No. 45. An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

(H.436)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Income Taxes * * *

Sec. 1. 32 V.S.A. § 3113b is added to read:

§ 3113b. LOTTERY WINNINGS; SATISFACTION OF TAX LIABILITIES

For all Vermont lottery games, the lottery commissioner may, before issuing prize money to a winner, determine whether the winner has an outstanding tax liability payable to the department of taxes. If any such winner owes taxes to the state, the commissioner of taxes, after notice to the owner, may request and the lottery commission shall transfer the amount of such tax liability to the department for setoff of the taxes owed. The notice shall advise the winner of the action being taken and the right to appeal the setoff if the tax debt is not the winner's debt; or if the debt has been paid; or if the tax debt was appealed within 60 days from the date of the assessment and the appeal has not been finally determined; or if the debt was discharged in bankruptcy. Any offset of lottery winnings for taxes shall be third in priority to the offset of lottery winnings to the office of child support pursuant to 15 V.S.A. § 792 and the offset of lottery winnings for resitution pursuant to 13 V.S.A. § 7043.

Sec. 2. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for taxable year ~~2009~~ 2010, but without regard to federal income tax rates under Section 1 of the Internal Revenue Code, are hereby adopted for the purpose of computing the tax liability under this chapter.

Sec. 3. 32 V.S.A. § 5884(d) is added to read:

(d) Notwithstanding subsection (a) of this section, a report required by subsection 5842(b) of this title may be amended after the due date of such report only for an administrative error. An administrative error is one that does not change the amount of tax withheld.

Sec. 3a. 32 V.S.A. § 5823(a)(8) is added to read:

(8) The amount paid by the state of Vermont pursuant to chapter 181 of Title 20 to the extent that such amount is included in the federal adjusted gross income of the taxpayer for the taxable year.

* * * Property Taxes * * *

Sec. 4. FISCAL YEAR 2012 EDUCATION PROPERTY TAX RATE

(a) For fiscal year 2012 only, the education property tax imposed under 32 V.S.A. § 5402(a) shall be reduced from the rates of $1.59 and $1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be $1.36 per $100.00; and

(2) the tax rate for homestead property shall be $0.87 multiplied by the district spending adjustment for the municipality, per $100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.

(b) For claims filed in 2012 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.80 percent multiplied by the fiscal year 2012 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.80 percent.

Sec. 5. FISCAL YEAR 2012 BASE EDUCATION PAYMENT AMOUNT

Notwithstanding 16 V.S.A. § 4011(b) or any other provision of law, the base education payment for fiscal year 2012 shall be $8,544.00.

Sec. 6. Sec. 45 of No. 160 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 45. STATE COLLECTION OF EDUCATION PROPERTY TAX

No later than July 15, 2011, the department of taxes shall provide the joint fiscal committee with a feasibility report on developing an electronic system for the department's administration, billing, and collection of the education

property tax provided for in chapter 135 of Title 32 and on the application of the common level of appraisal separately and independently from the tax rate.

Sec. 7. REPEAL

Sec. 46 of No. 160 of the Acts of the 2009 Adj. Sess. (2010) as amended by Sec. 102 of No. 3 of the Acts of 2011 is repealed.

Sec. 7a. 16 V.S.A. § 164(18) is amended to read:

(18) Ensure that Vermont's students, including students enrolled in secondary technical education, have access to a substantially equal educational opportunity by developing a system to evaluate the equalizing effects of Vermont's education finance system and school quality standards under section 165 of this title. ~~Beginning in school year 2000 and every five years thereafter, or more often if requested by the general assembly, the state board shall report to the general assembly concerning the results of this evaluation and recommendations for change if needed.~~

Sec. 8. EVALUATION OF EDUCATION FINANCING SYSTEM

(a) The joint fiscal office with the assistance of the legislative council, the department of taxes, and the department of education shall develop a proposal for a provider to evaluate the outcomes of No. 60 of the Acts of the 1997 Adj. Sess. (1998) and No. 68 of the Acts of the 2003 Adj. Sess. (2004).

(b) The proposal shall be approved by the president pro tempore of the senate, the speaker of the house, and a special committee consisting of the

members of the joint fiscal committee and the chairs of the house and senate committees on education.

(c) The evaluation shall incorporate the following:

(1) a review of the existing studies of Vermont's education finance system since the enactment of No. 60 of the Acts of the 1997 Adj. Sess. (1998) and No. 68 of the Acts of the 2003 Adj. Sess. (2004);

(2) a review of the existing data collected by the departments of education and of taxes related to the Vermont education finance system under Act 60 and Act 68;

(3) a review of education finance systems in comparable states with an emphasis on states in New England and states committed to equity.

(d) The evaluation will include comparisons between the communities within this state and between this state and other states based on the following factors:

(1) equity, which includes the opportunity for students, access to resources for schools, and equal treatment for taxpayers;

(2) education quality, which includes a review of Vermont's statutory outcome measures of performance and other state and national measures of performance based on existing data;

(3) comparative costs, including spending growth overall and particular areas of spending (e.g., special education), understanding that No. 60 of the

Acts of the 1997 Adj. Sess. (1998) and No. 68 of the Acts of the 2003 Adj. Sess. (2004) envisioned some increase in spending in poorer communities;

(4) funding reliance, which means the types of tax and revenues used to fund the education system;

(5) demographic issues, including the impact of demographic changes independent of the state education funding system;

(6) economic impacts, if any, that the education funding system has had on state and local economies;

(7) the relationship between per pupil spending and the total amount spent for each community; and

(8) the extent to which spending is correlated to community income wealth.

(e) The provider selected shall:

(1) carry out public participation activities as part of its evaluation;

(2) submit a report to the governor, the president pro tempore of the senate, the speaker of the house, and the joint fiscal committee by January 18, 2012.

(f) The department of education, the department of taxes, the joint fiscal office, and the legislative council shall assist the provider with gathering data required for the study.

Sec. 9. AUTHORIZATION TO SPEND

The joint fiscal office is authorized to expend up to a total of $210,000.00 for the evaluation in Sec. 8 of this act and related expenses by using funds from its existing budget, and, if necessary, the joint fiscal committee is authorized to transfer additional funds from other legislative departments to the joint fiscal office to cover the full amount of the evaluation requirements.

