



# Senate

General Assembly

**File No. 627**

February Session, 2018

Senate Bill No. 417

*Senate, April 23, 2018*

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist. and SEN. FRANTZ, L. of the 36th Dist., Chairpersons of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS REGARDING STATE TAXATION AND COLLECTION.***

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

1 Section 1. (NEW) (*Effective July 1, 2018*) (a) The Commissioner of  
2 Revenue Services may charge fees sufficient to cover the reasonable  
3 expenses incurred by the Department of Revenue Services in the  
4 performance of an administrative function, including, but not limited  
5 to, preparing an account reconstruction, preparing a letter of good  
6 standing, preparing a certified copy of a tax return and certifying a  
7 software program or a software provider. No such fee shall exceed one  
8 hundred dollars for the performance of a given administrative  
9 function.

10 (b) Any person subject to a fee imposed under subsection (a) of this  
11 section may request, in writing, that the commissioner waive such fee.  
12 The commissioner may waive such fee if the commissioner finds,

13 based on information provided by such person, that imposition of the  
14 fee would result in undue hardship for such person. The commissioner  
15 shall promptly inform such person of the granting or rejection of such  
16 requested waiver. The decision of the commissioner shall be final and  
17 not subject to further review or appeal.

18 Sec. 2. Subdivision (12) of subsection (a) of section 12-407 of the 2018  
19 supplement to the general statutes is repealed and the following is  
20 substituted in lieu thereof (*Effective from passage*):

21 (12) "Retailer" includes: (A) Every person engaged in the business of  
22 making sales at retail or in the business of making retail sales at  
23 auction of tangible personal property owned by the person or others;  
24 (B) every person engaged in the business of making sales for storage,  
25 use or other consumption or in the business of making sales at auction  
26 of tangible personal property owned by the person or others for  
27 storage, use or other consumption; (C) every operator, as defined in  
28 subdivision (18) of this subsection; (D) every seller rendering any  
29 service described in subdivision (2) of this subsection; (E) every person  
30 under whom any salesman, representative, peddler or canvasser  
31 operates in this state, or from whom such salesman, representative,  
32 peddler or canvasser obtains the tangible personal property that is  
33 sold; (F) every person with whose assistance any seller is enabled to  
34 solicit orders within this state; (G) every person making retail sales  
35 from outside this state to a destination within this state and not  
36 maintaining a place of business in this state who engages in regular or  
37 systematic solicitation of sales of tangible personal property in this  
38 state (i) by the display of advertisements on billboards or other  
39 outdoor advertising in this state, (ii) by the distribution of catalogs,  
40 periodicals, advertising flyers or other advertising by means of print,  
41 radio or television media, an Internet web site, software or any other  
42 form of electronic delivery, or (iii) by mail, telegraphy, telephone,  
43 computer data base, cable, optic, microwave, Internet or any other  
44 form of communication, [system,] for the purpose of effecting retail  
45 sales of tangible personal property, provided such person has gross  
46 receipts of at least two hundred fifty thousand dollars or made [one]

47 two hundred or more retail sales from outside this state to destinations  
48 within this state during the twelve-month period ended on the  
49 September thirtieth immediately preceding the monthly or quarterly  
50 period with respect to which such person's liability for tax under this  
51 chapter is determined; (H) any person owned or controlled, either  
52 directly or indirectly, by a retailer engaged in business in this state  
53 which is the same as or similar to the line of business in which such  
54 person so owned or controlled is engaged; (I) any person owned or  
55 controlled, either directly or indirectly, by the same interests that own  
56 or control, either directly or indirectly, a retailer engaged in business in  
57 this state which is the same as or similar to the line of business in  
58 which such person so owned or controlled is engaged; (J) any assignee  
59 of a person engaged in the business of leasing tangible personal  
60 property to others, where leased property of such person which is  
61 subject to taxation under this chapter is situated within this state and  
62 such assignee has a security interest, as defined in subdivision (35) of  
63 subsection (b) of section 42a-1-201, in such property; (K) every person  
64 making retail sales of items of tangible personal property from outside  
65 this state to a destination within this state and not maintaining a place  
66 of business in this state who repairs or services such items, under a  
67 warranty, in this state, either directly or indirectly through an agent,  
68 independent contractor or subsidiary; and (L) every person making  
69 sales of tangible personal property or services through an agreement  
70 with another person located in this state under which such person  
71 located in this state, for a commission or other consideration that is  
72 based upon the sale of tangible personal property or services by the  
73 retailer, directly or indirectly refers potential customers, whether by a  
74 link on an Internet web site or otherwise, to the retailer, provided the  
75 cumulative gross receipts from sales by the retailer to customers in the  
76 state who are referred to the retailer by all such persons with this type  
77 of an agreement with the retailer, is in excess of two thousand dollars  
78 during the preceding four quarterly periods ending on the last day of  
79 March, June, September and December.

