



General Assembly

Substitute Bill No. 5415

February Session, 2012

* _____HB05415APP__041612_____*

AN ACT PROVIDING CONSUMER PROTECTION TO CLIENTS OF EXCHANGE FACILITATORS FOR TAX DEFERRED EXCHANGES.

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

1 Section 1. (NEW) (*Effective October 1, 2012*) As used in this section
2 and sections 2 to 7, inclusive, of this act:

3 (1) "Affiliated with" means that a person, directly or indirectly,
4 through one or more intermediaries, controls, is controlled by or is
5 under common control with another specified person;

6 (2) "Client" means a taxpayer with whom an exchange facilitator
7 enters into an agreement, as described in subparagraph (B) of
8 subdivision (3) of this section;

9 (3) "Exchange facilitator" means a person who: (A) Maintains an
10 office in this state for the purpose of soliciting business facilitating the
11 exchange of like-kind property, as described in subparagraph (B) of
12 this subdivision; or (B) for a fee (i) facilitates an exchange of like-kind
13 property by entering into an agreement with a client pursuant to
14 which the exchange facilitator acquires from such client the contractual
15 rights to sell such client's relinquished property located in this state
16 and transfer a replacement property to such client as a qualified
17 intermediary, within the meaning of 26 CFR 1.1031(k)-1(g)(4), (ii)
18 enters into an agreement with a client to take title to a property in this

19 state as an exchange accommodation titleholder, as defined in Internal
20 Revenue Service Procedure 2000-37, or (iii) enters into an agreement
21 with a client to act as a qualified trustee or qualified escrow holder, as
22 such terms are defined in 26 CFR 1.1031(k)-1(g)(3); but shall not
23 include:

24 (I) Any financial institution, as defined in subdivision (6) of this
25 section, that is acting solely as a depository for exchange funds or
26 solely as a qualified escrow holder or qualified trustee, as such terms
27 are defined in 26 CFR 1.1031(k)-1(g)(3), and is not otherwise facilitating
28 exchanges in accordance with subparagraph (B) of subdivision (3) of
29 this section;

30 (II) An individual or entity that is teaching seminars or classes or
31 giving other presentations to attorneys, accountants, real estate
32 professionals, tax professionals or other professionals where the
33 primary purpose is to teach about tax deferred exchanges or to train
34 such professionals to act as exchange facilitators, or any individual or
35 entity advertising for such seminars, classes or other presentations; or

36 (III) An entity that is wholly owned by an exchange facilitator or by
37 a person acting as the exchange facilitator and used by such exchange
38 facilitator or person to facilitate exchanges or take title to property in
39 this state as an exchange accommodation titleholder;

40 (4) "Exchange funds" means the funds received by an exchange
41 facilitator from or on behalf of a client for the purpose of facilitating an
42 exchange of like-kind property;

43 (5) "Fee" means compensation of any nature, direct or indirect,
44 monetary or in-kind, that is received by a person or related person, as
45 defined in Section 267(b) or Section 707(b) of the Internal Revenue
46 Code of 1986, or any subsequent corresponding internal revenue code
47 of the United States, as amended from time to time, for any services
48 relating or incidental to the exchange of like-kind property under
49 Section 1031 of said Internal Revenue Code;

50 (6) "Financial institution" means any bank, federal credit union,
51 Connecticut credit union, savings and loan holding company, savings
52 and loan association, savings bank, trust company or trust bank, as
53 such terms are defined in section 36a-2 of the general statutes,
54 chartered under the laws of this state or the United States whose
55 accounts are insured by the full faith and credit of the United States of
56 America, the Federal Deposit Insurance Corporation, the National
57 Credit Union Share Insurance Fund or other similar or successor
58 programs;

59 (7) "Person" means a natural person, cooperative association, limited
60 liability company, firm, partnership, corporation or other legal entity,
61 and includes any agent or employee of any such person;

