



**HOME BUILDERS & REMODELERS ASSOCIATION  
OF CONNECTICUT, INC.**

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*Your Home  
Is Our  
Business*

March 11, 2013

To: Senator John W. Fonfara, Co-Chairman  
Representative Patricia M. Widlitz, Co-Chairman  
Members of the Finance, Revenue and Bonding Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **HB 6577, AAC the Real Estate Conveyance tax**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

**We strongly oppose HB 6577 as it will raise the cost on housing for some buyers and drastically confuses the conveyance tax statute.** The bill attempts to add a new tax on what are known in the industry as "dual transactions." These are transactions where a lot is transferred to a buyer under one contract (i.e., a taxable transfer of a deed) and a home is built under a separate construction contract (i.e., a contract to build where there is no property transfer, sale, conveyance or deed involved and, therefore, no conveyance tax is charged). HB 6577 tries to capture the price of a construction contract for conveyance tax purposes, significantly raising the cost of housing (or other buildings) in these transactions.<sup>1</sup>

"Dual transactions" are legitimate, permissible business practices. This was confirmed by the state Supreme Court in Old Farms Associates v. Commissioner of Revenue Services, 279 Conn. 465 (2006), resolving a DRS challenge in a particular dual transaction case in favor of the developer.<sup>2</sup> In the 2010 session, DRS offered the same legislation in its proposed package

<sup>1</sup> The tax assessed would be 1% on residential construction under \$800,000 (.75% to the state; .25% to the municipality) (e.g., a \$400,000 construction contract would incur a new tax of \$4,000). For all commercial construction (and residential that is \$800,000 or more), the rate is 1.25%. And in targeted investment communities and on certain other properties, add another .25%. See 12-494 (b) and (c).

<sup>2</sup> In the Old Farms case, due to some connections between the developer and the builder, but which were separate entities, the DRS tried to assess the conveyance tax on the value of the home construction paid by the new home owner and received by the builder, on top of the amount paid by the lot owner for the lot transfer and received by the developer. **The Court found against the DRS, noting that the developer and the builder were distinct business entities and found no reason to pierce the corporate veil.** The Court also discussed the rule that, ever since the 1971 amendments to 12-494 and under DRS' own regulations interpreting the statute, the conveyance tax is assessed on the amount received by the transferor (seller) for the transfer of real estate. In this case, the builder was not a transferor and the DRS, therefore, could not tax the value of the construction contract.

but then Co-Chair Sen. Daily agreed with our opposition and the proposal did not move forward. The DRS asserted at that time they were trying to close a loophole in the law to capture, for purposes of the conveyance tax, the value of home construction on lots separately transferred. **But, contrary to this characterization, the Court did not identify any “loophole” in the statute. There is no loophole in 12-494 that needs to be closed and we urge you to not pass HB 6577.**

Also, there are a number of legitimate ways to structure a real estate and building business. A developer of land, who sells lots, may also be a builder but there are also developers who do not build and builders who do not develop land. A developer/builder can be the same entity or structured as separate entities under the control of the same person or they can be separate entities with no common control or ownership. For over forty years, since the 1971 amendments to CT’s conveyance tax, the tax has been charged only when land is transferred via a “conveyance” (or deed) and is based on the amount received by the seller. **Never has the conveyance tax been charged on the price of a separate construction contract.**

HB 6577 attempts to expand the conveyance tax by capturing the price of separate home or other building construction contracts – on which there is no conveyance, no deed, and no seller. **If you do this, you will make housing that is done under these “dual transactions” more expensive for home buyers. And, this will impact all dual transaction projects, from affordable projects supported by government subsidies to market rate housing. Do you really want to do this?** Moreover, much more complicated commercial construction and sale projects will also be impacted. In commercial real estate, land is often owned by one or more entities, buildings thereon are owned by other entities, and leaseholds are often involved with other entities. How will HB 6577 adversely impact commercial transactions? Who in these situations would be identified as “third parties?”

**HB 6577, in addition to changing over forty years of conveyance tax law, creates more questions, confusion and uncertainty for the real estate and building business.** This confusion exists even where the developer/builder is the same entity conducting its business under dual transaction arrangements.

**For example, by changing the statute to include the “total consideration paid, regardless of whether paid to the seller or to a third person, or both, ...” the bill ignores the inability of a developer (i.e., the seller or transferor of a lot) of knowing the construction amount in a contract by a distinct building entity.** Even if the same entity, when the lot transfers the “seller” of the lot may not know the final amount the entity will receive under the construction contract. Home buyers in most cases order changes in the middle of construction, decide late on wanting various features, bonus rooms, finished basements, and many other things that change the amount eventually received by the builder. All these things could occur before or after the lot itself transfers in dual transaction deals. Construction could be in place on a lot, but payment for which has not been received by the builder. Or, payment for which is under dispute by the lot buyer who contracted to have a home built on the buyer’s lot. How in any of these cases does the transferor certify the correct amount received for conveyance tax purposes? How is the extra conveyance tax that is charged under sec. 12-494(b) and (c) to be determined if the construction contract amount

received is unknown? That is, when is the \$800,000 threshold in 12-494(b) met when the lot transfer is for a price less than \$800,000?

