



Senate

General Assembly

File No. 595

February Session, 2010

Substitute Senate Bill No. 445

Senate, April 19, 2010

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 ENHANCING THE ABILITY OF THE DEPARTMENT OF REVENUE SERVICES TO COLLECT OUTSTANDING TAXES.

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

- 1 Section 1. (NEW) (*Effective July 1, 2010*) (a) As used in this section:
- 2 (1) "Commissioner" means the Commissioner of Revenue Services;
- 3 (2) "Department" means the Department of Revenue Services;
- 4 (3) "Issuance of a license" means the granting, renewing, amending
- 5 or supplementing of a license;
- 6 (4) "License" means the whole or part of any public agency permit,
- 7 certificate, approval, registration, charter or similar form of permission
- 8 to engage in a profession, trade, business or occupation and any
- 9 notification required to be made to any public agency that a
- 10 profession, trade, business or occupation is being engaged in or is
- 11 expected to be commenced;

12 (5) "License applicant" means the person making application for
13 issuance of a license and any other person that is required to be
14 included in such application;

15 (6) "Person" means an individual, partnership, society, association,
16 joint stock company, corporation, limited liability company, estate,
17 receiver, trustee, assignee, referee or any other person acting in a
18 fiduciary or representative capacity, whether appointed by a court or
19 otherwise, or any combination of the foregoing;

20 (7) "Public agency" means any department within the executive
21 branch of state government as listed in section 4-38c of the general
22 statutes. "Public agency" includes the Department of Education, the
23 Department of Higher Education, the Department of Information
24 Technology and the Division of Criminal Justice;

25 (8) "Taxes due to this state" means taxes, including additions to tax
26 for penalties and interest, which are imposed under the laws of this
27 state, which are finally due and payable to the commissioner, and with
28 respect to which any administrative or judicial remedies, or both, have
29 been exhausted or have lapsed. "Taxes due to this state" does not
30 include taxes with respect to which a payment agreement, not in
31 default, has been entered into by a taxpayer and the department.

32 (b) The Commissioner of Revenue Services may adopt regulations,
33 in accordance with the provisions of chapter 54 of the general statutes,
34 in consultation with any commissioner of another public agency that
35 issues licenses, to ensure that no license shall be issued to an applicant
36 until such applicant has paid all taxes due to this state. Such
37 regulations shall (1) establish a means for such public agency, prior to
38 the issuance of a license, to verify that an applicant has no taxes due to
39 this state, (2) provide that, if an applicant has taxes due to this state,
40 the Commissioner of Revenue Services shall provide notice and an
41 opportunity for a hearing to such applicant, which hearing shall be
42 limited to verifying whether such applicant has taxes due to this state,
43 and (3) provide that, if it is established to the satisfaction of the
44 commissioner that an undue hardship would otherwise result to a

45 license applicant, a license shall be issued to the license applicant,
46 notwithstanding the fact that such applicant has taxes due to this state.
47 Such regulations shall also provide that, if such license applicant is not
48 an individual, there shall be a means for such public agency, prior to
49 the issuance of a license, to verify that the principals of a business
50 entity, as such is defined in such regulations, have no taxes due to this
51 state. The sole right to any hearing authorized pursuant to such
52 regulations shall be to the commissioner and not to the public agency
53 issuing the license.

54 Sec. 2. Section 12-35 of the general statutes is repealed and the
55 following is substituted in lieu thereof (*Effective July 1, 2010*):

56 (a) Wherever used in this chapter, unless otherwise provided: [.]

57 (1) ["state"] "State collection agency" includes the Treasurer, the
58 Commissioner of Revenue Services and any other state official, board
59 or commission authorized by law to collect taxes payable to the state
60 and any duly appointed deputy of any such official, board or
61 commission;

62 (2) ["tax"] "Tax" includes not only the principal of any tax but also all
63 interest, penalties, fees and other charges added thereto by law; and

64 (3) ["serving"] "Serving officer" includes any state marshal, constable
65 or employee of such state collection agency designated for such
66 purpose by a state collection agency and any person so designated by
67 the Labor Commissioner.

