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Vermont Updates Its IRC Conformity, Enacts "Click-Through" Nexus Laws, Hikes Cigarette Taxes, and Makes Other Tax Changes (06/06/2011)

State and Local Taxes Weekly,

Vermont Updates Its IRC Conformity, Enacts "Click-Through" Nexus Laws, Hikes Cigarette Taxes, and Makes Other Tax Changes

by Michael L. Siegel, Esq. (RIA)

Vermont has enacted legislation updating its conformity to the Internal Revenue Code (IRC) as in effect for taxable year 2010, increasing the tax on cigarettes, cigars, and new smokeless tobacco, imposing a floor stock tax, adjusting the tax on spirituous liquor, establishes click-through nexus provisions and remote seller notice requirements, and making multiple amendments to the sales and use tax, corporate and personal income tax, property tax, health assessments rates, insurance tax, and general administrative provisions. (L. 2011, H436, effective 05/24/2011 and as noted .)

Corporate and personal income taxes. *IRC Conformity:* Effective for taxable years beginning on or after January 1, 2010, Vermont adopts the IRC as in effect for taxable year 2010. Therefore, Vermont has adopted the changes to the IRC enacted by the 2010 Health Care Act as amended by the 2010 Health Care Reconciliation Act (P.L. 111-148; P.L. 111-152) and the Hiring Incentives to Restore Employment (HIRE) Act of 2010 (P.L. 111-147).

Vermont employment growth incentives (VEGI): Incentive claims must be filed annually no later than the last day of April of each year of the utilization period (previously last day of February). Incomplete claims may be considered timely filed if a complete claim is filed within the time prescribed by the Department. If a claim is not filed each year of the utilization period, an incentive installment previously paid will be recaptured.

Wood products manufacture tax credit: Applicable for corporate and individual taxpayers, the sunset date for the wood products manufacture tax credit is extended to July 1, 2013 from July 1, 2011. No credit will be available after July 1, 2013. For purposes of the credit, "finished wood products" means wood products that are manufactured into the form in which they are offered to sale to consumers.

Downtown and village center program tax credits: Applicable for corporate and individual taxpayers, credits are generally available for the first tax year in which the qualified project is complete. Alternatively, the Vermont Downtown Development Board may allocate program tax credits and may allocate upon completion of any distinct phase of a qualified project. The allocation and distinct phases of the qualified project must be identified in the application package approved by the Board.

Credits that are rescinded or recaptured by the Board will be available for the Board to award to applicants in any subsequent year, in addition to the amount statutorily authorized for that year under Vt. Stat. Ann. § 5930ee .

Composite returns: Applicable for tax years beginning on or after January 1, 2012, the Tax Commissioner may require S corporations, partnerships, or limited liability companies (LLCs) that have in excess of 50 nonresident shareholders, partners, or members to file composite returns and to make composite payments at the middle marginal rate on behalf of all its nonresident shareholders. Previously, the Tax Commissioner could request S corporations to file composite returns and to make

composite payments on behalf of some or all of its nonresident shareholders and partnerships or LLCs were allowed to file composite returns on behalf of some or all of its nonresident partners or members.

Personal income tax—items of income: For any taxable year, the Vermont income of a nonresident individual, estate or trust includes the amount paid by Vermont as benefits for the survivors of emergency personnel (Title 20, Ch. 181) the extent they are required to be included in the adjusted gross income of the individual or the gross income of an estate or trust for that taxable year. Effective January 1, 2012 and applicable to claim year 2012 and after, the definition of modified adjusted gross income is amended to mean federal adjusted gross income without the inclusion of health insurance costs of self-employed individuals.

Tobacco products. *Tax on cigarettes, cigars, and tobacco products:* Effective July 1, 2011, the tobacco tax rate will increase to 131 mills per cigarette or little cigar from 125.5 mills. Roll your own tobacco will be taxed at a rate of \$0.0325 per ounce. The rate for tobacco products except snuff, will continue to be taxed at \$1.87 per ounce, or fractional part thereof. New smokeless tobacco, will 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 \$2.17 (previously \$1.08) and less than \$10, will be taxed at the rate of \$2 per cigar if the wholesale price of the cigar is greater than \$2.17.