**The adverse consequences of this change in law, along with the new language “including any buildings, houses ...or other improvements made thereto,” could subject all kinds of various arrangements where people contract to buy land and within some period of time before the land purchase closes with the transfer of a deed, contracts separately to improve it.** Unintended consequences of this change in the law are unknown and the bill’s language raises many additional questions: Who is a “third person?” The builder? The various subcontractors and vendors the purchaser may engage and pay separately? Would it include the delivery and construction of a shed as an accessory structure to the home by an entirely different entity (e.g, Home Depot or Lowes)? Who pays the tax if it’s a third party that receives the construction contract amount? If the payor of the tax is the transferor (seller) of the lot, how is such seller supposed to find out the correct amount the purchaser paid to the builder or other “third persons?” What is the lot seller’s liability if the construction amount is found later to not be correct?

**Is it the intent of HB 6577 to charge a new “non-conveyance conveyance tax” directly to a third party builder or other third parties that make improvements to real property?**

How and why is this different from when a builder builds a home on property already owned by a purchaser, or the lot was bought years earlier, or was inherited from family? Currently, no conveyance tax is due in these construction situations – again, because there is no transfer of a conveyance or deed.

The Court in Old Farms did suggest the legislature could change the statute if it deems “the tax losses from such [dual transaction] arrangements ... outweigh the potential advantages of such developments.” Old Farms Associates, 279 Conn. at 491. If you undertake such a balancing evaluation, we urge you to consider the negative incentive on housing and economic development by adopting what this bill would do. **Placing a new tax on home or other building construction will depress jobs and hurt our economy – to do so after seven (7) years of our Great Housing Recession is unconscionable.** This could have a severe net adverse impact on tax revenues by driving investment capital away from the state, offsetting any gain received by applying the “conveyance” tax to the price of construction contracts not otherwise considered transfers of a conveyance.

**We desperately need this committee and the entire legislature to help our industry rebuild Connecticut’s economy, and not adopt additional barriers to housing affordability and disincentives to conduct business here. Please see the economic benefits of building homes attached.**

**Please do not create more uncertainty and costs on real estate development and home building. We urge you to not pursue the new tax on home and other building construction in HB 6577.**

Thank you for the opportunity to comment on this important issue.

## Home Building's Economic Impact in Connecticut

# Home Builders Can Help Lead CT's Economic Recovery!

## 100 New Single Family Homes Create:

- 334 new jobs,
- \$29.5 million in wages,
- \$5.5 million in Taxes, Fees & Charges paid to State & Local Government in the 1<sup>st</sup> Year Alone!<sup>1</sup>

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2011 was the worst year on record for new housing permits. 2009 & 2010 ranked #2 and #3 for all-time worst permit years.<sup>2</sup>

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**If Government Lets Us or Helps Us,  
WE CAN TURN THINGS AROUND!**

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**Home building not only itself creates jobs  
and leads economic trends**

**but also**

**HOMES ARE WHERE JOBS GO AT NIGHT**

**Message to Gov't: Please, let us build them.**

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<sup>1</sup> 100 multi-family units create 165 jobs, \$14.5 million in wages and \$2.9 million in taxes & fees in the 1<sup>st</sup> year alone. In the 2<sup>nd</sup> year and subsequent years, on average each 100 housing units (both SF and MF) create another 52 jobs, producing annually \$4.3 million in wages and \$1.4 million in taxes & fees for state & local government, due to occupant's economic activity. **For more on Homes Do Pay for Themselves, go to [www.hbact.org](http://www.hbact.org), and click on "Housing & Economic Development" under the Knowledge Center menu.**

<sup>2</sup> For all of CT, 2009 produced 3,136 new housing permits, 2010 saw 3,385 permits, and 2011 saw 3,123 permits. The average annual number of new housing permits from 2000-2006 was 10,146 (i.e., before the Great Housing Depression started in 2007). The average annual number of housing permits from 1990-1999 was 8,990 (which includes the housing recession of the early 1990s). The 1980s averaged 18,300 annual permits. While 2012 had just over 4,000 permits, a healthy percentage increase, it starts with the lowest base on record, fully half are multifamily units, and the increase was concentrated in a handful of communities, leaving the vast majority of the state with little to no growth in housing.