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General Assembly

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Substitute House Bill No. 5776

House of Representatives, April 13, 2000

The Committee on Finance, Revenue and Bonding reported through REP. MCDONALD of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning A Single Factor Apportionment Formula For Manufacturers And Broadcasters Under The Corporation Business Tax And Economic Development Incentives For Certain Financial Institutions.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-218 of the general statutes, as amended by
2 section 4 of public act 99-121, is repealed and the following is
3 substituted in lieu thereof:

4 (a) Any taxpayer which is taxable both within and without this state
5 shall apportion its net income as provided in this section. For purposes
6 of apportionment of income under this section, a taxpayer is taxable in
7 another state if in such state such taxpayer conducts business and is
8 subject to a net income tax, a franchise tax for the privilege of doing
9 business, or a corporate stock tax, or if such state has jurisdiction to
10 subject such taxpayer to such a tax, regardless of whether such state

11 does, in fact, impose such a tax.

12 (b) The net income of the taxpayer, when derived from business
13 other than the manufacture, sale or use of tangible personal or real
14 property, shall be apportioned within and without the state by means
15 of an apportionment fraction, the numerator of which shall represent
16 the gross receipts from business carried on within Connecticut and the
17 denominator shall represent the gross receipts from business carried
18 on everywhere, except that any gross receipts attributable to an
19 international banking facility, as defined in section 12-217, shall not be
20 included in the numerator or the denominator. Gross receipts as used
21 in this subsection shall have the same meaning as used in subdivision
22 (3) of subsection (c) of this section.

23 (c) [The] Except as otherwise provided in subsection (k) of this
24 section, the net income of the taxpayer when derived from the
25 manufacture, sale or use of tangible personal or real property, shall be
26 apportioned within and without the state by means of an
27 apportionment fraction, to be computed as the sum of the property
28 factor, the payroll factor and twice the receipts factor, divided by four.
29 (1) The first of these fractions, the property factor, shall represent that
30 part of the average monthly net book value of the total tangible
31 property held and owned by the taxpayer during the income year
32 which is held within the state, without deduction on account of any
33 encumbrance thereon, and the value of tangible property rented to the
34 taxpayer computed by multiplying the gross rents payable during the
35 income year or period by eight. For the purpose of this section, gross
36 rents shall be the actual sum of money or other consideration payable,
37 directly or indirectly, by the taxpayer or for its benefit for the use or
38 possession of the property, excluding royalties, but including interest,
39 taxes, insurance, repairs or any other amount required to be paid by
40 the terms of a lease or other arrangement and a proportionate part of
41 the cost of any improvement to the real property made by or on behalf
42 of the taxpayer which reverts to the owner or lessor upon termination

43 of a lease or other arrangement, based on the unexpired term of the
44 lease commencing with the date the improvement is completed,
45 provided, where a building is erected on leased land by or on behalf of
46 the taxpayer, the value of the land is determined by multiplying the
47 gross rent by eight, and the value of the building is determined in the
48 same manner as if owned by the taxpayer. (2) The second fraction, the
49 payroll factor, shall represent the part of the total wages, salaries and
50 other compensation to employees paid by the taxpayer during the
51 income year which was paid in this state, excluding any such wages,
52 salaries or other compensation attributable to the production of gross
53 income of an international banking facility as defined in section 12-217.
54 Compensation is paid in this state if (A) the individual's service is
55 performed entirely within the state; or (B) the individual's service is
56 performed both within and without the state, but the service
57 performed without the state is incidental to the individual's service
58 within the state; or (C) some of the service is performed in the state
59 and (i) the base of operations or, if there is no base of operations, the
60 place from which the service is directed or controlled is in the state, or
61 (ii) the base of operations or the place from which the service is
62 directed or controlled is not in any state in which some part of the
63 service is performed, but the individual's residence is in this state. (3)
64 The third fraction, the receipts factor, shall represent the part of the
65 taxpayer's gross receipts from sales or other sources during the income
66 year, computed according to the method of accounting used in the
67 computation of its entire net income, which is assignable to the state,
68 and excluding any gross receipts attributable to an international
69 banking facility as defined in section 12-217, but including receipts
70 from sales of tangible property if the property is delivered or shipped
71 to a purchaser within this state, other than a company which qualifies
72 as a Domestic International Sales Corporation (DISC) as defined in
73 Section 992 of the Internal Revenue Code of 1986, or any subsequent
74 corresponding internal revenue code of the United States, as from time
75 to time amended, and as to which a valid election under Subsection (b)

76 of said Section 992 to be treated as a DISC is effective, regardless of the
77 f.o.b. point or other conditions of the sale, receipts from services
78 performed within the state, rentals and royalties from properties
79 situated within the state, royalties from the use of patents or
80 copyrights within the state, interest managed or controlled within the
81 state, net gains from the sale or other disposition of intangible assets
82 managed or controlled within the state, net gains from the sale or other
83 disposition of tangible assets situated within the state and all other
84 receipts earned within the state.

85 (d) Any motor bus company which is taxable both within and
86 without this state shall apportion its net income derived from carrying
87 of passengers for hire by means of an apportionment fraction, the
88 numerator of which shall represent the total number of miles operated
89 within this state and the denominator of which shall represent the total
90 number of miles operated everywhere, but income derived by motor
91 bus companies from sources other than the carrying of passengers for
92 hire shall be apportioned as herein otherwise provided.

