SCHEDULE BA-402 Instructions
Apportionment & Allocation Schedule

General Instructions

Please use BLUE or BLACK ink only.

This schedule is required for all entities having activity (income or loss) outside of Vermont. You do not have to complete this schedule if your business activity is exclusively in Vermont. If a Schedule BA-402 is not attached to the return, apportionment will be assumed to be 100%. If you are claiming the "No Vermont Activity" exception from the minimum tax, then you must submit a Schedule BA-402 that accurately reports "everywhere" activity and no Vermont activity.

Review Regulation § 1.5833-1, Allocation and Apportionment of Vermont Net Income By Corporations. See **https://tax.vermont.gov/document/allocation-and-apportionment-regulation** for a copy of the regulation. Please note that the Department has issued new regulations effective December 1, 2021. The Department considers the Reg. § 1.5833 to also be applicable when defining Vermont business income from multi-state businesses passed through to individuals, estates, and trusts under 32 V.S.A. § 5823. As such, except as otherwise provided in statute, preparers may appropriately rely on these regulations when computing a BA-402 for a pass-through entity.

If the income or loss of a taxable entity is derived from any trade, business, or activity conducted entirely within Vermont, the net income shall be apportioned to Vermont in full. Vermont uses a three-factor formula to apportion the income of entities operating in more than one state. Vermont net income is the entity's total income multiplied by the arithmetic average of these three percentages:

1) The **gross sales or charges for services** performed within Vermont to such sales "Everywhere" (within and outside Vermont), **double-weighted**; and,

2) The total **wages, salaries, or personal service compensation** paid during the taxable year to employees or agents within Vermont to such payments "Everywhere" (within and outside Vermont); and,

3) The average value of **real and tangible personal property** owned or rented within Vermont to such property "Everywhere" (within and outside Vermont).

The **"Everywhere"** amounts include sales, wages, and property outside of Vermont as well as within Vermont. Entities filing apportioned consolidated Vermont returns use the combined amounts of the Vermont consolidated group, which includes only the members of the federal consolidated group with nexus in Vermont. The Department reserves the right to request detailed information regarding the sales, wages, and property in Vermont and "Everywhere" for each Vermont company, and the total amount for all non-nexus members of the group. Complete Schedule BA-410, Affiliation Schedule, to identify all members of the group. **Reminder:** We expect to match entries on Vermont forms and schedules, including Schedule BA-402, with entries on your federal return. If an entry is not the expected value, then you must provide a supporting reconciliation and explanation.

Line-by-Line Instructions

Enter your Business Name and Federal Employer Identification Number

- For separate corporations and consolidated groups that are not unitary, leave "Affiliate Corporation" and "Affiliate's FEIN" blank.

- For combined reports for unitary groups, complete a Schedule BA-402 for the Principal Vermont Corporation (PVC) and for each taxable affiliate. Provide the name and FEIN for both the PVC and the affiliate in the appropriate fields. The first Schedule BA-402 should report the PVC's name and FEIN in the "PVC" and "Affiliate" fields. **For each affiliate, the "Everywhere" figures reported should be those for the entire affiliated group (including those members that do not have nexus in Vermont), and thus should be the same on each Schedule BA-402 filed for the group.** Do not complete Schedule BA-402 or Schedule CO-421, Unitary Affiliate Schedule, for affiliates that do not have nexus in Vermont.

PART 1 DIRECTLY ALLOCATED NON-BUSINESS INCOME, OTHER NON-APPORTIONABLE INCOME, AND FOREIGN DIVIDENDS

All items of non-business or non-apportionable income (income which is not included in the apportioned tax base) are allocated directly to the state in which the income was generated (such as Vermont net income from a Schedule K-1VT, Shareholder, Partner, or Member Information) or in which the income-producing assets are located. If the income-producing asset has no situs (location), the income will be allocated to the state of commercial domicile, the principal place from which the business is directed or managed.

Line 1a Enter the amount of Non-business or Non-apportionable Income from Everywhere.

Line 1b Enter the amount of Non-business or Non-apportionable Income from Vermont.

Place an "X" in the box to the left of the amount to indicate a negative value.

Amounts from Lines 1a and 1b will be used on Form CO-411, Corporate Income Tax Return, and possibly Schedule CO-421 for corporate income tax filers, or Schedule BI-472, Non-Composite Schedule, or Schedule BI-473, Composite Schedule, for business income tax filers.

