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Testimony of Richard Convicer
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**House Bill 5471, An Act Concerning Refund Claim Periods for Sales and Use Taxes
and Personal Income Tax.**
Finance Revenue and Bonding Committee
March 16, 2012

Senator Daily, Representative Widlitz, and members of the Finance Revenue and Bonding Committee, thank you for the opportunity to appear and comment in support of **House Bill 5471, An Act Concerning Refund Claim Periods for Sales and Use Taxes and Personal Income Tax**. My name is Richard Convicer and I am member of the Executive Committee of the Connecticut Bar Association Tax Law Section. The section has a great interest in legislation that concerns tax procedures and respectfully requests that the legislature approve the bill.

Sales Tax

Conn. Gen. Statutes section 12-425, as currently in effect, provides that a claim for refund must be filed within three years from the last day of the month succeeding the period for which the overpayment was made, or, with respect to audit assessments, within six months after the assessment become final. Thus, the limitation period for refunds of taxes reported on returns is tied to the due date of the return for the period to which the refund relates, and not to the date of overpayment. If the taxpayer did not remit payment with the return due to lack of funds or any other reason, and three years later the Department of Revenue Services levies his account, then even if the taxpayer can show that the tax had been erroneously overstated, the taxpayer has no remedy under current law. By contrast, under federal law, the taxpayer would have three years from the due date of the return or two years from the date of payment, whichever is later, to seek a refund. Unlike Connecticut law, federal law grants the right to file a claim for refund within two years after payment.

The situation is even more inequitable in the case of deficiency assessments of sales taxes. The period for filing a refund claim is only six months after the assessment

becomes final as noted above. Thus if the taxpayer fails to file an appeal within 60 days of assessment, or fails to file suit in court within 30 days of an adverse notice of determination from the Appellate Division, the taxpayer is barred from filing a refund claim 6 months after the assessment becomes final. There are occasions where taxpayers are not well-represented and fail to timely challenge the assessments. The taxpayers have no legal remedy even though it may be clear that the assessments were improper. The Commissioner may collect the tax, even though the assessment is clearly erroneous, and the taxpayer has no basis to file a refund claim. The proposal follows the federal approach of tying the period of limitation to the date of payment as well as to the due date of the return.

Income Tax

Conn. Gen. Statutes section 12-732, as currently in effect, provides that a taxpayer may file a claim within three years from the due date for which the overpayment was made. There is an exception to this three year rule: if due to an IRS audit or to a timely amended federal tax return, there is an overpayment of federal taxes, the taxpayer will be able to file a claim for the corresponding overpayment of state taxes. However, there is no relief for a taxpayer who has made an overpayment more than three years from the due date of the return. For example, if the Commissioner of Revenue Services collects the tax after the three year period, the taxpayer has no basis for filing a claim for refund notwithstanding the tax assessment was erroneous. As noted above, in the case of federal taxes, the taxpayer would have two years after such payment to seek a refund claim. As is the case with the sales tax proposal, the income tax proposal ties the period of limitation to the date of payment by authorizing a refund claim to be filed within two years after such payment.

It should be noted that the statutes of limitations for refunds in New York, Massachusetts, Rhode Island and Maine provide for longer periods than Connecticut. New York provides, for sales tax and income tax, three years from the time the return was filed or two years from the time the tax was paid, whichever is later. Massachusetts

provides, for income tax and sales tax, three years from date of filing of the return or two years from the date the tax was assessed or within one year from the date the tax was paid, whichever is later. Rhode Island provides, for income tax, three years from the time the return was filed or two years from the time the tax was paid, whichever is later, and, for sales tax, three years from the due date of the return, or, with respect to deficiency assessments, within six months from the date of overpayment, whichever is later. Maine provides, for income tax, three years from the date the return was filed, or three years from the date the tax was paid, whichever is later, and with respect to sales tax, within three years from the date of overpayment.

Unlike the federal statutes, and the New York, Massachusetts, Rhode Island and Maine statutes, Connecticut alone does not grant a period of time to file a refund claim after making an overpayment, if the overpayment is made beyond the three year period after the due date of the return. There are occasions where overpayments are made beyond such three year period and current law provides no remedy. These proposals bring Connecticut's statutes in line with neighboring states and the federal tax law.

House Bill 5471 follows the federal approach (and that of several nearby states, including New York, Massachusetts and Maine) by tying the period of limitation to the date of payment as well as to the due date of the return. **If passed, the bill would provide fairness to taxpayers who have been erroneously assessed and who otherwise would not have any legal remedy to challenge the erroneous assessment.**

For these reasons, the CBA Tax Section requests that the Finance Revenue and Bonding Committee **favorably report** House Bill 5471. Thank you for the opportunity to comment on this important bill. I would be pleased to answer any questions that you may have.