



House of Representatives

General Assembly

File No. 685

February Session, 2008

Substitute House Bill No. 5938

House of Representatives, April 17, 2008

The Committee on Finance, Revenue and Bonding reported through REP. STAPLES of the 96th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE ATTORNEY OCCUPATIONAL TAX.

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

1 Section 1. Section 51-81b of the 2008 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2008, and applicable to calendar years commencing on or*
4 *after January 1, 2008*):

5 (a) Any person who has been admitted as an attorney by the judges
6 of the Superior Court shall annually on or before January fifteenth file
7 an annual return prescribed or furnished by the Commissioner of
8 Revenue Services. If any such person was engaged in the practice of
9 law in the year preceding the year in which an occupational tax is due
10 hereunder, such person, unless exempted under this section, shall
11 annually on or before January fifteenth pay to the Commissioner of
12 Revenue Services a tax in the amount of four hundred fifty dollars.
13 [Any] Except as provided in subsection (h) of this section, any person
14 who has been admitted as an attorney pro hac vice by a judge of the

15 Superior, Appellate or Supreme Court in accordance with the rules of
16 said court shall file such return and pay such tax as provided in this
17 subsection with respect to any year in which such person was
18 admitted pro hac vice and engaged in the practice of law in this state.

19 (b) Upon failure of any such person to pay the sum due hereunder
20 within thirty days of the due date, the provisions of section 12-35 shall
21 apply with respect to the enforcement of this section and the collection
22 of such sum. The warrant therein provided for shall be signed by the
23 commissioner or his authorized agent. The amount of any such tax,
24 penalty and interest shall be a lien, from the thirty-first day of
25 December next preceding the due date of such tax until discharged by
26 payment, against all real estate of the taxpayer within the state, and a
27 certificate of such lien signed by the commissioner may be filed for
28 record in the office of the clerk of any town in which such real estate is
29 situated, provided no such lien shall be effective as against any bona
30 fide purchaser or qualified encumbrancer of any interest in any such
31 property. When any tax with respect to which a lien has been recorded
32 under the provisions of this section has been satisfied, the
33 commissioner, upon request of any interested party, shall issue a
34 certificate discharging such lien, which certificate shall be recorded in
35 the same office in which the lien was recorded. Any action for the
36 foreclosure of such lien shall be brought by the Attorney General in the
37 name of the state in the superior court for the judicial district in which
38 the property subject to such lien is situated, or, if such property is
39 located in two or more judicial districts, in the superior court for any
40 one such judicial district, and the court may limit the time for
41 redemption or order the sale of such property or make such other or
42 further decree as it judges equitable.

43 (c) The Commissioner of Revenue Services shall notify the Chief
44 Court Administrator of the failure of any person to comply with the
45 provisions of this section and the Chief Court Administrator shall
46 notify the judges of the Superior Court of such failure.

47 (d) If any person fails to pay the amount of tax reported to be due

48 on such person's return within the time specified under the provisions
49 of this section, there shall be imposed a penalty of fifty dollars, which
50 penalty shall be payable to, and recoverable by, the commissioner in
51 the same manner as the tax imposed under this section. Subject to the
52 provisions of section 12-3a, the commissioner may waive all or part of
53 the penalties provided under this section when it is proven to his
54 satisfaction that the failure to pay any tax was due to reasonable cause
55 and was not intentional or due to neglect.

56 (e) If any tax is not paid when due as provided in this section, there
57 shall be added to the amount of the tax interest at the rate of one per
58 cent per month or fraction thereof from the date the tax became due
59 until it is paid.

60 (f) If the commissioner is satisfied beyond a reasonable doubt that
61 the failure to file a return or to pay the tax was due to reasonable cause
62 and was not intentional or due to neglect, he may abate or remit the
63 whole or any part of any penalty under this section.

64 (g) This section shall not apply (1) to any attorney whose name has
65 been removed from the roll of attorneys maintained by the clerk of the
66 superior court for the judicial district of Hartford, or (2) to any attorney
67 who has retired from the practice of law, provided the attorney shall
68 file written notice of retirement with the clerk of the superior court for
69 the judicial district of Hartford, or to any attorney who does not
70 engage in the practice of law as an occupation and receives less than
71 four hundred fifty dollars in legal fees or other compensation for
72 services involving the practice of law during any calendar year, or (3)
73 with respect to the tax due in any calendar year, to any attorney
74 serving on active duty with the armed forces of the United States for
75 more than six months in such year, or (4) to any attorney who provides
76 not less than ten hours of pro bono legal activity, as provided in
77 subsection (i) of this section.

78 (h) No person shall be liable for payment of the occupational tax
79 under this section solely by virtue of such person having engaged in
80 the practice of law in this state while acting as an employee of [the] this

81 or another state, any political subdivision of the state or any probate
82 court.

