



# Senate

General Assembly

**File No. 588**

*January Session, 2003*

Substitute Senate Bill No. 1138

*Senate, April 30, 2003*

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING TAX TREATMENT OF MARINE VESSEL BROKERAGE SERVICES, REFUND OF SALES TAX AND CERTAIN REMOTE SELLERS.***

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

1 Section 1. Section 12-412 of the general statutes is amended by  
2 adding subdivision (114) as follows (*Effective July 1, 2003, and applicable*  
3 *to sales occurring on or after July 1, 2003*):

4 (NEW) (114) Sales of marine vessel brokerage services provided by  
5 marine vessel brokers selling such vessels for the owners.

6 Sec 2. Subparagraph (B) of subdivision (8) of subsection (a) of  
7 section 12-407 of the general statutes is repealed and the following is  
8 substituted in lieu thereof (*Effective July 1, 2003, and applicable to sales*  
9 *occurring on or after July 1, 2003*):

10 (B) "Sales price" does not include any of the following: (i) Cash

11 discounts allowed and taken on sales; (ii) any portion of the amount  
12 charged for property returned by purchasers, which upon rescission of  
13 the contract of sale is refunded either in cash or credit, provided the  
14 property is returned within [ninety days] one year from the date of  
15 purchase; (iii) the amount of any tax, not including any manufacturers'  
16 or importers' excise tax, imposed by the United States upon or with  
17 respect to retail sales whether imposed upon the retailer or the  
18 purchaser; (iv) the amount charged for labor rendered in installing or  
19 applying the property sold, provided such charge is separately stated  
20 and exclusive of such charge for any service rendered within the  
21 purview of subparagraph (I) of subdivision (37) of this subsection; (v)  
22 unless the provisions of subdivision (4) of section 12-430 or of section  
23 12-430a are applicable, any amount for which credit is given to the  
24 purchaser by the retailer, provided such credit is given solely for  
25 property of the same kind accepted in part payment by the retailer and  
26 intended by the retailer to be resold; (vi) the full face value of any  
27 coupon used by a purchaser to reduce the price paid to a retailer for an  
28 item of tangible personal property, whether or not the retailer will be  
29 reimbursed for such coupon, in whole or in part, by the manufacturer  
30 of the item of tangible personal property or by a third party; (vii) the  
31 amount charged for separately stated compensation, fringe benefits,  
32 workers' compensation and payroll taxes or assessments paid to or on  
33 behalf of employees of a retailer who has contracted to manage a  
34 service recipient's property or business premises and renders  
35 management services described in subparagraph (I) of subdivision (37)  
36 of this subsection, provided, the employees perform such services  
37 solely for the service recipient at its property or business premises and  
38 "sales price" shall include the separately stated compensation, fringe  
39 benefits, workers' compensation and payroll taxes or assessments paid  
40 to or on behalf of any employee of the retailer who is an officer,  
41 director or owner of more than five per cent of the outstanding capital  
42 stock of the retailer. Determination whether an employee performs  
43 services solely for a service recipient at its property or business  
44 premises for purposes of this subdivision shall be made by reference to  
45 such employee's activities during the time period beginning on the

46 later of the commencement of the management contract, the date of the  
47 employee's first employment by the retailer or the date which is six  
48 months immediately preceding the date of such determination; (viii)  
49 the amount charged for separately stated compensation, fringe  
50 benefits, workers' compensation and payroll taxes or assessments paid  
51 to or on behalf of (I) a leased employee, or (II) a worksite employee by  
52 a professional employer organization pursuant to a professional  
53 employer agreement. For purposes of this subparagraph, an employee  
54 shall be treated as a leased employee if the employee is provided to the  
55 client at the commencement of an agreement with an employee leasing  
56 organization under which at least seventy-five per cent of the  
57 employees provided to the client at the commencement of such initial  
58 agreement qualify as leased employees pursuant to Section 414(n) of  
59 the Internal Revenue Code of 1986, or any subsequent corresponding  
60 internal revenue code of the United States, as from time to time  
61 amended, or the employee is added to the client's workforce by the  
62 employee leasing organization subsequent to the commencement of  
63 such initial agreement and qualifies as a leased employee pursuant to  
64 Section 414(n) of said Internal Revenue Code of 1986 without regard to  
65 subparagraph (B) of paragraph (2) thereof. A leased employee, or a  
66 worksite employee subject to a professional employer agreement, shall  
67 not include any employee who is hired by a temporary help service  
68 and assigned to support or supplement the workforce of a temporary  
69 help service's client; and (ix) any amount received by a retailer from a  
70 purchaser as the battery deposit that is required to be paid under  
71 subsection (a) of section 22a-245h; the refund value of a beverage  
72 container that is required to be paid under subsection (a) of section  
73 22a-244; or a deposit that is required by law to be paid by the  
74 purchaser to the retailer and that is required by law to be refunded to  
75 the purchaser by the retailer when the same or similar tangible  
76 personal property is delivered as required by law to the retailer by the  
77 purchaser, if such amount is separately stated on the bill or invoice  
78 rendered by the retailer to the purchaser.

