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Senate Bill 367  
Finance Revenue & Bonding Committee  
Public Hearing: 3/13/14

## PLEASE SUPPORT SENATE BILL 367 – AAC THE GIFT AND ESTATE TAX

Dear Finance Committee Friends:

Senate Bill 367 clarifies the Connecticut estate tax treatment of taxable gifts that were made by a person before he/she passed away. The primary purpose of this legislation is to add a provision to the estate tax in order to avoid double **taxation** in certain instances. As noted at the bottom of this memo, there is one change to the bill to make this good bill even better.

### EXPLANATION:

The law under Section 12-391(f) states that people must pay an estate tax based upon the size of the person's "*Connecticut Taxable Estate*."

The term "*Connecticut Taxable Estate*" is defined in Section 12-391(c). This section says that the taxable estate is the sum of two numbers: (1) the amount of a person's lifetime gifts plus (2) the amount of assets owned by the person at death. The problem is that in certain circumstances the same property is counted, and taxed, twice: once when the gift is made and a second time, when the same gift is brought back into the taxpayer's estate. Our proposed Amendment simply makes sure that the property is counted and taxed only once. Here is an example where this problem occurs:

Today, a Father deeds his house to his daughter and the Father keeps a life estate to use the house until the Father dies. The father must report the gift on a gift tax return for the year of the gift. In determining the Connecticut Taxable Estate for estate tax purposes under current law, the Father's estate must report the full value of the house as an asset owned by him at death **AND** as included in his lifetime gifts. Thus it is counted twice. That's not fair.

Senate Bill 367 simply corrects the definition of a *Connecticut taxable estate*, for people who die on or after **January 1, 2015**, by excluding "Connecticut taxable gifts that are otherwise includible in the gross estate of the decedent." This is consistent with the Federal Internal Revenue Code, 26 USC §2001(b)(2), which also excludes gifts that are includible in the gross estate of the decedent.

The proposal also parallels the Federal Internal Revenue Code, 26 USC §2035(b), to include in the definition of a *Connecticut Taxable Estate* the Connecticut Gift taxes paid within 3 years of death, and §2001(d) of the Internal Revenue Code to include a credit for gift taxes paid by the decedent's spouse on gifts made by the decedent that are brought back into his/her estate.

Finally, we believe that Senate Bill 367 should be revenue neutral. Although it is true that people will no longer be paying "double taxes," careful estate planners over the past nine years have been able to employ techniques that sidestep this landmine in the law. As a result, revenue loss from the elimination of this problem should be

nominal. Also, we expect that any loss would be offset, and maybe even exceeded, by revenue gained from the taxation of gift taxes brought back into taxable estates.

THANKS VERY MUCH FOR YOUR SUPPORT OF SENATE BILL 367.

IMPORTANT: PLEASE NOTE THAT THERE IS ONE CHANGE TO THE LANGUAGE OF SB 367 THAT WILL MAKE THIS GOOD BILL EVEN BETTER. THE CHANGE (JFS) IS LISTED BELOW IN SECTION 1 IN ***bold italicized ink***.



General Assembly

***Raised Bill No. 367***

***February Session, 2014***

LCO No. 1999

\*01999\_\_\_\_\_FIN\*

Referred to Committee on FINANCE, REVENUE AND BONDING

Introduced by:

(FIN)

***AN ACT CONCERNING THE GIFT AND ESTATE TAX.***

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

Section 1. Subsections (c) and (d) of section 12-391 of the 2014 supplement to the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to estates of decedents dying on or after January 1, 2015*):

(c) For purposes of this section:

(1) (A) "Connecticut taxable estate" means, with respect to the estates of decedents dying on or after January 1, 2005, but prior to January 1, 2010, (i) the gross estate less allowable deductions, as determined under Chapter 11 of the Internal Revenue Code, plus (ii) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005, but prior to January 1, 2010. The deduction for state death taxes paid under Section 2058 of said code shall be disregarded.

(B) "Connecticut taxable estate" means, with respect to the estates of decedents dying on or after January 1, 2010, but prior to January 1, 2015, (i) the gross estate less allowable deductions, as determined under Chapter 11 of the Internal Revenue Code, plus (ii) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005. The deduction for state death taxes paid under Section 2058 of

said code shall be disregarded.

(C) "Connecticut taxable estate" means, with respect to the estates of decedents dying on or after January 1, 2015, (i) the gross estate less allowable deductions, as determined under Chapter 11 of the Internal Revenue Code, plus (ii) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005, other than Connecticut taxable gifts that are includible in the gross estate *for federal estate tax purposes* of the decedent, plus (iii) the amount of any tax paid to this state pursuant to section 12-642 by the decedent or the decedent's estate on any gift made by the decedent or the decedent's spouse during the three-year period preceding the date of the decedent's death. The deduction for state death taxes paid under Section 2058 of the Internal Revenue Code shall be disregarded.

(2) "Internal Revenue Code" means the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, except in the event of repeal of the federal estate tax, then all references to the Internal Revenue Code in this section shall mean the Internal Revenue Code as in force on the day prior to the effective date of such repeal.

(3) "Gross estate" means the gross estate, for federal estate tax purposes.

(d) (1) (A) With respect to the estates of decedents who die on or after January 1, 2005, but prior to January 1, 2010, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642 for Connecticut taxable gifts made on or after January 1, 2005, but prior to January 1, 2010.

(B) With respect to the estates of decedents who die on or after January 1, 2010, but prior to January 1, 2015, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642 for Connecticut taxable gifts made on or after January 1, 2005, provided such credit shall not exceed the amount of tax imposed by this section.

(C) With respect to the estates of decedents who die on or after January 1, 2015, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for (i) any taxes paid to this state pursuant to section 12-642 for Connecticut taxable gifts made on or after January 1, 2005, and (ii) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2005, that are includible in the gross estate of the decedent, provided such credit shall not exceed the amount of tax imposed by this section.

(2) If real or tangible personal property of such decedent is located outside of this state, the amount of tax due under this section shall be reduced by an amount computed by multiplying the tax otherwise due pursuant to subdivision (1) of this subsection, without regard to the credit allowed for any taxes paid to this state pursuant to section 12-642, by a fraction, [(i)] (A) the numerator of which is the value of that part of the decedent's gross estate attributable to real or tangible personal property located outside of the state, and [(ii)] (B) the denominator of which is the value of the decedent's gross estate.

(3) For a resident estate, the state shall have the power to levy the estate tax upon real property

situated in this state, tangible personal property having an actual situs in this state and intangible personal property included in the gross estate of the decedent, regardless of where it is located. The state is permitted to calculate the estate tax and levy said tax to the fullest extent permitted by the Constitution of the United States.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to estates of decedents dying on or after January 1, 2015</i>	12-391(c) and (d)

**Statement of Purpose:**

To parallel the Internal Revenue Code by excluding gifts otherwise includible in the gross estate of the decedent from taxation under the estate tax, by including in the taxable estate any gift taxes paid within three years of death (for which a credit is allowed), and including a credit for gift taxes paid by the decedent's spouse on gifts made by the decedent that are then includible in the decedent's estate.

***[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]***