Sec. 10. 32 V.S.A. § 4961(c) is amended to read:

(c) Annually, on or before August 1, the supervisors of Glastenbury and Somerset shall each present the proposed budget and tax rate for the town for the ensuing year. Upon a finding by the commissioner of taxes before September 10 that the budget and tax rate are reasonable and show no obvious irregularities, the commissioner shall approve the budget and tax rate, and the supervisor shall then adopt the budget and tax rate and notify the residents of the town. If the commissioner does not approve the budget and tax rate by September 10, the budget ~~and tax rate~~ shall remain the same as the budget ~~and tax rate~~ for the prior year, and the supervisor shall so notify the residents of the town.

Sec. 11. 32 V.S.A. § 5410(g) is amended to read:

(g) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, ~~or fails to file a notice of~~

~~transfer or change in qualification pursuant to subdivisions (b)(1)(A) and (B) of this section,~~ the commissioner shall notify the municipality, and the municipality shall issue a corrected tax bill that ~~includes~~ may include a penalty ~~in an amount equal to three percent of the education tax on the property if the municipality's nonresidential tax rate is higher than the municipality's homestead tax rate for the tax year to which the declaration or failure pertains, or in any other case shall assess the taxpayer a penalty in an amount equal to eight percent of the education tax on the property~~. If the property incorrectly declared as a homestead is located in a municipality that has a lower homestead tax rate than the nonresidential tax rate, the penalty shall be an amount equal to eight percent of the education tax on the property, but if the homestead tax rate is higher than the nonresidential tax rate, the penalty shall be in an amount equal to three percent of the education tax on the property. If an undeclared homestead is located in a municipality that has a lower nonresidential tax rate than the homestead tax rate, the penalty shall be eight percent of the education tax liability on the property, but if the nonresidential tax rate is higher than the homestead tax rate, then the penalty shall be in an amount equal to three percent of the education tax on the property. If the commissioner determines that the declaration or failure to declare was with fraudulent intent, then the municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax on the property; plus any

interest and late-payment fee or commission which may be due. Any penalty imposed under this section and any additional property tax interest and late-payment fee or commission shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title.

Sec. 12. EXAMINATION OF RENEWABLE ENERGY PROPERTY TAX ISSUES

(a) The director of property valuation and review and the commissioner of public service shall undertake a joint examination of issues regarding the taxation of real property that includes a renewable energy plant. The examination shall consider the goals of Title 30 Chapter 89 relative to promoting in-state renewable energy resources, and in doing so shall consider whether the current method of property taxation of electric generation plants disproportionally burdens renewable energy plants.

(b) No later than January 15, 2012, the director of property valuation and review and the commissioner of public service shall report findings and analysis to the house committees on ways and means, on commerce and economic development, and on natural resources and energy, and the senate committees on finance, on economic development, housing and general affairs, and on natural resources and energy. The report shall include specific recommendations with respect to whether the current method of property

taxation of renewable energy plants should be continued or whether there are other methodologies that could be more appropriate. The report should detail both the positive and negative aspects associated with each methodology and make a recommendation as to which method the director and commissioner deem to be the best option for each type of renewable energy. The types of renewable energy generation that are to be addressed in the report shall include solar (both PV and solar thermal), woody biomass (both electric generation and pure thermal) and farm methane plants (designed to supply wholesale electricity into the grid). Among the factors that should be considered in making this determination, the report should address whether renewable energy plants that are on leased land should be taxed differently from renewable energy plants that are on land owned by the plant owner as well as other factors deemed important by the director and the commissioner. As part of the examination of this issue, parties of interest from both municipal government and the field of renewable energy development shall be consulted.

(c) For the purpose of this section, the terms "plant" and "renewable energy" shall have the same meaning as under 30 V.S.A. § 8002.

Sec. 13. 32 V.S.A. § 6061 is amended to read:

§ 6061. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

* * *

(5) "Modified adjusted gross income" means "federal adjusted gross income":

* * *

(D) without the inclusion of adjustments to total income except certain business expenses of reservists, one-half of self-employment tax paid, alimony paid, ~~and~~ deductions for tuition and fees, and health insurance costs of self-employed individuals; and

* * *

Sec. 13a. 32 V.S.A. § 3757(a) is amended to read:

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax ~~upon~~ on the earliest of either the development of that land, as defined in section 3752 of this chapter, or two years after the issuance of all permits legally required by a municipality for any action constituting development, or two years after the issuance of a wastewater system and potable water supply permit under 10 V.S.A. § 1973. Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market

value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

Sec. 13b. 32 V.S.A. § 6066(i) is added to read:

(i) Adjustments under subsection (a) of this section shall be calculated without regard to any exemption under section 3802(11) of this title.

Sec. 13c. 32 V.S.A. § 5401(12) is amended to read:

(12) "Excess spending" means:

(A) the per equalized pupil amount of~~:~~

~~(i)~~ the district's education spending, as defined in 16 V.S.A. § 4001(6), plus any amount required to be added from a capital construction reserve fund under 24 V.S.A. § 2804(b); ~~minus~~

~~(ii) the portion of education spending which is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. § 2804 to pay future approved school capital construction costs, including that~~

~~portion of tuition paid to an independent school designated as the public high school of the school district pursuant to 16 V.S.A. § 827 for capital construction costs by the independent school which has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to 16 V.S.A. § 3448(a)(2); and minus~~

~~(iii) the portion of education spending attributable to the district's share of special education spending in excess of $50,000.00 for any one student in the fiscal year occurring two years prior; and minus~~

~~(iv) a budget deficit in a district that pays tuition to a public school for all of its students in one or more grades in any year in which the deficit is solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed;~~

(B) in excess of 125 percent of the statewide average district education spending per equalized pupil in the prior fiscal year, as determined by the commissioner of education on or before November 15 of each year based on the passed budgets to date.

Sec. 13d. 16 V.S.A. § 4001(6) is amended to read:

(6) "Education spending" means the amount of the school district budget, any assessment for a joint contract school, technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) which is paid

for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental fund raising, federal funds, nongovernmental grants, or other state funds such as special education funds paid under chapter 101 of this title.

* * *

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12~~,~~)~~.~~ "education spending" shall not include:

(i) Spending during the budget year for approved school capital construction for a project that received preliminary approval under section 3448 of this title, including interest paid on the debt; provided the district shall not be reimbursed or otherwise receive state construction aid for the approved school capital construction.

