

Highlights of 2012 Tax Legislation

Administrative Provisions

The requirement of a **notary's signature** on power of attorney forms authorizing people to represent taxpayers before the department of taxes is eliminated. Legislation passed last year authorized the disclosure of information to authorized representative without a notary signature, but did not remove the notary requirement in cases in which authority is given to bind a taxpayer. Act 143, sec. 3, amending 14 V.S.A. §3502(f).

The **Taxpayer Advocate** will play a new role in formalizing requests for abatement of tax, interest or penalty which may result in a written recommendation to the Commissioner for this extraordinary relief if after investigation the Advocate finds that:

- (1) Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and
- (2) The taxpayer has no available rights or administrative remedies to correct the issue that led to such unfair result or hardship.

"Extraordinary relief" means a remedy that is within the power of the Commissioner to grant, a remedy that compensates for the result of inaccurate classification of property as homestead or nonresidential through no fault of the taxpayer, or a remedy that makes changes to a taxpayer's property tax adjustment or renter rebate claim.

The Taxpayer Advocate is also tasked with proposing a draft taxpayer statement of rights to the Senate Committee on Finance and the House Committee on Ways and Means by January 15, 2013 and the Advocate's role in assisting individual taxpayers in resolving disputes with the Tax Department is also codified. This role does not extend to representing taxpayers at a Commissioner's Hearing. Act 143, secs. 6-8, adding 32 V.S.A. §3206 and session law and amending 32 V.S.A. §3205(b).

The calculation of **interest on unpaid liabilities and refunds** has changed. The rate paid on refunds will be calculated as follows: the average prime rate charged by banks during the immediately preceding 12 months shall be rounded up to the nearest *quarter* percent instead of *whole* percent and this rate will be converted to a monthly rate, which shall be rounded upwards to the nearest tenth of a percent. The interest charged on unpaid liabilities shall be 200 basis points over the rate paid on refunds. For example, if refunds bear interest at 3.6 percent, interest charged on liabilities is 5.6 percent. This takes effect for 2013 rates. Act 143, sec. 15, amending 32 V.S.A. § 3108(a).

Business Entity Withholding

Partnerships and limited liability companies engaged solely in the business of operating one or more **federal new market tax credit** projects in the state are exempted from paying income tax estimates on behalf of its nonresident partners and members. Instead, the entity is required to notify its nonresident partners or members of their Vermont filing and payment obligations and to file copies of all schedules K-1. A "federal new market credit project" means a business that is intended primarily to benefit low income Vermont residents throughout the period of investment and that is subject to the following: (A) has been determined by the US Department of the Treasury to be a community development entity; (B) has been awarded an allocation of federal new market tax credits under 26 U.S.C. § 45D; and (C) is a partnership or limited liability corporation which is a pass-through of the federal new market credit to the nonresident investor. Act 143, sec. 17, adding 32 V.S.A. § 5920(g).

Cigarette Tax

The definition of “**little cigars**” – which are taxed as cigarettes – is amended so that if 1000 units weigh four-and-one-half pounds or less, the rolls are classified as little cigars. The triggering weight was formerly 3 pounds. Act 143, sec. 13a, amending 32 V.S.A. §7702(6).

Corporate Income Tax

The period of time the Department has to **process corporate income tax returns** before interest is due on overpayments is enlarged from 45 to 90 days after the return was either due or filed, whichever is later. Act 143, sec. 15, amending 32 V.S.A. §3108(b)(2).

The **minimum tax on C corporations** is increased from \$250 to \$300 if the corporation has gross receipts of \$2,000,000 or less; to \$500 if the corporation has gross receipts greater than \$2,000,000 to \$5,000,000; and \$750 if the corporation has gross receipts greater than \$5,000,000. Act 143, sec. 16, amending 32 V.S.A. §5832(2).

Current Use

The definition of “development” has been amended to provide that enrolled land is also considered developed – and therefore ineligible for continued enrollment – if a **wastewater system permit** has been issued for the land pursuant to 10 V.S.A. § 1973 *and* the Commissioner of Forests, Parks and Recreation has certified to the Director of Property Valuation and Review that the permit is contrary to a forest or conservation management plan or the minimum acceptable standards for forest management; use of the parcel would violate the conservation management standards; or after consulting with the Secretary of Agriculture, Food and Markets, the Commissioner certifies that the permit is not part of a farm operation. This replaces the legislation enacted last session regarding a broader group of permits, is retroactive to July 1, 2011 and applies only to wastewater permits issued after that date. Act 143, secs. 41-44, amending 32 V.S.A. § 3752(5), 3757, 3758(d).