93 (e) Any motor carrier which transports property for hire and which
94 is taxable both within and without this state shall apportion its net
95 income derived from carrying of property for hire by means of an
96 apportionment fraction, the numerator of which shall represent the
97 total number of miles operated within this state and the denominator
98 of which shall represent the total number of miles operated
99 everywhere, but income derived by motor carriers from sources other
100 than the carrying of property for hire shall be apportioned as herein
101 otherwise provided.

102 (f) (1) Each taxpayer that provides management, distribution or
103 administrative services, as defined in this subsection, to or on behalf of
104 a regulated investment company, as defined in Section 851 of the
105 Internal Revenue Code shall apportion its net income derived, directly
106 or indirectly, from providing management, distribution or

107 administrative services to or on behalf of a regulated investment
108 company, including net income received directly or indirectly from
109 trustees, and sponsors or participants of employee benefit plans which
110 have accounts in a regulated investment company, in the manner
111 provided in this subsection. Income derived by such taxpayer from
112 sources other than the providing of management, distribution or
113 administrative services to or on behalf of a regulated investment
114 company shall be apportioned as provided in this chapter.

115 (2) The numerator of the apportionment fraction shall consist of the
116 sum of the Connecticut receipts, as described in subdivision (3) of this
117 subsection. The denominator of the apportionment fraction shall
118 consist of the total receipts from the sale of management, distribution
119 or administrative services to or on behalf of all the regulated
120 investment companies. For purposes of this subsection, "receipts"
121 means receipts computed according to the method of accounting used
122 by the taxpayer in the computation of net income.

123 (3) For purposes of this subsection, Connecticut receipts shall be
124 determined by multiplying receipts from the rendering of
125 management, distribution or administrative services to or on behalf of
126 each separate regulated investment company by a fraction (A) the
127 numerator of which shall be the average of (i) the number of shares on
128 the first day of such regulated investment company's taxable year, for
129 federal income tax purposes, which ends within or at the same time as
130 the taxable year of the taxpayer, that are owned by shareholders of
131 such regulated investment company then domiciled in this state and
132 (ii) the number of shares on the last day of such regulated investment
133 company's taxable year, for federal income tax purposes, which ends
134 within or at the same time as the taxable year of the taxpayer, that are
135 owned by shareholders of such regulated investment company then
136 domiciled in this state; and (B) the denominator of which shall be the
137 average of the number of shares that are owned by shareholders of
138 such regulated investment company on such dates.

139 (4) (A) For purposes of this subsection, "management services"
140 includes, but is not limited to, the rendering of investment advice
141 directly or indirectly to a regulated investment company, making
142 determinations as to when sales and purchases of securities are to be
143 made on behalf of the regulated investment company, or the selling or
144 purchasing of securities constituting assets of a regulated investment
145 company, and related activities, but only where such activity or
146 activities are performed (i) pursuant to a contract with the regulated
147 investment company entered into pursuant to 15 USC 80a-15(a), as
148 from time to time amended, (ii) for a person that has entered into such
149 contract with the regulated investment company, or (iii) for a person
150 that is affiliated with a person that has entered into such contract with
151 a regulated investment company.

152 (B) For purposes of this subsection, "distribution services" includes,
153 but is not limited to, the services of advertising, servicing, marketing
154 or selling shares of a regulated investment company, but, in the case of
155 advertising, servicing or marketing shares, only where such service is
156 performed by a person that is, or, in the case of a closed end company,
157 was, either engaged in the service of selling such shares or affiliated
158 with a person that is engaged in the service of selling such shares. In
159 the case of an open end company, such service of selling shares shall
160 be performed pursuant to a contract entered into pursuant to 15 USC
161 80a-15(b), as from time to time amended.

162 (C) For purposes of this subsection, "administrative services"
163 includes, but is not limited to, clerical, fund or shareholder accounting,
164 participant record keeping, transfer agency, bookkeeping, data
165 processing, custodial, internal auditing, legal and tax services
166 performed for a regulated investment company but only if the
167 provider of such service or services during the income year in which
168 such service or services are provided also provides, or is affiliated with
169 a person that provides, management or distribution services to such
170 regulated investment company.

171 (D) For purposes of this subsection, a person is "affiliated" with
172 another person if each person is a member of the same affiliated group,
173 as defined under Section 1504 of the Internal Revenue Code without
174 regard to subsection (b) of said section.

175 (E) For purposes of this subsection, the domicile of a shareholder
176 shall be presumed to be such shareholder's mailing address as shown
177 in the records of the regulated investment company except that for
178 purposes of this subsection, if the shareholder of record is an insurance
179 company which holds the shares of the regulated investment company
180 as depositor for the benefit of a separate account, then the taxpayer
181 may elect to treat as the shareholders the contract owners or
182 policyholders of the contracts or policies supported by such separate
183 account. An election made under this subparagraph shall apply to all
184 shareholders that are insurance companies and shall be irrevocable for,
185 and applicable for, five successive income years. In any year that such
186 an election is applicable, it shall be presumed that the domicile of a
187 shareholder is the mailing address of the contract owner or
188 policyholder as shown in the records of the insurance company.

189 (g) (1) Each taxpayer that provides securities brokerage services, as
190 defined in this subsection, shall apportion its net income derived,
191 directly or indirectly, from rendering securities brokerage services in
192 the manner provided in this subsection. Income derived by such
193 taxpayer from sources other than the rendering of securities brokerage
194 services shall be apportioned as provided in this chapter.