68 (b) Upon the failure of any person to pay any tax, except any tax
69 under chapter 216, due the state within thirty days from its due date,
70 the state collection agency charged by law with its collection shall add
71 thereto such penalty or interest or both as are prescribed by law,
72 provided, if any statutory penalty is not specified, there may be added
73 a penalty in the amount of ten per cent of the whole or such part of the
74 principal of the tax as is unpaid or fifty dollars, whichever amount is
75 greater, and provided, if any statutory interest is not specified, there

76 shall be added interest at the rate of one per cent of the whole or such
77 part of the principal of the tax as is unpaid for each month or fraction
78 thereof, from the due date of such tax to the date of payment.

79 (c) Upon the failure of any person to pay any tax, except any tax
80 under chapter 216, due within thirty days of its due date, the state
81 collection agency charged by law with the collection of such tax may
82 make out and sign a warrant directed to any serving officer for
83 distraint upon any property of such person found within the state,
84 whether real or personal. An itemized bill shall be attached thereto,
85 certified by the state collection agency issuing such warrant as a true
86 statement of the amount due from such person. Such warrant shall
87 have the same force and effect as an execution issued pursuant to
88 chapter 906. Such warrant may be levied on any real property or
89 tangible or intangible personal property of such person, and sale made
90 pursuant to such warrant in the same manner and with the same force
91 and effect as a levy of sale pursuant to an execution. In addition
92 thereto, if such warrant has been issued by the Commissioner of
93 Revenue Services, [his] such commissioner's deputy, the Labor
94 Commissioner, the executive director of the Employment Security
95 Division or any person in the Employment Security Division in a
96 position equivalent to or higher than the position presently held by a
97 revenue examiner four, said serving officer shall be authorized to place
98 a keeper in any place of business and it shall be such keeper's duty to
99 secure the income of such business for the state and, when it is in the
100 best interest of the state, to force cessation of such business operation.
101 In addition, the Attorney General may collect any such tax by civil
102 action. If a state collection agency brings a civil action in the
103 appropriate courts of another state, and the state collection agency is
104 the prevailing party in such an action, the state collection agency shall
105 be entitled to recover all costs, fees and expenses in connection with
106 such action, including collection costs and reasonable attorney's fees.

107 (d) Each serving officer so receiving a warrant shall make a return
108 with respect to such warrant to the appropriate collection agency
109 within a period of ten days following receipt of such warrant. Each

110 serving officer shall collect from such person, in addition to the
111 amount shown on such warrant, [his] such serving officer's fees and
112 charges, which shall be twice those authorized by statute for serving
113 officers, provided the minimum charge shall be five dollars and money
114 collected pursuant to such warrant shall be first applied to the amount
115 of any fees and charges of the serving officer. In the case of an
116 employee of the state acting as a serving officer the fees and charges
117 collected by such employee shall inure to the benefit of the state. For
118 the purposes of this section, "keeper" means a person who has been
119 given authority by an officer authorized to serve a tax warrant to act in
120 the state's interest to secure the income of a business for the state and,
121 when it is in the best interest of the state, to force the cessation of such
122 business's operation, upon the failure of such business to pay taxes
123 owed to the state.

124 [(b)] (e) (1) Any such warrant on any intangible personal property of
125 any person may be served by mailing a certified copy of such warrant
126 by certified mail, return receipt requested, to any third person in
127 possession of, or obligated with respect to, receivables, bank accounts,
128 evidences of debt, securities, salaries, wages, commissions,
129 compensation or other intangible personal property subject to such
130 warrant, ordering such third person to forthwith deliver such property
131 or pay the amount due or payable to the state collection agency which
132 has made out such warrant, provided such warrant may be issued only
133 after the state collection agency making out such warrant has notified
134 the person owning such property, in writing, of its intention to issue
135 such warrant. The notice of intent shall be: (A) Given in person; (B) left
136 at the dwelling or usual place of business of such person; or (C) sent by
137 certified mail, return receipt requested, to such person's last known
138 address, not less than thirty days before the day the warrant is to be
139 issued.