79 Sec. 3. Subparagraph (B) of subdivision (9) of subsection (a) of  
80 section 12-407 of the general statutes is repealed and the following is

81 substituted in lieu thereof (*Effective July 1, 2003, and applicable to sales*  
82 *occurring on or after July 1, 2003*):

83 (B) "Gross receipts" do not include any of the following: (i) Cash  
84 discounts allowed and taken on sales; (ii) any portion of the sales price  
85 of property returned by purchasers, which upon rescission of the  
86 contract of sale is refunded either in cash or credit, provided the  
87 property is returned within [ninety days] one year from the date of  
88 sale; (iii) the amount of any tax, not including any manufacturers' or  
89 importers' excise tax, imposed by the United States upon or with  
90 respect to retail sales whether imposed upon the retailer or the  
91 purchaser; (iv) the amount charged for labor rendered in installing or  
92 applying the property sold, provided such charge is separately stated  
93 and exclusive of such charge for any service rendered within the  
94 purview of subparagraph (I) of subdivision (37) of this subsection; (v)  
95 unless the provisions of subdivision (4) of section 12-430 or of section  
96 12-430a are applicable, any amount for which credit is given to the  
97 purchaser by the retailer, provided such credit is given solely for  
98 property of the same kind accepted in part payment by the retailer and  
99 intended by the retailer to be resold; (vi) the full face value of any  
100 coupon used by a purchaser to reduce the price paid to the retailer for  
101 an item of tangible personal property, whether or not the retailer will  
102 be reimbursed for such coupon, in whole or in part, by the  
103 manufacturer of the item of tangible personal property or by a third  
104 party; (vii) the amount charged for separately stated compensation,  
105 fringe benefits, workers' compensation and payroll taxes or  
106 assessments paid to or on behalf of employees of a retailer who has  
107 contracted to manage a service recipient's property or business  
108 premises and renders management services described in subparagraph  
109 (I) of subdivision (37) of this subsection, provided the employees  
110 perform such services solely for the service recipient at its property or  
111 business premises and "gross receipts" shall include the separately  
112 stated compensation, fringe benefits, workers' compensation and  
113 payroll taxes or assessments paid to or on behalf of any employee of  
114 the retailer who is an officer, director or owner of more than five per  
115 cent of the outstanding capital stock of the retailer. Determination

116 whether an employee performs services solely for a service recipient at  
117 its property or business premises for purposes of this subdivision shall  
118 be made by reference to such employee's activities during the time  
119 period beginning on the later of the commencement of the  
120 management contract, the date of the employee's first employment by  
121 the retailer or the date which is six months immediately preceding the  
122 date of such determination; (viii) the amount charged for separately  
123 stated compensation, fringe benefits, workers' compensation and  
124 payroll taxes or assessments paid to or on behalf of (I) a leased  
125 employee, or (II) a worksite employee by a professional employer  
126 organization pursuant to a professional employer agreement. For  
127 purposes of this subparagraph, an employee shall be treated as a  
128 leased employee if the employee is provided to the client at the  
129 commencement of an agreement with an employee leasing  
130 organization under which at least seventy-five per cent of the  
131 employees provided to the client at the commencement of such initial  
132 agreement qualify as leased employees pursuant to Section 414(n) of  
133 the Internal Revenue Code of 1986, or any subsequent corresponding  
134 internal revenue code of the United States, as from time to time  
135 amended, or the employee is added to the client's workforce by the  
136 employee leasing organization subsequent to the commencement of  
137 such initial agreement and qualifies as a leased employee pursuant to  
138 Section 414(n) of said Internal Revenue Code of 1986 without regard to  
139 subparagraph (B) of paragraph (2) thereof. A leased employee, or a  
140 worksite employee subject to a professional employer agreement, shall  
141 not include any employee who is hired by a temporary help service  
142 and assigned to support or supplement the workforce of a temporary  
143 help service's client; and (ix) the amount received by a retailer from a  
144 purchaser as the battery deposit that is required to be paid under  
145 subsection (a) of section 22a-256h; the refund value of a beverage  
146 container that is required to be paid under subsection (a) of section  
147 22a-244 or a deposit that is required by law to be paid by the purchaser  
148 to the retailer and that is required by law to be refunded to the  
149 purchaser by the retailer when the same or similar tangible personal  
150 property is delivered as required by law to the retailer by the