195 (2) The numerator of the apportionment fraction shall consist of the
196 brokerage commissions and total margin interest paid on behalf of
197 brokerage accounts owned by the taxpayer's customers who are
198 domiciled in this state during such taxpayer's income year, computed
199 according to the method of accounting used in the computation of net
200 income. The denominator of the apportionment fraction shall consist of
201 brokerage commissions and total margin interest paid on behalf of

202 brokerage accounts owned by all of the taxpayer's customers,
203 wherever domiciled, during such taxpayer's income year, computed
204 according to the method of accounting used in the computation of net
205 income.

206 (3) For purposes of this subsection:

207 (A) "Security brokerage services" means services and activities
208 including all aspects of the purchasing and selling of securities
209 rendered by a broker, as defined in 15 USC 78c(a)(4) and registered
210 under the provisions of 15 USC 78a to 78kk, inclusive, as from time to
211 time amended, to effectuate transactions in securities for the account of
212 others, and a dealer, as defined in 15 USC 78c(a)(5) and registered
213 under the provisions of 15 USC 78a to 78kk, inclusive, as from time to
214 time amended, to buy and sell securities, through a broker or
215 otherwise. Security brokerage services shall not include services
216 rendered by any person buying or selling securities for such person's
217 own account, either individually or in some fiduciary capacity, but not
218 as part of a regular business carried on by such person.

219 (B) "Securities" means security, as defined in 15 USC 78c(a)(10), as
220 from time to time amended.

221 (C) "Brokerage commission" means all compensation received for
222 effecting purchases and sales for the account or on order of others,
223 whether in a principal or agency transaction, and whether charged
224 explicitly or implicitly as a fee, commission, spread, markup or
225 otherwise.

226 (4) For purposes of this subsection, the domicile of a customer shall
227 be presumed to be such customer's mailing address as shown in the
228 records of the taxpayer.

229 (h) (1) Any company that is (A) a limited partner in a partnership,
230 other than an investment partnership, that does business, owns or

231 leases property or maintains an office within this state and (B) not
232 otherwise carrying on or doing business in this state shall pay the tax
233 imposed under section 12-214 solely on its distributive share as a
234 partner of the income or loss of such partnership to the extent such
235 income or loss is derived from or connected with sources within this
236 state, except that, if the commissioner determines that the company
237 and the partnership are, in substance, parts of a unitary business
238 engaged in a single business enterprise, the company shall be taxed in
239 accordance with the provisions of subdivision (3) of this subsection
240 and not in accordance with the provisions of this subdivision,
241 provided, in lieu of the payment of tax based solely on its distributive
242 share, such company may elect for any particular income year, on or
243 before the due date or, if applicable the extended due date, of its
244 corporation business tax return for such income year, to apportion its
245 net income within and without the state under the provisions of this
246 chapter.

247 (2) Any company that is (A) a limited partner (i) in an investment
248 partnership or (ii) in a limited partnership, other than an investment
249 partnership, that does business, owns or leases property or maintains
250 an office within this state and (B) otherwise carrying on or doing
251 business in this state shall apportion its net income, including its
252 distributive share as a partner of such partnership income or loss,
253 within and without the state under the provisions of this chapter,
254 except that the numerator and the denominator of its payroll factor,
255 property factor, and receipts factor shall include its proportionate part,
256 as a partner, of the numerator and the denominator of such
257 partnership's payroll factor, property factor and receipts factor,
258 respectively. For purposes of this section, such partnership shall
259 compute its apportionment fraction and the numerator and the
260 denominator of its payroll factor, property factor and receipts factor, as
261 if it were a company taxable both within and without this state.

262 (3) Any company that is a general partner in a partnership that does

263 business, owns or leases property or maintains an office within this
264 state shall, whether or not it is otherwise carrying on or doing business
265 in this state, apportion its net income, including its distributive share
266 as a partner of such partnership income or loss, within and without the
267 state under the provisions of this chapter, except that the numerator
268 and the denominator of its payroll factor, property factor and receipts
269 factor shall include its proportionate part, as a partner, of the
270 numerator and the denominator of such partnership's payroll factor,
271 property factor and receipts factor, respectively. For purposes of this
272 section, such partnership shall compute its apportionment fraction and
273 the numerator and the denominator of its payroll factor, property
274 factor and receipts factor, as if it were a company taxable both within
275 and without this state.

276 (i) The provisions of this section shall not apply to insurance
277 companies.

278 (j) (1) Any financial service company as defined in section 12-218b,
279 that has net income derived from credit card activities, as defined in
280 this subsection, shall apportion its net income derived from credit card
281 activities in the manner provided in this subsection. Income derived by
282 such taxpayer from sources other than credit card activities shall be
283 apportioned as provided in this chapter.

284 (2) The numerator of the apportionment fraction shall consist of the
285 Connecticut receipts, as described in subdivision (3) of this subsection.
286 The denominator of the apportionment fraction shall consist of (A) the
287 total amount of interest and fees or penalties in the nature of interest
288 from credit card receivables, (B) receipts from fees charged to card
289 holders, including, but not limited to, annual fees, irrespective of the
290 billing address of the card holder, (C) net gains from the sale of credit
291 card receivables, irrespective of the billing address of the card holder,
292 and (D) all credit card issuer's reimbursement fees, irrespective of the
293 billing address of the card holder.

294 (3) For purposes of this subsection, "Connecticut receipts" shall be
295 determined by adding (A) interest and fees or penalties in the nature of
296 interest from credit card receivables and receipts from fees charged to
297 card holders, including, but not limited to, annual fees, where the
298 billing address of the card holder is in this state and (B) the product of
299 (i) the sum of net gains from the sale of credit card receivables and all
300 credit card issuer's reimbursement fees multiplied by (ii) a fraction, the
301 numerator of which shall be interest and fees or penalties in the nature
302 of interest from credit card receivables and receipts from fees charged
303 to card holders, including, but not limited to, annual fees, where the
304 billing address of the card holder is in this state, and the denominator
305 of which shall be the total amount of interest and fees or penalties in
306 the nature of interest from credit card receivables and receipts from
307 fees charged to card holders, including, but not limited to, annual fees,
308 irrespective of the billing address of the card holder.