140 (2) Any such warrant on any intangible personal property of any
141 person may be served by electronic mail or facsimile machine on any
142 third person in possession of, or obligated with respect to, receivables,
143 bank accounts, evidences of debt, securities, salaries, wages,

144 commissions, compensation or other intangible personal property
145 subject to such warrant, ordering such third person to forthwith
146 deliver such property or pay the amount due or payable to the state
147 collection agency which has made out such warrant provided such
148 warrant may be issued only after the state collection agency making
149 out such warrant has notified the person owning such property, in
150 writing, of its intention to issue such warrant. The notice of intent shall
151 be: (A) Given in person; (B) left at the dwelling or usual place of
152 business of such person; or (C) sent by certified mail, return receipt
153 requested, to such person's last-known address, not less than thirty
154 days before the day the warrant is to be issued.

155 Sec. 3. Section 12-414a of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective July 1, 2010*):

157 (a) For purposes of this section:

158 (1) "Responsible person" means any individual, corporation, limited
159 liability company or partnership and any officer or employee of any
160 corporation, including a dissolved corporation, and a member or
161 employee of any partnership or limited liability company who, as such
162 officer, employee or member, is under a duty to file a tax return under
163 this chapter on behalf of a retailer or to collect or truthfully account for
164 and pay over the tax imposed under this chapter on behalf of a retailer;

165 (2) "Wilfully" shall be treated as the term "willfully" is described in
166 Section 6672 of the Internal Revenue Code of 1986, or any subsequent
167 corresponding internal revenue code of the United States, as amended
168 from time to time.

169 (b) Each responsible person, other than a retailer, who is required,
170 on behalf of a retailer, to collect, truthfully account for and pay over
171 the tax imposed on such retailer under this chapter and who wilfully
172 fails to collect such tax or truthfully account for and pay over such tax
173 or who wilfully attempts in any manner to evade or defeat the tax or
174 the payment [thereof] of such tax, shall, in addition to other penalties
175 provided by law, be liable for a penalty equal to the total amount of

176 the tax evaded, or not collected, or not accounted for and paid over,
177 including any penalty or interest attributable to such wilful failure to
178 collect or truthfully account for and pay over such tax or such wilful
179 attempt to evade or defeat such tax, provided such penalty shall only
180 be imposed against such person in the event that such tax, penalty or
181 interest cannot otherwise be collected from the retailer itself in
182 accordance with section 12-420.

183 (c) The amount of such penalty with respect to which a responsible
184 person may be personally liable under this section shall be collected in
185 accordance with said section 12-420 and any amount so collected shall
186 be allowed as a credit against the amount of such tax, penalty or
187 interest due and owing from the retailer. The amount of such penalty
188 with respect to which a responsible person may be personally liable
189 under this section shall not be subject to waiver under section 12-419.

190 (d) The dissolution of the retailer shall not discharge any
191 responsible person in relation to any personal liability under this
192 section for wilful failure to collect or truthfully account for and pay
193 over such tax or for a wilful attempt to evade or defeat such tax prior
194 to dissolution, except as otherwise provided in this section. [For
195 purposes of this section, "person" includes any individual, corporation,
196 limited liability company or partnership and any officer or employee
197 of any corporation, including a dissolved corporation, and a member
198 or employee of any partnership or limited liability company who, as
199 such officer, employee or member, is under a duty to file a tax return
200 under this chapter on behalf of a retailer or to collect or truthfully
201 account for and pay over the tax imposed under this chapter on behalf
202 of a retailer.]

203 (e) For purposes of section 12-418, a person against whom a penalty
204 is imposed under this section may file a petition for reassessment,
205 provided, if the retailer has filed a petition for reassessment for the
206 same period or periods, the petition for reassessment that may be filed
207 by the person against whom a penalty is imposed under this section
208 shall be limited to the issue of whether the person is a responsible

209 person.

210 (f) A responsible person against whom a penalty is imposed under
211 this section shall be entitled to recover a payment made by such person
212 pursuant to this section from the retailer.