(ii) For a project that received final approval for state construction aid under chapter 123 of this title:

(I) Spending for approved school capital construction during the budget year that represents the district's share of the project, including interest paid on the debt;

(II) Payment during the budget year of interest on funds borrowed under subdivision 563(21) of this title in anticipation of receiving state aid for the project.

(iii) Spending that is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. § 2804 to pay future approved school capital construction costs, including that portion of tuition paid to an independent school designated as the public high school of the school district pursuant to section 827 of this title for capital construction costs by the independent school that has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to subdivision 3448(a)(2) of this title.

(iv) Spending attributable to the cost of planning the merger of a small school, which for purposes of this subdivision means a school with an average grade size of 20 or fewer students, with one or more other schools.

(v) Spending attributable to the district's share of special education spending in excess of $50,000.00 for any one student in the fiscal year occurring two years prior.

(vi) A budget deficit in a district that pays tuition to a public school or an approved independent school or both for all of its resident students in any year in which the deficit is solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed.

(vii) For a district that pays tuition for all of its resident students and into which additional students move after the end of the census period

defined in subdivision (1)(A) of this section, the number of students that exceeds the district's most recent average daily membership and for whom the district will pay tuition in the subsequent year multiplied by the district's average rate of tuition paid in that year.

Sec. 13e. HEALTH, RECREATION, AND FITNESS ORGANIZATION PROPERTY TAX EXEMPTION

In fiscal year 2012, the following two properties shall be exempt from 50 percent of the education property tax under chapter 135 of Title 32: Buildings and land owned and occupied by a health, recreation, and fitness organization which is exempt under Section 501(c)(3) of the Internal Revenue Code, the income of which is entirely used for its exempt purpose, one of which is designated by the Springfield Hospital and the other designated by the North Country Hospital, to promote exercise and healthy lifestyles for the community and to serve citizens of all income levels in this mission. This exemption shall apply, notwithstanding the provisions of 32 V.S.A. § 3832(7).

Sec. 13f. Sec. 40 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. 22 of No. 160 of the Acts of the 2009 Adj. Sess. (2010), is further amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR SKATINGRINKS USED FOR PUBLIC SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt from 50 percent of the education property taxes for fiscal ~~years 2009, 2010, and 2011~~ year 2012 only.

Sec. 13g. 32 V.S.A. § 3802(11)(A) is amended to read:

(11)(A) Real and personal property to the extent of $10,000.00 of appraisal value, except any part used for business or rental, occupied as the established residence of and owned in fee simple by a veteran of any war or a veteran who has received an American Expeditionary Medal, his or her spouse, widow, widower or child, or jointly by any combination of them, if one or more of them are receiving disability compensation for at least 50 percent disability, death compensation, dependence and indemnity compensation, or pension for disability paid through any military department or the veterans

administration if, before May 1 of each year, there is filed with the ~~listers~~ office of veterans affairs:

(i) a written application therefor; and

(ii) a written statement from the military department or the veterans administration showing that the compensation or pension is being paid. Only one exemption may be allowed on a property. Application for an exemption under this section based upon permanent disability is only required to be filed with the ~~listers~~ office of veterans affairs before May 1 of the first year for which the exemption is sought, and the exemption shall remain on the grand list until title to the property is transferred.

Sec. 13h. TRACKING WASTEWATER PERMITS

The division of property valuation and review shall establish a system for tracking the issuance of wastewater system and potable water supply permits under 10 V.S.A. § 1973 on land enrolled in the use value appraisal program.

* * * Economic Development * * *

Sec. 14. 32 V.S.A. § 5930b(c)(9) is amended to read:

(9) ~~Incentives~~ Incentive claims must be ~~claimed~~ filed annually ~~on an incentive return available from the department of taxes filed~~ no later than the last day of ~~February~~ April of each year of the utilization period. Incomplete ~~returns shall not~~ claims may be considered to have been timely filed if a complete claim is filed within the time prescribed by the department of taxes.

If a claim is not filed each year of the utilization period, any incentive installment previously paid shall be recaptured in accordance with subsection (d) of this section. The incentive return shall be subject to all provisions of this chapter governing the filing of tax returns. No interest shall be paid by the department of taxes for any reason with respect to incentives allowed under this section.

Sec. 15. 24 V.S.A. § 1894(a)(2) is amended to read:

(2) If no indebtedness is incurred within the first five years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under 32 V.S.A. § 5404a(h). When considering reapproval, the Vermont economic progress council shall consider only material changes in the application under 32 V.S.A. § 5404a(h). The Vermont economic progress council shall presume that an applicant qualifies for reapproval upon a showing that the inability of the district to incur indebtedness was the result of the macro-economic conditions in the first five years after the creation of the district. Upon reapproval, the Vermont economic progress council shall grant a five-year extension of the period to incur indebtedness.

Sec. 15a. 32 V.S.A. § 5404a(l) is amended to read:

(l) The state auditor of accounts shall review and conduct an audit of all active tax increment financing districts every ~~three~~ four years and bill back to

the municipality the charge for the audit. The amount paid by the municipality for the audit shall be considered a "related cost" as defined in 24 V.S.A. § 1891(6). Any audit conducted by the state auditor of accounts under this subsection shall include a validation of the portion of the tax increment retained by the municipality and the portion directed to the education fund.

Sec. 15b. TREATMENT OF TIF DISTRICTS FOR ACCOUNTING PURPOSES

The town of Milton may elect to treat the Husky and Catamount tax increment financing districts as a single district for purposes of the accounting and reporting requirements established under 32 V.S.A. § 5404a, 24 V.S.A. § 1901, and any rule adopted by the Vermont economic progress council governing tax increment financing districts, and such an election shall be conclusive for purposes of any state audit pursuant to 32 V.S.A. § 5404a(l).

Sec. 16. BURLINGTON TAX INCREMENT FINANCING

(a) Pursuant to Sec. 83 of No. 54 of the Acts of the 2009 Adj. Sess. (2010), the joint fiscal committee approved a formula for the implementation of a payment to the education fund in lieu of tax increment payments.

(b) The terms of the formula approved by the joint fiscal committee are as follows:

(1) Beginning in the fiscal year in which there is the incurrence of new TIF debt, the city will calculate and make an annual payment on December

10th to the education fund each year until 2025. The April 1, 2010 grand list for the area encompassing the existing Waterfront TIF – excluding two parcels at 25 Cherry Street or the Marriott Hotel (SPAN#114-035-20755) and 41 Cherry Street – is the baseline to be used as the starting point for calculating the tax increment that will be divided 25 percent to the state education fund and 75 percent to the city of Burlington. At the conclusion of the TIF in FY2025, any surplus tax increment funds will be returned to the city of Burlington and state education fund in proportion to the relative municipal and education tax rates as clarified in a letter from Mayor Bob Kiss to the chair of the joint fiscal committee dated September 9, 2009.

