



Senate

General Assembly

File No. 657

February Session, 2008

Substitute Senate Bill No. 702

Senate, April 17, 2008

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 TAXPAYER PRIVACY RIGHTS AND RIGHTS IN TAX ASSESSMENT, COLLECTION AND ENFORCEMENT PROCESSES.

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

1 Section 1. Section 12-15 of the general statutes is amended by adding
2 subsection (i) as follows (*Effective October 1, 2008*):

3 (NEW) (i) In the event that the commissioner acquires knowledge
4 that a return or return information maintained by the commissioner, or
5 any contractor of the commissioner, in any electronic files, media,
6 databases or computerized data containing return information, has
7 been or may become subject to access by, or disclosed to, any person
8 not authorized to receive such return or return information pursuant
9 to this section, the commissioner shall provide written notification of
10 such fact to any taxpayer who is the subject of such return or return
11 information. Such notification shall be made without unreasonable
12 delay, except that such notification may be delayed for a reasonable

13 time if a law enforcement agency determines that such notification
14 may impede a criminal investigation and such law enforcement agency
15 requests that the commissioner delay such notification. Any such
16 delayed notification shall be made after such law enforcement agency
17 determines that such notification will not compromise the criminal
18 investigation and so notifies the commissioner of such determination.
19 Promptly upon discovery of an unauthorized access to or disclosure of
20 a return or return information, the commissioner shall confer with the
21 Secretary of the Office of Policy and Management to determine what
22 actions the state should take, if any, to mitigate any adverse
23 consequences taxpayers may incur as a result of such unauthorized
24 access or disclosure.

25 Sec. 2. Section 12-39l of the general statutes is repealed and the
26 following is substituted in lieu thereof (*Effective from passage and*
27 *applicable to any tax appeal pending on or after such date*):

28 (a) Except as otherwise provided by statute, "tax appeal" means an
29 appeal from an order, decision, determination or disallowance of the
30 Commissioner of Revenue Services; an appeal that may be taken from
31 a decree of a court of probate under subsection (b) of section 12-359,
32 subsection (b) of section 12-367 or under subsection (b) of section 12-
33 395; an appeal from any order, decision, determination or disallowance
34 of the Secretary of the Office of Policy and Management pursuant to
35 sections 12-242gg to 12-242nn, inclusive; and an appeal that may be
36 taken from a decision of the Penalty Review Committee under
37 subsection (d) of section 12-3a.

38 (b) The Chief Court Administrator shall appoint two judges of the
39 Superior Court to hear tax appeals. If practicable, the judges shall hear
40 the appeals for not less than eighteen months. The appeals may be
41 heard at the judicial district that the Chief Court Administrator deems
42 appropriate.

43 (c) The Chief Court Administrator shall adopt the policies and
44 procedures necessary to implement the provisions of this section.

45 (d) Except as otherwise specifically provided by statute, the burden
 46 upon a taxpayer of proving questions of fact in any tax appeal shall be
 47 by a preponderance of the evidence.

48 Sec. 3. Subdivision (3) of section 12-39n of the general statutes is
 49 repealed and the following is substituted in lieu thereof (*Effective*
 50 *October 1, 2008*):

51 (3) The right to be represented or advised by counsel or other
 52 qualified representatives at any time in administrative interactions
 53 with the department, including the right to have a timely copy of any
 54 notice, as provided in section 12-2f, sent to such counsel or other
 55 qualified representative who has filed a properly executed power of
 56 attorney with the department for the type of tax and tax period that is
 57 the subject of such notice and the right to have audits, inspection of
 58 records and interviews conducted at reasonable times and places.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	12-15
Sec. 2	<i>from passage and applicable to any tax appeal pending on or after such date</i>	12-39l
Sec. 3	<i>October 1, 2008</i>	12-39n(3)

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 Impact	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

Historically, taxpayer must provide clear and convincing evidence in tax appeals. The bill establishes a lower standard of proof to a preponderance of the evidence. This will result in a General Fund revenue loss, which may be significant, to the degree that this change increases the number of assessments that are overturned by the court. It may also result in greater administrative costs to the Department of Revenue Services if it increases the number of cases that are appealed.