213 Sec. 4. Section 12-458e of the general statutes is repealed and the
214 following is substituted in lieu thereof (*Effective July 1, 2010*):

215 (a) For purposes of this section:

216 (1) "Responsible person" means any individual, corporation, limited
217 liability company or partnership and any officer or employee of any
218 corporation, including a dissolved corporation, and a member or
219 employee of any partnership or limited liability company who, as such
220 officer, employee or member, is under a duty to file a tax return under
221 this chapter on behalf of a distributor or to collect or truthfully account
222 for and pay over the tax imposed under this chapter on behalf of a
223 distributor;

224 (2) "Wilfully" shall be treated as the term "willfully" is described in
225 Section 6672 of the Internal Revenue Code of 1986, or any subsequent
226 corresponding internal revenue code of the United States, as amended
227 from time to time.

228 (b) Each responsible person, other than a distributor, who is
229 required, on behalf of a distributor, to collect, truthfully account for
230 and pay over the tax imposed on such distributor under this chapter
231 and who wilfully fails to collect such tax or truthfully account for and
232 pay over such tax or who wilfully attempts in any manner to evade or
233 defeat the tax or the payment [thereof] of such tax, shall, in addition to
234 other penalties provided by law, be liable for a penalty equal to the
235 total amount of the tax evaded, or not collected, or not accounted for
236 and paid over, including any penalty or interest attributable to such
237 wilful failure to collect or truthfully account for and pay over such tax
238 or such wilful attempt to evade or defeat such tax, provided such
239 penalty shall only be imposed against such person in the event that

240 such tax, penalty or interest cannot otherwise be collected from the
241 distributor itself in accordance with section 12-475.

242 (c) The amount of such penalty with respect to which a responsible
243 person may be personally liable under this section shall be collected in
244 accordance with said section 12-475 and any amount so collected shall
245 be allowed as a credit against the amount of such tax, penalty or
246 interest due and owing from the distributor. The amount of such
247 penalty with respect to which a responsible person may be personally
248 liable under this section shall not be subject to waiver under section 12-
249 458.

250 (d) The dissolution of such distributor shall not discharge any
251 responsible person in relation to any personal liability under this
252 section for wilful failure to collect or truthfully account for and pay
253 over such tax or for a wilful attempt to evade or defeat such tax prior
254 to dissolution, except as otherwise provided in this section. [For
255 purposes of this section, "person" includes any individual, corporation,
256 limited liability company or partnership and any officer or employee
257 of any corporation, including a dissolved corporation, and a member
258 or employee of any partnership or limited liability company who, as
259 such officer, employee or member, is under a duty to file a tax return
260 under this chapter on behalf of a distributor or to collect or truthfully
261 account for and pay over the tax imposed under this chapter on behalf
262 of a distributor.]

263 (e) A person against whom a penalty is imposed under this section
264 may apply to the commissioner, in writing, for a hearing, as provided
265 in section 12-461 in the case of a distributor aggrieved by the action of
266 the commissioner, provided, if the distributor has applied to the
267 commissioner, in writing, for a hearing for the same period or periods,
268 the hearing that may be applied for by the person against whom a
269 penalty is imposed under this section shall be limited to the issue of
270 whether such person is a responsible person.

271 (f) A responsible person against whom a penalty is imposed under
272 this section shall be entitled to recover a payment made by such person

273 pursuant to this section from the distributor.

274 Sec. 5. Section 12-547a of the general statutes is repealed and the
275 following is substituted in lieu thereof (*Effective July 1, 2010*):

276 (a) For purposes of this section:

277 (1) "Responsible person" means any individual, corporation, limited
278 liability company or partnership and any officer or employee of any
279 corporation, including a dissolved corporation, and a member or
280 employee of any partnership or limited liability company who, as such
281 officer, employee or member, is under a duty to file a tax return under
282 this chapter on behalf of a distributor or to collect or truthfully account
283 for and pay over the tax imposed under this chapter on behalf of a
284 distributor;

285 (2) "Wilfully" shall be treated as the term "willfully" is described in
286 Section 6672 of the Internal Revenue Code of 1986, or any subsequent
287 corresponding internal revenue code of the United States, as amended
288 from time to time.

