



House of Representatives

General Assembly

File No. 461

February Session, 2002

Substitute House Bill No. 5665

House of Representatives, April 11, 2002

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 THE CORPORATION BUSINESS TAX, THE CIGARETTE TAX AND CERTAIN EXCISE TAXES.

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

1 Section 1. Section 12-217j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) There shall be allowed as a credit against the tax imposed on any
4 corporation under this chapter, [(1)] with respect to income years of
5 such corporation commencing on or after [January 1, 1993, and prior
6 to] January 1, 1994, an amount equal to [ten] twenty per cent of the
7 amount spent by such corporation directly on research and
8 experimental expenditures, as defined in Section 174 of the Internal
9 Revenue Code of 1986, or any subsequent corresponding internal
10 revenue code of the United States, as from time to time amended,
11 which are conducted in this state and which exceeds the amount spent
12 by such corporation during the preceding [taxable] income year of

13 such corporation for such expenditures. [and (2) with respect to any
14 taxable year of such corporation commencing on or after January 1,
15 1994, an amount equal to twenty per cent of the amount spent by such
16 corporation on such expenditures which exceeds the amount spent by
17 such corporation during the preceding taxable year of such
18 corporation for such expenditures. A]

19 (b) (1) With respect to any income year commencing on or after
20 January 1, 2000, a credit or any portion of a credit that is allowed under
21 this section [, with respect to any taxable year commencing on or after
22 January 1, 2000,] but that is not used by a taxpayer because the amount
23 of the credit exceeds the tax due and owing by the taxpayer shall be
24 carried forward to each of the successive income years until such
25 credit, or applicable portion of the credit, is fully taken. In no case shall
26 a credit, or any portion of a credit, that is not used by a taxpayer be
27 carried forward for a period of more than fifteen years.

28 (2) (A) With respect to any income year commencing on or after
29 January 1, 1997, and prior to January 1, 2000, a credit, or any portion of
30 a credit, that is allowed under this section for research and
31 experimental expenditures of a biotechnology company, which credit
32 is not used by such company because the amount of the credit exceeds
33 the tax due and owing by the taxpayer, shall be carried forward to
34 each of the successive income years until such credit, or applicable
35 portion of the credit, is fully taken. In no case shall a credit, or any
36 portion of a credit, that is not used by a biotechnology company be
37 carried forward for a period of more than fifteen years.

38 (B) For purposes of this subdivision, "biotechnology company"
39 means a company engaged in the business of applying technologies,
40 such as recombinant DNA techniques, biochemistry, molecular and
41 cellular biology, genetics and genetic engineering, biological cell fusion
42 technique and new bioprocesses, using living organisms, or parts of
43 organisms, to produce or modify products, to improve plants or
44 animals, to develop microorganisms for specific uses, to identify
45 targets for small molecule pharmaceutical development or to

46 transform biological systems into useful processes and products.

47 Sec. 2. Subsection (b) of section 12-285 of the general statutes, as
48 amended by section 27 of public act 01-6 of the June special session, is
49 repealed and the following is substituted in lieu thereof (*Effective*
50 *January 1, 2002*):

51 (b) For the purposes of part I and part II only of this chapter:

52 (1) "Cigarette" means and includes [(A)] any roll for smoking made
53 wholly or in part of tobacco, irrespective of size or shape and
54 irrespective of whether the tobacco is flavored, adulterated or mixed
55 with any other ingredient, where such roll has a wrapper or cover
56 made of paper or any other material, except where such wrapper is
57 wholly or in the greater part made of tobacco and such roll weighs
58 over three pounds per thousand, provided, if any roll for smoking has
59 a wrapper made of homogenized tobacco or natural leaf tobacco, and
60 the roll is a cigarette size so that it weighs three pounds or less per
61 thousand, such roll is a cigarette and subject to the tax imposed by part
62 I and part II of this chapter; and [(B) each nine one-hundredths of an
63 ounce of roll-your-own tobacco;]

64 (2) "Unstamped cigarette" means any package of cigarettes to which
65 the proper amount of Connecticut cigarette tax stamps have not been
66 affixed. [; and]

67 [(3) "Roll-your-own tobacco" means any tobacco which, because of
68 its appearance, type, packaging or labeling, is suitable for use and
69 likely to be offered to, or purchased by, consumers as tobacco for
70 making cigarettes.]

71 Sec. 3. Section 12-294 of the general statutes is repealed and the
72 following is substituted in lieu thereof (*Effective July 1, 2002*):

73 (a) If a distributor or dealer removes his or her business from one
74 location to another during the period in which the license is in force,
75 the commissioner shall transfer the license to the new location without
76 an additional fee.

