



CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION

TESTIMONY OF
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VICE PRESIDENT OF GOVERNMENT AFFAIRS
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION
BEFORE THE
FINANCE, REVENUE AND BONDING COMMITTEE
MARCH 15, 2010

My name is Bonnie Stewart. I am vice president of government affairs for the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 10,000 member companies in virtually every industry. They range from large, global corporations to small, family-owned businesses. The vast majority of our member companies have fewer than 50 employees.

There are several bills before you today that I will be addressing. They include:

- SB 433 An Act Concerning The Burden Of Proof In Tax Appeals (Support)
- SB 436 An Act Concerning Municipal Revenue (Oppose)
- SB 444 An Act Concerning Revisions To The Nonresident Contractor Bond Statute (Modifications Needed)
- SB 445 An Act Enhancing The Ability Of The Department Of Revenue Services To Collect Outstanding Taxes (Modifications Needed)
- HB 5480 An Act Permitting A Regional Sales Tax (Oppose)
- HB 5494 An Act Concerning Various Changes To Title 12 (Modifications Needed)

Testimony on all of these measures is on the following pages.

SB 433, An Act Concerning The Burden Of Proof In Tax Appeals

CBIA supports SB 433, An Act Concerning The Burden Of Proof In Tax Appeals. This measure concerns the standard of proof in an appeal to the Tax Session of the Superior Court from a determination made by the Commissioner of Revenue Services. This bill makes it clear that, unless otherwise specifically provided by statute, the burden of proof upon a taxpayer in a tax appeal would be by a preponderance of the evidence.

The Connecticut Tax Court recently concluded that the burden of proof upon a taxpayer in a tax appeal is "clear and convincing evidence." This is a much higher standard than the preponderance of the evidence standard used in most civil cases. In Connecticut, the clear and convincing evidence standard usually only applies in cases involving civil fraud or other instances in which a very high degree of certainty is required.

As this measure is a clarification of existing law, we urge you to adopt it with an effective date applicable to all pending tax appeals.

CBIA appreciates your attention on this matter and urges your support of SB-433.

SB 436 An Act Concerning Municipal Revenue

CBIA opposes SB 436 An Act Concerning Municipal Revenue. This measure allows municipalities to choose to impose a sales or other local tax in addition to the property tax. It also permits towns to unilaterally increase municipal fees.

CBIA understands that municipalities are looking for ways to address budget problems, but we do not believe the adoption of a local or regional sales tax is the answer. We are especially concerned by the adoption of a local or regional sales tax that could result in the creation of many more taxing districts. It would make Connecticut an even more expensive place to do business than it already is, from both the standpoint of compliance and perspective of taxpayers.

A great deal of time and effort has been spent in helping municipalities identify regional efficiencies and the laws that might have to be modified to permit such efficiencies. Furthermore, there is a strong effort taking place to waive some of the unfunded mandates that the state has placed on municipalities. We encourage municipalities and state to continue moving in this direction instead of adding another local or regional tax.

CBIA urges you to reject SB 436.

SB 444 AAC Revisions To The Nonresident Contractor Bond Statute

CBIA has two concerns with SB 444, AAC Revisions To The Nonresident Contractor Bond Statute. The measure is intended to “streamline the process and provide quicker resolution for the contractors involved.” Unfortunately, the way the fix has been proposed, it will result in penalties against Connecticut’s small businesses that aren’t contractors, and it will put Connecticut contractors at a competitive disadvantage.

CBIA opposes the bonding requirement in this measure, regardless of how it is structured. The problem is that no matter how much we can educate the contractor community, it is the innocent business that will be impacted--because reaching that community is extremely difficult and informing them of the requirement virtually impossible. Under this bill, a small business that hires a nonresident contractor to construct a building for its business or, more likely renovate or expand existing commercial space, would be more likely to be pursued by the Department of Revenue Services (DRS) than the nonresident contractor. I understand the frustration of the DRS with nonresident contractors, but this measure, if adopted, would allow the DRS to continue to punish the wrong people.

In addition, this measure will create a competitive disadvantage for Connecticut contractors. This is because the DRS intends to list on its Web site all of the nonresident contractors that have been approved. As a result, in-state contractors will be left out, implying the state is favoring only out-of-state contractors. This is a message that we should not be sending.