80 Sec. 3. Subdivision (15) of subsection (a) of section 12-407 of the 2018  
81 supplement to the general statutes is repealed and the following is

82 substituted in lieu thereof (*Effective July 1, 2018*):

83 (15) (A) "Engaged in business in the state" means and includes but  
84 shall not be limited to the following acts or methods of transacting  
85 business: (i) Selling in this state, or any activity in this state in  
86 connection with selling in this state, tangible personal property for use,  
87 storage or consumption within the state; (ii) engaging in the transfer  
88 for a consideration of the occupancy of any room or rooms in a hotel,  
89 lodging house or bed and breakfast establishment for a period of thirty  
90 consecutive calendar days or less; (iii) rendering in this state any  
91 service described in any of the subparagraphs of subdivision (2) of this  
92 subsection; (iv) maintaining, occupying or using, permanently or  
93 temporarily, directly or indirectly, through a subsidiary or agent, by  
94 whatever name called, any office, place of distribution, sales or sample  
95 room or place, warehouse or storage point or other place of business or  
96 having any representative, agent, salesman, canvasser or solicitor  
97 operating in this state for the purpose of selling, delivering or taking  
98 orders; (v) notwithstanding the fact that retail sales are made from  
99 outside this state to a destination within this state and that a place of  
100 business is not maintained in this state, engaging in regular or  
101 systematic solicitation of sales of tangible personal property in this  
102 state by the display of advertisements on billboards or other outdoor  
103 advertising in this state, by the distribution of catalogs, periodicals,  
104 advertising flyers or other advertising by means of print, radio or  
105 television media, an Internet web site, software or any other form of  
106 electronic delivery, or by mail, telegraphy, telephone, computer data  
107 base, cable, optic, microwave, Internet or any other form of  
108 communication, [system,] for the purpose of effecting retail sales of  
109 tangible personal property, provided [one] at least two hundred fifty  
110 thousand dollars of gross receipts are received or two hundred or  
111 more retail sales from outside this state to destinations within this state  
112 are made during the twelve-month period ended on the September  
113 thirtieth immediately preceding the monthly or quarterly period with  
114 respect to which liability for tax under this chapter is determined; (vi)  
115 being owned or controlled, either directly or indirectly, by a retailer  
116 engaged in business in this state which is the same as or similar to the

117 line of business in which the retailer so owned or controlled is  
118 engaged; (vii) being owned or controlled, either directly or indirectly,  
119 by the same interests that own or control, either directly or indirectly, a  
120 retailer engaged in business in this state which is the same as or similar  
121 to the line of business in which the retailer so owned or controlled is  
122 engaged; (viii) being the assignee of a person engaged in the business  
123 of leasing tangible personal property to others, where leased property  
124 of such person is situated within this state and such assignee has a  
125 security interest, as defined in subdivision (35) of subsection (b) of  
126 section 42a-1-201, in such property; (ix) notwithstanding the fact that  
127 retail sales of items of tangible personal property are made from  
128 outside this state to a destination within this state and that a place of  
129 business is not maintained in this state, repairing or servicing such  
130 items, under a warranty, in this state, either directly or indirectly  
131 through an agent, independent contractor or subsidiary; and (x) selling  
132 tangible personal property or services through an agreement with a  
133 person located in this state, under which such person located in this  
134 state, for a commission or other consideration that is based upon the  
135 sale of tangible personal property or services by the retailer, directly or  
136 indirectly refers potential customers, whether by a link on an Internet  
137 web site or otherwise, to the retailer, provided the cumulative gross  
138 receipts from sales by the retailer to customers in the state who are  
139 referred to the retailer by all such persons with this type of agreement  
140 with the retailer is in excess of two thousand dollars during the four  
141 preceding four quarterly periods ending on the last day of March,  
142 June, September and December.

143 (B) A retailer who has contracted with a commercial printer for  
144 printing and distribution of printed material shall not be deemed to be  
145 engaged in business in this state because of the ownership or leasing  
146 by the retailer of tangible or intangible personal property located at the  
147 premises of the commercial printer in this state, the sale by the retailer  
148 of property of any kind produced or processed at and shipped or  
149 distributed from the premises of the commercial printer in this state,  
150 the activities of the retailer's employees or agents at the premises of the  
151 commercial printer in this state, which activities relate to quality

152 control, distribution or printing services performed by the printer, or  
153 the activities of any kind performed by the commercial printer in this  
154 state for or on behalf of the retailer.