151 purchaser, if such amount is separately stated on the bill or invoice  
152 rendered by the retailer to the purchaser.

153       Sec. 4. (NEW) (*Effective July 1, 2003, and applicable to sales occurring on*  
154 *or after July 1, 2003*) (a) For any contract for provision of tangible  
155 personal property to the state entered into on or after the effective date  
156 of this section, each department head, as defined in section 4-5 of the  
157 general statutes, shall enter into an agreement with the contractor  
158 pursuant to which such contractor shall agree, on its own behalf and  
159 on behalf of each affiliate, as defined in subsection (d) of this section, of  
160 such contractor, for the term of the state contract, to collect and remit  
161 to the state on behalf of its customers any use tax due to the state  
162 under the provisions of chapter 219 of the general statutes for items of  
163 tangible personal property sold by the contractor or by any of its  
164 affiliates in the same manner as if the contractor and its affiliates were  
165 engaged in the business of selling tangible personal property for use in  
166 this state and had sufficient nexus with this state to be required to  
167 collect use tax due to the state.

168       (b) The following provisions shall apply to and be made part of any  
169 agreement entered into pursuant to subsection (a) of this section:

170       (1) The contractor and its affiliates are not liable for use tax not paid  
171 to them by a customer;

172       (2) A customer's payment of a use tax to the contractor or its  
173 affiliates relieves the customer of liability for the use tax;

174       (3) The contractor and its affiliates shall remit all use taxes they  
175 collect from customers on or before the due date specified in the  
176 agreement, which may not be later than the last day of the month next  
177 succeeding the end of a calendar quarter or other tax collection period  
178 during which the tax was collected; and

179       (4) Any contractor or affiliate who fails to remit use taxes collected  
180 on behalf of its customers by the due date specified in the agreement  
181 shall be subject to the interest and penalties provided for persons

182 required to collect sales tax under chapter 219 of the general statutes.

183 (c) Any agreement entered into under subsection (a) of this section  
184 may provide that the contractor and its affiliates shall collect the use  
185 tax only on items that are subject to the six per cent rate of tax.

186 (d) For purposes of this section, "affiliate" means any person, as  
187 defined in section 12-1 of the general statutes, that controls, is  
188 controlled by, or is under common control with another person. A  
189 person controls another person if the person owns, directly or  
190 indirectly, more than ten per cent of the voting securities of the other  
191 person. For purposes of this subsection, "voting security" means a  
192 security that confers upon the holder the right to vote for the election  
193 of members of the board of directors or similar governing body of the  
194 business, or that is convertible into, or entitles the holder to receive,  
195 upon its exercise, a security that confers such a right to vote. "Voting  
196 security" includes a general partnership interest.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003, and applicable to sales occurring on or after July 1, 2003</i>
Sec 2	<i>July 1, 2003, and applicable to sales occurring on or after July 1, 2003</i>
Sec. 3	<i>July 1, 2003, and applicable to sales occurring on or after July 1, 2003</i>
Sec. 4	<i>July 1, 2003, and applicable to sales occurring on or after July 1, 2003</i>

**FIN** Joint Favorable Subst.

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:

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## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Type</b>	<b>FY 04 \$</b>	<b>FY 05 \$</b>
Revenue Serv., Dept.	GF - Revenue Gain	1.9 million (net)	4.4 million (net)

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The impact of the bill is expected to be a net General Fund revenue gain of approximately \$1.9 million in FY 04 and \$4.4 million in FY 05. This is comprised of: (1) an estimated revenue loss of \$100,000 in each FY 04 and FY 05 for the marine vessel brokerage services exemption, (2) an estimated revenue loss of \$500,000 in each FY 04 and FY 05 for the sales tax credit extension, and (3) a revenue gain of \$2.5 million in FY 04 (partial year) and \$5.0 million in FY 05 (full year) for the use tax provision.