(2) The formula for calculating the payment in lieu of tax increment is as follows: first, the difference between the grand list for the Waterfront TIF excluding the two hotel parcels from the fiscal year in which the payment is due and the April 1, 2010 grand list is calculated. Next, that amount is multiplied by the current education property tax rates to determine the increment subject to payment. Finally, this new increment is multiplied by 25 percent to derive the payment amount.

(3) The city of Burlington will prepare a report annually, beginning July 1, 2010, for both the joint fiscal committee and the department of taxes, which will contain:

(A) the calculation set out in subdivision (2) of this subsection;

(B) a listing of each parcel within the Waterfront TIF District and the 1996 original taxable value, 2010 extended base value, and the most recent values for all homestead and nonresidential property;

(C) a history of all of the TIF revenue and debt service payments; and

(D) details of new debt authorized, including repayment schedules.

Sec. 17. Sec. 2 of No. 2 of the Acts of 2005 (Spec. Sess.), as amended by Sec. 9 of No. 212 of the Acts of the 2005 Adj. Sess. (2006) and Sec. 29 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), is further amended to read:

Sec. 2. EFFECTIVE DATE; SUNSET

Sec. 1 of this act (wood products manufacture tax credit) shall apply to taxable years beginning on or after July 1, 2005. 32 V.S.A. § 5930y is repealed July 1, ~~2011~~ 2013, and no credit under that section shall be available for any taxable year beginning on or after July 1, ~~2011~~ 2013.

Sec. 17a. 32 V.S.A. 5930y(b) is amended to read:

(b) A credit against the income tax liability is available as follows:

(1) A credit of two percent of the wages paid in the taxable year by an employer for services performed in the designated counties associated with the manufacture of finished wood products. The credit shall be available to the employer in any year the counties qualify and for one year after a qualification ends. For purposes of this section, "finished wood products" means wood

products that are manufactured into the form in which they are offered for sale to consumers.

* * *

Sec. 18. 32 V.S.A. § 5930dd is amended to read:

§ 5930dd. CLAIMS; AVAILABILITY

(a) A taxpayer claiming credit under this subchapter shall submit to the department of taxes with the first return on which a credit is claimed a copy of the state board's tax credit allocation.

(b) A credit under this subchapter shall be available for the first tax year in which the qualified project is complete. In the alternative, the state board may allocate the credit available under this subchapter and make an allocation available upon completion of any distinct phase of a qualified project. The allocation and distinct phases of the qualified project shall be identified in the application package approved by the state board.

* * *

Sec. 19. 32 V.S.A. § 5930ee is amended to read:

§ 5930ee. LIMITATIONS

Beginning in fiscal year 2010 and thereafter, the state board may award tax credits to all qualified applicants under this subchapter, provided that:

* * *

(6) Credit awarded under section 5930cc of this subchapter that is rescinded or recaptured by the state board shall be available for the state board to award to applicants in any subsequent year, in addition to the total amount of tax credits authorized under this section.

Sec. 20. 32 V.S.A. § 5914(b) is amended to read:

(b) The commissioner may upon request and for ease of administration permit S corporations to file composite returns and to make composite payments of tax on behalf of some or all of its nonresident shareholders. In addition, the commissioner may require an S corporation that has in excess of 50 nonresident shareholders to file composite returns and to make composite payments at the middle marginal rate on behalf of all of its nonresident shareholders.

Sec. 21. 32 V.S.A. § 5920(b) is amended to read:

(b) The commissioner may permit a partnership or limited liability company to file composite returns and to make composite payments of tax on behalf of some or all of its nonresident partners or members. In addition, the commissioner may require a partnership or limited liability company that has in excess of 50 nonresident partners or members to file composite returns and to make composite payments at the middle marginal rate on behalf of all of its nonresident partners or members.

* * * Health Care-Related Provisions * * *

Sec. 22. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax is intended to be imposed only once upon the wholesale sale of any tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at $1.87 per ounce, or fractional part thereof, new smokeless tobacco, which shall be taxed at the greater of $1.87 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of $2.24 per package, and cigars with a wholesale price greater than ~~$1.08~~ $2.17, which shall be taxed at the rate of $2.00 per cigar if the wholesale price of the cigar is greater than ~~$1.08~~ $2.17

and less than $10.00, and at the rate of $4.00 per cigar if the wholesale price of the cigar is $10.00 or more. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 23. 33 V.S.A. § 1955a is amended to read:

§ 1955a. HOME HEALTH AGENCY ASSESSMENT

(a) Beginning ~~July 1, 2009~~ October 1, 2011, each home health agency's assessment shall be ~~17.69~~ 19.30 percent of its net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act. The amount of the tax shall be determined by the commissioner based on the home health agency's most recent audited financial statements at the time of submission, a copy of which shall be provided on or before December 1 of each year to the department. For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:

* * *

Sec. 24. 33 V.S.A. § 1953(a) is amended to read:

(a) Hospitals shall be subject to an annual assessment as follows:

(1) Each hospital's annual assessment, except for hospitals assessed under subdivision (2) of this subsection, shall be 5.5 percent of its net patient revenues (less chronic, skilled, and swing bed revenues) ~~for the hospital's fiscal year as determined annually by the commissioner of Vermont health access from the hospital's financial reports and other data filed with the department of banking, insurance, securities, and health care administration~~ ~~The annual assessment shall be based on data from a hospital's most recent full fiscal year for which data has been reported to the department of banking, insurance, securities, and health care administration~~ through September 30, 2011. Beginning October 1, 2011, each hospital's assessment, except for hospitals assessed under subdivision (2) of this subsection, shall be 5.9 percent of its net patient revenues (less chronic, skilled, and swing bed revenues).

* * *

Sec. 24a. HOSPITAL ASSESSMENT BILLING

(a) For the purpose of this section, the word "assessment" means the hospital assessment under 33 V.S.A. § 1953.

(b) Each year by May 15, the department of banking, insurance, securities, and health care administration shall deliver to the department of Vermont health access the financial reports and other data required to identify the actual

net patient revenue for each hospital subject to the assessment for the months of the preceding October through March.

