State education tax adjustments: The commissioner’s annual recommendation to the General Assembly to adjust the education tax rates shall include, for 2011 only, information on: (1) the total amount of annual education property tax adjustments (2) the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income and (3) the dollar limitations that are used for each of the computations. Act 160, sec. 50. 32 V.S.A. § 5402b(c).

Compliance: The department must file a report with the House Ways and Means and Senate Finance Committees with detailed findings and recommendations on further enhancing the State’s compliance and collection of taxes. The report is due no later than January 15, 2011. H. 792, sec. B8.

Electronic filing of tax returns: The department must file a report with the House Ways and Means and Senate Finance Committees that details the fees charged and expenses incurred in making refund payments electronically and by physical check. The report is due no later than January 15, 2011 and must include recommendations to provide incentives for taxpayers and tax preparers to file returns and pay or receive refunds electronically. H. 792, sec. B9.

Valuation of hydroelectric generating facilities: The department, in conjunction with the department of public service and representatives of Vermont municipalities must prepare findings regarding the feasibility of implementing an appraisal method that uses 3- to-5 year rolling appraisal values on hydroelectric facilities. The report is due to the House Ways and Means and Senate Finance Committees no later than January 15, 2011. Act 160, sec. 59.