Several clarifying and **technical amendments** were made to the current use statutes, including that timber cutting contrary to a forest or conservation management plan during the remaining term of the plan or contrary to the minimum acceptable standards for forest management if the plan has expired will constitute development and that renewal plans must be filed no later than April 1 of the year in which the initial 10-year plan expires. Act 143, secs. 45, 47, amending 32 V.S.A. §3752(5) and 3755(b).

Energy Taxes

An annual tax of \$4.00 per kW plant capacity is imposed on any renewable energy plant in Vermont commissioned to generate **solar power** except that plants with a capacity equal to or less than 10 kW are exempt from the new tax as well as existing municipal and education property tax until January 1, 2023. This tax does not replace property tax on the land underlying the fixtures and personal property of a plant. The tax is due to the Department each year no later than April 1 and shall be deposited into the Education Fund. Property Valuation and Review will provide advice to listers on methods of valuing these plants for municipal purposes. The tax takes effect January 1, 2013. Act 127, secs. 1-4 and 6, enacting new secs. 32 V.S.A. §§ 8701, §3802(17) and amending 32 V.S.A. §5401(10)(J).

The threshold triggering a generation tax on **wind facilities** has been decreased from 5 megawatts to 1 megawatt. This takes effect January 1, 2013. Act 127, sec. 5.

The electric generating plant education property tax is repealed and the rate of the electric generating plant tax is increased to \$0.0025 per kWh of electric energy produced. The rate increase is effective for electricity generated after July 1, 2012. The taxes had been imposed on generation tax since 2005 (to that, they were imposed on net book value) but beginning July 1, 2012 the tax will be imposed on energy produced in the preceding quarter rather than based on average production for sale in the 3 preceding years. Act 143, sec. 57, 58, repealing 32 V.S.A. §5402a and amending 32 V.S.A. §8661.

Local Option Sales Tax

A resident of Vermont who purchased a **mobile home** after April 1, 2011 and before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage caused by a federally declared disaster in Vermont in 2011 is not subject to local option sales tax with respect to that purchase and the resident purchaser is entitled to a reimbursement of sales tax paid. The Department will establish procedures for reimbursements. Act 143, sec. 55, session law.

The voters of a municipality that has a local option tax may rescind that tax by a majority vote at an annual or special meeting warned for that purpose. Act 143, sec. 48, amending 24 V.S.A. §138(g).

Malt and Vinous Beverages Tax

The Department of Taxes may disclose to the Department of Liquor Control sales and use tax and meals and rooms tax account information of **liquor license** holders seeking renewal and new applicants. Act 143, sec. 4, amending 32 V.S.A. § 3102(e).

Effective July 1, 2012, beer and wine bottlers and wholesalers are required to report to the Commissioner the description, quantity and price of malt and vinous **beverages sold to each retail dealer**. The reports are due at the same time as bottler/wholesaler returns are due and must be in electronic format except that manufacturers or rectifiers of vinous beverages may submit reports of direct sales to retail dealers in non electronic format. Act 143, sec. 14, amending 7 V.S.A. §421(c).

Meals and Rooms Tax

The exemption from tax for charges for rooms situated in and meals served at “a sanitorium, convalescent home or ... home for the aged” has been replaced with more modern language. Now the rooms tax exemption extends to nursing homes, residential care homes, assisted living residences, homes for the terminally ill, therapeutic community residences and independent living facilities. Similarly, meals prepared and served by employees, volunteers or contractors of any of these facilities are exempt from tax. The term “contractor” excludes restaurants (as defined in 32 V.S.A. §9292(10)(D)(ii)(15)) when those meals are not otherwise available generally to residents of the facility. **“Independent living facility”** means a congregate living environment, however named, for profit or otherwise, that meets the definitions of housing complexes for older persons as enumerated in 9 V.S.A. § 4503(b) and (c), or housing programs designed to meet the needs of individuals with a handicap or disability as defined in 32 V.S.A. §4501(2) and (3). Act 143, secs. 59-60, amending 32 V.S.A. §9202(3), (10)(D)(ii) and (18).

