Written testimony submitted by Peter T. Mott, Howard S. Tuthill, III, Suzanne Brown Walsh,
John Ivimey and Amy L. Day
in opposition to Section 2 of Raised Bill 6557.

AN ACT CONCERNING THE INCOME TAX AND ESTATE TAX
FINANCE, REVENUE AND BONDING COMMITTEE
MARCH 2, 2009

This written testimony is submitted in opposition specifically to Section 2 of Raised Bill 6557, which imposes a temporary surcharge on the Connecticut estate tax. This testimony is submitted by Suzanne Brown Walsh and Howard S. Tuthill, III, of the law firm of Cummings & Lockwood, LLC, Peter T. Mott of Brody Wilkinson PC, John Ivimey of Reid and Riege PC, and Amy L. Day of Day & Levy, LLC, all of whom are officers or former officers of the Connecticut Bar Association Estates and Probate Section. The views expressed in this statement, however, are not submitted on behalf of the Connecticut Bar Association, but rather are the views of these five individual attorneys as trust and estate practitioners in private practice.

It is well understood that the State of Connecticut faces a budget crisis and the likely solution will be some combination of spending cuts and revenue increases. However, we believe that the 30% surcharge imposed on the Connecticut estate tax will be counterproductive. In balancing its budget, it is imperative that the state consider the impact particular taxes have on the decisions of Connecticut residents, particularly the state's older and wealthier residents, to either remain in the state or leave the state for a more tax friendly jurisdiction. This is an issue that has been considered many times in connection with the Connecticut succession tax and estate tax.

Until the late 1990's Connecticut was an exception to the general rule in that it imposed its own Succession Tax that was a "death tax" with tax rates higher than the Federal state death tax credit. Based on reasonably clear evidence that large numbers of the state's middle income and wealthy residents were leaving the state (then referred to as "creeping palm tree disease") for jurisdictions like Florida and Arizona which did not impose a separate death tax, the Connecticut legislature repealed the Succession Tax and replaced it with an estate tax limited to the revenue generated by the Federal state death tax credit. The repeal of the Succession Tax put Connecticut on an even footing with the "palm tree" states and virtually stopped the "tax motivated" departure of residents from the state.

In 2001 the Federal government enacted estate tax reform that dramatically increased the Federal estate tax exemption and reduced the marginal estate tax rate from 55% to the current rate of 45%. Unfortunately for the states, in an effort to prevent erosion of Federal revenue, the 2001 tax legislation also repealed the state death tax credit, thereby eliminating revenue sharing with the states. While the 2001 legislation did indeed reduce the overall estate tax burden, it also eliminated entirely the revenue that once benefited the states.

The reaction of state governments to the loss of the estate tax revenue was quite predictable. Over the past several years almost half of the states have adopted their own independent estate tax, with a typical marginal rate of 16%, intending to restore the revenue lost by the repeal of the Federal state death tax credit. These states include New York and all of the

New England states except New Hampshire. Unfortunately, the so called "palm tree" states (such as Florida and Arizona) have not followed suit. To complicate matters, the estate tax legislation adopted by the states contains radically different exemptions (most of which are substantially less than the Federal exemption) and different rules on very important issues such as the marital deduction for gifts to a surviving spouse. This has made it necessary for virtually all of our clients to prepare new estate planning documents that are far more complicated than ever before. Connecticut is no exception. While the Connecticut estate tax has a $2,000,000 exemption (which is higher than New York or Massachusetts, for instance), it is now less than the Federal exemption and its rules regarding the estate tax marital deduction are complicated and inflexible. Furthermore, the $2,000,000 exemption only applies to taxable estates of $2,000,000 or less. A surviving spouse with assets in excess of $2,000,000 leaving assets to his or her children gets no exemption in Connecticut. With a top marginal Federal tax rate of 45% and a marginal Connecticut tax rate of 16% some Connecticut residents face a total estate tax rate of over 50% or more than the total tax bill before the "reform" of 2001. A Florida resident on the other hand is looking at a maximum estate tax rate of 45%.

Needless to say, the proposed surcharge magnifies this problem. As an example, if Section 2 of Raised Bill 6557 is adopted, a taxable estate of $2,250,000 left to children will yield a Connecticut tax of $154,440, compared to zero in Florida and many other states.

The principal impact of the combined Federal and state estate tax legislation has been to restore the issue of "where should I live" to a prominent subject of discussion in estate planning meetings with clients. Bear in mind that there are many citizens of the state who already own a home or condominium in one of these "palm tree" states so that a shift of tax residence does not necessarily mean a significant change to their way of living. The individuals the Connecticut estate tax was intended to impact are exactly the individuals who have left or are making plans to leave Connecticut. These departures substantially negate any real benefit from the estate tax. Over the long haul, the real impact of the departure of Connecticut residents to the "palm tree" states will be on the revenues collected from the Connecticut income tax. The people leaving for Florida are also the people with very significant six and seven figure incomes who pay the highest income taxes to Connecticut. Once these residents leave, the income tax revenue is lost forever. Sadly, it will be the residents who are not in a position to move either for family reasons or because they run a closely held business in Connecticut that will be hurt by the Connecticut estate tax.

We urge the Committee to reject the estate tax surcharge imposed by Section 2 of Raised Bill 6557.