
OLR Bill Analysis

sHB 7373 (as amended by House "A")*

AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS FOR TAX ADMINISTRATION AND MINOR REVISIONS TO THE TAX AND RELATED STATUTES.

SUMMARY

This bill makes various changes in the tax statutes. Among other things, the bill:

1. expands the pass-through entity (PE) tax base to include guaranteed payments with respect to a partnership (§ 1);
2. exempts PE taxpayers with less than \$1,000 in annual tax liability from required quarterly estimated tax payments (§ 2);
3. establishes conditions under which real and tangible personal property owned by a pass-through entity is treated as personally owned by a nonresident decedent for estate tax purposes (§ 31);
4. waives penalties, interest, and any addition to tax due for late personal income or PE tax payments for the 2018 tax year under certain conditions (§ 33);
5. delays sales and use tax notice and reporting requirements for referrers (i.e., people and businesses who connect sellers and consumers for a commission or fee)(§ 34);
6. changes the order in which the Department of Revenue Services (DRS) commissioner must apply partial tax payments (§ 28);
7. prohibits applying urban and industrial sites reinvestment act tax credits against the (1) ambulatory surgical center gross receipts tax, (2) dry cleaning gross receipts tax, and (3) public service companies tax (§ 9);

8. increases, from \$1,000 to \$5,000, the threshold over which penalty waivers require Penalty Review Committee review and approval (§ 10);
9. requires businesses, as a condition of receiving a tax refund for a tax they collected from a customer, to establish to the DRS services commissioner's satisfaction that the amount for which they are claiming a refund was or will be repaid to the customer (§ 30); and
10. makes various minor, technical, and conforming changes.

*House Amendment "A" (1) eliminates a provision expanding the resident portion of un sourced income used to calculate an entity's PE tax under the alternative base method, (2) modifies the provision concerning real and tangible personal property owned by a pass-through entity for estate tax purposes, and (3) adds the provisions on penalty and interest waivers as a result of the PE tax (§ 33) and referrer notice and reporting requirements (§ 34).

EFFECTIVE DATE: Upon passage, unless otherwise noted below.

§§ 1 & 2 — PE TAX

The bill requires PE taxpayers, when calculating income subject to the tax, to include guaranteed payments with respect to a partnership (i.e., payments made to partners to compensate them for services rendered or use of capital that are unrelated to the partnership's income). It further specifies that a pass-through entity's income excludes any item treated as an itemized deduction for federal income tax purposes, which conforms to existing DRS guidance on the tax. Under the bill, these changes apply to both the standard and alternative base method for calculating the tax.

The bill also (1) exempts entities with less than \$1,000 in annual PE tax liabilities from the requirement to pay the tax in four estimated installments and (2) makes minor and technical changes in the PE tax statutes, including to the provision concerning nonresident partner filing requirements.

EFFECTIVE DATE: July 1, 2019, and applicable to tax years beginning on or after January 1, 2019.

§ 3 — CREDIT REVENUE BOND PROGRAM

The bill makes technical changes in the credit revenue bond statutes.

§ 4 — STATE TAX WARRANTS

Existing law allows DRS and other state collection agencies to (1) issue a tax warrant on the intangible personal property (e.g., bank accounts, receivables, and securities) of a taxpayer who fails to pay state taxes and (2) serve the warrant on a third party (e.g., bank or payment settlement entity) who possesses the property or is obligated to it in some way. The bill allows the warrant to be served to the third party by any electronic means, rather than just by email or fax.

EFFECTIVE DATE: October 1, 2019

§ 5 — SALES TAX CREDITS FOR UNCOLLECTIBLE AMOUNTS

Existing law allows retailers to claim a credit for sales tax they paid on accounts later deemed worthless; they must generally do so within three years after they remitted the tax to DRS. If a retailer who claimed such a credit subsequently collects all or some portion of that account, current law requires the retailer to include the amount it collected in its next regular sales tax payment. The bill (1) provides that the retailer must only include the amount of sales tax for which it claimed the credit and (2) requires that any payments made on the account be applied first to the sales tax.

EFFECTIVE DATE: Upon passage, and applicable to credit claims received on or after such date.

§ 6 — ALCOHOLIC BEVERAGES TAX EXEMPTION

The bill makes a technical change to the alcoholic beverages tax exemption for sales of malt beverages consumed on the premises of an establishment covered by a manufacturer's permit by replacing the term "malt beverages" with beer.

EFFECTIVE DATE: July 1, 2019

§ 7 — TAX PREPARERS AND FACILITATORS

Current law requires those applying for a DRS-issued tax preparer or facilitator permit on or after January 1, 2020, to have completed an Internal Revenue Services-administered annual filing season program. The bill extends the implementation date for this requirement by two years, to January 1, 2022, and limits the requirement to tax preparer permit applicants.