289 (b) Each responsible person, other than a taxpayer, who is required,
290 on behalf of a taxpayer, to collect, truthfully account for and pay over
291 the tax imposed on such taxpayer under this chapter and who wilfully
292 fails to collect such tax or truthfully account for and pay over such tax
293 or who wilfully attempts in any manner to evade or defeat the tax or
294 the payment [thereof] of such tax, shall, in addition to other penalties
295 provided by law, be liable for a penalty equal to the total amount of
296 the tax evaded, or not collected, or not accounted for and paid over,
297 including any penalty or interest attributable to such wilful failure to
298 collect or truthfully account for and pay over such tax or such wilful
299 attempt to evade or defeat such tax, provided such penalty shall only
300 be imposed against such person in the event that such tax, penalty or
301 interest cannot otherwise be collected from the taxpayer itself in
302 accordance with section 12-555a.

303 (c) The amount of such penalty with respect to which a responsible

304 person may be personally liable under this section shall be collected in
305 accordance with said section 12-555a and any amount so collected shall
306 be allowed as a credit against the amount of such tax, penalty or
307 interest due and owing from the taxpayer. The amount of such penalty
308 with respect to which a responsible person may be personally liable
309 under this section shall not be subject to waiver under section 12-548.

310 (d) The dissolution of such taxpayer shall not discharge any
311 responsible person in relation to any personal liability under this
312 section for wilful failure to collect or truthfully account for and pay
313 over such tax or for a wilful attempt to evade or defeat such tax prior
314 to dissolution, except as otherwise provided in this section. [For
315 purposes of this section, "person" includes any individual, corporation,
316 limited liability company or partnership and any officer or employee
317 of any corporation, including a dissolved corporation, and a member
318 or employee of any partnership or limited liability company who, as
319 such officer, employee or member, is under a duty to file a tax return
320 under this chapter on behalf of a taxpayer or to collect or truthfully
321 account for and pay over the tax imposed under this chapter on behalf
322 of a taxpayer.]

323 (e) A person against whom a penalty is imposed under this section
324 may apply to the commissioner, in writing, for a hearing, as provided
325 in section 12-553 in the case of a taxpayer aggrieved by the action of
326 the commissioner, provided, if the taxpayer has applied to the
327 commissioner, in writing, for a hearing for the same period or periods,
328 the hearing that may be applied for by the person against whom a
329 penalty is imposed under this section shall be limited to the issue of
330 whether the person is a responsible person.

331 (f) A responsible person against whom a penalty is imposed under
332 this section shall be entitled to recover a payment made by such person
333 pursuant to this section from the taxpayer.

334 Sec. 6. Section 12-736 of the general statutes is repealed and the
335 following is substituted in lieu thereof (*Effective July 1, 2010*):

336 (a) For purposes of this section:

337 (1) "Responsible person" means any individual, corporation, limited
338 liability company or partnership and any officer or employee of any
339 corporation, including a dissolved corporation, and a member or
340 employee of any partnership or limited liability company who, as such
341 officer, employee or member, is under a duty to file a tax return under
342 this chapter on behalf of an employer or payer or to collect or
343 truthfully account for and pay over the tax imposed under this chapter
344 on behalf of an employer or payer;

345 (2) "Wilfully" shall be treated as the term "willfully" is described in
346 Section 6672 of the Internal Revenue Code of 1986, or any subsequent
347 corresponding internal revenue code of the United States, as amended
348 from time to time.

349 [(a)] (b) Any responsible person, [required] other than an employer
350 or payer, as defined in subsection (e) of section 12-707 who is required,
351 on behalf of an employer or payer, to collect, truthfully account for and
352 pay over the tax imposed under this chapter who wilfully fails to
353 collect such tax or truthfully account for and pay over such tax or who
354 wilfully attempts in any manner to evade or defeat the tax or the
355 payment [thereof] of such tax, shall, in addition to other penalties
356 provided by law, be liable for a penalty equal to the total amount of
357 the tax evaded, or not collected, or not accounted for and paid over,
358 including any penalty or interest attributable to such wilful failure to
359 collect or truthfully account for and pay over such tax or such wilful
360 attempt to evade or defeat such tax, provided such penalty shall only
361 be imposed against such person in the event that such tax, penalty or
362 interest cannot otherwise be collected from the employer or payer in
363 accordance with section 12-734.

