

2012 Annual Report on Digital Business Entities

Section H. 55 in Act 1 of the 2009 Vermont Legislature Special Session requires the Tax Department to provide a report on the election of the tax for digital business entities under 32 VSA§ 5832a. This is the first report and includes all of the filings received through December 1, 2011.

Number of returns filed by Digital Business Entities – 0

Income reported by businesses electing to be taxed as digital business entities - \$0.

Income taxes exempted as the result of electing to be taxed as digital business entities -- \$0.

Because there have been no businesses electing to be taxed as digital business entities, there are no details to report on the characteristics of those companies.

Projections for the Future

The Tax Department does not believe that the state will receive revenues from digital business entities in the future. After discussions with experts on digital business entities in Vermont, we can formulate no examples where the election of the digital business entity tax will be advantageous for any company and we expect no filings in the future.

Applying the definition of a digital business entity in 32 V.S.A. § 5811(26), companies are only allowed to elect the alternate tax calculations under the conditions when that company:

was not 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 taxation;

did not have any Vermont property, payroll, or sales and

did not perform any activities in this state which would constitute doing business for purposes of income taxation¹.

A company that meets these conditions is not considered to have nexus for the purpose of paying the Vermont Corporate Income tax. Companies without nexus in Vermont do not file business income taxes in Vermont.

¹ except activities described in subdivisions (15)(C)(i) (fulfillment operations) and (C)(ii) (web page or Internet site maintenance) of 32 VSA§ 5811. These exceptions do not create nexus for the purpose of collection of the Vermont Corporate Income tax.

Pass through entities not currently eligible for the digital business entity tax treatment follow the same conditions for establishing nexus in Vermont. Expanding the current law to include pass through entities will not introduce new opportunities for application of the tax treatment.

Text of Section H.55 in Act 1 (2009 Special Section)

Beginning in 2011 and every year thereafter, by January 15, the commissioner of taxes shall report to the house committee on ways and means and to the senate committee on finance on the amount of income reported to date to the department by businesses electing to be taxed as digital businesses, an estimate of the amount of income taxes exempted as a result, and details as to the size of businesses reporting. The committees shall review the report and make their recommendation to the general assembly as to whether to continue the taxpayer option of a digital business election and whether to extend the option to pass-through entities. If the digital business election is repealed, the commissioner's reporting requirement of this section shall no longer apply.