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## **OLR Bill Analysis**

### **sSB 10**

#### ***AN ACT MAKING ADJUSTMENTS TO STATE REVENUE AND CONCERNING THE AMBULATORY SURGICAL CENTERS TAX.***

#### **SUMMARY**

This bill makes various changes to state tax laws. Specifically, the bill:

1. beginning July 1, 2018, replaces the current 6% gross receipts tax on ambulatory surgical centers (ASC) with a 6% net revenue tax on ASCs, with certain exclusions, subject to the same administrative requirements and tax credit prohibition that apply under existing law to the hospital provider tax and user fees on nursing homes and intermediate care facilities for individuals with intellectual disabilities (ICF-IDs)(§§6-11);
2. establishes a personal income tax deduction of up to \$40,000 for businesses that donate agricultural food commodities they grew or produced to nonprofit food banks, food pantries, or soup kitchens (§§ 3 & 4);
3. exempts from the tobacco products tax cigars that are (a) exported from Connecticut and (b) owned by a distributor located on the premises of a company performing “fulfillment services” for the distributor (§ 5); and
4. makes permanent the personal income tax deduction for pension and annuity income currently scheduled to phase in from the 2019 to 2025 tax years, and end after 2025 (§ 4).

The bill also makes the following adjustments to the FY 18-19 biennial budget:

1. delays, by one year, the date by which MMCT Venture, LLC

- must provide a \$30 million advance to the state (§ 1);
2. prohibits the Office of Policy and Management (OPM) secretary from transferring funds from the Community Investment Account for FY 19 as part of his authority to transfer up to \$20 million to the General Fund from nonappropriated accounts (§ 2);
  3. repeals a requirement that the OPM secretary, in consultation with the revenue services and economic and community development commissioners, evaluate state tax expenditures, and by February 1, 2018, report his findings and recommendations to the Finance, Revenue and Bonding Committee (§ 12); and
  4. repeals a requirement that (a) all agency heads, except the OPM secretary, determine whether the fees their agencies charge cover program administration costs and (b) OPM recommend fee increases, of up to \$20 million in the aggregate, to the Finance, Revenue and Bonding Committee by February 7, 2018 (§ 12).

EFFECTIVE DATE: Upon passage, except the income tax provisions are effective July 1, 2018, and applicable to tax years beginning on or after January 1, 2018.

### **§ 1 — MMCT VENTURE, LLC PAYMENT**

The bill delays, by one year, from June 30, 2019, to June 30, 2020, the date by which MMCT Venture, LLC must provide a \$30 million advance to the state, which will be credited against required future monthly casino gross gaming revenue payments to the state.

Existing law authorizes MMCT Venture, LLC, a company jointly owned and operated by the Mashantucket Pequot and Mohegan tribes, to conduct authorized games at a new off-reservation commercial casino, once certain conditions are met, and requires MMCT to pay the state 25% of its gross gaming revenue once the casino is operational.

## **§ 2 — TRANSFERS FROM NONAPPROPRIATED ACCOUNTS**

Current law authorizes the OPM secretary, for FY 19, to transfer to the General Fund up to \$20 million from nonappropriated accounts that do not receive (1) gifts, grants, or donations from public or private sources or (2) other revenues from individuals to support a particular interest or purpose. The bill prohibits him from transferring any such funds from the Community Investment Account (CIA).

By law, the CIA is a separate, nonlapsing General Fund account that provides funding for open space, farmland preservation, historic preservation, affordable housing, and promoting agriculture, among other things. The account is capitalized by land recording fees.

## **§§ 3 & 4 — INCOME TAX DEDUCTION FOR AGRICULTURAL FOOD DONATIONS**

The bill establishes a personal income tax deduction for businesses that donate agricultural food commodities they grew or produced to nonprofit (i.e., 501(c)(3)) food banks, food pantries, or soup kitchens providing food resources to low-income individuals and families. The donated commodities may include fruit, vegetables, dairy, eggs, poultry, or meat.

Under the bill, the deduction is equal to the wholesale value of the commodities donated during the tax year for which the taxpayer claims the deduction, up to \$40,000. Taxpayers claiming the deduction must provide documentation supporting the deduction to the Department of Revenue Services (DRS), in the form and manner the commissioner prescribes.