364 (c) The amount of such penalty with respect to which a responsible
365 person may be personally liable under this section shall be collected in
366 accordance with section 12-734 and any amount so collected shall be
367 allowed as a credit against the amount of such tax, penalty or interest
368 due and owing from the employer or payer. The amount of such

369 penalty with respect to which a responsible person may be personally
 370 liable under this section shall not be subject to waiver under section 12-
 371 735.

372 (d) The dissolution of such employer or payer shall not discharge
 373 any responsible person in relation to any personal liability under this
 374 section for wilful failure to collect or truthfully account for and pay
 375 over such tax or for a wilful attempt to evade or defeat such tax prior
 376 to such dissolution, except as otherwise provided in this section.

377 (e) A person against whom a penalty is imposed under this section
 378 may protest the imposition of the penalty, as provided in section 12-
 379 729 in the case of a taxpayer's protest against a proposed assessment,
 380 provided, if the employer or payer has filed a protest for the same
 381 period or periods, the protest that may be filed by the person against
 382 whom a penalty is imposed under this section shall be limited to the
 383 issue of whether such person is a responsible person.

384 (f) A responsible person against whom a penalty is imposed under
 385 this section shall be entitled to recover a payment made by such person
 386 pursuant to this section from the employer or payer.

387 [(b)] (g) Any responsible person who with fraudulent intent shall
 388 fail to pay, to deduct or to withhold and pay any tax, to make, render,
 389 sign or certify any return or to supply any information within the time
 390 required by or under this chapter shall be subject to a penalty of not
 391 more than one thousand dollars, in addition to any other amounts
 392 required under this chapter to be imposed, assessed and collected by
 393 the commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2010	New section
Sec. 2	July 1, 2010	12-35
Sec. 3	July 1, 2010	12-414a
Sec. 4	July 1, 2010	12-458e
Sec. 5	July 1, 2010	12-547a

Sec. 6	July 1, 2010	12-736
--------	--------------	--------

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Department of Revenue Services	GF - Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

There will be a revenue increase to the General Fund to the degree that the provisions of the bill result in the collection of delinquent taxes. The value of delinquent taxes as of 6/30/09 was approximately \$315 million.

The Out Years

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

Sources: Department of Revenue Services

OLR Bill Analysis**sSB 445*****AN ACT ENHANCING THE ABILITY OF THE DEPARTMENT OF REVENUE SERVICES TO COLLECT OUTSTANDING TAXES.*****SUMMARY:**

This bill allows the Department of Revenue Services (DRS) to adopt regulations, in consultation with commissioners of any other agencies that issue occupational, professional, or business licenses, to (1) establish a method for verifying whether a license applicant owes state taxes and (2) require the applicant to pay all state taxes due before receiving a license.

It also allows state tax collection officials to sue in other states' courts to collect Connecticut taxes and, if they prevail, to recover costs and expenses, including reasonable attorneys' fees in connection with the action.

Finally, the bill extends and makes uniform several laws making those responsible for collecting and paying certain state taxes on a business' behalf personally liable if they willfully fail to collect, truthfully account for, or pay the tax and it cannot be collected from the business.

EFFECTIVE DATE: July 1, 2010

§ 1 — STATE TAX PAYMENT AS A CONDITION OF ISSUING STATE LICENSE

The bill allows the DRS commissioner, in consultation with the commissioner of any other agency that issues licenses or similar credentials granting permission to engage in any profession, occupation, or business, to adopt regulations establishing a method for the licensing agency to verify that license applicants owe no state

taxes. If an applicant is not an individual, verification must include the principals, as defined in the regulations, of the business seeking a license.

The regulations must ensure that no license is issued until the applicant pays what he or she owes, including taxes, penalties, and interest due to the state and for which all administrative or judicial remedies for disputing amounts owed have expired or been exhausted. Taxes owed do not include payments due under a payment agreement between DRS and a taxpayer that is not in default. The regulations must also require the license to be issued, regardless of whether the applicant owes state taxes, if the applicant establishes to the DRS commissioner's satisfaction that failure to issue the license will cause undue hardship.

If a license applicant owes state taxes, the regulations must require the DRS commissioner to give notice and provide an opportunity for a hearing, the subject of which must be limited to verifying that the applicant owes state taxes. The sole right to a hearing under the regulations belongs to the DRS commissioner, not the agency issuing the license.