77 (b) (1) If any distributor liable for any amount due under this
78 chapter sells out his or her business or stock of goods or quits the
79 business, such distributor's successors or assigns shall withhold a
80 sufficient amount of the purchase price to pay the amount due from
81 the business until the distributor provides to such successor or
82 assignee a receipt from the commissioner showing that such amount
83 has been paid or a certificate stating that no amount is due.

84 (2) If any such successor or assignee fails to withhold the purchase
85 price as required, such successor or assignee shall be personally liable
86 for the payment of the amount required to be withheld by such
87 successor or assignee to the extent of the purchase price, valued in
88 money.

89 (c) (1) No later than the sixtieth day after the latest of the dates
90 specified in subdivision (2) of this subsection, the commissioner shall
91 either issue the certificate stating that no amount is due or mail notice
92 of the amount that must be paid as a condition of issuing the
93 certificate. Such notice shall be mailed to such successor or assignee at
94 such successor's or assignee's address as it appears on the records of
95 the commissioner.

96 (2) For purposes of subdivision (1) of this subsection, the latest of
97 the following dates shall apply: (A) The date the commissioner
98 receives a written request from the successor or assignee for a
99 certificate; (B) the date of the sale of the business or stock of goods; or
100 (C) the date the former owner's records are made available for audit.

101 (d) Failure of the commissioner to mail the notice referred to in
102 subsection (c) of this section shall release the successor or assignee
103 from any further obligation to withhold the purchase price as provided
104 in subsection (b) of this section. The period within which the obligation
105 of the successor or assignee may be enforced shall commence on the
106 date the person sells out his or her business or stock of goods or quits
107 the business or on the date that the assessment against such person
108 becomes final, whichever event occurs later, and shall end three years
109 after such date.

110 (e) The certificate provided for in subsection (c) of this section may
111 be issued after the payment of all amounts due under this chapter,
112 according to the records of the department as of the date of the
113 certificate, or after the payment of the amounts is secured to the
114 satisfaction of the commissioner.

115 (f) The obligation of the successor or assignee shall be enforced by
116 servicing a notice of successor liability on the successor or assignee. The
117 notice shall be served in the manner prescribed under section 12-309
118 for service of a notice of assessment, not later than three years after the
119 date the commissioner is notified by the successor or assignee of the
120 purchase of the business or stock of goods. The successor or assignee
121 may protest the assessment in the manner provided in section 12-311.
122 Sixty days after the date on which a notice of assessment is mailed, an
123 assessment shall become final except for any amount as to which the
124 successor or assignee has filed a written protest with the
125 commissioner, as provided in section 12-311.

126 Sec. 4. Section 12-330a of the general statutes, as amended by section
127 28 of public act 01-6 of the June special session, is repealed and the
128 following is substituted in lieu thereof (*Effective January 1, 2002*):

129 As used in this chapter: (1) "Commissioner" means the
130 Commissioner of Revenue Services; (2) "tobacco products" means
131 cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut,
132 ready rubbed and other smoking tobacco, snuff tobacco products,
133 cavendish, plug and twist tobacco, fine cut and other chewing
134 tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of
135 tobacco and all other kinds and forms of tobacco, prepared in such
136 manner as to be suitable for chewing or smoking in a pipe or otherwise
137 or for both chewing and smoking, but shall not include any cigarette,
138 as defined in section 12-285; [or any roll-your-own tobacco, as defined
139 in section 12-285;] (3) "distributor" means (A) any person in this state
140 engaged in the business of manufacturing tobacco products, (B) any
141 person who purchases tobacco products at wholesale from
142 manufacturers or other distributors for sale, or (C) any person who

143 imports into this state tobacco products, at least seventy-five per cent
144 of which are to be sold; (4) "unclassified importer" means any person,
145 other than a distributor, who imports, receives or acquires tobacco
146 products from outside this state for use or consumption in this state;
147 (5) "sale" or "sell" includes or applies to gifts, exchanges and barter; (6)
148 "wholesale sales price" means, in the case of a manufacturer of tobacco
149 products, the price set for such products or, if no price has been set, the
150 wholesale value of such products, and, in the case of a distributor who
151 is not a manufacturer of tobacco products, the price at which the
152 distributor purchased such products, and, in the case of an unclassified
153 importer of tobacco products, the price at which the unclassified
154 importer purchased such products; and (7) "snuff tobacco products"
155 means only those snuff tobacco products that have imprinted on the
156 packages the designation "snuff" or "snuff flour", or the federal tax
157 designation "Tax Class M", or both.