309 (4) For purposes of this subsection:

310 (A) "Credit card" means a credit, travel, or entertainment card;

311 (B) "Receipts" means receipts computed according to the method of
312 accounting used by the taxpayer in the computation of net income;

313 (C) "Credit card issuer's reimbursement fee" means the fee that a
314 taxpayer receives from a merchant's bank because one of the persons
315 to whom the taxpayer or a related person, as defined in section 12-
316 218b, has issued a credit card has charged merchandise or services to
317 the credit card;

318 (D) "Net income derived from credit card activities" means (i)
319 interest and fees or penalties in the nature of interest from credit card
320 receivables and receipts from fees charged to card holders, including,
321 but not limited to, annual fees, net gains from the sale of credit card
322 receivables, credit card issuer's reimbursement fees, and credit card
323 receivables servicing fees received in connection with credit cards

324 issued by the taxpayer or a related person, as defined in section 12-
325 218b, less (ii) expenses related to such income, to the extent deductible
326 under chapter 208;

327 (E) "Billing address" shall be presumed to be the location indicated
328 in the books and records of the taxpayer as the address where any
329 notice, statement or bill relating to a card holder is to be mailed, as of
330 the date of such mailing; and

331 (F) "Credit card activities" means those activities involving the
332 underwriting and approval of credit card relationships or other
333 business activities generally associated with the conduct of business by
334 an issuer of credit cards from which it derives income.

335 (5) The Commissioner of Revenue Services may adopt regulations,
336 in accordance with chapter 54, to permit a financial service company
337 that is an owner of a financial asset securitization investment trust, as
338 defined in Section 860H(a) of the Internal Revenue Code, to elect to
339 apportion its share of the net income from credit card activities carried
340 on by such trust, and to provide rules for apportioning such share of
341 net income that are consistent with this subsection.

342 (k) (1) For income years commencing on or after January 1, 2001, the
343 net income of a taxpayer which is primarily engaged in activities that,
344 in accordance with the North American Industrial Classification
345 System, United States manual, United States Office of Management
346 and Budget, 1997 edition, would be included in Sector 31, 32 or 33,
347 shall be apportioned within and without the state by means of the
348 apportionment fraction described in subdivision (2) of this subsection.

349 (2) The numerator of the apportionment fraction shall consist of the
350 taxpayer's gross receipts, as described in subdivision (3) of subsection
351 (c) of this section, which are assignable to the state, as provided in
352 subdivision (3) of subsection (c) of this section. The denominator of
353 the apportionment fraction shall consist of the taxpayer's total gross

354 receipts, as described in subdivision (3) of subsection (c) of this section,
355 whether or not assignable to the state.

356 (3) Any taxpayer which is described in subdivision (1) of this
357 subsection and seventy-five per cent or more of whose total gross
358 receipts, as described in subdivision (3) of subsection (c) of this section,
359 during the income year are from the sale of tangible personal property
360 directly, or in the case of a subcontractor, indirectly to the United
361 States government may elect, on or before the due date or, if
362 applicable, the extended due date, of its corporation business tax
363 return for the income year, to apportion its net income within and
364 without the state by means of the apportionment fraction described in
365 subsection (c) of this section. The election, if made by the taxpayer,
366 shall be irrevocable for, and applicable for, five successive income
367 years.

368 (l) (1) For income years commencing on or after October 1, 2001, any
369 broadcaster which is taxable both within and without this state shall
370 apportion its net income derived from the broadcast of film or radio
371 programming, whether through the public airwaves, by cable, by
372 direct or indirect satellite transmission or by any other means of
373 communication, through an over-the-air television or radio network,
374 through a television or radio station or through a cable network or
375 cable television system by means of the apportionment fraction
376 described in subdivision (3) of this subsection, and any eligible
377 production entity which is taxable both within and without this state
378 shall apportion its net income derived from film or radio programming
379 production services by means of the apportionment fraction described
380 in subdivision (4) of this subsection.

381 (2) For purposes of this subsection:

382 (A) "Film or radio programming" means any and all performances,
383 events or productions, including without limitation news, sporting
384 events, plays, stories and other entertainment, literary, commercial,

385 educational or artistic works, telecast or otherwise made available for
386 video or audio exhibition through live transmission or through the use
387 of video tape, disc or any other type of format or medium;

388 (B) A "subscriber" to a cable television system is an individual
389 residence or other outlet which is the ultimate recipient of the
390 transmission;

391 (C) "Telecast" or "broadcast" means the transmission of film or radio
392 programming by an electronic or other signal conducted by
393 radiowaves or microwaves, by wires, lines, coaxial cables, wave guides
394 or fiber optics, by satellite transmissions directly or indirectly to
395 viewers or listeners or by any other means of communication;

396 (D) "Eligible production entity" means a corporation which provides
397 film or radio programming production services and which is affiliated,
398 within the meaning of Sections 1501 to 1504 of the Internal Revenue
399 Code and the regulations promulgated thereunder, with a broadcaster;

400 (E) "Release" or "in release" means the placing of film or radio
401 programming into service. A film or radio program is placed into
402 service when it is first broadcast to the primary audience for which the
403 program was created. For example, a film is placed in service when it
404 is first publicly telecast for entertainment, educational, commercial,
405 artistic or other purpose. Each episode of a television or radio series is
406 placed in service when it is first broadcast; and

407 (F) "Broadcaster" means a corporation that is engaged in the
408 business of broadcasting film or radio programming, whether through
409 the public airwaves, by cable, by direct or indirect satellite
410 transmission or by any other means of communication, through an
411 over-the-air television or radio network, through a television or radio
412 station or through a cable network or cable television system, and that
413 is primarily engaged in activities that, in accordance with the North
414 American Industry Classification System, United States manual, 1997

415 edition, are included in industry group 5131 or 5132.

