

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 14-155—sHB 5466

Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' STATUTES AND PROCEDURES, INCLUDING BACKGROUND CHECKS FOR EMPLOYEES, THE MASTER SETTLEMENT AGREEMENT, THE MOTOR VEHICLE FUELS TAX, THE ESTATE TAX, ADDITIONS AND CHANGES TO VARIOUS PUBLIC LISTS MAINTAINED BY THE DEPARTMENT, THE PAYMENT SCHEDULE FOR THE SALES AND USE TAX, A DATA MATCH SYSTEM WITH FINANCIAL INSTITUTIONS, THE PERSONAL INCOME TAX AND TECHNICAL CORRECTIONS

SUMMARY: This act makes numerous changes in the tax and tobacco settlement statutes. Among other things, it:

1. requires prospective Department of Revenue Services (DRS) employees to (a) disclose any criminal convictions and pending charges, (b) be fingerprinted, and (c) submit to state and national criminal history record checks under Connecticut's uniform criminal record check procedure;
2. requires the DRS commissioner to annually issue information about how he calculates the motor vehicle fuels tax on gaseous fuels;
3. makes numerous changes in the state's tobacco settlement law to implement the Nonparticipating Manufacturer (NPM) Adjustment Settlement Agreement (i.e., the May 24, 2013 settlement between the state and certain tobacco product manufacturers);
4. modifies the starting point for calculating the estate tax for those who die on or after January 1, 2015 and gives these estates a tax credit for certain gift taxes paid;
5. authorizes the DRS commissioner to publicly list the people for whom he denied, revoked, or suspended a license, permit, or certificate;
6. requires him to state on the publicly available delinquent taxpayers list why he intends to remove a name from the list;
7. moves up the deadline for remitting monthly sales taxes and filing sales tax returns from the last to the 20th day of the month following the monthly return period and authorizes the commissioner to require weekly sales tax returns from retailers that are delinquent in remitting the tax;
8. requires the commissioner to exchange information about delinquent taxpayers with financial institutions;
9. requires trusts and estates, when calculating their Connecticut income tax, to add certain lump sum distributions to their Connecticut fiduciary adjustment;
10. subjects to Connecticut's personal income tax the income nonresidents

OLR PUBLIC ACT SUMMARY

receive from (a) nonqualified deferred compensation plans attributable to service performed in Connecticut and (b) the sale or transfer of shares in a business that owns real property in Connecticut; and

11. modifies how nonresidents' business income must be apportioned to Connecticut.

EFFECTIVE DATE: Upon passage unless noted otherwise.

§ 1 — BACKGROUND CHECKS FOR PROSPECTIVE DRS EMPLOYEES

This act requires prospective DRS employees to (1) disclose any criminal convictions and pending charges, (2) allow themselves to be fingerprinted, and (3) submit to state and national criminal history record checks under Connecticut's uniform criminal record check procedure. These requirements apply to (1) people applying for employment with DRS and (2) state employees seeking to transfer to DRS. DRS must enforce the requirements consistent with the law prohibiting employers from requiring prospective employees to disclose information in certain erased criminal records (see BACKGROUND).

Under the act, prospective DRS employees must disclose their criminal conviction and pending charges in writing, indicating if (1) they have ever been convicted of a crime or (2) charges are pending against them on the date they apply for a DRS position. If charges are pending, the applicant must identify them and the court in which they are pending.

§ 2 — MOTOR FUELS TAX ON GASEOUS FUELS

Beginning June 15, 2014, the act requires the DRS commissioner, in consultation with the energy and environmental protection commissioner, to issue annually information about how he calculates the motor vehicle fuels tax on gaseous fuel (e.g., propane or natural gas). The information must include the conversion factor used to determine the liquid gallon equivalent of such fuel. The factor must be consistent with applicable federal standards and be applied to the 12-month period beginning on the following July 1 (see BACKGROUND).

With regard to propane gas, the act requires the commissioner to determine the liquid gallon equivalent only for propane gas used to power a motor vehicle owned by a person who purchases the gas and stores it in a tank or cylinder he or she owns. The commissioner does not have to provide this information for propane gas stored in a leased tank or cylinder.

§§ 3-10 — TOBACCO SETTLEMENT LAW

The act makes numerous changes in Connecticut's tobacco settlement law, under which tobacco product manufacturers must choose between two payment arrangements. They may (1) enter into the master settlement agreement between Connecticut and four leading tobacco companies and comply with its terms and conditions ("participating manufacturers") or (2) pay into a qualified escrow account a specified amount for each cigarette they sell in the state ("nonparticipating manufacturers" (NPM)). The escrowed funds must be used

OLR PUBLIC ACT SUMMARY

only to pay judgments or settlements brought against an NPM by the state or any other party to the master tobacco settlement agreement located or living here.