158 Sec. 5. Subsection (a) of section 12-459 of the general statutes is
159 repealed and the following is substituted in lieu thereof (*Effective from*
160 *passage*):

161 (a) The payment of the tax provided for by section 12-458 shall be
162 subject to refund as provided herein when such fuel has been sold for
163 use of any of the following: (1) Any person, other than one engaged in
164 the business of farming, when such fuel is used other than in motor
165 vehicles licensed or required to be licensed to operate upon the public
166 highways of this state, except that no tax paid on fuel which is taken
167 out of this state in a fuel tank connected with the engine of a motor
168 vehicle and which is consumed without this state shall be refunded; (2)
169 any person engaged in the business of farming, when such fuel is used
170 other than in motor vehicles licensed or required to be licensed to
171 operate upon the public highways of this state or such fuel is used in
172 motor vehicles registered exclusively for farming purposes, except that
173 no tax paid on fuel which is taken out of this state in a fuel tank
174 connected with the engine of a motor vehicle and which is consumed
175 without this state shall be refunded; (3) the United States; (4) a
176 Connecticut motor bus company, as defined in subsection (e) of section

177 12-455a, engaged in the business of carrying passengers for hire in this
178 state in common carrier motor vehicles, or any person, association or
179 corporation engaged in the business of operating taxicabs in this state
180 pursuant to a certificate under chapter 244a, when such fuel is used in
181 such common carrier motor vehicle or taxicab on roads in this state,
182 except that with respect to such fuel used in a taxicab only fifty per
183 cent of the tax paid on any purchase of fuel applicable to mileage on
184 any roads in this state shall be refunded; (5) any person, association or
185 corporation engaged in the business of operating a motor vehicle in
186 livery service pursuant to a permit issued under chapter 244b, or a
187 motor bus over highways within this state and between points within
188 and without this state pursuant to a permit issued under chapter 244,
189 when such fuel is used in such motor bus on roads in this state for the
190 exclusive purpose of transporting passengers for hire to or from
191 airport facilities, except that with respect to any such motor vehicle in
192 livery service pursuant to a permit issued under chapter 244b only fifty
193 per cent of the tax paid on any purchase of fuel applicable to mileage
194 on any roads in this state shall be refunded; (6) this state or a
195 municipality of this state, when such fuel is used in vehicles owned
196 and operated, or leased and operated, by this state or municipality for
197 governmental purposes; (7) any school bus, as defined in section 14-
198 275; (8) a hospital, when such fuel is used in an ambulance owned by
199 such hospital; (9) a nonprofit civic organization approved by the
200 commissioner, when such fuel is used in an ambulance owned by such
201 organization; (10) a transit district formed under chapter 103a or any
202 special act, when such fuel is used in vehicles owned and operated, or
203 leased and operated, by such transit district for the purposes of such
204 transit district; (11) a corporation or an employee of a corporation or of
205 the United States, this state or a municipality of this state, when such
206 fuel is used in a high-occupancy commuter vehicle on roads in this
207 state, which vehicle is owned or leased by such corporation or such
208 employee, [which] seats at least ten but not more than fifteen
209 passengers and [which] has a minimum average daily passenger usage
210 of nine persons to and from work, for the purpose of transporting such
211 passengers to and from work daily; (12) a person, corporation or

212 association operating a motor vehicle in livery service which is
 213 registered in accordance with the provisions of section 13b-83, when
 214 such fuel is used in such motor vehicle in livery service on roads in this
 215 state; and (13) a federally funded nutrition program approved by the
 216 commissioner, when such fuel is used in a delivery vehicle [that is
 217 used exclusively for the delivery of] on roads in this state for the
 218 exclusive purpose of delivering meals to senior citizens.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>January 1, 2002</i>
Sec. 3	<i>July 1, 2002</i>
Sec. 4	<i>January 1, 2002</i>
Sec. 5	<i>from passage</i>

Statement of Legislative Commissioners:

In section 1, text was added to clarify that the credit for biotechnology companies is for research and experimental expenditures; and in section 2, "purchaser" was changed to "successor or assignee" for consistency.

FIN *Joint Favorable Subst.-LCO*

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:

Fund-Type	Agency Affected	FY 03 \$
GF - Potential Revenue Gain	Department of Revenue Services	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

Sections 2 and 4 - Tax on "Roll Your Own" Tobacco

Public Act 01-6, June Special Session, subjected "roll your own" tobacco to the cigarette tax rather than the tobacco products tax effective January 1, 2002. The change in the method of taxing "roll your own" tobacco was anticipated to result in a minimal revenue gain (less than \$5,000/yr).

Currently, the tax on "roll your own" tobacco is not being levied because the Department of Revenue Services and the industry have not been able to formulate a method to tax "roll your own" tobacco under the cigarette tax statutes. Therefore subjecting "roll your own" tobacco to the tobacco products tax will preclude a minimal revenue gain and preserve revenue steam generated under this method.

Section 3 - Successor Liability for Cigarette Taxes

The provisions of this section may result in a revenue gain to the state if cigarette taxes that are otherwise due but not paid are remitted upon transfer of stock to a successor company.