§ 2 — COSTS OF SUING IN OTHER STATES' COURTS TO COLLECT STATE TAXES

Under current law, the attorney general is authorized to file civil actions to collect state taxes. This bill allows the state treasurer; DRS commissioner; and any other state official, board, or commissioner authorized to collect state taxes, and their authorized deputies to file civil actions in other states' courts to collect Connecticut taxes and, if they prevail, to recover all costs, fees, and expenses in connection with the action, plus reasonable attorneys' fees.

§§ 3-6 — LIABILITY OF "RESPONSIBLE PERSON" FOR CERTAIN TAXES

Personal Liability Under Current Law

The bill extends and makes uniform provisions making those responsible for paying certain taxes on behalf of a business personally

liable for those taxes if they willfully fail to collect, truthfully account for, and pay the taxes or file a required return.

By law, an officer, partner, or employee of a business who is responsible for paying certain taxes on the business' behalf is personally liable for the full unpaid tax, plus interest and penalties, if (1) he or she willfully fails to collect or pay it or file appropriate returns and (2) the tax cannot otherwise be collected from the business. The dissolution of the business does not free the person from liability. DRS must credit any amount collected from such a person against the taxes owed by the business.

Changes Applicable to All Covered Taxes

Under current law, personal liability provisions apply to those who, on behalf of a business, are required to file returns for and pay sales and use; motor vehicle fuels; admissions and dues; and personal income withholding taxes. This bill makes the following changes in the personal liability provisions of these taxes. It:

1. designates the person who is personally liable for willfully failing to pay the taxes as the "responsible person;"
2. eliminates the DRS commissioner's authority to waive the responsible person's penalty;
3. allows a responsible person penalized under the bill to recover the penalty from the business; and
4. requires that, for purposes of the determining the responsible person's liability, "willfully" failing to pay taxes means the same thing as described in the federal tax law (IRC § 6672 - see BACKGROUND).

In addition, the bill allows a responsible person penalized by the DRS commissioner for a business' unpaid taxes to ask for a hearing according to existing tax appeal procedures. However, if the business has also filed a petition for a reassessment or a written request for a

hearing, as applicable, covering the same tax period, the bill limits the responsible person's hearing to the issue of whether or not he or she is a responsible person.

Additional Changes Applicable to Withholding Taxes

In addition to the changes described above, the bill adds the following to the existing income tax withholding tax penalty provisions. It:

1. extends penalties to a person who is not an employer or payer required to withhold Connecticut income taxes, if the person is a "responsible person" who willfully fails to collect, truthfully account for, and pay the taxes;
2. specifies that the responsible person is liable not only for the unpaid taxes but also for any penalty and interest attributable to the willful failure to pay, if the amounts due cannot be collected from the business;
3. requires DRS to collect amounts owed from the responsible person using all statutorily allowed state tax collection methods, including tax warrants, liens on the person's property, and foreclosure against that property;
4. applies the amounts collected from a responsible person against the amounts owed by the business; and
5. specifies that dissolution of the business does not relieve the responsible person of his or her personal liability.

For purposes of the income tax, the bill defines a "responsible person" to include any of the following that has a duty to (1) file a withholding tax return on behalf of an employer or payer and (2) collect, truthfully account for, and pay withholding tax on the employer's or payer's behalf:

1. an individual, corporation, partnership, or limited liability company and

2. a member, officer, or employee of any of these entities, including a dissolved corporation.

This definition already applies to the other covered taxes under current law.

BACKGROUND

Meaning of “Willfully” Under Federal Tax Law

IRC § 6672, which this bill incorporates by reference, imposes penalties on a responsible person who (1) willfully fails to collect, truthfully account for, or pay federal taxes or (2) willfully attempts to evade or defeat federal taxes. The federal statute does not define “willfully,” but courts have construed the term to mean a voluntary, conscious, or intentional decision to prefer other creditors over the government (*Kelley v. U.S.*, 868 F. Supp 1276 (1994), affirmed 68 F.3d 482, cert. denied, 516 U.S. 1119).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 31 Nay 14 (04/01/2010)