The act's changes implement the May 24, 2013 NPM Adjustment Settlement Agreement between the state and participating manufacturers, which modified the tobacco master settlement agreement and, among other things, broadened the state's enforcement responsibilities regarding illegal contraband cigarette sales.

EFFECTIVE DATE: January 1, 2015

§§ 3-5 — *Escrow Contribution*

Basis and Frequency. By law, NPMs base their escrow payment amounts on the number of cigarettes they sell in Connecticut. The act changes how they must determine that number. Under prior law, NPMs determined it based on the excised taxes the state collected on cigarette packs or tobacco containers (for roll-your-own tobacco). The act instead requires them to base the number on the number of cigarettes they sold subject to the cigarette tax or, for roll-your-own tobacco, the tobacco products tax. By law, NPMs must base the payment on the number of cigarettes sold each year through direct sales and sales through distributors, dealers, or similar intermediaries.

When determining the number of cigarettes sold, the act requires NPMs to exclude cigarettes (1) sold on federal military installations, (2) sold by a Native American tribe to a tribe member on the tribe's land, and (3) otherwise exempt from state excise tax under federal law.

The act requires DRS to adopt regulations needed to determine the amount of excise tax required to be paid, not just the actual tax paid, by each tobacco product manufacturer.

The act requires NPMs to make more frequent escrow payments. Under prior law, they had to make annual payments equal to a specified amount for each cigarette they sold during the prior year. An NPM had to make quarterly deposits if the DRS commissioner required it to do so under regulations prior law allowed him to adopt to enforce the required escrow deposits. For sales in 2013, the escrow payment was \$.0299790 per cigarette (based on the 2007 amount of \$.0188482, as adjusted for inflation).

Beginning January 1, 2015, NPMs must make quarterly payments equal to the statutorily derived amount for each cigarette they sold during the quarter. They must pay the amount within 30 days after the quarter's end. NPMs must also certify to the attorney general that they are complying with the quarterly payment schedule.

Penalties for Noncompliance. The act makes any person in the United States who imports cigarettes from an NPM located outside the United States jointly and severally liable (see BACKGROUND) with the NPM for making the escrow payments and any penalties imposed for violating the escrow requirements. A person is jointly or severally liable with the NPM under these conditions if:

1. cigarettes manufactured in another country are shipped or consigned to the person,
2. the person removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or

OLR PUBLIC ACT SUMMARY

3. the person unlawfully brings cigarettes into the country.

By law, the attorney general may sue NPMs that violate the escrow requirements and, if the court finds a violation, impose civil penalties of up to 5% of the improperly withheld amount for each day of violation, up to 100% of that amount. For a knowing violation, the penalty may be up to 15% of the improperly withheld amount per day, up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required deposit is a separate violation.

§§ 6 & 7 — Certification Requirements

The law requires all manufacturers (participating and nonparticipating) whose cigarettes are directly or indirectly sold in Connecticut to annually certify, by April 30 and under penalty of false statement, to the DRS commissioner and attorney general that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow requirements for nonparticipating manufacturers.

The act also requires each manufacturer to annually (1) certify that it or its importer holds a valid federal permit for engaging in such business (26 USC § 5713), (2) provide a copy of the permit to the DRS commissioner, and (3) certify that it complies with federal tobacco manufacturer reporting and registration requirements (15 USC § 375 et seq.). It bars manufacturers from including in their certifications any material representation they know is false or inaccurate.

§ 8 — DRS Directory

By law, the DRS commissioner must prepare a directory listing (1) all manufacturers that have provided current and accurate certifications and (2) the “brand families” under each certification. A brand family is a style of cigarette, such as menthols or lights, sold under the same trademark. The commissioner must make the directory available to the public.

The act prohibits the commissioner from listing an NPM’s brand families if there are discrepancies between the totals in the NPM’s sales reports. Specifically, he cannot list the brand families in the directory if the NPM’s total nationwide sales for federally taxable cigarettes exceed the sum of its sales on two federally required monthly sales reports by more than 5% of its total sales or one million cigarettes, whichever is less. The sales reports are the (a) nationwide sales reports it or its importer submitted to DRS and (b) any intrastate sales reports (15 USC 376 (a)).

The act implicitly requires the commissioner to notify the NPM about the discrepancy. If the NPM fixes or satisfactorily explains the discrepancy within 10 days after receiving the commissioner’s notice, the commissioner must retain the brand families in the directory.