Petroleum Distributor Licensing Fee

Effective July 1, 2012, the imposition of the petroleum distributor licensing fee is limited to *bulk* retail sales of heating oil, kerosene or other dyed diesel fuel sold in the state. The exemption for fuels used to propel a motor vehicle is eliminated. Act 143, sec. 1, amending 10 V.S.A. § 1942(b).

Property Tax

Both the homestead and nonresidential education tax rates are **increased 2 cents** for fiscal year 2013 over fiscal year 2012. The homestead rate will be \$0.89 and the nonresidential rate will be \$1.38 per \$100.00 of equalized property value. The homestead rate is further adjusted for district spending. The base education amount for fiscal year 2013 is \$8,723. Act 143, secs. 38, 39, session law.

Beginning in 2013, **homestead declarations** are again required to be filed annually. However, a special 2013 transition provision allows the Commissioner to provide a remedy for a taxpayer who fails to file or files an inaccurate classification through no fault of the taxpayer. Act 143, sec.25, 25a, amending 32 V.S.A. §5410(b), session law.

Where common elements of a **condominium or planned community unit** cross town lines, a town other than the town in which the common elements are located may designate that portion of the common element within its boundaries as a parcel for property tax assessment purpose. This is an exception to the rule that no separate tax may be imposed against common elements where the developer has not reserved development rights. Act 143, sec. 33, amending 27A V.S.A. § 1-105.

The statute governing county taxes is amended to include the unified towns and gores of Essex County in addition to unorganized towns and gores. These are technical changes. Act 143, secs. 35, 36, amending 32 V.S.A. §4301.

The requirement that a **veteran** had to have served in a war to be eligible for the \$10,000 reduction of value from his or her residence was removed. Effective for claims made after January 1, 2012, all veterans are eligible for this reduction in value. Act 111, amending 32 V.S.A. §3802(11)(A).

Municipalities that **abated taxes** assessed on property lost or destroyed due to the Irene or the May flooding could apply for reimbursement of education taxes. The abatement had to have been granted prior to April 15, 2012. Municipalities that demonstrated that due to disruption to tax collections resulting from such flooding it incurred unanticipated interest expenses on funds borrowed to make payments to the Education Fund were also eligible for reimbursement of the reasonable interest expense incurred. Act 67, session law.

Property Tax Adjustments and Renter Rebates

Property tax adjustment and renter rebate claims continue to be due by April 15 each year, but the last date on which they will be accepted is moved from September 1 to **October 15**. The commissioner shall notify municipalities of these late property tax adjustment claims on November 1. Act 143, sec. 27-29, amending 32 V.S.A. §§6066a, 6968 and 6074.

Property tax adjustment amounts are now **“confidential” information**. This means that while property tax bills sent to property owners will show that amount of tax due from the owner (i.e., net of adjustment), bills and information given to others will show only the gross (pre-adjustment) amount of tax except that municipal officers and the commissioner *may* provide the information to the following persons:

- (1) An escrow agent, the owner of the property to which the adjustment applies, a town auditor, or a person hired by the town to serve as auditor;

(2) A lawyer, including a paralegal or assistant of the lawyer, an employee or agent of a financial institution as that term is defined in 8 V.S.A. § 11101, an employee or agent of a credit union as that term is defined in 8 V.S.A. § 11101, a realtor, or certified public accountant as that term is defined in 26 V.S.A. § 13(12) who represents that she or he has a need for the information as it pertains to a real estate transaction or to a client or customer relationship; and

(3) Any other person as long as the taxpayer has filed a written consent to such disclosure with a municipality.

Act 143, secs. 5 and 11, amending 32 V.S.A. §3102 and §6066a(f).

Beginning with claim year 2013 (2012 Household Income), a claimant who has two or more businesses operating as sole proprietorships may net the loss of one sole proprietorship against the income of another sole proprietorship as long as the loss and gain are incurred in the same tax year. Act 143, sec. 10, amending 32 V.S.A. §6061(5)(A).

Health savings account deductions for self-employed individuals are added to the list of items excluded in determining **household income** effective for claims filed for 2013 and after. Act 143, sec. 26, amending 32 V.S.A. §6061.

Property tax adjustments will continue to be limited to \$500,000 or less of **equalized housesite value** for claim year 2013 and after. As originally enacted in 2010, the limitation was repealed for claims filed after January 1, 2013. Act 143, sec. 31.