416 (3) (A) Except as provided in subparagraph (B) of this subdivision,
417 the numerator of the apportionment fraction for a broadcaster shall
418 consist of the broadcaster's gross receipts, as described in subdivision
419 (3) of subsection (c) of this section, which are assignable to the state, as
420 provided in subdivision (3) of subsection (c) of this section. Except as
421 provided in subparagraph (C) of this subdivision, the denominator of
422 the apportionment fraction for a broadcaster shall consist of the
423 broadcaster's total gross receipts, as described in subdivision (3) of
424 subsection (c) of this section, whether or not assignable to the state.

425 (B) The numerator of the apportionment fraction for a broadcaster
426 shall include the gross receipts of the taxpayer from sources within this
427 state determined as follows:

428 (i) Gross receipts, including without limitation, advertising revenue,
429 affiliate fees and subscriber fees, received by a broadcaster from film or
430 radio programming in release to or by a broadcaster for telecast which
431 is attributed to this state.

432 (ii) Gross receipts, including without limitation, advertising
433 revenue, received by an over-the-air television or radio network or a
434 television or radio station from film or radio programming in release
435 to or by such network or station for telecast shall be attributed to this
436 state in the same ratio that the audience for such over-the-air network
437 or station located in this state bears to the total audience for such over-
438 the-air network or station inside and outside of the United States. For
439 purposes of this subparagraph, the audience shall be determined either
440 by reference to the books and records of the taxpayer or by reference to
441 the applicable year's published rating statistics, provided the method
442 used by the taxpayer is consistently used from year to year for such
443 purpose and fairly represents the taxpayer's activity in the state.

444 (iii) Gross receipts including, without limitation, advertising

445 revenue, affiliate fees and subscriber fees, received by a cable network
446 or a cable television system from film or radio programming in release
447 to or by such cable network or cable television system for telecast shall
448 be attributed to this state in the same ratio that the subscribers for such
449 cable network or cable television system located in this state bears to
450 the total of such subscribers of such cable network or cable television
451 system inside and outside of the United States. For purpose of this
452 subparagraph, the number of subscribers of a cable network shall be
453 measured by reference to the number of subscribers of cable television
454 systems that are affiliated with such network and that receive film
455 program of such network. For purposes of this subparagraph, if the
456 number of subscribers of a cable television system cannot be accurately
457 determined from the books and records maintained by the taxpayer,
458 the ratio shall be determined on the basis of the applicable year's
459 subscription statistics located in published surveys, provided the
460 source selected is consistently used from year to year for such purpose.

461 (4) (A) Except as provided in subparagraph (B) of this subdivision,
462 the numerator of the apportionment fraction for an eligible production
463 entity shall consist of the eligible production entity's gross receipts, as
464 described in subdivision (3) of subsection (c) of this section, which are
465 assignable to the state, as provided in subdivision (3) of subsection (c)
466 of this section. Except as provided in subparagraph (C) of this
467 subdivision, the denominator of the apportionment fraction for an
468 eligible production entity shall consist of the eligible production
469 entity's total gross receipts, as described in subdivision (3) of
470 subsection (c) of this section, whether or not assignable to the state.

471 (B) The numerator of the apportionment fraction for an eligible
472 production entity shall include gross receipts of the entity that are
473 derived from film or radio programming production services relating
474 to events which occur within this state.

475 (C) The denominator of the apportionment fraction for an eligible

476 production entity shall include gross receipts of the entity that are
477 derived from film or radio programming production services relating
478 to events which occur within or without this state.

479 Sec. 2. Section 12-217u of the general statutes is amended by adding
480 subsection (n) as follows:

481 (NEW) (n) (1) No taxpayer which has received financial assistance
482 from the state under section 5 of this act may claim the credit under
483 subsection (b) of this section. The total amount of credit allowed under
484 subsection (f) of this section to such a taxpayer shall not exceed, in the
485 aggregate, twenty-five million dollars.

486 (2) Notwithstanding the provisions of subsection (c) of this section,
487 for purposes of any credit allowed under subsection (f) of this section
488 to a taxpayer which has received financial assistance under section 5 of
489 this act, the initial qualified year shall be the income year in which the
490 Commissioner of Economic and Community Development executes an
491 agreement with such financial institution to provide financial
492 assistance pursuant to section 5 of this act.

493 (3) For purposes of determining the number of qualified employees
494 under subsection (d) of this section with respect to any taxpayer which
495 has received financial assistance under section 5 of this act, the date of
496 the proposal by such financial institution to provide new positions in
497 this state shall be the date provided in the agreement executed by
498 Commissioner of Economic and Community Development with such
499 financial institution to provide financial assistance pursuant to section
500 5 of this act.