§ 9 — Agent for Service of Process Requirements

Under the act, NPMs located outside of the United States must have an agent for service of process in Connecticut before the commissioner can list the persons

OLR PUBLIC ACT SUMMARY

importing their brand families in the directory. Specifically, these NPMs must (1) require each brand family importer to appoint and maintain a Connecticut agent for service of process and (2) notify the DRS commissioner and attorney general of the agent the same way domestic NPMs must notify them about their agents. If a foreign NPM does not comply with this requirement, the act makes the secretary of the state the agent for its importers. Proceedings against these importers may be brought by serving process on the secretary, but the secretary's appointment does not satisfy the agent appointment requirements for having the NPM's brand families listed in the DRS directory.

§§ 7 & 9 — Surety Bond

To have its brand families listed in the DRS directory, the act requires NPMs to file a surety bond with the DRS commissioner. The amount of the bond must be the greater of (1) \$25,000 or (2) the greatest amount of total escrow payments owed in any of the five calendar years before the bond's filing. The bond must be (1) in a form the attorney general approves and (2) issued by a bonding or insurance company authorized to do business in Connecticut. NPMs must include proof that they have posted the bond in their annual certification to the DRS commissioner and attorney general.

The commissioner may execute on a bond to recover delinquent escrow payments and civil penalties and costs if the NPM failed to (1) make its required quarterly escrow payment within 15 days following the due date or (2) have another party make the payment on its behalf before that deadline. He must deposit any delinquent escrow funds he recovers into a qualified escrow fund or a reasonable alternative account he determines. Any escrow amounts above the amount recovered on the bond remain due from the NPM and its importers.

§ 10 — Information Sharing

The act sets conditions under which the DRS commissioner and the attorney general may disclose tax returns or return information (see BACKGROUND). The commissioner may disclose the information to the attorney general if it is relevant to the state's implementation of the Master Settlement Agreement or the NPM Adjustment Settlement Agreement. The attorney general may further disclose this information to two parties. He may disclose it to an entity designated to serve as a data clearinghouse under the NPM Adjustment Settlement Agreement. The disclosure must be done under a separate agreement between the commissioner and the entity. The attorney general may also disclose a licensed cigarette or tobacco products distributor's tax information to an NPM that makes escrow fund contributions, as long as the information relates only to the NPM's Connecticut sales.

The act also broadens the purposes for which the commissioner and attorney general may share information they receive under the state's tobacco settlement law with other federal, state, and local agencies to include any law enforcement purpose, not just those related to Connecticut's or other states' tobacco settlement laws.

§ 10 — *Reporting Requirements*

Monthly Sales Reports. The act requires each manufacturer and importer to file a monthly sales report with the DRS commissioner, certifying that it is complete and accurate. The report, which manufacturers and importers must file within 15 days following the end of the month, must include the (1) total number of cigarettes they sold in the state that month, identified by name and number, including those sold through an affiliate; (2) cigarette manufacturer and brand family; and (3) cigarette purchasers. Manufacturers and importers satisfy this monthly reporting requirement by submitting federally required monthly sales reports to the commissioner and certifying that they are complete and accurate.

Federal Excise Tax Returns. The act requires each manufacturer and importer to submit federal excise tax returns to the DRS commissioner and gives them a choice on how they may do so. They may (1) submit their federal excise tax returns and monthly operational reports within 30 days after filing them with the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) or (2) request specific federal agencies to disclose their returns to the commissioner. They may do the latter by submitting a valid U.S. Treasury request or consent authorizing TTB or, in the case of a foreign manufacturer or importer, the U.S. Customs and Border Protection, to disclose the returns to the commissioner.

Additional Reporting Requirements. The act requires manufacturers and importers to disclose to the commissioner or attorney general, upon request, copies of all federally required sales reports they filed in other states.

It also allows the attorney general to require NPMs, importers, and stampers to produce information to allow him to determine whether a quarterly escrow deposit is adequate.

§§ 11 & 12 — ESTATE TAX CHANGES

Connecticut Taxable Estate and Gift Taxes Paid on Certain Taxable Gifts

The act changes how taxpayers must calculate the estate tax for those who die on or after January 1, 2015. As under prior law, a taxpayer begins with the gross estate, subtracts federally allowable deductions, and adds the total value of all taxable gifts the decedent made on or after January 1, 2005. In calculating the total value of taxable gifts under the act, though, the taxpayer must:

1. exclude any taxable gifts that must be included in the decedent's gross estate for federal tax purposes and
2. include the amount of any Connecticut gift tax the decedent or his or her estate paid during the three years preceding the decedent's death for gifts the decedent or his or her spouse made.