CBIA urges you to reject SB 444.

SB 445 An Act Enhancing The Ability Of The Department Of Revenue Services To
Collect Outstanding Taxes

CBIA has several concerns with SB 445, An Act Enhancing The Ability Of The Department Of Revenue Services To Collect Outstanding Taxes.

First, Section 1 of the measure calls for a pre-license tax clearance procedure. Although the DRS must first adopt regulations to implement the procedure, I am concerned that any clearance procedure will be problematic for a new business. While the DRS is trying hard to reach out to taxpayers and improve the agency's processes, adding another step, as this measure proposes, would be another impediment to starting businesses. Therefore, prior to requiring the pre-license tax clearance, CBIA recommends the DRS first change its procedure for issuing sales tax permits to require the DRS internally to perform the clearance procedure it wants to impose on other agency licenses. Modifying its internal procedure should give the DRS the same result without gumming up the license issuing procedures of other agencies.

Second, in Section 2 of the bill allows the unilateral awarding of attorneys' fees and costs to the state. This would create an inequitable system. If state is allowed to collect attorneys' fees and costs, so also should any other prevailing party. This would discourage the state from turning over to agencies numerous collections that might not otherwise be handled in that manner. It would also help avoid harming innocent taxpayers with incorrect assessments. We urge you instead to make the playing field even.

Also in section 2, the measure should clarify that out-of-state actions must be cleared by the Attorney General. The proposed language only speaks in terms of the state collection agency--it should instead be the Attorney General.

Next, CBIA urges modifications to Sections 3 through 6. First, the penalty should be subject to waiver, as any penalty should. Second, the alleged responsible person should be able to file a petition for reassessment (i.e. challenge the underlying tax assessment) if he or she did not participate as a party in the petition for reassessment by the taxpayer. This is an important change because an alleged responsible person who is not an owner of the taxpayer, such as a CFO, may not get his or her first opportunity under the DRS proposal.

CBIA urges you to make the modifications requested above to SB 445.

HB 5480. An Act Permitting A Regional Sales Tax

CBIA opposes HB 5480 An Act Permitting A Regional Sales Tax. This measure allows regional planning organizations to inflict a sales tax on its region.

CBIA understands that municipalities are looking for ways to address budget problems, but we do not believe adoption of a regional sales tax is the answer. The state sales tax is the most complex tax in the state to comply with. Permitting up to sixteen more sales taxing districts would just add litigation, as well as additional compliance and collection costs, and make Connecticut an even more expensive place in which to do business than it already is.

There has been a great deal of time and effort spent in helping municipalities identify regional efficiencies and the laws that might have to be modified to permit such efficiencies. Furthermore, there is a strong effort taking place to waive some of the unfunded mandates that the state has placed on municipalities. We encourage municipalities and state to continue moving in this direction instead of adding another local or regional tax.

CBIA urges you to reject HB 5480.

HB 5494 An Act Concerning Various Changes To Title 12

This morning, CBIA received substitute language for HB 5494 from the DRS. We would appreciate having a couple of days to review it and subsequently provide the DRS with our response. The substitute language received is an improvement over RHB 5494, but we know we will have some concerns. For example, there is no good policy reason why a captive REIT should not be able to deduct payments made to an unrelated third party shareholder. The proposal the business community shared with the DRS (see below) does not have that problem. Another issue arises when the captive REIT owner is in a jurisdiction that does impose a tax on that dividend--under such circumstances, there is no tax game being played and the owner could be subject to double taxation.

