S.196

Introduced by Senators Snelling, Illuzzi and Miller

Referred to Committee on

Date:

Subject: Taxation; estate taxes; exclusion amount

Statement of purpose: This bill proposes to: (1) allow bonus depreciation against personal and corporate income taxes; (2) bring Vermont's exclusion amount for estate taxes in line with the federal amount; (3) allow the deductibility of state and local taxes against personal income taxes; (4) return capital gains treatment to a straight 40 percent exemption from income; and (5) move the corporate income tax apportionment formula to a single sales factor with no throwback rule.

An act relating to improving Vermont's economic competitiveness by reducing the state tax burden

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

Sec. 1. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on January 1, 2009, are hereby adopted for the purpose of computing the tax liability under this chapter, except:

(1) ~~the~~ The credit for state death taxes shall remain as provided for under 26 U.S.C. §§ 2011 and 2604 as in effect on January 1, 2001~~;~~.

(2) ~~the~~ The current applicable exclusion amount under 26 U.S.C. § 2010 shall ~~not~~ apply~~; and the tax imposed under section 7442a of this chapter shall be calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were $2,750,000.00; and~~.

(3) ~~the~~ The deduction for state death taxes under 26 U.S.C. § 2058 shall not apply.

Sec. 2. 32 V.S.A. § 5811(18) is amended to read:

(18) “Vermont net income” means, for any taxable year and for any corporate taxpayer:

(A) the taxable income of the taxpayer for that taxable year under the laws of the United States, ~~without regard to Section 168(k) of the Internal Revenue Code,~~ and excluding income which under the laws of the United States is exempt from taxation by the states:

(i) increased by:

(I) the amount of any deduction for state and local taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business, and capital stock taxes; and

(II) to the extent such income is exempted from taxation under the laws of the United States by the amount received by the taxpayer on and after January 1, 1986 as interest income from state and local obligations, other than obligations of Vermont and its political subdivisions, and any dividends or other distributions from any fund to the extent such dividend or distribution is attributable to such Vermont state or local obligations; and

(ii) decreased by:

(I) the “gross-up of dividends” required by the federal Internal Revenue Code to be taken into taxable income in connection with the taxpayer’s election of the foreign tax credit; and

(II) the amount of income which results from the required reduction in salaries and wages expense for corporations claiming the Targeted Job or WIN credits.

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Sec. 3. 32 V.S.A. § 5811(21) is amended to read:

(21) “Taxable income” means federal taxable income ~~determined without regard to Section 168(k) of the Internal Revenue Code and~~:

(A) Increased by the following items of income (to the extent such income is excluded from federal adjusted gross income):

(i) interest income from non-Vermont state and local obligations;

(ii) dividends or other distributions from any fund to the extent they are attributable to non-Vermont state or local obligations~~; and~~.

~~(iii) the amount in excess of $5,000.00 of state and local income taxes deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; and~~

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations;

(ii) ~~with respect to adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code: either the first $5,000.00 of adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years, except not adjusted net capital gain income from:~~

~~(I) the sale of any real estate or portion of real estate used by the taxpayer as a primary or nonprimary residence; or~~

~~(II) the sale of depreciable personal property other than farm property and standing timber; or stocks or bonds publicly traded or traded on an exchange, or any other financial instruments; regardless of whether sold by an individual or business;~~

~~and provided that the total amount of decrease under this subdivision (21)(B)(ii) shall not exceed 40 percent of federal taxable income; and~~ <u>40 percent of adjusted net capital gain income as defined in Section 1(h) of</u>

the Internal Revenue Code, but the total amount of decrease under this subdivision (ii) shall not exceed 40 percent of federal taxable income; and

(iii) recapture of state and local income tax deductions not taken against Vermont income tax.

Sec. 4. 32 V.S.A. § 5833(a) is amended to read:

(a) If the income of a taxable corporation is derived from any trade, business, or activity conducted entirely within this state, the Vermont net income of the corporation shall be allocated to this state in full. If the income of a taxable corporation is derived from any trade, business or activity conducted both within and without this state, the amount of the corporation's Vermont net income which shall be apportioned to this state, so as to allocate to this state a fair and equitable portion of that income, shall be determined by multiplying that Vermont net income by ~~the arithmetic average of the following factors, with the sales factor described in subdivision (3) of this subsection double-weighted:~~

~~(1) The average of the value of all the real and tangible property within this state (A) at the beginning of the taxable year and (B) at the end of the taxable year (but the commissioner may require the use of the average of such value on the fifteenth or other day of each month, in cases where he or she determines that such computation is necessary to more accurately reflect the~~

~~average value of property within Vermont during the taxable year), expressed as a percentage of all such property both within and without this state;~~

~~(2) The total wages, salaries, and other personal service compensation paid during the taxable year to employees within this state, expressed as a percentage of all such compensation paid whether within or without this state;~~

~~(3) The~~ gross sales, or charges for services performed, within this state, expressed as a percentage of such sales or charges whether within or without this state. Sales of tangible personal property are made in this state if the property is delivered or shipped to a purchaser, other than the United States government, who takes possession within this state, regardless of f.o.b. point or other conditions of sale~~, or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (A) the purchaser is the United States government; or (B) the corporation is not taxable in the state in which the purchaser takes possession~~. Sales other than sales of tangible personal property are in this state if the income producing activity is performed in this state or the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

Sec. 5. EFFECTIVE DATE

This act shall take effect on January 1, 2013.