As under prior law, the taxpayer must disregard the federal deduction for state death taxes.

The act also gives such estates a tax credit for any gift taxes the decedent's spouse paid for Connecticut taxable gifts made by the decedent on or after January 1, 2005 that are includible in the decedent's gross estate. This credit is in addition to the existing credit for any Connecticut gift taxes paid on gifts made on or after January 1, 2005. Prior law capped that credit at the estate tax due. The act

OLR PUBLIC ACT SUMMARY

similarly caps the total credit at the tax due.

Estate Tax Changes in PA 13-247

PA 13-247 (§ 120) (1) conformed the law to DRS practice by modifying how estate taxes are calculated for Connecticut residents who have estate property in other states and (2) provided, for both resident and nonresident estates, that the state is permitted to calculate and levy the tax to the fullest extent permitted by the U. S. Constitution.

Under existing law, these provisions apply to deaths on or after January 1, 2013, and became effective on June 19, 2013. The act states that the General Assembly intends these modifications to be clarifying in nature and applicable to all estates that were open on January 1, 2013, including those involving deaths that occurred before that date but for which the taxes are still being determined.

§ 13 — DRS TAXPAYER LIST

Listing Actions Regarding Licenses, Permits, and Certificates

The act allows the DRS commissioner to create a public list of specific enforcement actions he took regarding licenses, permits, or certificates. He may list each person whose (1) application for these documents was denied or (2) license was suspended, revoked, or not renewed. The commissioner must arrange any list he publishes by the type of tax and may, at his discretion, add the date he took the actions and the reasons for taking them.

Including Reasons for Removing a Taxpayer's Name from the Delinquent Taxpayer List

By law, the DRS commissioner must maintain a publicly available list of delinquent taxpayers. Before removing a name from the list, he must, under the act, state the reasons for doing so, specifying whether the delinquency was (1) resolved by negotiated settlement, (2) paid in full, or (3) designated as uncollectable.

EFFECTIVE DATE: July 1, 2014

§§ 14 & 19 — SALES TAX

Remittance Deadline

The act moves up the deadline for remitting monthly sales and use taxes and filing sales tax returns from the last day to the 20th day of the month following the month covered by the return.

Weekly Remittance for Delinquent Parties

The law allows the commissioner to require retailers to remit sales taxes for other than monthly or quarterly periods. The act explicitly allows him to require retailers that fail to remit the tax on time to file returns and remit the tax weekly, by the Wednesday following the end of the previous weekly period. The

OLR PUBLIC ACT SUMMARY

commissioner must notify affected retailers in writing, specifying how they must remit the tax. He must require weekly remittance for one year, starting on the notice's date. If a weekly period straddles two months, retailers must still remit the tax for the previous weekly period. The commissioner cannot extend the weekly remittance deadline as he may for retailers remitting the tax on a monthly or quarterly basis.

In addition, retailers required to remit the tax on a weekly basis must continue to file the required monthly or quarterly returns and remain liable for penalties if they fail to do so, including having their sales tax permits revoked. The commissioner cannot extend the deadline for retailers required to remit the tax.

EFFECTIVE DATE: October 1, 2014

§§ 15 & 20 — IDENTIFYING DELINQUENT TAXPAYER ASSETS

The act requires the DRS commissioner to contract with financial institutions doing business in Connecticut to exchange information about taxpayers who owe state taxes. Such institutions include banks, credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and other similar entities authorized to do business here.

Under the contract, the commissioner must provide these institutions (1) each delinquent taxpayer's name, Social Security number, or other taxpayer identification numbers and (2) the amount of taxes due and payable for which every administrative or judicial remedy has been exhausted. Within 90 days after receiving this list, the financial institution must provide the commissioner with a list of its account holders appearing on the commissioner's list, along with the account holder's Social Security number or taxpayer identification number and a statement about whether their account balance exceeds \$1,000.

The act waives the existing statutory restrictions against releasing taxpayer information when the commissioner exchanges the information with a financial institution. It also relieves contracting institutions from liability to anyone for disclosing customer information to the commissioner or for any other good faith actions taken to comply with the act.

§ 16 — CONNECTICUT FIDUCIARY ADJUSTMENT

When a trust or estate taxpayer determines its Connecticut adjusted gross income for state income tax purposes, the act requires it to add any lump sum distributions it receives during the tax year that are not included in the trust's or estate's federal taxable income before deducting distributions made to the beneficiaries.

EFFECTIVE DATE: Upon passage and applicable to taxable years beginning on or after January 1, 2014.

