



Senate

General Assembly

File No. 579

January Session, 2011

Senate Bill No. 1213

Senate, April 19, 2011

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 bill ought to pass.

AN ACT CONCERNING THE BURDEN OF PROOF IN TAX APPEALS.

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

1 Section 1. Section 12-39l of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2011, and*
3 *applicable to any tax appeal filed on or after said date*):

4 (a) Except as otherwise provided by statute, "tax appeal" means an
5 appeal from an order, decision, determination or disallowance of the
6 Commissioner of Revenue Services; an appeal that may be taken from
7 a decree of a court of probate under subsection (b) of section 12-359,
8 subsection (b) of section 12-367 or under subsection (b) of section 12-
9 395; an appeal from any order, decision, determination or disallowance
10 of the Secretary of the Office of Policy and Management pursuant to
11 sections 12-242gg to 12-242nn, inclusive; and an appeal that may be
12 taken from a decision of the Penalty Review Committee under
13 subsection (d) of section 12-3a.

14 (b) Except as otherwise specifically provided by statute, the burden

15 upon a taxpayer of proving questions of fact in any tax appeal shall be
16 by a preponderance of the evidence.

17 [(b)] (c) The Chief Court Administrator shall appoint two judges of
18 the Superior Court to hear tax appeals. If practicable, the judges shall
19 hear the appeals for not less than eighteen months. The appeals may be
20 heard at the judicial district that the Chief Court Administrator deems
21 appropriate.

22 [(c)] (d) The Chief Court Administrator shall adopt the policies and
23 procedures necessary to implement the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011, and applicable to any tax appeal filed on or after said date</i>	12-39l

FIN *Joint Favorable*

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 12 \$	FY 13 \$
Department of Revenue Services	GF - Potential Revenue Loss	Greater than 1.0 million	Greater than 1.0 million
Department of Revenue Services	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes a lower standard of proof in tax appeals, which is expected to result in a General Fund revenue loss that may be significant to the degree it increases the number of assessments that are overturned by the court. It may also result in greater administrative costs to the Department of Revenue Services if it increases the number of cases that are appealed.¹

There are approximately \$12.0 million in tax cases in litigation and \$244.0 million in tax cases on appeal currently.

The Out Years

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

¹ There are typically between 50 and 75 tax cases that are on appeal.

OLR Bill Analysis**SB 1213*****AN ACT CONCERNING THE BURDEN OF PROOF IN TAX APPEALS.*****SUMMARY:**

This bill establishes by statute that a taxpayer's standard for proving facts in any tax appeal is by a preponderance of the evidence, unless the law in question specifically establishes a different standard. It thus reduces the higher, clear and convincing standard of proof for taxpayer appeals established by the Connecticut Supreme Court (see BACKGROUND). A "clear and convincing" standard requires a fact to be highly probable or reasonably certain. A "preponderance of the evidence" standard requires that it be more likely than not that a particular fact is true.

The bill's standard of proof applies in court appeals of (1) the Department of Revenue Services (DRS) commissioner's orders, decisions, determinations, and disallowances; (2) probate court determinations for succession and estate tax purposes; (3) the Office of Policy and Management secretary's decisions concerning the state's taking of the rights of holders of certain state and municipal bonds to exclude certain interest on those bonds from corporation tax; and (4) Penalty Review Committee decisions on waiving tax penalties exceeding \$500.

EFFECTIVE DATE: July 1, 2011, and applicable to any tax appeal filed on or after that date.

BACKGROUND***Related Court Case***

In a taxpayer appeal of a DRS sales and use tax deficiency assessment, the Connecticut Supreme Court ruled in 2003 that, to

overturn the DRS commissioner's decision, a taxpayer "must present clear and convincing evidence that the assessment is incorrect or that the method of audit or amount of tax assessed was erroneous or unreasonable" (*Leonard v. Commissioner of Revenue Services*, 264 Conn. 286, June 10, 2003, p. 302).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 52 Nay 0 (04/07/2011)