(c) The department of Vermont health access shall use the data identified in subsection (b) of this section to prepare estimated monthly assessments for the entire year based on the estimated net patient revenues for each hospital. The department of Vermont health access shall send notice of the assessment due to each hospital for the months of July through March based on its estimates prepared under this subsection.

(d) Each year on or before March 15, when the department of banking, insurance, securities, and health care administration obtains the information necessary to determine the actual net patient revenue for each hospital for the preceding fiscal year, it shall transmit that information to the department of Vermont health access and the department of taxes.

(e) The department of Vermont health access, with the assistance of the department of taxes, shall calculate the assessments for the months of April, May, and June of each year to reflect the difference on an annual basis, if any, between the amount a hospital would have paid under the estimates prepared by the department of Vermont health access under subsection (c) of this section and the amount based on the actual net patient revenue provided by the department of banking, insurance, securities, and health care administration under subsection (d) of this section.

Sec. 25. 33 V.S.A. § 1954(a) is amended to read:

(a) Beginning July 1, ~~2007~~ 2011, each nursing home's annual assessment shall be ~~$4,322.90~~ $4,509.57, and beginning ~~January 1, 2008, $3,962.66~~ October 1, 2011, $4,919.53 per bed licensed pursuant to section 7105 of this title on June 30 of the immediately preceding fiscal year. The annual assessment for each bed licensed as of the beginning of the fiscal year shall be prorated for the number of days during which the bed was actually licensed and any over payment shall be refunded to the facility. To receive the refund, a facility shall notify the commissioner in writing of the size of the decrease in the number of its licensed beds and dates on which the beds ceased to be licensed.

Sec. 26. 33 V.S.A. § 1955(a) is amended to read:

(a) Beginning ~~January 1, 2008~~ October 1, 2011, each ICF/MR's annual assessment shall be ~~5.5~~ 5.9 percent of the ICF/MR's total annual direct and indirect expenses for the most recently settled ICF/MR audit.

Sec. 27. 32 V.S.A. § 7771 is amended to read:

§ 7771. RATE OF TAX

* * *

(d) The tax imposed under this section shall be at the rate of ~~112~~ 131 mills per cigarette or little cigar and for each 0.0325 ounces of roll-your-own

tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 27a. 32 V.S.A. § 7814(b) is amended to read:

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. on July 1 ~~following enactment of this act~~, 2011, has more than 10,000 cigarettes or little cigars or who has $500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. on July 1 ~~following enactment of this act~~, 2011, and on which cigarette stamps have been affixed before July 1 ~~following enactment of this act~~, 2011. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on July 1 ~~following enactment of this act~~, 2011, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~$0.25~~ $0.38 per stamp. Each wholesaler and retailer subject to the tax shall, on or before July 25 ~~following enactment of this act~~, 2011, file a report

to the commissioner in such form as the commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. on July 1 ~~following enactment of this act~~, 2011, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before July 25 ~~following enactment of this act~~, 2011, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

Sec. 28. 8 V.S.A. § 4089l is added to read:

§ 4089l. HEALTH CARE CLAIMS ASSESSMENT

(a)(1) Beginning October 1, 2011 and annually thereafter, each health insurer shall pay an assessment into the state health care resources fund established in 33 V.S.A. § 1901d in the amount of 0.80 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid in installments on November 1, January 1, April 1, and June 1.

(2) On or before September 1, 2011 and annually thereafter, the secretary of administration, in consultation with the commissioner of banking,

insurance, securities, and health care administration, shall publish a list of health insurers subject to the fee imposed by this section together with the paid claims amounts attributable to each health insurer for the previous fiscal year. The costs of the department of banking, insurance, securities, and health care administration in calculating the annual claims data shall be paid from the state health care resources fund.

(b) It is the intent of the general assembly that all health insurers shall contribute equitably to the state health care resources fund. In the event that the assessment established in subsection (a) of this section is found not to be enforceable as applied to third-party administrators or other entities, the assessment amounts owed by all other health insurers shall remain at existing levels and the general assembly shall consider alternative funding mechanisms that would be enforceable as to all health insurers.

(c) As used in this section:

(1) "Health insurance" means any group or individual health care benefit policy, contract, or other health benefit plan offered, issued, renewed, or administered by any health insurer, including any health care benefit plan offered, issued, renewed, or administered by any health insurance company, any nonprofit hospital and medical service corporation, or any managed care organization as defined in 18 V.S.A. § 9402. The term includes comprehensive major medical policies, contracts, or plans and Medicare

supplemental policies, contracts, or plans, but does not include Medicaid, VHAP, or any other state health care assistance program financed in whole or in part through a federal program, unless authorized by federal law and approved by the general assembly. The term does not include policies issued for specified disease, accident, injury, hospital indemnity, long-term care, disability income, or other limited benefit health insurance policies.

(2) "Health insurer" means any person who offers, issues, renews, or administers a health insurance policy, contract, or other health benefit plan in this state and includes third-party administrators or pharmacy benefit managers who provide administrative services only for a health benefit plan offering coverage in this state. The term does not include a third-party administrator or pharmacy benefit manager to the extent that a health insurer has paid the fee which would otherwise be imposed in connection with health care claims administered by the third-party administrator or pharmacy benefit manager. The term also does not include a health insurer with a monthly average of fewer than 200 Vermont insured lives.

(d) If any health insurer fails to pay the fee established in subsection (a) of this section within 45 days after notice from the secretary of administration of the amount due, the secretary of administration or his or her designee shall notify the commissioner of banking, insurance, securities, and health care administration of the failure to pay. In addition to any other remedy or

sanction provided for by law, if the commissioner finds, after notice and an opportunity to be heard, that the health insurer has violated this section or any rule or order adopted or issued pursuant to this section, the commissioner may take any one or more of the following actions:

(1) Assess an administrative penalty on the health insurer of not more than $1,000.00 for each violation and not more than $10,000.00 for each willful violation;

(2) Order the health insurer to cease and desist in further violations;

(3) Order the health insurer to remediate the violation, including the payment of fees in arrears and payment of interest on fees in arrears at the rate of 12 percent per annum.

Sec. 29. 8 V.S.A. § 4089k(a)(1) is amended to read:

(a)(1) Beginning October 1, 2009 and annually thereafter, each health insurer shall pay a fee into the health IT fund established in 32 V.S.A. § 10301 in the amount of 0.199 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid in ~~quarterly~~ installments on ~~October 1~~ November 1, January 1, April 1, and ~~July 1~~ June 1.