83 (i) To qualify for the exemption from payment of the occupational
84 tax provided in subdivision (4) of subsection (g) of this section, an
85 attorney's pro bono activities shall be approved by the Superior Court,
86 the Probate Assembly, or the program for the use of interest on
87 lawyers' clients' funds accounts. The Judicial Department shall issue
88 rules to implement the provisions of this subsection.

89 [(i)] (j) The provisions of sections 12-548 to 12-554, inclusive, and
90 section 12-555a shall apply to the provisions of this section in the same
91 manner and with the same force and effect as if the language of said
92 sections 12-548 to 12-554, inclusive, and section 12-555a had been
93 incorporated in full into this section and had expressly referred to the
94 tax under this section, except to the extent that any such provision is
95 inconsistent with a provision of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008, and applicable to calendar years commencing on or after January 1, 2008</i>	51-81b

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Revenue Services	GF - Revenue Loss	900,000	900,000
Judicial Dept.	GF - Potential Cost	Minimal	Minimal
Probate Court	PCAF - None	None	None

Note: GF=General Fund; PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill exempts attorneys who provide at least 10 hours of qualifying free (*pro bono*) legal activity from the annual \$450 occupational tax on attorneys who practice law in Connecticut. To qualify for the tax exemption, the free legal activities must be approved by the Superior Court, the Probate Assembly, or the program for using interest on lawyers' client funds' accounts.

Revenue Loss

Approximately 800 attorneys participate in the Pro Bono Panel of the Connecticut Bar Association. It is anticipated that these attorneys would qualify for the bill's exemption from the \$450 occupational tax. The number of attorneys currently performing pro bono work outside of this panel who would also qualify for an exemption is not anticipated to exceed 800.

The bill could increase the number of attorneys performing pro bono work since it effectively establishes a \$45 per-hour incentive for the first ten hours of work performed. Approximately 400 attorneys perform contractual work for the state Division of Public Defender Services Commission or the Commission on Child Protection at hourly

rates of \$45 or less.

Taking the factors listed above into account, the total number of attorneys who may qualify for exemptions under the bill is estimated to be approximately 2,000. The associated, annual revenue loss is \$900,000.

Pro Bono Reviews/Approvals for Exemption

The bill requires any attorney seeking an exemption to submit the attorney's pro bono activities for approval by the Superior Court, the Probate Assembly, or the program for the use of interest on lawyers' client funds' accounts.¹

The Superior Court could incur a minimal cost under the bill to provide additional staffing (e.g., temporary employees) to review materials submitted to it under the bill.

The Probate Court Assembly is a professional organization comprised of all 117 probate judges throughout the state. It is governed internally and is voluntarily supported by members; therefore any review under the bill by the Assembly would result in no cost to the state.

The Out Years

The annualized ongoing cost identified above would continue into the future subject to inflation; the annualized ongoing revenue loss identified above would remain relatively stable into the future since the occupational tax is set by statute.

¹ The IOLTA program is authorized by statute to subsidize legal aid to the poor in Connecticut and to fund law school scholarships based on financial need. It is administered by the Connecticut Bar Foundation and supported by interest income from lawyers' trust accounts and certain accounts established to receive loan proceeds from mortgage lenders. No state or municipal funds are involved in the IOLTA program.

OLR Bill Analysis**sHB 5938*****AN ACT CONCERNING THE ATTORNEY OCCUPATIONAL TAX.*****SUMMARY:**

This bill exempts attorneys who provide at least 10 hours of qualifying, free (pro bono) legal activity from the annual \$450 occupational tax on attorneys who practice law in Connecticut. To qualify for the tax exemption, the free legal activities must be approved by the Superior Court, the probate assembly, or the program for using interest on lawyers' client funds' accounts (see BACKGROUND). The bill requires the Judicial Department to issue rules to implement the pro bono exemption.

The bill also extends an existing tax exemption for lawyers employed by the state, one of its political subdivisions, or a Connecticut probate court to also cover lawyers practicing here as employees of other states.

EFFECTIVE DATE: July 1, 2008 and applicable to calendar years starting on or after January 1, 2008.

BACKGROUND***IOLTA Program***

State law established the Interest on Lawyers' Trust Accounts (IOLTA) program in 1984 as a voluntary program for lawyers to pool their clients' funds accounts and to use the interest generated to assist in providing legal services to the poor. The program is administered by the Connecticut Bar Foundation.

Existing Exemptions for Attorney Occupational Tax

By law, the following are already exempt from the tax:

1. attorneys who have been removed from the list maintained by the clerk of the Hartford Superior Court,
2. retired attorneys who notify the clerk of their retirement,
3. attorneys who do not practice law for a living and receive less than \$450 per year in fees or other compensation from legal practice, and
4. any attorney serving on active duty in the U.S. armed forces for more than six months during the calendar year for which the tax is due.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 44 Nay 9 (04/01/2008)