Use Line 1b to report a deduction for income received from a pass-through entity of which this company is an owner, but upon which composite tax has already been paid by that pass-through entity. This situation would arise if a pass-through entity was required to file a composite return and pay tax, but the corporation filing this return had additional income or activity in Vermont, thus triggering a filing requirement. The Line 1b deduction is the mechanism to prevent double taxation of the pass-through income.

Lines 1c and 1d should only be used by Unitary filers.

Line 1c Enter the total amount of Foreign Dividends paid to the unitary group. This is the amount reported on Form CO-411, Line 4(d), and will be the same on all Schedules BA-402 and Schedules CO-419, Apportionment of Foreign Dividends.

Line 1d Enter the Vermont Foreign Dividends Taxable Income from Schedule CO-419, Line 17. Include on the Schedule CO-421 for the corresponding affiliate, Line 5.

PART 2 APPORTIONMENT FACTORS

DO NOT REPORT NEGATIVE VALUES ON SCHEDULE BA-402. This schedule is to apportion or allocate activity, not report income. It is not possible to have negative activity in "Vermont" or "Everywhere." If an item of income is negative, use the absolute value in order to fairly apportion or allocate activity.

Complete Sections A, B, and C. Enter "Everywhere" amounts in the left columns and "Vermont" amounts in the right columns. Compute the Vermont-apportioned percentage for Lines 12, 13, and 20 by dividing the "Vermont" total by the "Everywhere" total. Carry out the percentage to six decimal places. Enter the percentages on Lines 12c, 13c, and 20c. The percentages are totaled and averaged in Section D.

For Unitary filers, the "Everywhere" figures reported should be those for the entire group, and should be the same on each Schedule BA-402 filed for each affiliate within the group. If this entity holds an interest in a unitary pass-through entity, then the pro-rata share of the pass-through entity's apportionment factors must be added to Lines 2 through 20. If the pass-through entity is not unitary, then the distributed income is reported on Lines 1a and 1b and the pro-rata share of pass-through entity's apportionment factors are excluded from Lines 2 through 20.

SECTION A: Apportioned Income, Sales and Receipts Factor

Line 2 **Enter the total sales or gross receipts** for the year. Enter **GROSS RECEIPTS COMPONENTS** of net income amounts. The taxpayer may need to refer to various other federal forms or schedules to obtain the gross components of business receipts. For example, federal Form 1065, U.S. Return of Partnership Income, Page 1, Line 5, provides a net amount; the taxpayer must refer to federal Form 1040, U.S. Individual Income Tax Return, Schedule F, Profit or Loss from Farming, Line 9, for the **GROSS** amount for the purpose of this factor.

Line 3 **Enter the total of all receipts from services** received in or delivered to Vermont. Under the market-based approach, effective Jan. 1, 2020, sales of services are assigned to Vermont when the services or benefits of the services are received in or delivered to Vermont, or if the customer or marketplace is located in Vermont.

Line 4 **Enter the sales of tangible personal property** shipped or delivered to Vermont from *outside* Vermont, except when the purchaser is the United States Government.

Line 5 **Enter the sales of tangible personal property** shipped or delivered to Vermont from *within* Vermont, except when the purchaser is the United States Government. Also use this line for **sales of real property** included in Line 2 if the property is in Vermont.

Line 6 **Enter the sales of tangible personal property** shipped *from Vermont to the United States Government.* These are "throwback" sales. (Vermont apportionment factor of Line 2 above.)

Line 7 **Enter the sales of tangible personal property** shipped *from Vermont to purchasers in a state where the entity is not taxable; i.e., does not have nexus.* These are "throwback" sales. (Vermont apportionment factor of Line 2 above.)

Line 8 **Enter receipts from business interest and dividends.** Interest and dividends are apportioned if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business. Interest or dividends that are not apportioned are reported on Schedule BA-402, Lines 1a and 1b.

Line 9 **Enter receipts from royalties** as reported by filers of federal Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule K, Line 6; federal Form 1065, U.S. Return of Partnership Income, Schedule K, Line 7; or federal Form 1120, U.S. Corporation Income Tax Return, Line 7. Royalties are apportioned to Vermont on a market-based sourcing basis.

Line 10 **Enter the total gross rental receipts** for the year as reported by filers of federal Form 1120S, Schedule K, Line 3a; federal Form 1065, Schedule K, Line 3a; federal Form 8825, Line 2; or federal Form 1120, Line 6.