Beginning with claim year 2013 (2012 Household Income), **interest and dividend income** over \$10,000 will continue to be counted twice in household income for claimants under age 65. Act 143, sec. 31a, amending 32 V.S.A. §6061(5)(E). A similar provision without the age ceiling was repealed. Act 143, secs. 31, 31a, amending 32 V.S.A. §6061(5)(E).

The **maximum renter rebate** is lowered from \$8000 to \$3000. This change is effective for rebates paid in 2013. Act 143, sec. 30, amending 32 V.S.A. §6067.

Property Transfer Tax

A transfer in fee by a 501(c)(3) organization that has as its primary purpose the provision of housing to low income individuals is exempt if made concurrently with the transfer of an improvement located on the property. The intended beneficiaries of this exemption are transferees of housing from **Habitat for Humanity**. Act 143, sec. 24, amending 32 V.S.A. §9603(23).

A resident of Vermont who purchased a **mobile home** after April 1, 2011 and before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage caused by a federally declared disaster in Vermont in 2011 is not subject to property transfer tax with respect to that purchase and the resident purchaser is entitled to a reimbursement of property transfer tax paid. The Department will establish procedures for reimbursements. Act 143, sec. 55, session law.

Sales and Use Tax

A resident of Vermont who purchased a **mobile home** after April 1, 2011 and before July 1, 2012 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage caused by a federally declared disaster in Vermont in 2011 is not subject to sales tax with respect to that purchase

and the resident purchaser is entitled to a reimbursement of sales tax paid. The Department will establish procedures for reimbursements. Act 143, sec. 55; session law.

The **manufacturing exemption** has been expanded to include machinery used for secondary packaging if it is part of the same machine that performs the initial packaging and is part of an integrated process. Act 143, sec. 54, amending 32 V.S.A. §9741(14).

The imposition of sales tax on **specified digital products** (music, books, movies and ringtones) was amended to bring it into compliance with the Streamlined Sales and Use Tax Agreement, adding the phrase “regardless of whether for permanent use or less than permanent use and regardless of whether or not conditioned upon continued payment from the purchaser.” Act 143, sec. 50, amending 32 V.S.A. §9771(8).

A temporary moratorium on enforcement of sales tax on **prewritten computer software** accessed remotely was enacted. Notwithstanding that the law imposes sales tax on such software, the tax will not be enforced for the period from January 1, 2007 to July 1, 2013 and timely and documented refunds may be requested. “Charges for remotely accessed software” means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Act 143, sec. 52, session law.

Toothbrushes, dental floss and similar items of nominal value given by dentists and hygienists to patients during treatment are exempt from sales and use tax effective July 1, 2012. Act 143, sec. 54, amending 32 V.S.A. §9741(2).

Natural gas used to propel a motor vehicle is subject to sales tax effective July 1, 2013 with the tax being allocated to the Transportation Fund. Act 153, sec.42, amending 32 V.S.A. §9741(7).

Tax Credits and Incentives

The amount that may be awarded to applicants for owner-occupied **affordable housing tax credits** is increased from \$100,000 to \$300,000 beginning in fiscal year 2013. This credit may be taken against individual income, corporate, franchise, or insurance premium tax liability. Act 143, sec. 21, amending 32 V.S.A. §5930u(g).

An additional one-time, refundable **downtown credit** of 10 percent of the qualified expenditures resulting from damage caused by a federally declared disaster in Vermont in 2011 may be awarded to qualified applicants to take against the individual income tax. The total available for tax credits under this section is \$500,000. Act 143, sec. 22, 23. 32 V.S.A. §5930bb(d), session law.

Vermont employment and growth incentive (**VEGI**) claims must be filed annually no later than the last day of April of each year of the utilization period. The law now clarifies that to be timely, all forms and workbooks must be completed and all underlying documentation must be filed with the Department. Act 143, sec. 18, amending 32 V.S.A. §5930b(c)(9).

The date by which the report of Vermont Economic Progress Council and the Tax Department on the **VEGI** is due is moved from May 1 to September 1 and the subject of the report is clarified. Act 143, sec. 19, amending 32 V.S.A. §5930b(e).

The authority of the Economic Incentive Review Board to grant incentives under the **VEGI** program is extended to July 1, 2017. It had been due to expire on July 1, 2012. Act 143, sec. 20.