501 Sec. 3. Subparagraph (a) of subdivision (59) of section 12-81 of the
502 general statutes is repealed and the following is substituted in lieu
503 thereof:

504 (59) (a) Any manufacturing facility, as defined in section 32-9p,

505 acquired, constructed, substantially renovated or expanded on or after
506 July 1, 1978, in a distressed municipality, as defined in said section or
507 in a targeted investment community, as defined in section 32-222, or in
508 an enterprise zone designated pursuant to section 32-70 and for which
509 an eligibility certificate has been issued by the Department of
510 Economic and Community Development, and any manufacturing
511 plant designated by the Commissioner of Economic Development
512 under subsection (a) of section 32-75c as follows: To the extent of
513 eighty per cent of its valuation for purposes of assessment in each of
514 the five full assessment years following the assessment year in which
515 the acquisition, construction, renovation or expansion of the
516 manufacturing facility is completed, except that a manufacturing
517 facility having a standard industrial classification code of 2833 or 2834
518 and having at least one thousand full-time employees, as defined in
519 subsection (f) of section 32-9j, or any financial institution, as defined in
520 section 12-217u, having a least four thousand qualified employees as
521 determined in accordance with subsections (d) and (n) of section 12-
522 217u, as amended by this act, shall be eligible to have the assessment
523 period extended for five additional years upon approval of the
524 commissioner, in accordance with all applicable regulations, provided
525 such full-time employees have not been relocated from another facility
526 in the state operated by the same eligible applicant.

527 Sec. 4. Subparagraph (a) of subdivision (60) of section 12-81 of the
528 general statutes is repealed and the following is substituted in lieu
529 thereof:

530 (60) (a) (1) Machinery and equipment which represents an addition
531 to the assessment or grand list of the municipality in which this
532 exemption is claimed and is installed in any manufacturing facility, as
533 defined in section 32-9p, which facility is or has been constructed, or
534 substantially renovated or expanded on or after July 1, 1978, in a
535 distressed municipality or targeted investment community or
536 enterprise zone designated pursuant to section 32-70 and for which an

537 eligibility certificate has been issued by the Department of Economic
538 and Community Development, concurrently with and directly
539 attributable to such construction, renovation or expansion, (2)
540 machinery and equipment which represents an addition to the
541 assessment or grand list of the municipality in which this exemption is
542 claimed and is installed, or machinery and equipment existing, in any
543 manufacturing facility, as defined in section 32-9p, which facility is or
544 has been acquired on or after July 1, 1978, in a distressed municipality,
545 targeted investment community or enterprise zone designated
546 pursuant to section 32-70 and for which an eligibility certificate has
547 been issued by the Department of Economic and Community
548 Development, and (3) machinery and equipment acquired and
549 installed on or after October 1, 1986, in a manufacturing facility that is
550 or has at one time been certified as eligible for the exemption under
551 this subparagraph in accordance with section 32-9r, and which
552 continues to be used for manufacturing purposes, provided such
553 machinery and equipment is installed in conjunction with an
554 expansion program that satisfies the requirements for a manufacturing
555 facility, as defined in section 32-9p, and is contiguous to and represents
556 an increase in square feet of floor space of not less than fifty per cent of
557 the floor space in the certified manufacturing facility, as follows: To the
558 extent of eighty per cent of its valuation for purposes of assessment in
559 each of the five full assessment years for which the manufacturing
560 facility in which it is installed qualifies for an exemption under
561 subdivision (59) of this section, except that a financial institution, as
562 defined in section 12-217u, having at least four thousand qualified
563 employees as determined in accordance with subsections (d) and (n) of
564 section 12-217u, as amended by this act, shall be eligible to have the
565 assessment period extended for five additional years upon approval of
566 the commissioner, in accordance with all applicable regulations,
567 provided such full-time employees have not been relocated from
568 another facility in the state operated by the same eligible applicant.

569 Sec. 5. (NEW) In furtherance of the economic development of the

570 state, the Department of Economic and Community Development may
571 provide financial assistance under sections 32-220 to 32-235, inclusive,
572 of the general statutes to a financial institution, as defined in section
573 12-217u of the general statutes, as amended by this act, which has not
574 less than two thousand qualified employees, determined in accordance
575 with subsections (d) and (n) of said section 12-217u, at a facility or
576 facilities located in a municipality in this state with a population
577 greater than one hundred thousand. The provisions of section 32-462
578 of the general statutes shall not apply to such assistance.

579 Sec. 6. Subsection (a) of section 32-235 of the general statutes, as
580 amended by section 16 of public act 99-241, is repealed and the
581 following is substituted in lieu thereof:

582 (a) For the purposes described in subsection (b) of this section the
583 State Bond Commission shall have the power, from time to time, to
584 authorize the issuance of bonds of the state in one or more series and
585 in principal amounts not exceeding in the aggregate [three hundred
586 ninety-nine million three hundred thousand] four hundred sixty-five
587 million three hundred thousand dollars, provided [thirty-five] one
588 hundred one million dollars of said authorization shall be effective on
589 July 1, 2000.

590 Sec. 7. This act shall take effect from its passage.

FIN Committee Vote: Yea 40 Nay 6 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Revenue Loss, Precludes a Revenue Loss, Potential Revenue Gain, Future Cost

Affected Agencies: Department of Revenue Services, Department of Economic and Community Development

Municipal Impact: Grand List Increase, Future Revenue Gain

Explanation

State Impact:

Section 1

The following table presents the estimated revenue loss associated with allowing manufacturers and broadcasters to apportion their income using a 100% sales formula for purposes of determining net income under the state’s corporation business tax.