The other provisions contained in the bill have no fiscal impact since they make technical changes that clarify current practices by the

Department of Revenue Services.

OLR Bill Analysis

HB 5665

AN ACT CONCERNING THE CORPORATION BUSINESS TAX, THE CIGARETTE TAX AND CERTAIN EXCISE TAXES**SUMMARY:**

This bill:

1. makes someone who takes over a cigarette distributor's business liable in certain circumstances for unpaid cigarette taxes the distributor owes and establishes procedures for collecting unpaid cigarette taxes when a distributor sells either his business or his entire stock of goods;
2. makes it clear that biotechnology companies may carry forward unused research and development (R&D) credits against the corporation tax from the 1997, 1998, and 1999 income years;
3. subjects "roll your own" tobacco to the tobacco products tax rather than the cigarette tax;
4. limits motor fuel tax refunds for fuels used in certain qualifying vehicles to fuel used in Connecticut; and
5. makes technical changes in the corporation tax law.

EFFECTIVE DATE: The R&D credit and motor fuel tax refund provisions and the technical changes in the corporation tax are effective on passage. The change in the tax on roll-your-own tobacco is retroactive to January 1, 2002. The successor tax liability provisions for cigarette distributors take effect July 1, 2002.

SUCCESSOR LIABILITY FOR CIGARETTE TAXES***Requirements for Successors***

The bill requires someone buying a cigarette distributor's business or entire stock of goods to withhold enough money from the purchase price to pay any cigarette taxes the distributor owes. (A distributor is a cigarette manufacturer, wholesaler, or retailer who operates five or more retail outlets or 25 or more cigarette vending machines.) The buyer must withhold the money until the seller provides either a Department of Revenue Services (DRS) receipt showing that he has

paid all cigarette taxes due or a DRS certificate stating that no taxes are due. If the buyer fails to withhold the money, he becomes personally liable for the unpaid taxes, up to the purchase price.

DRS Responsibilities

The bill requires the DRS commissioner to issue the certificate that no taxes are owed or mail notice of the amount owed to the purchaser within 60 days of the latest of:

1. the date the commissioner receives the purchaser's written request for a certificate,
2. the sale date, or
3. the date the former owner's records are made available for audit.

If the commissioner fails to mail the notice to the purchaser by the deadline, the purchaser is not required to withhold money from the purchase price. If there are taxes owed, the commissioner may issue a certificate after all taxes are either paid or payments are secured to the commissioner's satisfaction.

Enforcing Successor Liability

The bill allows the commissioner to enforce the successor's obligation for three years after either the sale date or the date the assessment against the seller becomes final, whichever is later. The commissioner must serve notice of successor liability on the purchaser in the same way as he serves notice of a cigarette tax assessment, i.e., through a tax warrant and a lien against the taxpayer's real estate in the state. The successor has 60 days from the date the notice is delivered or mailed to challenge the assessment by making a written request to the commissioner for a hearing. The assessment becomes final 60 days after the notice is mailed, except for any amount subject to a written challenge.

R&D CREDITS FOR BIOTECHNOLOGY COMPANIES

By law, companies receive corporation tax credits for 20% of increased in R&D expenditures over the previous year. This bill makes it clear that biotechnology companies that were eligible to carry forward unused R&D credits from the 1997 through 1999 income years for up

to 15 years may still do so. It does so by restoring provisions of a 1996 law that allowed the carry-forwards.

In 1996, the General Assembly gave biotechnology companies the 15-year carry forward starting with the 1997 income year (PA 96-252). In 1998, the legislature extended the carry-forward provision to all types of companies starting with the 2000 income year but, in the process, eliminated pre-2000 carry-forward provisions concerning biotechnology companies (PA 98-110).

TAX ON “ROLL YOUR OWN” TOBACCO

The bill subjects roll-your-own tobacco to the tobacco products tax rather than the cigarette tax, thus reversing the effect of PA 01-6, June Special Session, which switched roll-your-own tobacco to the cigarette tax as of January 1, 2002. Under current law, each .09 ounces of roll-your-own tobacco is considered one cigarette. The cigarette tax is 55.5 mills per cigarette as of April 3, 2002. The tobacco products tax is 20% of the wholesale price.

MOTOR FUEL TAX REFUNDS

Motor fuel taxes are refundable for fuel is used in (1) vanpool vehicles carrying between 10 and 15 people to and from work each day, (2) vehicles operated by livery services registered with the motor vehicles commissioner, and (3) vehicles delivering meals to senior citizens under a federally funded nutrition program approved by the DRS commissioner. This bill specifies that, to receive the refund, the fuel must be used within Connecticut.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Report
Yea 42 Nay 0