155 (C) A retailer not otherwise a retailer engaged in business in the  
156 state who purchases fulfillment services carried on in this state by a  
157 person other than an affiliated person, or who owns tangible personal  
158 property located on the premises of an unaffiliated person performing  
159 fulfillment services for such retailer shall not be deemed to be engaged  
160 in business in the state. For purposes of this subparagraph, persons are  
161 affiliated persons with respect to each other where one of such persons  
162 has an ownership interest of more than five per cent, whether direct or  
163 indirect, in the other, or where an ownership interest of more than five  
164 per cent, whether direct or indirect, is held in each of such persons by  
165 another person or by a group of other persons who are affiliated  
166 persons with respect to each other. For purposes of this subparagraph,  
167 "fulfillment services" means services that are performed by a person on  
168 its premises on behalf of a purchaser of such services and that involve  
169 the receipt of orders from the purchaser of such services or an agent  
170 thereof, which orders are to be filled by the person from an inventory  
171 of products that are offered for sale by the purchaser of such services,  
172 and the shipment of such orders outside this state to customers of the  
173 purchaser of such services.

174 (D) A retailer not otherwise a retailer engaged in business in this  
175 state that participates in a trade show or shows at the convention  
176 center, as defined in subdivision (3) of section 32-600, shall not be  
177 deemed to be engaged in business in this state, regardless of whether  
178 the retailer has employees or other staff present at such trade shows,  
179 provided the retailer's activity at such trade shows is limited to  
180 displaying goods or promoting services, no sales are made, any orders  
181 received are sent outside this state for acceptance or rejection and are  
182 filled from outside this state, and provided further that such  
183 participation is not more than fourteen days, or part thereof, in the  
184 aggregate during the retailer's income year for federal income tax  
185 purposes.

186 Sec. 4. Subsection (a) of section 12-829 of the general statutes is  
187 repealed and the following is substituted in lieu thereof (*Effective July*  
188 *1, 2018*):

189 (a) (1) On or after January 1, 2012, but prior to July 1, 2018, when  
190 any person redeems a winning lottery ticket worth five thousand  
191 dollars or more at the central office of the Connecticut Lottery  
192 Corporation, the Connecticut Lottery Corporation shall check the  
193 name and other identifying information of such person against a list of  
194 taxpayers who are delinquent, supplied by the Commissioner of  
195 Revenue Services.

196 (2) On or after July 1, 2018, when any person redeems a winning  
197 lottery ticket worth two thousand dollars or more at the central office  
198 of the Connecticut Lottery Corporation, the Connecticut Lottery  
199 Corporation shall check the name and other identifying information of  
200 such person against a list of taxpayers who are delinquent, supplied by  
201 the Commissioner of Revenue Services.

|   |                     |               |
|---|---------------------|---------------|
| This act shall take effect as follows and shall amend the following sections: |                     |               |
| Section 1   | <i>July 1, 2018</i> | New section   |
| Sec. 2  | <i>from passage</i> | 12-407(a)(12) |
| Sec. 3  | <i>July 1, 2018</i> | 12-407(a)(15) |
| Sec. 4  | <i>July 1, 2018</i> | 12-829(a)     |

**FIN**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

| <b>Agency Affected</b>          | <b>Fund-Effect</b>             | <b>FY 19 \$</b>  | <b>FY 20 \$</b>  |
|---------------------------------|--------------------------------|------------------|------------------|
| Department of Revenue Services  | GF - Revenue Gain              | At least 300,000 | At least 300,000 |
| Connecticut Lottery Corporation | Lottery Enterprise Fund - Cost | Approx. 100,000  | Approx. 100,000  |

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill makes a number of changes relating to the Department of Revenue Services' policies and procedures which are outlined in detail below:

**Section 1** authorizes the Commissioner of Revenue Services to charge a fee of up to \$100 to cover reasonable expenses incurred in the performance of various agency functions. This is anticipated to result in a revenue gain of less than \$50,000 annually.

**Sections 2 & 3** amend various definitions related to Sales and Use Tax collections. To the extent this increases sales tax compliance, this results in a revenue gain.

**Section 4** lowers the threshold for Connecticut Lottery Corporation (CLC) offsets for delinquent taxes from \$5,000 in winnings to \$2,000. This results in an estimated revenue gain of \$300,000 annually to the General Fund beginning in FY 19, as well as an ongoing annual cost to the CLC of approximately \$100,000 beginning in FY 19 for salary and



fringe costs.<sup>1</sup>

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Connecticut Lottery Corporation Testimony*

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<sup>1</sup> Based on current CLC claims statistics, it is estimated that the lower threshold will result in approximately 1,000 new claims each year at CLC headquarters.