	FY 01	FY 02	FY 03
	(in millions)		
Manufacturers	(\$15.0)	(\$21.0)	(\$22.0)
Broadcasters	-	(\$17.6)	(\$22.0)
Total Revenue Loss	(\$15.0)	(\$38.6)	(\$44.0)

Sections 2-6

The following table presents the fiscal impact of the remaining sections of the bill. The impact reflects an agreement between the state and Union Bank of Switzerland (UBS formerly Swiss Bank Corporation) in Stamford.

Description	Current Law	Bill	Fiscal Impact
REVENUE IMPACT			
<u>Tax Credits (Section 2)</u>			
Urban jobs credits in years 1-10 (Section 12-217u (b))	Up to \$120 * million over 10 years.	Cannot qualify for credits as a condition of receiving aid	Precludes ** revenue loss of between \$0 to \$120 million
Urban jobs credit in years 11-15 (Section 12-217u (f))	Up to \$25 million over 5 years in years 11-15 after DCED certification.	Up to \$25 million over 5 years in years 11-15 after DCED certification.	No change
* It should be noted that the taxpayer has not applied to DECD for this credit but presumably would qualify.			
** It should be noted that the taxpayer qualifies for the tax credit provided in section 12-217(e) of the statutes, which provides for 50% credit for a company with a service facility located in a Targeted Investment Community with at least 2,000 new employees. The difference between this credit and the one under 12-217(u) is that the credit is against the portion of the tax allocable to the service facility, rather than against the total tax liability of the taxpayer. The amount of tax allocable to the proposed service facilities is not known at this time.			
Description	Current Law	Bill	Fiscal Impact
COST IMPACT			
<u>Property Tax Abatement (Sections 3&4)</u>			
Property tax abatement program (Section 12-81 (59) & (60))	Qualifies for five-year abatement of 80% of personal and real property taxes.	Qualifies for 80% abatement of real and personal property for 5 additional years (10 total) if the 4,000 employee criteria is met.	Estimated cost* for phase I of the construction is \$8.1 million over 10years, beginning in FY 04. Costs of phase II is \$16.9

Description	Current Law	Bill	Fiscal Impact
			million over 10 years, beginning in FY 07. The state reimburses towns for 50% of 80% lost property taxes.
* It should be noted that if the 4,000 employee criteria is not met the cost to the state would only be for 5 years.			
<u>Financial Assistance (sections 5 & 6)</u>			
Manufacturing Assistance Act funding. Section 32-235	No assistance has been granted	Total of \$66 million in assistance	The interest* cost to the state to bond \$66 million is \$41.6 million at an assumed interest rate of 6%. If all the conditions in the agreement with the company are fulfilled, then \$66 million in loan assistance would become a grant and a cost to the state.
* Per the agreement between the state and the company the financial assistance from bond funds will be payable in installments as follows: \$23 million in FY 01, \$23 million in FY 02, \$10 million in FY 03, and \$10 million in FY 04. In FY 03 and FY 04, \$7 million of the \$10 million scheduled to be awarded in each year is contingent upon the company constructing a new office tower (phase II of construction).			

To the degree that the incentives provided in the bill result in economic development that would otherwise not have occurred, revenue increases will result primarily from the personal income and sales taxes.

Municipal Impact:

Section 1

To the degree that the incentives provided in the bill result in economic development that would otherwise not have occurred, grand list increases in various municipalities will result.

Sections 2-6

The City of Stamford is anticipated: 1) to receive payments from the state for property tax reimbursements as noted above; and 2) to realize a grand list increase for the value of the property that is not exempt (20%).

OLR Bill Analysis

sHB 5776

AN ACT CONCERNING A SINGLE FACTOR APPORTIONMENT FORMULA FOR MANUFACTURERS UNDER THE CORPORATION BUSINESS TAX.

SUMMARY:

This bill requires multi-state manufacturers and broadcasters to apportion their net income for purposes of the corporation tax based on a single factor: the share of their gross receipts from Connecticut compared to their total receipts. Under current law, the companies must use a three-factor formula that also includes payroll and property factors. Under the bill, "broadcasters" include television and radio broadcasters, cable television systems and networks, and affiliated program production entities.

An apportionment formula based only on receipts allows manufacturers and broadcasters with lots of property and employees in the state to pay less if most of their sales are outside Connecticut. Conversely, companies whose share of sales in Connecticut is greater than their share of property and payroll here pay more under the single-factor formula.

The bill increases, by \$66 million, the bond authorization to the Department of Economic and Community Development (DECD) for the Manufacturing Assistance Act (MAA). And it makes a financial institution with at least 2,000 qualified employees at a facility or facilities in a municipality with more than 100,000 people eligible for MAA assistance.

The bill prohibits the financial institution that receives direct MAA financing from taking advantage of an existing 10-year, 50% corporation tax credit for financial institutions constructing facilities and creating new jobs in urban areas. But it allows the company to take an existing 25% corporation tax credit, up to a total of \$25 million. Under the bill, these credits start 10 years after the year in which

DECD executes an agreement to provide MAA financing (the “qualifying year”) and last for five consecutive years. To be eligible, the company must maintain 3,000 qualified employees in the state.

Finally, the bill extends certain property tax abatements for financial institutions located in enterprise zones for an additional five years if a company maintains 4,000 qualified employees in the state.

EFFECTIVE DATE: Upon passage

CORPORATION TAX APPORTIONMENT

Under current law, manufacturers and broadcasters must use an apportionment formula with three factors:

1. a property factor that represents the average book value of all tangible property the company holds or owns in the state, plus the value of any such property it rents;
2. a payroll factor consisting of the total wages, salaries, and other compensation paid to officers and employees in this state; and
3. a receipts factor, which is the share of the company’s gross receipts from sales or other sources assignable to the state.

