

1 H.315

2 Introduced by Representatives Clarkson of Woodstock and Botzow of Pownal

3 Referred to Committee on

4 Date:

5 Subject: Taxation; income taxes; corporate tax; digital business entities

6 Statement of purpose: This bill proposes to define digital business entities and
7 provide for the taxation of such businesses.

8 An act relating to taxation of digital business entities

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

10 Sec. 1. LEGISLATIVE INTENT

11 The purpose of this act is to build on the momentum created by Secs. 74
12 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which
13 provided for Vermont companies to conduct much of their statutorily required
14 corporate affairs using electronic media, including e-mail, facsimile, and
15 web-based filings.

16 Sec. 2. 32 V.S.A. § 5811(26) is added to read:

17 (26) "Digital business entity" means a business entity which, during the
18 entire taxable year:

19 (A) was not a member of an affiliated group or engaged in a unitary
20 business with one or more members of an affiliated group that is subject to

1 Vermont income taxation; did not perform any activities in this state which
2 would constitute doing business for purposes of income taxation, other than
3 activities described in subdivisions (15)(C)(i) of this section, fulfillment
4 operations, and (C)(ii), web page, or Internet site maintenance; and

5 (B) used mainly computer, electronic, and telecommunications
6 technologies in its formation and in the conduct of its business meetings, in its
7 interaction with shareholders, members, and partners, in executing any other
8 formal requirements.

9 Sec. 3. 32 V.S.A. § 5832(2) is amended to read:

10 (2)(A) \$75.00 for small farm corporations. “Small farm corporation”
11 means any corporation organized for the purpose of farming, which during the
12 taxable year is owned solely by active participants in that farm business and
13 receives less than \$100,000.00 gross receipts from that farm operation,
14 exclusive of any income from forest crops; or

15 (B) An amount determined in accordance with section 5832a of this
16 title for a corporation which qualifies as and has elected to be taxed as a digital
17 business entity for the taxable year; or

18 (C) \$250.00 for all other corporations.

1 Sec. 4. 32 V.S.A. § 5911 is amended to read:

2 § 5911. TAXATION OF AN S CORPORATION AND ITS

3 SHAREHOLDERS

4 (a) An S corporation shall not be subject to the tax imposed by section
5 5832 of this title, except to the extent of income taxable to the corporation
6 under the provisions of the Internal Revenue Code.

7 (b) For the purposes of section 5823 of this title, each shareholder's pro
8 rata share of the S corporation's income attributable to Vermont and each
9 resident shareholder's pro rata share of the S corporation's income not
10 attributable to Vermont shall be taken into account by the shareholder in the
11 manner provided in Section 1366 of the Code.

12 (c) An S corporation and its shareholders shall not be subject to the tax
13 imposed by section 5832 of this title or to the provisions of this subchapter if
14 the S corporation qualifies as and elects to be taxed as a digital business for the
15 taxable year.

16 Sec. 5. 32 V.S.A. § 5921a is added to read:

17 § 5921a. DIGITAL BUSINESS ENTITY ELECTION

18 A corporation, partnership, or limited liability company and its
19 shareholders, partners, or members shall not be subject to the tax imposed by
20 section 5832 of this title or to provisions of this subchapter if the corporation,

1 partnership, or company qualifies as and elects to be taxed as a digital business
2 entity for the taxable year.

3 Sec. 6. 32 V.S.A. § 5832a is added to read:

4 § 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

5 (a) There is imposed upon every business entity which qualifies as and has
6 elected to be taxed as a digital business entity an annual franchise tax equal to:

7 (1) the greater of 0.02 percent of the current value of the tangible and
8 intangible assets of the company or \$250.00, but in no case more than
9 \$500,000.00; or

10 (2) where the authorized capital stock does not exceed 5,000 shares,
11 \$250.00; where the authorized capital stock exceeds 5,000 shares, but is not
12 more than 10,000 shares, \$500.00; and the further sum of \$250.00 on each
13 10,000 shares or part thereof.

14 (b) In no case shall the tax on any corporation for a full taxable year,
15 whether computed under subdivision (a)(1) or (2) of this section be more than
16 \$500,000.00 or less than \$250.00.

17 (c) In the case of a corporation that has not been in existence during the
18 whole year, the amount of tax due, at the foregoing rates and as provided in
19 this section, shall be prorated for the portion of the year during which the
20 corporation was in existence.

1 (d) In the case of a corporation changing during the taxable year the
2 amount of its authorized capital stock, the total annual franchise tax payable at
3 the foregoing rates shall be arrived at by adding together the franchise taxes
4 calculated pursuant to subdivision (a)(2) of this section as prorated for the
5 several periods of the year during which each distinct authorized amount of
6 capital stock was in effect.

7 (f) For the purpose of computing the taxes imposed by this section, the
8 authorized capital stock of a corporation shall be considered to be the total
9 number of shares that the corporation is authorized to issue without regard to
10 whether the number of shares that may be outstanding at any one time is
11 limited to a lesser number.

12 (g) The franchise tax under this section shall be reported and paid in the
13 same manner as the tax under subdivision 5832(2)(B) of this title.

14 Sec. 7. EFFECTIVE DATE

15 This act shall apply to taxable years beginning on or after January 1, 2010.