The bill prohibits a taxpayer from donating commodities that are adulterated, are unfit for human consumption, or were embargoed or ordered destroyed by the Department of Public Health. It also prohibits a taxpayer from claiming a deduction if it received any remuneration for a donated commodity.

## **§ 4 — INCOME TAX DEDUCTION FOR PENSION AND ANNUITY INCOME**

The bill makes permanent the personal income tax deduction for

pension and annuity income currently scheduled to phase in from the 2019 to 2025 tax years, and end after 2025. Under the bill, eligible taxpayers may deduct 100% of such income for tax years beginning in 2025, and each tax year thereafter. By law, the deduction applies to taxpayers with federal adjusted gross incomes below (1) \$75,000 for single filers, married people filing separately, and heads of households and (2) \$100,000 for married people filing jointly.

### **§ 5 — TOBACCO PRODUCTS TAX EXEMPTION FOR CERTAIN EXPORTED CIGARS**

The bill exempts from the tobacco products tax cigars that are (1) exported from Connecticut and (2) owned by a distributor located on the premises of a company performing “fulfillment services” for the distributor. A company provides “fulfillment services” when it receives orders from a distributor or its agent, fills them with the distributor’s inventory stored on its premises, and ships them to the distributor’s customers. By law, exported tobacco products are already exempt from tobacco products tax and distributors are eligible for a refund for any taxes paid on products that are subsequently exported.

Under the bill, cigars owned by such distributors are subject to the tax if they are shipped, delivered, or transferred to a Connecticut address. The tax must be (1) imposed on the date the cigars are shipped, delivered, or transferred and (2) reported and paid on the tobacco products tax return corresponding to the month the shipment, delivery, or transfer occurred.

The bill authorizes the DRS commissioner to require the fulfillment company to file a quarterly informational return, containing the information the commissioner prescribes, for the cigars located on the company’s premises.

### **§§ 6-11 — ASC TAX**

#### ***Sunset of ASC Gross Receipts Tax***

Beginning July 1, 2018, the bill sunsets the current 6% gross receipts tax on ASCs and imposes on them a 6% net revenue tax, with certain exclusions.

Under current law, the tax is based on an ASC's gross receipts for each quarter, excluding the first \$1 million in the applicable fiscal year and any portion of the ASC's gross receipts that constitutes net patient revenue of a hospital subject to the hospital provider tax. Although the bill sunsets the gross receipts tax on June 30, 2018, it (1) excludes from the tax gross receipts from any Medicaid and Medicare payments the ASC receives and (2) specifies that the existing exclusion for the first \$1 million of an ASC's gross receipts excludes Medicaid and Medicare payments. In doing so, it appears to limit the tax base for the gross receipts tax due for the calendar quarter in which the bill takes effect, but before July 1, 2018 (i.e., the second quarter of 2018).

### ***ASCs Subject to the Tax***

By law, and under the bill, an ASC is a distinct entity that (1) operates exclusively to provide surgical services to patients not requiring hospitalization, where the services are not expected to take more than 24 hours, (2) has an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC, and (3) meets the federal requirements to do so.

### ***Tax Base and Rate***

Under current law, the ASC tax is based on an ASC's gross receipts for each quarter, excluding the first \$1 million in the applicable fiscal year and any portion of the ASC's gross receipts that constitutes net patient revenue of a hospital subject to the hospital provider tax. For calendar quarters beginning July 1, 2018, the bill instead bases the tax on the total net revenue the ASC receives for providing ASC services, excluding the (1) revenue from Medicaid and Medicare payments and (2) first \$1 million of gross receipts (other than Medicaid and Medicare payments) in the applicable fiscal year, subject to the approval of the federal waiver described below. The bill maintains the tax rate at 6%.

Under the bill, the same definitions of net revenue and gross receipts that apply under the hospital provider tax apply to the ASC tax. "Net revenue" means gross receipts minus payer discounts, charity care, and bad debts on which the taxpayer previously paid the tax and "gross receipts" means the amount received (cash or in-kind)

from patients, third-party payers, and others for taxable health care items or services the taxpayer provides in the state. It includes retroactive adjustments under reimbursement agreements with third-party payers, with no deduction for expenses.

Under the bill, “ASC services” are the items and services included in a facility fee payment to an ASC that are (1) associated with a surgical procedure and (2) not separately reimbursable ancillary or professional services. They exclude surgical procedures and physicians’, anesthetists’, radiology, diagnostic, and ambulance services that are separately reimbursed to an ASC from the facility fee payment.

