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Testimony to the Connecticut General Assembly Joint Committee on Finance, Revenue and Bonding

In Support of Senate Bill 1213 Burden of Proof in Tax Appeals

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March 28, 2011

Co-Chairs Daily and Widlitz and Members of the Committee, thank you for the opportunity to provide testimony today on behalf of the Council On State Taxation (COST) in support of Senate Bill 1213, which would clarify the burden of proof in tax appeals.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Preponderance of the Evidence is the Proper Burden of Proof in Tax Appeals

Taxation is fundamental to our system of government and among government's most far reaching powers. It has often been said that taxes are the life blood of government without which a civil society cannot exist. At the same time, however, taxes are the most sensitive point of contact between citizens and their government. There is a delicate balance between revenue collection and freedom from government oppression. Consequently, our system of taxation depends on voluntary compliance and is imbued with the notion of fundamental fairness.

Historically, taxpayers have been required to carry the burden of proof in tax appeals by a "preponderance of the evidence." The historic foundation for this treatment traces to common-law principles where tax appeals, particularly refund actions, were treated as actions in assumpsit (the common-law count for money had and received). Such suits were civil in nature and therefore followed the common law rule of placing the burden on the party initiating the action. Like

most civil suits, the burden placed on the taxpayer claiming a refund was proving their case by a preponderance of the evidence.

Unfortunately, recent cases decided by the Tax Session of the Superior Court in Connecticut have held that taxpayers must bear the burden of proving that a tax assessment is unlawful by “clear and convincing evidence.” This heightened standard upsets the delicate balance in tax administration by placing on taxpayers an excessively high hurdle to challenge an assessment.

As noted in *State v. Davis* (1994) 229 Con. 285, 296,

The function of the burden of proof employed by the court is to allocate the risk of error between litigants and indicate the relative importance of the ultimate decision. . . . Proof by clear and convincing evidence is an intermediate standard generally used in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing The preponderance of the evidence standard indicates that the litigants should share equally the risk of error . . . because the interests at state have roughly equal societal importance.

Elevating the standard of the burden of proof in tax appeals to “clear and convincing” makes taxpayers challenging an assessment or claiming a refund the civil equivalent of alleging fraud by the state and upsets the delicate balance in tax administration on which our system relies. The taxing authority issuing an assessment is already the beneficiary of the presumptive correctness of their assessment. Moreover, we are aware of no study suggesting that the traditional standard of proof has somehow afforded taxpayers an unfair advantage challenging assessments made by the taxing authority.

Senate Bill 1213 restores the proper balance between taxpayers and the taxing authority by making clear that the burden of proof to be carried by taxpayers in any tax appeal is the “preponderance of the evidence.” We respectfully urge your support of Senate Bill 1213.