



STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATOR

PAUL J. KNIERIM, JUDGE
Probate Court Administrator

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To: Senate Co-Chair Andrew McDonald
House Co-Chair Michael Lawlor
Senate Ranking Member John Kissel
House Ranking Member Arthur O'Neill
Honorable Members of the Judiciary Committee

From: Paul J. Knierim, Judge
Probate Court Administrator

Re: **RB 5407** An Act Concerning Probate Fees

Date: March 12, 2010

This proposal would correct problems with the current statutes governing the calculation of probate fees and repeal certain obsolete provisions. It would also provide the probate system with tools to assist in the collection of probate fees by authorizing credit card payments and by assessing interest on the late payment of fees for decedents' estates.

Out-of-State Property

Prior to July 1, 2005, probate fees for decedents' estates were generally calculated on the basis of the Connecticut succession tax. In 2005, the succession tax was replaced with the Connecticut estate tax. The probate fee statutes were amended at the same time to tie our fees to the new estate tax. An inadvertent consequence of the change was to require that probate courts include out-of-state property in the calculation of probate fees. This resulted from the reliance on the *federal* estate tax to define the terms used in the Connecticut estate tax. Since the federal gross estate includes all assets, wherever located within the United States, the Connecticut gross estate likewise includes all assets, including those located outside the borders of Connecticut.

The problem with assessing fees on out-of-state property is twofold. First, our courts have no jurisdiction over out-of-state property and hence no logical basis for a fee. Secondly, the statute may violate principles of constitutional law that limit the ability of states to impose taxes on property located outside state boundaries. The practice has drawn considerable and justifiable criticism from the public and the bar as well as threats of litigation against probate courts.

With respect to the estates of Connecticut residents, the bill would exclude from consideration any out-of-state real or tangible personal property. In the case of nonresidents owning property in this state, probate fees would be calculated only with reference to the Connecticut property over which a Connecticut probate court has jurisdiction. We would suggest changing the effective date of this provision to apply to estates initiated on or after January 1, 2011. This will allow our office sufficient time to reprogram the case management software.

Repeal of additional fee on non-solely owned real property

A second provision of the bill would repeal C.G.S. § 45a-107(b)(4), which imposes an additional 0.1% fee on joint real estate when an estate is not required to file a succession tax return. This provision was first enacted in 1997 in connection with the phase-out of the succession tax. At the time, it was anticipated that Connecticut would have no death tax after the elimination of the succession tax. The provision was intended to replace some of the probate fee revenue that would have been lost in the absence of a death tax. Given that the new estate tax has provided the probate courts with a substitute revenue source, this provision effectively operates to impose a double tax in the limited circumstances to which it applies.

Repeal of fee for motion to appeal

The bill would also repeal the now obsolete statutes that require parties to pay a \$50 fee when filing an appeal from a decision of a probate court. Since a 2007 change in the C.G.S. § 45a-186, appeals from probate are now filed directly with the Superior Court, and no motion is made to the probate courts. Because probate courts no longer receive appeal motions, the fee previously associated with the motion is no longer applicable.

Credit card payments

The bill would authorize probate courts to accept credit cards as a method of paying probate fees. This language is identical to the statute that permits the Superior Court to collect fees by credit card. It offers a convenience to court users and will facilitate timely collection of fees into the Probate Court Administration Fund.

Interest on late payments

A new concept included in the bill is the assessment of interest on late payment of probate fees for decedents' estates matters. Under the proposal, interest would begin accruing 30 days from the issuance of the probate bill or the due date of the estate tax return. Judges would have discretion to extend the due date of the bill, and thereby prevent the accrual of interest, if payment by the due date would cause a hardship.

Under current law, payment of the probate fee is mandatory, but there is no consequence for late payment or even for failure to pay the fee at all. This proposal is intended to provide a reasonable incentive to comply with the statute. Increasing compliance, in turn, improves the fairness of the system by which probate courts collect fees. The current system essentially penalizes those who voluntarily comply. On the other hand, a person who fails to pay the fee on time enjoys the benefit of the funds, including the opportunity to make investment income on the funds. The application of interest to late payments simply attempts to make the probate system whole from the delay in payment.

Please keep in mind that the fees on decedents' estates matters are the principal source of funding for the probate system. While the system now receives general fund support, fee revenue still represents approximately 85% of our total revenue in the current fiscal year. We recognize the state's desire to maximize the extent to which the probate system is self-sufficient, and this bill will help achieve that goal. Moreover, beginning in 2011, C.G.S. § 45a-82 provides that any surplus in the probate court administration fund is returned to the general fund, so the success of probate court collections has a direct effect on the finances of the state.

The proposed rate of interest is 6% annually (0.5% per month), which is significantly lower than the 12% interest rate on the estate tax and the 18% interest rate on municipal property taxes. It is intended not as a penalty, but instead as a reasonable approximation of the time value of funds that are not paid on time.

We thank you for your consideration and urge the committee to act favorably on the bill.

