

CCDLA
"Ready in the Defense of Liberty"
Founded in 1988

Connecticut Criminal Defense Lawyers
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February 9, 2009

Finance, Revenue and Bonding Committee
Room 3700, Legislative Office Building
Hartford, Connecticut 06106

**RE: H.B. No. 6349 (RAISED) AN ACT CONCERNING
THE SALES TAX ON SERVICES - TESTIMONY OF
EDWARD J. GAVIN, PRESIDENT OF THE CONNECTICUT
CRIMINAL DEFENSE LAWYERS ASSOCIATION, OBJECTING TO
HOUSE BILL 6349, AN ACT CONCERNING SALES TAX ON SERVICES**

Dear Chairman Daily, Chairman Staples and Distinguished Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice.

CCDLA OBJECTS TO RAISED HOUSE BILL 6349, AN ACT CONCERNING SALES TAX ON SERVICES:

CCDLA recognizes the difficult financial position the State of Connecticut is in. As practicing lawyers, we see the effects of the devastating economy on our clients every day. As members of the business community, we also pay our share of personal taxes as well as our annual occupational taxes. While it is true that the system is currently in the middle of a crisis, the appropriate response is not to eliminate the current exemption from the sales tax for professional, insurance and personal services transactions.

I. Confidentiality Considerations:

As criminal defense lawyers, we are most concerned with protecting our clients' right to counsel. The attorney-client relationship is long recognized as providing citizens the right to **CONFIDENTIALLY** seek guidance from attorneys. This relationship is especially true in the representation of clients in criminal cases. By removing the existing exemption and requiring us to collect sales taxes, the legislature would thereby open up to inspection our books and records regarding the collection of legal fees. That examination of our billing records would necessarily subject our clients to disclosure of our professional relationship. The fear of potential disclosure will undoubtedly discourage citizens from seeking legal advice.

The disclosure of attorney-client billing records is in direct conflict with our citizens' constitutionally guaranteed privacy rights. It also would subject clients to public speculation as to why they would consult with a criminal defense lawyer. The presumption of innocence is a protection founded in the heart and soul of our constitution. Despite that protection, the public disclosure of our billing records would cause the public to speculate as to why someone would need to retain a criminal defense lawyer if they did nothing wrong. In point of fact, just as many clients retain criminal defense lawyers for consultation purposes before any charges are brought as do clients that have actually been charged with a crime. It also raises questions where lawyers represent minors or other individuals whose proceedings and dispositions are sealed to the public and/or erased by law.

II. Foreseeable Consequences on the Taxation of Legal Services:

1. The imposition of sales tax on legal services will increase the cost to our citizens and make it even more difficult for the people of Connecticut to obtain legal representation in tough economic times. In the criminal arena, this will result in a heavier burden on the Public Defender's Office, legal aid societies, and the State of Connecticut as a result of increased self-representation. The net effect will be an increased cost to the state.

2. Legal services on large scale, multi-state transactions will be performed by out-of-state counsel in order for business clients to avoid paying the Connecticut tax. This will hurt our practitioners and ultimately the Connecticut economy. Indeed, the United States Supreme Court, in **Quill v. North Dakota, 504 U.S. 298 (1992)**, held that it was unconstitutional to collect out-of-state taxes from businesses that do not have a substantial nexus to the taxing state.

3. The imposition of taxes on legal services may discourage average Connecticut citizens from obtaining simple legal services such as the drafting of a will or an estate plan. This will undoubtedly cause an increase in litigation that could have been avoided through proper representation.

4. How would this affect in-house counsel? Does the tax cover paralegal and secretarial services? Imposition of the tax raises innumerable questions, particularly in criminal cases where fees are often received as retainers billed over a long period of time. Taxation for these services becomes inordinately complicated and unduly burdensome as a result of how fees are paid and earned by attorneys.

III. National Statistics on Taxation of Legal Services:

According to the Federation of Tax Administrators, an organization founded in 1937 to improve the quality of state tax administration, most states have been opposed to a broad based expansion of taxes on legal services. Only 3 states currently assess sales taxes on legal services: Hawaii, New Mexico and South Dakota. Florida and Massachusetts passed similar laws that were quickly repealed.

IV. Position of the American Bar Association:

In 1987, the American Bar Association passed a resolution (re-adopted in 1992) opposing taxation of legal services on the grounds that it would have a negative effect on citizens' rights, attorney-client confidentiality and the legal profession in general.

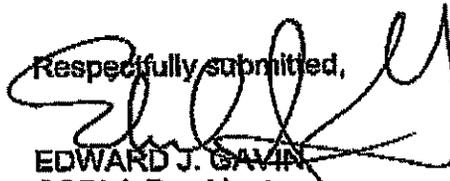
V. Effect on Solo/Small Firm Practitioners:

Connecticut is not a big-firm state. Most of our practitioners have small businesses with under 5 lawyers. The obligation to collect sales taxes will put an unreasonable burden on small practitioners. Our operating costs to keep records of the sales taxes collected, our accounting costs to file the proper returns, and our overhead expenses to train our staff will all increase. In these tough economic times, these increased burdens are unreasonable and likely to wreak havoc on the small business owner. Potential audits of so many solo practices and small businesses could lead to increased costs to the State.

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CCDLA applauds the efforts of the Finance, Revenue, and Bonding Committee to address the economic crisis facing our State, but must adamantly oppose House Bill 6349 as violative of attorney-client confidentiality and the constitutionally protected privacy rights of our citizens. We urge this Committee to recognize the additional burdens a sales tax would impose on attorneys and clients, and ultimately place on the criminal justice system as a whole. Therefore, CCDLA urges this Committee to vote "No" on Raised House Bill 6349 following the wisdom of all but three states in this country.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. J. Gavin', written over the typed name below.

EDWARD J. GAVIN
CCDLA President
On behalf of the Connecticut Criminal
Defense Lawyers Association