Under current law and this bill, the receipts factor includes receipts from:

1. sales of tangible property delivered and shipped to a purchaser in Connecticut, with one exclusion;
2. services performed here;
3. rents and royalties from properties located here;
4. royalties from use of patents and copyrights here;
5. interest earned from assets managed or controlled here;
6. net gains from sale or other disposition of tangible or intangible

assets managed in the state; and

7. all other receipts in this state.

Receipts have a double weighting in the current allocation formula.

The bill requires most manufacturers and all broadcasters to use only the receipts factor to apportion their net income.

Manufacturers

The bill requires manufacturing companies to change from the triple-factor to the single-factor formula starting with income year beginning January 1, 2001. They must apportion their net income according to the ratio of their gross receipts assignable to Connecticut to their total gross receipts, using the existing definition of receipts.

A manufacturer that makes 75% or more of its gross sales directly or indirectly to the federal government may choose to continue apportioning net income according to the triple-factor formula. If a company makes that choice, it may not change its mind for the following five years.

Broadcasters

Broadcasters must switch to single-factor apportionment based on receipts starting with the income year beginning October 1, 2001. Under the bill, the single-factor formula applies only to a company's receipts from broadcasting, film, or radio programming. For eligible affiliates that provide film or radio programming production services, the single-factor formula applies only to income they derive from such services.

Under the bill, a "broadcaster" is a company that broadcasts film or radio programming over the air or by cable, satellite, or other means of communication through a television or radio broadcast network or station or a cable television network or system.

"Film or radio programming" covers all performances, events, and productions, including news, sports, plays, stories and other

entertainment, and literary, commercial, educational, and artistic works exhibited live or on tape, disc, or in any other format or medium.

The broadcaster's gross receipts must include advertising revenue and affiliate and subscriber fees from programming attributable to this state. Over-the-air broadcasters must attribute programming to this state based on Connecticut's share of the total audience for a program, both in and outside the United States. The audience share must be determined by taxpayer records or by rating statistics.

Cable television networks and systems must attribute programming to Connecticut based on the network's or system's Connecticut subscribers compared to their total subscribers both inside and outside the U.S. A network must count as a subscriber anyone who (1) subscribes to a cable system affiliated with the network and (2) receives the network's programming. The subscriber numbers must be based on the taxpayer's records or, if that does not give an accurate count, by published subscriber statistics.

Eligible production entities must assign gross receipts to Connecticut based on the ratio of receipts they derive from film or radio programming production services for events that occur here compared to their total receipts for such events.

ASSISTANCE FOR A FINANCIAL INSTITUTION

MAA Assistance

The bill exempts the MAA assistance provided to a financial institution under the bill from the requirement that economic development assistance to any company that exceeds \$10 million in two years be specifically approved by the General Assembly. It increases the bond authorization for MAA programs from \$399.3 million to \$465.3 million, with \$101 million rather than \$35 million taking effect July 1, 2000.

Corporation Tax Credits

Under current law, a financial institution is eligible for credits against 50% of its corporation tax, up to \$120 million, for 10 years if it (1)

constructs a new facility in the state for its direct or indirect corporate purposes that has at least 900,000 square feet, (2) receives a temporary certificate of occupancy for the building, and (3) has employed an average of 2,000 qualified employees during the year it claims a credit. Also under current law, the company can receive a 25% credit for the following five consecutive years if it employs at least 3,000 qualified employees both in the last year of its 50% credit eligibility and in each of five years it is eligible for the 25% credit. The company's eligibility period for the credits is triggered when the company receives a DECD eligibility certificate.

Under the bill, the initial qualified year for the tax credits is the income year DECD executes an agreement to provide the new MAA financing. The bill prohibits the company that receives the assistance from claiming the 50% credits for the 10 years following the initial qualified year. But it allows the company to receive the 25% credits in the 11th through the 15th years if it has at least 3,000 qualified employees in the state in the 10th year and in each of the subsequent five years. The company's total credits are limited to \$25 million.

Property Tax Exemption

Financial institutions are already eligible for five-year, 80% property tax abatements on new or expanded facilities and new machinery and equipment located in an enterprise zone. This bill extends the abatements for an additional five years if a financial institution has at least 4,000 qualified employees. The law already allows extensions for new and expanded medicinal and botanical products and pharmaceutical manufacturing facilities with at least 1,000 employees.

The bill imposes the same conditions on the abatement extension for new machinery and equipment that already apply to abatement extensions for new or expanded facilities. Those conditions are that (1) the employees are new and not transferred from another facility in the state operated by the applicant and (2) the DECD commissioner approve the extension in accordance with applicable regulations.

Qualified Employees

Under current law and this bill, a company receiving tax credits must

employ a specified number of “qualified employees.” To be “qualified,” employees must be new to the state and must either work here or perform services outside Connecticut that are merely incidental to their work here. They must work an average of at least 35 hours per week for at least eight weeks and be employed by the financial institution, by an independent consultant to the institution, or an unrelated company that derives at least 80% of its gross revenue from the institution or a related company.

BACKGROUND

Job Creation Tax Credits

A financial institution eligible for assistance under this bill may also be eligible for additional corporate tax credits of between 15% and 50%. Under existing law, which the bill does not change, the DECD commissioner may grant credits to service firms that meet certain criteria and that create at least 300 new jobs in an enterprise zone. The amount of the credit is based on the number of jobs the firm creates and ranges from 15% for 300 jobs to 50% for 2,000 jobs or more (CGS Sec. 12-217e).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 40 Nay 6