As is the case under the current ASC tax, the bill does not prohibit an ASC from seeking remuneration for the tax it imposes.

***Request for Federal Waiver***

The bill requires the Department of Social Services (DSS) commissioner, before July 1, 2018, and annually thereafter, to seek approval from the Centers for Medicare and Medicaid (CMS) to exempt from the ASC tax the first \$1 million of net revenue an ASC receives during the fiscal year. (However, the bill excludes the first \$1 million of gross receipts, rather than net revenue, an ASC receives during the fiscal year.)

If CMS denies the exemption, the DSS commissioner must seek its approval to exempt the amount closest to \$1 million, but between \$500,000 and \$1.5 million, that meets the applicable federal waiver provisions applicable to health care-related taxes (see BACKGROUND). If CMS denies the exemption or grants it for an amount other than \$1 million, the exemption terminates or equals the approved amount, as applicable, as of the first day of the quarter following CMS’s decision.

Annually, upon request, the bill requires each ASC to provide the DSS commissioner with certain information to allow him to make the calculations necessary for the annual waiver request. Specifically, each

ASC must indicate, for the prior calendar year, the amount of net revenue and Medicaid and Medicare payments it received for providing ASC services. The ASCs must provide this information, if requested, by April 30.

Under the bill, the information the ASCs provide to DSS is considered confidential tax return information. The law establishes narrow conditions under which return information may be disclosed and sets penalties for unauthorized disclosures (a fine of up to \$1,000, up to one year in prison, or both (CGS § 12-15(g))).

### ***Tax Credits***

The bill extends to ASCs the prohibition against using tax credits that applies under existing law to hospitals, nursing homes, and ICF-IDs. Under current law, ASCs may apply urban and industrial site reinvestment tax credits against the ASC gross receipts tax.

### ***Administrative Requirements***

The bill extends to ASCs the same administrative requirements that apply to the hospital provider tax and nursing home and ICF-ID user fees. Among other things, these provisions:

1. require ASCs to file quarterly returns and generally remit their tax payment to the DRS commissioner by the last day of January, April, July, and October of each year on DRS-prescribed forms;
2. subject delinquent and non-filing ASC taxpayers to a penalty of 10% of the unpaid tax or fee or \$50, whichever is greater, plus 1% interest for each full or partial month that the tax or fee remains unpaid;
3. subject ASC taxpayers to penalties for willfully failing to pay the tax or supplying false information;
4. authorize the DRS commissioner to examine an ASC's records as he deems necessary and impose deficiency assessments;

5. authorize the DRS commissioner to enter into an agreement with the DSS commissioner delegating to the DSS commissioner the authority to examine ASC taxpayer records and returns and determine whether the correct amount has been paid;
6. allow aggrieved ASC taxpayers to appeal certain orders and decisions; and
7. authorize the DRS commissioner, and any duly authorized agent, to take certain measures to enforce and collect the tax.

***Pilot Program (§ 9)***

The bill requires the DSS commissioner, in consultation with the Connecticut Association of Ambulatory Surgical Centers, to establish a pilot program to study ways of increasing access to, and decreasing the cost of, medical care under the Medicaid program by having certain medical procedures performed at ASCs. The program must establish the (1) application procedure, (2) participation criteria, (3) applicable medical procedures, and (4) appropriate reimbursement rates for the procedures.

By December 31, 2019, the commissioner must report on the pilot program and his findings and recommendations to the Finance, Revenue and Bonding Committee.

**BACKGROUND**

***Federal Waiver Provisions Applicable to Health Care-Related Taxes***

As a condition of receiving federal matching funds, federal law generally requires state provider taxes to be both broad-based (i.e., imposed on all providers within a specified class of providers) and uniform (i.e., the same tax for all providers within a specified class of providers). But states may submit a waiver request to CMS if a provider tax does not meet these requirements.

In order to waive either the broad-based or uniform requirement, a state needs to prove that the (1) net impact of the tax is generally redistributive, (2) amount of the tax is not directly correlated to

Medicaid payments, and (3) tax program does not guarantee that providers receive their money back (or be “held harmless”) (42 CFR 433.72).

***Related Bills***

sSB 414 and sHB 5433, favorably reported by the Finance, Revenue and Bonding Committee, contain identical provisions that make permanent the personal income tax deduction for pension and annuity income.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/05/2018)