The agency has indicated that there are typically between 50 and 75 tax cases that are on appeal.

The bill is also expected to result in a minimal cost to the Department of Revenue Services to provide official copies of notices to a taxpayer’s representative.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 702****AN ACT CONCERNING TAXPAYER PRIVACY RIGHTS AND RIGHTS IN TAX ASSESSMENT, COLLECTION AND ENFORCEMENT PROCESSES.****SUMMARY:**

This bill:

1. requires the revenue services (DRS) commissioner, without unreasonable delay, to notify affected taxpayers whenever she finds that electronic taxpayer data has been or may be compromised or impermissibly disclosed;
2. establishes preponderance of the evidence as the standard of proof for taxpayers appealing certain state tax determinations, unless a particular statute establishes a different standard; and
3. gives taxpayers the right to have DRS send timely copies of tax-related notices arising from the taxpayer's administrative interactions with DRS to the taxpayer's qualified representative.

EFFECTIVE DATE: October 1, 2008, except for the burden of proof provision, which is effective on passage and applies to any tax appeal pending on or after that date.

§ 1 — NOTICE OF UNAUTHORIZED ACCESS TO ELECTRONIC TAX DATA

The bill requires the DRS commissioner to notify each affected taxpayer in writing if she finds that tax returns or return information she or any of her contractors maintains in electronic form has been or may be accessed by, or disclosed to, an unauthorized person. She must send the notice without unreasonable delay, unless a law enforcement agency determines the notice will impede a criminal

investigation and asks her to wait. She must send a delayed notice after the law enforcement agency determines and notifies her that the notice will not compromise the investigation. Similar notice requirements already apply to any business operating in Connecticut that suffers a breach of security in a computerized database containing personal information (CGS § 36a-701b).

The bill also requires the commissioner, when she discovers unauthorized access or disclosure, to “promptly” confer with the OPM secretary to determine any action the state should take to mitigate the consequences to taxpayers.

§ 2 — BURDEN OF PROOF IN TAX APPEALS

The bill establishes that the taxpayer’s burden in proving facts in any tax appeal is by a preponderance of the evidence, unless the law in question specifically establishes a different burden. Although the bill does not define it, a “preponderance of the evidence” standard is commonly understood to mean that it is more likely than not that the facts asserted are true.

The bill’s standard applies to court appeals of (1) the DRS commissioner’s orders, decisions, determinations, and disallowances; (2) probate court determinations for succession and estate tax purposes; (3) the OPM secretary’s decisions concerning the state’s taking of the rights of holders of certain state and municipal bonds to exclude certain interest on those bonds from corporation tax; and (4) Penalty Review Committee decisions on waiving tax penalties exceeding \$500.

§ 3 — RIGHT TO HAVE DRS NOTICE SENT TO TAXPAYER’S REPRESENTATIVE

By law, a taxpayer has the right to be represented or advised by a lawyer or another qualified representative during administrative interactions with DRS. The bill specifies that this right includes the right to have DRS send copies of any notices it serves on the taxpayer to that representative in a timely fashion. In order to exercise the right, the representative must file with DRS a properly executed power of

attorney covering the tax type and tax period that is the subject of the notice.

BACKGROUND

Related Court Case

The Connecticut Supreme Court has ruled that, in appealing a DRS sales and use tax deficiency assessment, (1) the burden of proving an error in the assessment is on the taxpayer and (2) the taxpayer “must present clear and convincing evidence that the assessment is incorrect or that the method of audit or amount of tax assessed was erroneous or unreasonable” (*Leonard v. Commissioner of Revenue Services*, 264 Conn. 286, June 10, 2003, p. 302).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 53 Nay 0 (04/01/2008)