Floor stock tax: Effective July 1, 2011, the floor stock tax due on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on July 1, 2011, and not yet affixed to a cigarette package, will increase from \$0.25 to \$0.38 per stamp. Wholesalers and retailers subject to the tax must file on or before July 25, 2011, a report showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. on July 1, 2011, and the amount of tax due. The tax is due and payable on or before July 25, 2011.

Alcoholic beverages. Effective July 1, 2011, the tax on spirituous liquor, including fortified wine, is based on the seller's gross revenue of his or her retail sales in the previous year as follows:

- 5%, if the gross revenue is \$100,000 or less;
- \$5,000 plus 15%, if the gross revenue is \$100,000 or less than \$200,000; and
- 25% if the gross revenue is over \$200,000.

Previously, the tax was imposed at a rate of 25% on the gross revenue on sales of spirituous liquor, including fortified wine.

Sales and use tax. *Click-through nexus:* The new law includes a so-called "click-through" nexus provision. A remote seller making sales that are subject to Vermont sales and use tax is presumed to be soliciting business through an independent contractor, agent, or other representative if it enters into an agreement with a Vermont resident under which the resident, for a commission or other consideration, directly or indirectly refer potential customers to the seller, through an Internet website link or otherwise, if the seller's cumulative gross receipts from residents through such referrals are in excess of \$100,000 during the preceding tax year. The presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in Vermont on behalf of the seller that would satisfy the federal constitution's nexus requirement during the tax year at issue. This provision takes effect on the date when 15 or more states have adopted requirements that are the same, substantially similar, or significantly comparable to Vermont's "click-through" nexus provision. The attorney general will determine when this date has occurred.

Remote seller notice requirements: "Noncollecting retailers" and "online auction websites" are required to give notice to their purchasers in Vermont that use tax is due on nonexempt purchases of tangible personal property, services, or products transferred electronically and must be paid by the buyer. "Noncollecting retailer" is defined as one not currently registered to collect and remit Vermont sales and use tax who make 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. "Online auction website" is

defined as 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.

The notice must be readily visible and contain the following information:

- (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;
- (3) the purchase is not exempt because the purchase is made over the Internet, by catalogue, or by other remote means;
- (4) Vermont requires each purchaser to report any purchase that was not taxed and to pay tax on the purchase and that 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.

Remote sellers whose gross sales in Vermont in the previous calendar year was less than \$100,000 and reasonably expects gross sales of under \$100,000 in the current calendar year are exempt from the notice requirements. Similarly exempt are online auction websites who facilitated gross sales in Vermont in the previous calendar year of less than \$100,000 and reasonably expects to facilitate gross sales of under \$100,000 in the current calendar year. This notice requirement is repealed on the date when 15 or more states have adopted requirements that are the same, substantially similar, or significantly comparable to Vermont's "click-through" nexus provision. The attorney general will determine when this date has occurred

Admission to nonprofit live performances: The law increases the threshold amount for the exemption from the tax on admission of fees charged for live performances held by an IRC §501(c)(3) organization or an IRC §501(c)(5) agricultural organization. Under the law, the nonprofit organization does not have to collect sales tax as long as its gross sales of entertainment charges in the prior year did not exceed \$100,000 (previously, \$50,000).

Auction sales: Sales of tangible personal property by a licensed auctioneer, including any buyer's premium, 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 are exempt from sales and use tax.

Education property tax. Education property tax: For fiscal year 2012 only, the education property tax will be reduced from the rate of \$1.59 and \$1.10 to the following rates: nonresidential property will be \$1.36 per \$100 and the tax rate for homestead property will be \$0.87 multiplied by the district spending adjustment for the municipality per \$100 of equalized value as most recently determined pursuant to Vermont law. For fiscal year 2012 only, the applicable percentage is reduced to 1.8% multiplied by the fiscal year 2012 district spending adjustment for the municipality in which the homestead residence is location, but in no instance will the applicable percentage be less than 1.8%. The education property tax exemption for skating rinks operated on a nonprofit basis that were used by local public schools for a sport officially recognized by the Vermont Principals' Association is extended for 2011.