The sales tax exemption for marine vessel brokerage services is expected to result in an estimated \$100,000 per year loss. It should be noted that both brokerage services and boat sales are currently subject to the sales tax. If the repeal of tax on brokerage services results in a greater number of boats being sold in the state, then the anticipated revenue loss for repealing the tax on brokerage services could be offset by an increase in revenue from the tax on boat sales.

Extending the time during which retailers can receive a sales tax credit on items returned by customers for a refund or credit is expected to result in an estimated \$500,000 per year loss based on information from the Department of Revenue Services (the bill extends the time from 90 days after the sale to 1 year).

Requiring companies who do business with the state but have no physical presence in the state to collect use tax on all Connecticut sales is expected to result in an estimated revenue gain of \$2.5 million in FY 04 (partial year) and \$5.0 million in FY 05 (full year). The figure is based on North Carolina's experience (\$8 million/yr), which was adjusted for differences in sales tax rates between the states (6.0% versus 4.5%) and the fact that vendors in North Carolina must collect sales tax on contract with state agencies.

**OLR Bill Analysis**

sSB 1138

***AN ACT CONCERNING TAX TREATMENT OF MARINE VESSEL BROKERAGE SERVICES, REFUND OF SALES TAX AND CERTAIN REMOTE SELLERS*****SUMMARY:**

This bill exempts charges for marine vessel brokerage services from the 6% sales and use tax. Marine vessel brokers sell boats for their owners. The bill also allows retailers to adjust monthly sales tax remittances to the state to reflect refunds or credits to customers on items returned within one year, rather than 90 days, after a sale.

Finally, the bill requires new contracts for state agency purchases from sellers with no physical presence (“nexus”) in Connecticut to include an agreement requiring the contractor and its affiliates to collect use tax on all Connecticut sales during the term of the state contract. The requirement applies to contracts for state purchases of tangible property after July 1, 2003.

EFFECTIVE DATE: July 1, 2003 and applicable to sales on or after that date.

**SALES TAX ON RETURNED ITEMS**

By law, retailers must pay sales tax on their gross receipts from taxable items they sell and remit the taxes monthly to the state. The retailers, in turn, collect the tax from customers by adding it to the price of the item.

Under current law, retailers may adjust their monthly tax remittances to reflect refunds or credits of both the sales price and tax to customers on items returned within 90 days after sale. Although current law does not prohibit a retailer from refunding the tax to a customer on items returned after more than 90 days, the retailer cannot recover the tax on such an item from the state. This bill allows adjustments for refunds or credits on items returned within one year of the sale.

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**USE TAX COLLECTION AGREEMENTS WITH STATE CONTRACTORS*****Applicability***

The use tax collection agreements must cover any state contractor in the business of selling taxable items in Connecticut that does not have enough nexus here to be covered by requirements to register with the state and collect sales taxes on items sold here. It also applies to any affiliates that control, are controlled by, or are under common control with, the contractor. Under the bill, "control" means directly or indirectly to control more than 10% of an entity's voting securities. "Voting securities" are those giving their owner the right to vote for the entity's board of directors or other governing body, those convertible into securities with such voting rights, or a general partnership interest.

***Agreement Provisions***

Under the bill, the following provisions apply to the required agreements:

1. the contractor and affiliates are liable only for use taxes paid by customers;
2. once a customer pays the tax to the contractor or affiliate, he is no longer liable for paying use tax on the item to the state;
3. the contractor and affiliates must remit taxes collected by the due date specified in the agreement, which must be no later than the end of the month following the calendar quarter during which it collected the tax; and
4. contractors and affiliates that fail to remit taxes on time are subject to the same interest and penalties as other retailers (1% for each month or part of a month the payment is overdue, plus a penalty of 15% of the deficiency or \$50 whichever is greater for negligent or intentional nonpayment and 25% of the deficiency for nonpayment due to fraud).

The bill allows agreements to provide that a contractor and affiliates collect use tax only on items subject to the 6% tax rate.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 39    Nay 5