Sec. 30. DATA COLLECTION FOR PROVIDER TAXES

The secretary of administration shall develop systems to identify and collect the data necessary to administer any health-care-related tax under 42 C.F.R.

part 433.50 et seq. that is permitted by federal law but that Vermont does not currently levy, including an analysis of the base to which such a tax would apply and mechanisms for collection.

* * * Miscellaneous Provisions * * *

Sec. 31. 32 V.S.A. § 3102(b)(7) is added to read:

(7) "Authorized representative" means any person who would be considered a designee of the taxpayer under 26 U.S.C. § 6103(c). The signature of a notary public shall not be required for a person to be considered an "authorized representative."

Sec. 32. 33 V.S.A. § 2503(h) is amended to read:

(h) No tax under this section shall be imposed for any quarter ending after June 30, ~~2011~~ 2016. Monies from the escrow account shall be issued for rebates pursuant to subsection (g) of this section until March 1, ~~2012~~ 2017.

Sec. 32a. 33 V.S.A. § 2503(e) is amended to read:

(e) Fuel sellers, which are regulated "companies" as defined in ~~subsection~~ 30 V.S.A. § 201(a) ~~of Title 30~~, which provide conservation programs that meet the goals of the weatherization program in a manner approved by the public service board, and which enhance the weatherization program's capacity to serve low income households may be eligible for rebates from the fuel gross receipts tax imposed under this section. To establish rebate eligibility, such a company shall file with the public service board, on or before August 15 of

each year, a request for approval of rebates based on the company's activities during the prior fiscal year. The public service board shall make a determination of the amount of rebate for each applicant on or before January 15 of each year, and such amount shall be rebated by the state economic opportunity office under the provisions of subsection (g) of this section. The public service board shall authorize rebates equal to the expenditures undertaken by the regulated utilities provided that such expenditures were prudently incurred and cost-effective, that they provided weatherization services following a comprehensive energy audit and work plan, except in cases where the fuel seller and weatherization staff jointly conclude that the need for weatherization services can be determined without a comprehensive energy audit, and that they were targeted to households ~~at or below 150 percent of the federally-established poverty guidelines~~ that meet the eligibility criteria for low income weatherization services as determined by the office of economic opportunity.

Sec. 33. REPEAL

32 V.S.A. § 9602(2) (providing preferential property transfer tax for land enrolled in the use value appraisal program) is repealed effective July 1, 2011.

Sec. 34. 32 V.S.A. § 9610(c) is amended to read:

(c) Prior to distributions of property transfer tax revenues under 10 V.S.A. § 312, 24 V.S.A. § 4306(a), and 32 V.S.A. § 435(b)(10), ~~one~~ two percent of

the revenues received from the property transfer tax shall be deposited in a special fund in the ~~tax~~ department of taxes for property valuation and review administration costs. Up to one-half of the funds deposited in a special fund under this subsection shall be used for the purpose of administering the current use value program electronically.

Sec. 35. 32 V.S.A. § 9610(c) is amended to read:

(c) Prior to distributions of property transfer tax revenues under 10 V.S.A. § 312, 24 V.S.A. § 4306(a), and 32 V.S.A. § 435(b)(10), ~~two~~ one percent of the revenues received from the property transfer tax shall be deposited in a special fund in the tax department for property valuation and review administration costs. ~~Up to one-half of the funds deposited in a special under this subsection shall be used for the purpose of administering the current use value program electronically.~~

Sec. 36. 32 V.S.A. § 9743 is amended to read:

§ 9743. ORGANIZATIONS NOT COVERED

* * *

(7) An exemption under ~~subdivisions (3) and (5)~~ subdivision (3) of this section shall not be available for entertainment charges for admission to a live performance by an organization whose gross sales of entertainment charges by or on behalf of an organization for admission to live performances in the prior calendar year exceeded ~~$50,000.00~~ $100,000.00.

Sec. 36a. 32 V.S.A. § 9701(9)(I) is added to read:

(I) For purposes of subdivision (C) of this subdivision (9), a person making sales that are taxable under this chapter shall be presumed to be soliciting business through an independent contractor, agent, or other representative if the person enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the person if the cumulative gross receipts from sales by the person to customers in the state who are referred to the person by all residents with this type of an agreement with the person are in excess of $10,000.00 during the preceding tax year. For purposes of subdivision (C) of this subdivision (9), the presumption may be rebutted by proof that the resident with whom the person has an agreement did not engage in any solicitation in the state on behalf of the person that would satisfy the nexus requirements of the United States Constitution during the tax year in question.

Sec. 36b. 32 V.S.A. § 9783 is added to read:

§ 9783. NOTICE OF USE TAX DUE

(a) As used in this section:

(1) "De minimis online auction website" means an online auction website that facilitated total gross sales in Vermont in the prior calendar year

of less than $100,000.00 and reasonably expects to facilitate total gross sales in Vermont in the current calendar year of less than $100,000.00.

(2) "De minimis retailer" means any noncollecting retailer that made total gross sales in Vermont in the prior calendar year of less than $100,000.00 and reasonably expects total gross sales in Vermont in the current calendar year to be less than $100,000.00.

(3) "Noncollecting retailer" means any retailer not currently registered to collect and remit Vermont sales and use tax who makes sales of tangible personal property, services, and products transferred electronically from a place of business outside Vermont to be shipped to Vermont for use, storage, or consumption and who is not required to collect Vermont sales or use taxes.

(4) "Online auction website" means a collection of web pages on the Internet that allows any person to display tangible personal property, services, or products transferred electronically for sale which are purchased through a competitive process in which a participant places a bid, with the highest bidder purchasing the property, service, or product when the bidding period ends.

(5) "Vermont purchaser" means any purchaser who purchases tangible personal property, services, or products transferred electronically to be shipped or transferred to Vermont.

(b) Each noncollecting retailer shall give notice that Vermont use tax is due on nonexempt purchases of tangible personal property, services, or products

transferred electronically and shall be paid by the Vermont purchaser. The notice in this subsection shall be readily visible and contain the information as follows:

(1) The noncollecting retailer is not required and does not collect Vermont sales and use tax;

(2) The purchase is subject to state use tax unless it is specifically exempt from taxation;

(3) The purchase is not exempt merely because the purchase is made over the Internet, by catalogue, or by other remote means;

(4) The state requires each Vermont purchaser to report any purchase that was not taxed and to pay tax on the purchase. The tax may be reported and paid on the Vermont use tax form; and

(5) The use tax form and corresponding instructions are available on the department of taxes website.