As we prepare our response, we include below a copy of a modified draft of HB 5494 that the business community shared with the DRS on March 3, 2010:

Business Community's Proposed Version of HB 5494

(DRS #2: AA Making Various Changes to Title 12)

Sec. 1. (*Effective upon passage for income years commencing on or after January 1, 2010.*) (NEW) (a) As used in this section:

(1) "Captive real estate investment trust" or "captive REIT" means a corporation, a trust, or an association: (A) that is considered a real estate investment trust for the income year under Section 856 of the Internal Revenue Code; (B) that is not regularly traded on an established securities market; and (C) in which more than fifty percent (50%) of the voting power, beneficial interests or shares are owned or controlled, directly or constructively, by a single entity that is subject to Subchapter C of Chapter 1 of the Internal Revenue Code, such entity to be referred to as the "captive real estate investment trust owner" or "captive REIT owner" for purposes of this section. "Captive real estate investment trust" or "captive REIT" does not include a corporation, a trust, or an association in which more than fifty percent (50%) of the entity's voting power, beneficial interests, or shares are owned by a single entity described in the preceding subparagraph (C) that is owned or controlled, directly or constructively, by: (A) a corporation, a trust, or an association that is considered a real estate investment trust under Section 856 of the Internal Revenue Code; (B) a person exempt from taxation under Section 501 of the Internal Revenue Code; (C) a listed property trust or other foreign real estate investment trust that is organized in a country that has a tax treaty with the United States Treasury

Department governing the tax treatment of these trusts; or (D) a real estate investment trust that is intended to become regularly traded on an established securities market and satisfies the requirements of Section 856(a)(5) and Section 856(a)(6) of the Internal Revenue Code under Section 856(h) of the Internal Revenue Code. For purposes of this subdivision, the constructive ownership rules of Section 318 of the Internal Revenue Code, as modified by Section 856(d)(5) of the Internal Revenue Code, apply to the determination of the ownership of stock, assets, or net profits of any person.

(2) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is: (A) a related entity, as defined in this subsection, (B) a component member, as defined in Section 1563(b) of the Internal Revenue Code, (C) a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code, other than a statutory business trust of which each beneficiary is not a related entity to the taxpayer, or (D) a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs (A) to (C), inclusive, of this subdivision.

(3) "Related entity" means (A) a stockholder who is an individual, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock; or (C) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

(4) "Captive REIT related member" means, with respect to a captive REIT, the captive REIT owner of the captive REIT or a related member of such captive REIT owner.

(5) "Captive REIT income adjustment" means the amount by which the Connecticut net income of a captive REIT, after apportionment, that would be subject to tax under chapter 208 of the general statutes would increase if the captive REIT were unable to deduct, for purposes of determining federal net income, the dividends paid by the captive REIT to each captive REIT related member to the extent such dividends do not constitute taxable income to the recipient of such dividends under the laws of this state or another state or local jurisdiction or to the extent such dividends are deductible pursuant to section 12-217(a)(3).

(6) “Captive REIT related member’s proportionate share of the captive REIT income adjustment” means, with respect to a captive REIT related member of a captive REIT, the product of: (A) the captive REIT income adjustment of the captive REIT to which the captive REIT related member, which is otherwise subject to tax under chapter 208 of the general statutes, has directly or indirectly paid, accrued or incurred deductible expenses or costs; multiplied by (B) a fraction of which the numerator is the total amount of deductible expenses or costs directly or indirectly paid, accrued or incurred by such captive REIT related member to the captive REIT, and the denominator of which is the total amount of deductible expenses or costs directly or indirectly paid, accrued or incurred by all taxpayers who both are otherwise subject to tax under chapter 208 of the general statutes and are captive REIT related members of the captive REIT.

(b) For purposes of computing its net income under section 12-217, a corporation that is a captive REIT related member of a captive REIT shall add back all otherwise deductible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, the captive REIT to the extent of such captive REIT related member’s proportionate share of the captive REIT income adjustment of the captive REIT. Such expenses and costs shall be added back before net income is apportioned as provided in chapter 208 of the general statutes.

(c) Nothing in this section shall be construed to require a corporation to add to its net income more than once any amount of otherwise deductible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, a captive real estate investment trust.

(d) Nothing in this section shall be construed to limit or negate the commissioner’s authority to enter into agreements and compromises otherwise allowed by law or to negate an existing agreement or compromise that the commissioner determines is reasonably consistent with the intent of this section.

(e) Nothing in this section shall be construed to limit or negate the commissioner’s authority to make adjustments under section 12-221a or 12-226a.

Bonnie Stewart, CBIA

Conclusion

Thank you for listening to our thoughts on the bills before you today. Should you need any additional information or explanations from CBIA on these matters, please contact me at (860) 244-1900.