§§ 17 & 18 — NONRESIDENT INCOME DERIVED FROM CONNECTICUT SOURCES

Nonqualified Deferred Compensation Plans

OLR PUBLIC ACT SUMMARY

The act subjects to the state income tax the income nonresidents receive from nonqualified deferred compensation plans performing services in Connecticut, including income subject to federal income taxes. Under these plans, an employee allows an employer to defer a portion of his or her wages until a specified future date, thus delaying the employee's tax liability until the employer pays the deferred amount.

Sale or Disposition of Property Interest in an Entity

The act requires nonresidents to pay Connecticut income tax on gains or losses from the sale or disposition of an interest in an entity (i.e., partnership, limited liability company, or S corporation) that owns certain real property in Connecticut.

Under the act, all or a portion of the gain or loss from a nonresident taxpayer's sale or disposition of an interest in the entity is considered taxable in Connecticut if the entity owns real property in the state valued at 50% or more of the fair market value of the entity's total assets in the preceding two years. The Connecticut gain or loss from the transaction is the total federal gain or loss multiplied by the ratio of the fair market value of the entity's Connecticut real property to that of its total assets, as of the transaction date.

EFFECTIVE DATE: Upon passage and applicable to taxable years beginning on or after January 1, 2014.

Apportioning Nonresident Business Income

The act makes a change to the method nonresidents must use to determine how certain sales are sourced to Connecticut when calculating Connecticut income taxes.

By law, a business entity conducting business partly in and partly outside Connecticut must apportion its gains and losses derived or connected with Connecticut to the state. Its proportion of net income, gain, loss, and deduction sourced to Connecticut equals its average percentage of property, payroll, and gross income in the state.

The entity calculates its gross income by dividing its gross Connecticut sales by its total sales. Under prior law, property and service sales were sourced to Connecticut if they were negotiated or performed by an employee, agent, agency, or independent contractor chiefly situated at, contracted with, or sent from the business' Connecticut offices or branches (Conn. Agencies Regs. § 12-711(c)-4). The act instead sources property sales to Connecticut if the property is delivered or shipped to a purchaser in the state, regardless of the FOB point (i.e., point at which title for the goods transfers to the buyer) or other conditions of the sale.

EFFECTIVE DATE: Upon passage and applicable to taxable years beginning on or after January 1, 2014.

BACKGROUND

Nondisclosure of Information Contained in Erased Criminal Records

The law prohibits all employers, including the state and its political

OLR PUBLIC ACT SUMMARY

subdivisions, from requiring prospective and current employees to disclose records of erased arrests, criminal charges, or convictions (CGS § 31-51i). It similarly prohibits employers from denying employment or discharging an employee solely because of information contained in such records. The records that the law covers relate to delinquency; family with service needs or youth offender status; criminal charges that have been dismissed, nolle, or resulted in not guilty findings; and absolute pardons.

Employment application forms requesting criminal history data must contain a statement informing applicants that (1) they are not required to disclose criminal history data subject to erasure, (2) the erasure of this data deems they were never arrested for the associated crime, and (3) they can swear under oath that they were never arrested for those crimes.

Federal Standards on Natural Gas Conversion Factors

The National Institute of Standards and Technology's *Uniform Laws and Regulations in Areas of Legal Metrology and Engine Fuel Quality Handbook 130* (2013) specify that a gallon of gasoline is equivalent to 2.567 kg (5.660 lbs.) of natural gas.

Joint and Several Liability

Joint and several liability is a form of liability used in civil cases where two or more people are found liable for damages. The winning plaintiff in such a case may collect the entire judgment from any one of the parties, or from any and all of the parties in various amounts until the judgment is paid in full. In other words, if any of the defendants do not have enough money or assets to pay an equal share of the award, the other defendants must make up the difference.

Tax Returns and Return Information

By law, a "return" is any of the following filed with the DRS commissioner by, on behalf of, or with respect to, anyone: (1) a tax or information return; (2) an estimated tax declaration; (3) a refund claim; or (4) any license, permit, registration, or other application. The term also covers amendments or supplements, including supporting schedules, attachments, or lists that supplement or are part of a filed return.

"Return information" includes:

1. a taxpayer's identity;
2. the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax under- or over-reportings, or tax payments; and
3. any other data received, recorded, prepared, or collected by or furnished to the DRS commissioner regarding a return or regarding any determination of liability for a tax, penalty, interest, fine, forfeiture, or other imposition or offense (CGS § 12-15 (h)(1) & (2)).

OLR PUBLIC ACT SUMMARY

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