Line 11 **Enter other business income** as reported by filers of federal Form 1120S, Line 5; federal Form 1065, Line 7; or federal Form 1120, Line 10. Include taxable income from Vermont sources earned as a shareholder or partner and reported on federal Schedule K-1; i.e., from income-producing assets and activity located in Vermont. Include supporting detail for calculation of "Other Business Income" included on Line 11a and 11b. Schedules sent that re-state "Other" or "Miscellaneous" Income with no further detail may be considered incomplete or insufficient. If you do not include the required supporting information, then your return is incomplete.

Line 12 **Total sales and gross receipts.** Add Lines 2 through 11 and enter the "Everywhere" and "Vermont" values on Lines 12a and 12b, respectively. Calculate the Vermont apportionment percentage for sales and gross receipts by dividing Line 12b by Line 12a. Carry this percentage six places beyond the decimal point and enter on Line 12c.

SECTION B: Salaries and Wages Factor

Line 13 **Enter the salaries and wages** paid or accrued during the taxable year for "Everywhere" and for "Vermont" on Lines 13a and 13b, respectively. Salaries and wages are apportioned to Vermont if they were paid for services performed in the state. Payments to employees for board, rent, housing, lodging, and any other benefits paid in exchange for labor will be treated as compensation if they are considered as income under the Internal Revenue Code. To the extent that employee services produce both business and nonbusiness income, proration is required. Calculate the Vermont apportionment percentage for salaries and wages by dividing Line 13b by Line 13a. Carry this percentage six places beyond the decimal point and enter on Line 13c.

SECTION C: Property Factor

Lines 14-18 Use the **average** of the beginning and ending values based on the **original** cost.

DO NOT INCLUDE INTANGIBLE PROPERTY IN THIS FACTOR. Tangible personal property is within Vermont if it is physically situated or located here. Property of the taxpayer held in Vermont by an agent, consignee, or factor is situated or located within Vermont. **Property in transit** between locations of the taxpayer to which it belongs is considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices is included in the numerator according to the state of destination. The value of **mobile or movable property** such as construction equipment, trucks, or leased electronic equipment which are located within and without this state during the tax period is determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. **Construction in progress except as otherwise provided in the regulations, Intangible Property should not be included in the property factor.** (see Reg. § 1.5833(B)(5). If you report activity on Line 18: "Other assets," then you must include a schedule.

Line 19 The value of the **rented or leased real or tangible personal property** both within and outside Vermont is determined by multiplying the gross rent payable during the tax year by a factor of eight. The gross rent to be used includes all money or other considerations payable directly or indirectly for the use and possession of the property and includes payments measured as a percentage of profits, payments in addition to or in lieu of rent for interest, taxes, insurance, repairs or other amounts paid on behalf of the lessor which may be required by the lease.

Line 20 **Total property values.** Add Lines 14 through 19 and enter the "Everywhere" values (left column) and the "Vermont" values (right column) on Lines 20a and 20b respectively. Calculate the Vermont apportionment percentage for property by dividing Line 20b by 20a. Carry this percentage six places beyond the decimal point and enter the resultant percentage on Line 20c.

SECTION D: Vermont Apportionment Percentage

The Vermont apportionment percentage is the numerical average of the sales factor (double-weighted), the salaries and wages factor, and the property factor.

- If the sales factor does not exist, i.e. Line 12a is zero, the remaining two factors are totaled and divided by two.
- If either the wages or property factors are zero, i.e., Line 13a or Line 20a is zero, divide the sum of the weighted sales factor and other factor by three.
- If two factors are zero, the remaining factor is the Vermont apportionment percentage.
- If Line 12b, 13b, or 20b is zero, and there is a nonzero amount in the corresponding "Everywhere" line, the factor exists. The factor 0.000000% should be included with the other factors to determine the Vermont apportionment percentage.

Line 21 **Total of the three percentages.** Add Lines 12c twice, 13c, and 20c. Enter the result here.

Line 22 **Vermont Apportionment Percentage** Divide Line 21 by 4 (or as indicated below). Enter the result here and, as applicable, on the following: Form CO-411, Line 6; Schedule CO-421, Line 1; Schedule BI-472, Line 7; or Schedule BI-473, Line 8.

- Sales/Receipts and Salaries and Wages - divide by 3
- Sales/Receipts and Property - divide by 3
- Salaries and Wages and Property - divide by 2
- Sales/Receipts only - divide by 2
- Salaries and Wages only - divide by 1
- Property only - divide by 1

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