(c) Notice requirements.

(1) The notice required by subsection (b) of this section to be displayed on a website shall occur on a page necessary to facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the

state of Vermont." The prominent linking notice shall direct the purchaser to the principal notice information required by subsection (b) of this section.

(2) The notice required in a catalogue by subsection (b) of this section shall be part of the order form. The notice shall be sufficient if the noncollecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont on page __." The notice on the order form shall direct the purchaser to the page that includes the principal notice required by subsection (b) of this section.

(3) For any Internet purchase made pursuant to this section, the invoice notice shall occur on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The invoice notice link shall direct the purchaser to the principal notice required by subsection (b) of this section. If the noncollecting retailer does not issue an electronic order confirmation, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) For any catalogue or telephone purchase made pursuant to this section, the complete notice required by subsection (b) of this section shall be

placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(5) For any Internet purchase made pursuant to this section, notice on the check-out page fulfills simultaneously both the website and invoice notice requirements of subdivisions (1) and (3) of this subsection. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The check-out page notice link shall direct the purchaser to the principal notice required by subsection (b) of this section.

(d) Exemptions and limitations.

(1) If a retailer is required to provide a similar notice for another state in addition to Vermont, the retailer may provide a consolidated notice so long as the notice includes the information contained in subsection (b) of this section, specifically references Vermont, and meets the placement requirements of this section.

(2) A noncollecting retailer may not state or display or imply that no tax is due on any Vermont purchase unless the display is accompanied by the notice required by subsection (b) of this section each time the display appears. If a summary of the transaction includes a line designated "sales tax" and shows the amount of sales tax as zero, this constitutes a display implying that

no tax is due on the purchase. This display shall be accompanied by the notice required by subsection (b) of this section each time it appears.

(3) Notwithstanding the limitation in this section, if a noncollecting retailer knows that a purchase is exempt from Vermont tax pursuant to Vermont law, the noncollecting retailer may display or indicate that no sales or use tax is due even if the display is not accompanied by the notice required by subsection (b) of this section.

(4) With the exception of notification on an invoice, the provisions of this section apply to online auction websites.

(5) A de minimis retailer and a de minimis online auction website are exempt from the notice requirements provided by this section.

(6) No criminal penalty or civil liability may be applied or assessed for failure to comply with the provisions of this section.

Sec. 36c. REPEAL

Sec. H.6 of No. 1 of the Acts of 2009 (Sp. Sess.) (transition to department of revenue) is repealed.

Sec. 36d. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax ~~of 25 percent of the gross revenues~~ is assessed on the gross revenue on the retail sale of spirituous liquor in the state of Vermont, including fortified wine, sold by ~~or through~~ the liquor control board or sold by a manufacturer or

rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the previous year:

(1) if the gross revenue of the seller is $100,000.00 or lower a year, the rate of tax is five percent;

(2) if the gross revenue of the seller is between $100,000.00 and $200,000.00, the rate of tax is $5,000.00 plus 15 percent of gross revenues over $100,000.00;

(3) if the gross revenue of the seller is over $200,000.00, the rate of tax is 25 percent.

Sec. 36e. 32 V.S.A. § 3205 is added to read:

§ 3205. TAXPAYER ADVOCATE

(a) There is established within the department of taxes an office of the taxpayer advocate.

(b) The taxpayer advocate shall have the following functions and duties:

(1) identify subject areas where taxpayers have difficulties interacting with the department of taxes;

(2) identify classes of taxpayers or specific business sectors who have common problems related to the department of taxes;

(3) propose solutions, including administrative changes to practices and procedures of the department of taxes;

(4) recommend legislative action as may be appropriate to resolve problems encountered by taxpayers;

(5) educate taxpayers concerning their rights and responsibilities under Vermont's tax laws; and

(6) educate tax professionals concerning the department of taxes regulations and interpretations by issuing bulletins and other written materials.

(c) The taxpayer advocate shall prepare an annual report detailing the actions the taxpayer's advocate has taken to improve taxpayer services and the responsiveness of the department of taxes. The report shall identify the problems encountered by taxpayers in interacting with the department of taxes and include specific recommendations for administrative and legislative actions to resolve those problems. The report shall identify any problems that span an entire class of taxpayer or specific industry, and propose class- or industry-wide solutions. The report of the taxpayer advocate shall be submitted to the senate committee on finance and the house committee on ways and means no later than January 15th of each year.

(d) By January 15, 2012, the joint fiscal office and the office of legislative council shall jointly present a proposal to the senate committee on finance and the house committee on ways and means for the creation of an independent office of the taxpayer advocate. The proposal shall consider the experiences in other states and include the specific duties and functions of the office, an

independent appointment and retention process, a reporting process, and potential funding sources. The joint fiscal office and office of legislative council shall be assisted by the department of taxes, and any other executive agency, as necessary in preparing the proposal.

Sec. 36f. 32 V.S.A. § 5887(c) is added to read:

(c) Notwithstanding subsections (a) and (b) of this section, the commissioner may compromise a tax liability arising under this title upon the grounds of doubt as to liability or doubt as to collectibility, or both. Upon acceptance by the commissioner of an offer in compromise, the liability of the taxpayer in question is conclusively settled, and neither the taxpayer nor the commissioner may reopen the case except by reason of falsification or concealment of assets by the taxpayer or mutual mistake of a material fact or if, in the opinion of the commissioner, justice requires it. The decision of the commissioner to reject an offer in compromise is not subject to review. The commissioner may adopt rules regarding the procedures to be followed for the submission and consideration of offers in compromise.

Sec. 36g. 32 V.S.A. § 9741(48) is added to read:

(48) Sales of tangible personal property sold by an auctioneer licensed under chapter 89 of Title 26, including any buyer's premium charged by the auctioneer, that are conducted on the premises of the owner of the property, provided that no other person's property is sold on the auction premises.