**OLR Bill Analysis****SB 417*****AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS REGARDING STATE TAXATION AND COLLECTION.*****SUMMARY**

This bill:

1. expands the conditions under which certain out-of-state retailers must collect and remit Connecticut sales tax;
2. authorizes the Department of Revenue Services (DRS) commissioner to charge fees of up to \$100 that are sufficient to cover the reasonable expenses the agency incurs in performing administrative functions and authorizes him to waive the fee under certain conditions;
3. decreases, from \$5,000 to \$2,000, the value of lottery prize claims above which the Connecticut Lottery Corporation (CLC) must deduct and withhold delinquent taxes.

EFFECTIVE DATE: July 1, 2018, except that the provision expanding the definition of a retailer is effective upon passage.

**§§ 2 & 3 — SALES TAX NEXUS*****Out-of-State Retailers Engaged in Business in Connecticut***

State law requires “retailers” to collect Connecticut sales tax if they are “engaged in the business” of making retail sales in the state. If a retailer is engaged in business in Connecticut, it is said to have a significant presence (i.e., nexus) here (see BACKGROUND).

Under current law, out-of-state retailers that regularly or systematically solicit sales of tangible personal property in Connecticut

by various means must collect and remit sales tax if their Connecticut sales exceed a threshold of 100 transactions during the preceding twelve-month period (ending September 30). The bill expands the means by which such retailers are considered to be soliciting sales in Connecticut to include regular or systematic solicitation by Internet websites or communication, software, or other forms of electronic delivery for the purpose of making sales of tangible personal property. It also replaces the current 100 transaction sales threshold with a threshold of at least (1) 200 transactions or (2) gross receipts of \$250,000 or more during the twelve-month period.

As under existing law, such retailers are also considered to be soliciting sales in Connecticut if they regularly and systematically solicit sales by:

1. displaying billboards or other outdoor advertisements;
2. distributing catalogs, periodicals, advertising flyers, or other print, radio, or television media; or
3. mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication.

### ***Fulfillment House Exclusion***

The bill limits the out-of-state retailers that are exempt from collecting and remitting state sales tax under the existing “fulfillment house exclusion.”

By law, an out-of-state retailer not otherwise engaged in business in Connecticut is not required to collect and remit Connecticut sales tax solely because it purchases fulfillment services from an unaffiliated in-state company or owns property stored on that company’s premises.

Under current law, a company provides “fulfillment services” when it receives orders from a retailer or its agent, fills them from the retailer's inventory stored on its premises, and ships them to the retailer's customers. The bill limits the fulfillment services that qualify

for this exclusion to those shipping orders outside of Connecticut.

### **§ 1 — DRS ADMINISTRATIVE FEE**

Under the bill, the DRS commissioner may impose a fee of up to \$100 to cover the reasonable expenses the agency incurs in performing an administrative function, including preparing an account reconstruction, letter of good standing, or certified copy of a tax return or certifying a software program or provider.

Any person subject to the fee may submit a written request to the commissioner to waive the fee. The bill authorizes the commissioner to waive it if he finds, based on information the person provides, that imposing the fee would result in undue hardship for the person. He must promptly notify the person of his decision to grant or reject the waiver and his decision is final and not subject to further review or appeal.

### **§ 4 — LOTTERY PRIZE TAX OFFSETS**

Current law requires CLC to deduct and withhold delinquent taxes from any lottery prize claim of \$5,000 or more that a delinquent taxpayer submits at CLC's central office. The bill decreases the value of lottery prizes subject to being offset for delinquent taxes to \$2,000 for claims submitted on or after July 1, 2018, at CLC's central office.

By law, the offset is for state taxes, including penalties and interest, more than 30 days overdue that are not the subject of a timely filed (1) administrative appeal to the commissioner or (2) appeal pending before a court.

## **BACKGROUND**

### ***U.S. Supreme Court Decisions on Sales Tax Nexus***

The U.S. Supreme Court has ruled that a state may require a company engaged in interstate commerce to collect taxes on its behalf if "the tax is applied to an activity with a substantial nexus with the taxing [s]tate, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by

the [s]tate” (*Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)).

The Court has ruled that a company does not have the required nexus if it has no physical presence in a state and its only connection with it is to solicit business there through catalogs, flyers, advertisements in national publications, or phone calls and to fulfill orders by delivering merchandise to customers by mail or common carrier (*Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); *National Bellas Hess, Inc. v. Illinois Department of Revenue*, 386 U.S. 753 (1967)).

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 45    Nay 6    (04/05/2018)