62 (8) "Pool" means to (A) aggregate exchange funds of multiple
63 taxpayers for investment purposes to achieve common investment
64 goals and efficiencies, and (B) ensure that such exchange funds are
65 readily identifiable as to each taxpayer for whom they are held,
66 through an accounting or subaccounting system;

67 (9) "Prudent investor standard" means the prudent investor rule, as
68 set forth by the Connecticut Uniform Prudent Investor Act, or as
69 otherwise defined by part VII of chapter 802c of the general statutes;
70 and

71 (10) "Publicly traded company" means a corporation whose
72 securities are publicly traded on the New York Stock Exchange, the
73 American Stock Exchange, or the national market system of the
74 National Association of Securities Dealers Automated Quotation
75 System established pursuant to the Securities Exchange Act of 1934,
76 and the subsidiaries of any such corporation.

77 Sec. 2. (NEW) (*Effective October 1, 2012*) An exchange facilitator shall
78 notify each client, whose relinquished property, as defined in 26 CFR
79 1.1031(k)-1(a), is located in this state or whose replacement property,
80 as defined in 26 CFR 1.1031(k)-1(a), held under a qualified exchange
81 accommodation agreement is located in this state, of any change in

82 control of the exchange facilitator. The exchange facilitator shall notify
83 each such client not later than ten business days after the effective date
84 of such change in control by facsimile, electronic mail transmission or
85 first class mail and by posting such notice of change of control on the
86 exchange facilitator's web site for a period ending not earlier than
87 ninety days after the change in control. Such notification shall set forth
88 the name, address and other contact information of the persons to
89 whom control was transferred. Notwithstanding the provisions of this
90 section, if the exchange facilitator is a publicly traded company and
91 remains a publicly traded company after a change in control, the
92 publicly traded company shall not be required to notify its existing
93 clients of such change in control. For purposes of this section, "change
94 in control" means any transfer or transfers within a twelve-month
95 period of more than fifty per cent of the assets or ownership interests,
96 directly or indirectly, of the exchange facilitator.

97 Sec. 3. (NEW) (*Effective October 1, 2012*) An exchange facilitator at all
98 times shall:

99 (1) Maintain a fidelity bond in an amount of not less than one
100 million dollars executed by an insurer authorized to do business in this
101 state;

102 (2) Deposit all exchange funds in a separately identified account, as
103 defined in 26 CFR 1.468B-6(c)(2)(ii)(A), and provide that any
104 withdrawals from such separately identified account require the
105 written authorizations of both the client and the exchange facilitator.
106 Deliver authorization for withdrawals by any commercially reasonable
107 means, including (A) the client's delivery to the exchange facilitator of
108 the client's authorization to disburse exchange funds and the exchange
109 facilitator's delivery to the depository institution of the exchange
110 facilitator's sole authorization to disburse exchange funds, or (B)
111 delivery to the depository institution of both the client's and the
112 exchange facilitator's authorizations to disburse exchange funds; or

113 (3) Deposit all exchange funds in a qualified escrow or qualified

114 trust, as such terms are defined in 26 CFR 1.1031(k)-1(g)(3), with a
115 financial institution and provide that any withdrawals from such
116 qualified escrow or qualified trust require the taxpayer's and the
117 exchange facilitator's written authorization.

118 Sec. 4. (NEW) (*Effective October 1, 2012*) An exchange facilitator at all
119 times shall: (1) Maintain an errors and omissions policy of insurance in
120 an amount not less than two hundred fifty thousand dollars executed
121 by an insurer authorized to do business in this state; (2) deposit an
122 amount of cash or securities; or (3) provide irrevocable letters of credit
123 in an amount not less than two hundred fifty thousand dollars.

124 Sec. 5. (NEW) (*Effective October 1, 2012*) Any person claiming to have
125 suffered damage by reason of the failure of an exchange facilitator to
126 comply with the provisions of sections 2 to 7, inclusive, of this act may
127 file a claim against the exchange facilitator to recover such damage
128 from (1) the fidelity bond maintained in accordance with subdivision
129 (1) of section 3 of this act, (2) cash or securities deposited in accordance
130 with subdivision (2) of section 4 of this act, or (3) letters of credit
131 provided in accordance with subdivision (3) of section 4 of this act.