Sec. 36h. TAXPAYER OUTREACH AND INFORMATION SYSTEMS

As the department of taxes has increased its compliance efforts in recent years, it has not increased its taxpayer service and education capacity. To balance the needs of the state with the rights of taxpayers, the department of taxes should increase its taxpayer outreach and education efforts. By January 18, 2012, the department of taxes shall make recommendations to the senate committee on finance and the house committee on ways and means on:

(1) ways in which the department of taxes can improve its education outreach to taxpayers in specific industries or classes to ensure that taxpayers in those industries and classes are aware of their obligations under law and to ensure that the department of taxes is able to track and respond to industry- or class-wide concerns;

(2) how to improve its system of taxpayer administrative appeals that includes a review of the feasibility of creating an appeals officer or body independent of the department of taxes; and

(3) protocols the department of taxes can adopt for tracking taxpayer inquiries and responses by the department of taxes to ensure that taxpayers receive correct information.

Sec. 36i. LEGISLATIVE INTENT FOR TAX EXPENDITURES

It is the intent of the general assembly in reviewing the tax expenditure budgets recommended by the governor to ensure that any changes to

Vermont's tax expenditures are done openly and equitably and are subject to public review. Vermont tax expenditures are intended to reflect and support Vermont values and policies.

Sec. 36j. 32 V.S.A. § 306 is amended to read:

§ 306. BUDGET REPORT

(a) The governor shall submit to the general assembly, not later than the third Tuesday of every annual session, a budget which shall embody his or her estimates, requests, and recommendations for appropriations or other authorizations for expenditures from the state treasury. In the first year of the biennium, the budget shall relate to the two succeeding fiscal years. In the second year of the biennium, it shall relate to the succeeding fiscal year.

(b) The governor shall also submit to the general assembly, not later than the third Tuesday of each session of every biennium, a tax expenditure budget which shall embody his or her estimates, requests, and recommendations. The tax expenditure budget shall be divided into three parts and made as follows:

(1) A budget covering tax expenditures related to nonprofits and charitable organizations and covering miscellaneous expenditures shall be made by the third Tuesday of the legislative session beginning in January 2012 and every three years thereafter.

(2) A budget covering tax expenditures related to economic development, including business, investment, and energy, shall be made by the

third Tuesday of the legislative session beginning in January 2013 and every three years thereafter.

(3) A budget covering tax expenditures made in furtherance of Vermont's human services, including tax expenditures affecting veterans, shall be made by the third Tuesday of the legislative session beginning in January 2014 and every three years thereafter.

(c) The tax expenditure budget shall be provided to the house committee on ways and means and the senate committee on finance, which committees shall review the tax expenditure budget and shall report their recommendations in bill form.

Sec. 36k. 32 V.S.A. § 312 is amended to read:

§ 312. TAX EXPENDITURE REPORT

* * *

(c) ~~Based on the information contained in the tax expenditure report, the commissioner shall recommend to the general assembly that any expenditure that has cost less than $50,000.00 or has been claimed by fewer than ten taxpayers in each of the three preceding years be repealed two years hence.~~

Sec. 36l. REPEAL

32 V.S.A. § 5823(a)(5) is repealed as of July 1, 2013.

Sec. 36m. LINK-BASED USE TAX RETURNS

The department of taxes shall evaluate the feasibility of providing a voluntary Internet-based use tax reporting and payment system in conjunction with the notice required under Sec. 36a of this act. The department of taxes shall communicate its findings to the senate committee on finance and the house committee on ways and means by memorandum no later than January 15, 2012.

* * * TECHNICAL CORRECTIONS * * *

Sec. 36n. 33 V.S.A. § 1986(a)(2) is amended to read:

(2) ~~15.5~~ 14.5 percent of the revenue from the cigarette tax levied pursuant to chapter 205 of Title 32;

Sec. 36o. 33 V.S.A. § 1901d(b)(1) is amended to read:

(1) all revenue from the tobacco products tax and ~~84.5~~ 85.5 percent of the revenue from the cigarette tax levied pursuant to chapter 205 of Title 32;

* * * EFFECTIVE DATES * * *

Sec. 37. EFFECTIVE DATES

This act shall take effect on passage except:

(1) Sec. 2 (link to Internal Revenue Code) shall apply to taxable years beginning on and after January 1, 2010.

(2) Secs. 4 (fiscal year 2012 property tax rates) and 5 (fiscal year 2012 base education payment amount) shall apply to fiscal year 2012 education property taxes.

(3) Sec. 11 (changes to homestead declaration penalty) and Sec. 13b (veteran's exemption adjustment) shall apply to property tax adjustment claims made in 2011 and after.

(4) Sec. 13 (definition of household income) and Sec. 13b (veteran's exemption adjustment), shall take effect on January 1, 2012 and apply to claim year 2012 and after.

(5) Sec. 14 (VEGI claim file date) shall apply to claims made in 2011 and after.

(6) Secs. 20 and 21 (mandatory composite filing for pass-through entities with large number of nonresident owners) shall apply to taxable years beginning on and after January 1, 2012.

(7) Sec. 22 (cigar tax) shall take effect on July 1, 2011.

(8) Secs. 27 (cigarette tax), 27a (floor tax), 33 (property transfer tax), 34 (allocation of property transfer tax revenue) 36 (exempt organizations), 36d (spirituous liquors), 36g (sales tax exemption for auctioneers), 36n (Catamount fund), and 36o (state health care fund) shall take effect on July 1, 2011.

(9) Sec. 29 (health information technology) shall take effect on June 1, 2011.

(10) Sec. 35 (repeal of the allocation of property transfer tax revenue) shall take effect on July 1, 2016.

(11) Sec. 13a (use value appraisal permits) shall take effect on passage and shall apply to any land permitted at the time of passage, or to any land permitted after passage.

(12) Sec. 15a (tax increment audits) shall apply only to audits initiated by the state auditor of accounts after January 1, 2012.

(13) Sec. 36a (Internet affiliate sales tax) shall take effect on the date on which, through legislation, rule, agreement, or other binding means, 15 or more other states have adopted requirements that are the same, substantially similar, or significantly comparable to the requirements contained in Sec. 36a. The attorney general shall determine when this date has occurred.

(14) Sec. 36b (out of state sellers notice) is repealed on the date on which, through legislation, rule, agreement, or other binding means, 15 or more other states have adopted requirements that are the same, substantially similar, or significantly comparable to the requirements contained in Sec. 36a. The attorney general shall determine when this date has occurred.

(15) Sec. 15b (Milton TIF) shall apply retroactively to July 1, 2008.

(16) Secs. 13c and 13d of this act shall take effect on passage and shall apply to tax rates calculated for fiscal year 2012 school budgets and after.

Approved: May 24, 2011