Skating rinks operated on a nonprofit basis that were used by local public schools for a sport officially recognized by the Vermont Principals' Association will be exempt from 50% of the education property tax for fiscal year 2012 (previously 100% for fiscal years 2009-2011).

Health-related assessments. *Home health agency assessment:* Beginning October 1, 2011, the home health agency assessment is 19.3% (previously 17.69%) of the net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act.

Hospital assessment: Beginning October 1, 2011, the hospital assessment is 5.9% (previously 5.5%) of

net patient revenues (less chronic, skilled, and swing bed revenues).

Nursing home assessment: Effective July 1, 2011, each nursing home is assessed \$4,509.57 (previously \$4,322.90) and beginning October 1, 2011, \$4919.53 per licensed bed. The annual assessment for each bed licensed at the start of the fiscal year is prorated for the number of days when the bed is actually licensed.

ICF/MR assessment: Beginning October 1, 2011, each Intermediate Care Facility for the Mentally Retarded is assessed at 5.9% (previously 5.5%) of its total annual direct and indirect expenses for the most recently settled audit.

Health insurers. *Health care claims assessment:* Effective October 1, 2011 and annually thereafter, health insurers are required to pay an assessment equal to 0.8% on all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The fee is paid in installments due November 1, January 1, April 1, and June 1. "Health insurance" means any group or individual health care benefit policy, contract, or other benefit plan offered, issued, renewed, or administered by any health insurer, including health benefit plan offered, issued, renewed, or administered by any health insurance company, nonprofit hospital or medical service corporation, or any managed care organization and 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 part through a federal program, unless authorized by federal law and approved by the Legislature. "Health insurance" does not include policies issued for specified disease, disease, accident, injury, hospital indemnity, long-term care, disability income, or other limited benefit health insurance policies. Penalties are imposed for the failure to pay the fee within 45 days after notice from the Secretary of the amount due.

Health insurer fee: Effective June 1, 2011, the health insurer fees for funding the health information technology fund are due November 1, January 1, April 1, and June 1. Previously, the fees were due quarterly on October 1, January 1, April 1, and June 1.

Taxpayer advocate. A taxpayer advocate position is established in the Department of Taxes to identify areas where taxpayers are having difficulties interacting with the Department, identify classes of taxpayers who have common problems related to the Department, propose solutions, including administrative changes to practices and procedures, recommend legislative action to resolve such problems, and educate taxpayers and tax professionals concerning rights and responsibilities under Vermont tax law, including the publication of bulletins and other written materials.

Miscellaneous provisions. *Fuel gross receipts tax:* The sunset date for the fuel gross receipts tax is extended to June 30, 2016 from June 30, 2011. Monies from the escrow account are authorized to be issued for rebates for companies that participate in providing low income weatherization services until March 1, 2017 (previously March 1, 2012).

Compromise of tax liabilities: The Tax Commissioner may compromise a tax liability arising under Vermont tax statutes upon the grounds of doubt as to liability or doubt as to whether the liability can be collected, or both. Upon acceptance of an offer in compromise, the taxpayer's liability is settled and neither the taxpayer nor the Tax Commissioner may reopen the case except by reason of falsification or concealment of assets by the taxpayer or mutual mistake of fact or if, in the opinion of the Tax Commissioner, justice so requires. The Tax Commissioner's refusal to accept an offer in compromise is not subject to review.

Preferential property transfer tax for certain land repealed: Vermont has repealed a preferential property transfer tax provision that allowed property that was enrolled at the time of transfer in a use value appraisal program or which is otherwise a working farm at the time of transfer to be taxed at a rate of 0.5% on the entire value of the property.

Transition to Department of Revenue repealed: Vermont has repealed a 2009 provision converting and

reorganizing the Department of Taxes to the Department of Revenue no later than June 30, 2012.

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