132 Sec. 6. (NEW) (*Effective October 1, 2012*) (a) An exchange facilitator
133 shall hold all exchange funds, including money, property, other
134 consideration or instruments received by the exchange facilitator from
135 or on behalf of the client, but not including funds received as the
136 exchange facilitator's compensation, in a manner that provides
137 liquidity and preserves principal. An exchange facilitator shall provide
138 the client with written notification of the manner in which the
139 exchange funds will be invested or deposited and shall deposit or
140 invest exchange funds in investments which meet the prudent investor
141 standard and which satisfy investment goals of liquidity and
142 preservation of principal. Exchange funds may be pooled. For
143 purposes of this section, an exchange facilitator violates the prudent
144 investor standard if:

145 (1) Exchange funds are knowingly commingled by the exchange

146 facilitator with the operating accounts of the exchange facilitator; or

147 (2) Exchange funds are loaned or otherwise transferred to any
148 person or entity affiliated with or related to the exchange facilitator
149 except that this subdivision shall not apply to a transfer made
150 pursuant to the exchange contract (A) for payment of an exchange
151 expense or completion of the acquisition of the replacement property,
152 (B) for depositing exchange funds with a financial institution, or (C) to
153 an exchange accommodation titleholder, a trustee of a qualified trust
154 or a qualified escrow agent.

155 (b) Exchange funds are not subject to execution or attachment on
156 any claim against the exchange facilitator. An exchange facilitator shall
157 not knowingly keep or cause to be kept any money in any financial
158 institution under any name designating the money as belonging to a
159 client of the exchange facilitator unless the money equitably belongs to
160 the client and was actually entrusted to the exchange facilitator by the
161 client.

162 Sec. 7. (NEW) (*Effective October 1, 2012*) No exchange facilitator or, in
163 the case of an exchange facilitator that is an entity, no owner, officer,
164 director or employee of such exchange facilitator, shall knowingly:

165 (1) Make any material misrepresentations concerning any exchange
166 facilitator transaction that are intended to mislead;

167 (2) Pursue a continued or flagrant course of misrepresentation or
168 making false statements through advertising or by any other means;

169 (3) Fail, within a reasonable time, to account for any money or
170 property belonging to another person that may be in the possession or
171 under the control of the exchange facilitator;

172 (4) Engage in any conduct constituting fraudulent or dishonest
173 dealings;

174 (5) Commit any crime related to the exchange facilitation business
175 involving fraud, misrepresentation, deceit, embezzlement,

176 misappropriation of funds, robbery or other theft of property, except
177 that commission of such crime by an officer, director or employee shall
178 not be considered a violation of this section, provided (A) the
179 employment or appointment of such officer, director or employee has
180 been terminated, and (B) no clients of the exchange facilitator were
181 harmed or full restitution has been made to all harmed clients;

182 (6) Materially fail to fulfill the exchange facilitator's contractual
183 duties to the client to deliver property or funds to the client unless
184 such failure is due to circumstances beyond the control of the exchange
185 facilitator; and

186 (7) Materially violate any provision of sections 2 to 6, inclusive, of
187 this act or the rules adopted pursuant to said sections.

188 Sec. 8. (NEW) (*Effective October 1, 2012*) A person who violates any
189 provision of sections 2 to 7, inclusive, of this act is subject to civil suit
190 in a court of competent jurisdiction.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	New section
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>October 1, 2012</i>	New section
Sec. 4	<i>October 1, 2012</i>	New section
Sec. 5	<i>October 1, 2012</i>	New section
Sec. 6	<i>October 1, 2012</i>	New section
Sec. 7	<i>October 1, 2012</i>	New section
Sec. 8	<i>October 1, 2012</i>	New section

BA *Joint Favorable Subst.-LCO*

APP *Joint Favorable*