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Testimony of Robert J. Percy, Member, Executive Committee
Tax Law Section of the Connecticut Bar Association
Senate Bill 433 *An Act Concerning the Burden of Proof in Tax Appeals*
Finance Revenue and Bonding Committee
March 15, 2010

Senator Daily, Representative Staples, and members of the Finance Revenue and Bonding Committee, thank you for the opportunity to appear and comment in support of Senate Bill 433, *An Act Concerning Certain Appeal Procedures*. My name is Robert J. Percy and I am a member of the Executive Committee of the Connecticut Bar Association Tax Law Section. The section has a great interest in legislation that concerns tax appeals procedures. The Tax Section of the Connecticut Bar Association **supports passage of Senate Bill 433**, and respectfully requests that the legislature **approve the bill**. Among other things, the bill would:

- Clarify that taxpayers (i.e. your constituents) would have the same burden of proof in a tax appeal as would a party in an administrative hearing or civil litigation i.e. proving their case by a "preponderance of the evidence." A tax appeal is a trial *de novo*, which means that it is the first chance that a taxpayer has to present his or her case to an impartial judge.
- Reverse a trend in cases decided by the Tax Session of the Superior Court which have held that taxpayers must bear the burden of proving that a tax assessment is unlawful by "clear and convincing evidence," a much higher standard than the "preponderance of the evidence" standard employed in civil cases, and applicable generally only in cases involving civil fraud or child custody.

The Department of Revenue Services has broad discretion and authority to impose assessments. If a taxpayer chooses to appeal an assessment, it is appropriate that the taxpayer should have to prove that the facts are more likely than not as the taxpayer alleges in order to prevail. **To require that a taxpayer prove facts with "clear and convincing evidence" places an unfair and unnecessary burden upon a taxpayer seeking to assert his or her rights. This bill restores the proper balance between the DRS Commissioner and the taxpayer** by leaving the Commissioner's presumption of correctness intact while still requiring that the taxpayer produce greater evidence than the evidence presented by the Commissioner.

Senate Bill 433 will **fix the appropriate standard** that courts and DRS should apply to cases and appeals involving Connecticut taxpayers. The CBA Tax Section respectfully urges you to **support** and **pass** Senate Bill 433, *An Act Concerning Certain Appeal Procedures*.

Thank you for the opportunity to comment on this important bill. I would be pleased to answer any questions that you may have,