Under current law, tax preparer or facilitator permittees granted inactive status from DRS can reactivate their permits by paying a renewal fee. The bill specifies that they may only do so before the permit's expiration date.

§ 8 — TRANSPORTATION NETWORK COMPANY (TNC) FEE

The bill requires the DRS commissioner, when reporting TNC fee revenue, to include it with the admissions and dues tax, rather than the motor carrier road tax.

§ 9 — APPLICATION OF URBAN AND INDUSTRIAL SITES REINVESTMENT ACT (URA) TAX CREDITS

The bill prohibits the application of URA tax credits against the (1) ambulatory surgical center gross receipts tax, (2) dry cleaning gross receipts tax, and (3) public service companies tax. As under current law, the credits continue to apply against the insurance premiums tax; corporation business tax; unrelated business income tax; air carriers tax; railroad companies tax; cable, satellite, and video companies tax; utility companies tax; and surplus lines brokers tax.

EFFECTIVE DATE: Upon passage, and applicable to income years beginning on or after such date.

§ 10 — PENALTY REVIEW COMMITTEE

The bill increases, from \$1,000 to \$5,000, the threshold over which a penalty waiver requires Penalty Review Committee review and approval. By law, the Penalty Review Committee must review and approve tax penalty waivers granted by the DRS commissioner and lottery sales agent penalty waivers granted by the consumer protection

commissioner, if they exceed the minimum threshold.

The Penalty Review Committee consists of the comptroller, DRS commissioner, and Office of Policy and Management secretary or their designees. The committee must (1) meet at least monthly and make an itemized statement of all approved waivers available for public inspection and (2) approve a waiver only by majority vote.

§§ 10-27 & 33 — TAX APPEALS TIMEFRAME

The bill modifies the timeframe for aggrieved taxpayers to bring tax appeals to Superior Court by requiring that they do so within 30 days, rather than one month, after receiving notice. It also repeals an obsolete tax appeal statute.

§ 28 — ORDER OF APPLYING PARTIAL PAYMENTS

For periods ending on or after December 31, 2019, the bill requires the DRS commissioner to apply partial payments to penalties first, then to interest, and any remaining balance to the tax. Under current law, the commissioner must apply the payment to the penalties first, but he must apply the remaining balance first to the tax and then to the interest.

§ 29 — PENALTIES FOR PAYMENTS BY ELECTRONIC FUNDS TRANSFER

The bill replaces the graduated penalties that apply to late tax payments paid by electronic funds transfer with the existing penalties that apply to late payments for the respective tax being paid. Under current law, the penalty is 2% if it is less than six days late, 5% if it is six to 15 days late, and 10% if it is more than 15 days late. For periods ending on or after December 31, 2019, the bill instead requires any late tax payments paid by electronic funds transfer to be subject to interest and penalty provisions that apply by law to the specific tax being paid.

§ 30 — STATE TAX REFUNDS

The bill requires businesses, as a condition of receiving a tax refund for a tax they collected from a customer, to establish to the DRS commissioner's satisfaction that the tax amount for which they are

claiming a refund was or will be repaid to the customer.

EFFECTIVE DATE: July 1, 2019, and applicable to refund claims received on or that date.

§ 31 — ESTATE TAX ON SPECIFIED BUSINESS PROPERTY

The bill establishes conditions under which real and tangible personal property owned by a pass-through entity (i.e., partnership, S corporation, or a single member limited liability company that is disregarded for federal income tax purposes) is treated as personally owned by a nonresident decedent for estate tax purposes. By law, a nonresident estate is an estate of a decedent who was not domiciled in Connecticut at the time of death, but owned real or tangible personal property here.

Under the bill, real and tangible personal property owned by a pass-through entity must be treated as personally owned by the nonresident decedent in proportion to his or her constructive ownership in the pass-through entity if the:

1. entity does not actively carry on a business for profit or gain,
2. entity did not own the property for a valid business purpose, or
3. property was not acquired through a bona fide sale for full and adequate consideration and the decedent retained a power with respect to or interest in the property that would bring the real property located in the state within the decedent's federal gross estate.

The bill provides that this provision must not be deemed to impose a lien in favor of the state against any real property included in the nonresident decedent's estate to any greater extent than if the nonresident decedent was a resident decedent owning an interest in a pass-through entity owning real property located here.

§ 32 — OBSOLETE GENERATION-SKIPPING TRANSFER TAX STATUTES

The bill repeals obsolete statutory provisions concerning the

generation-skipping transfer tax. Due to the repeal of the federal law on which the tax was based, the tax applied only to transfers made before January 1, 2005.

§ 33 — WAIVER OF PENALTIES, INTEREST, AND TAXES DUE AS A RESULT OF THE PE TAX

The bill requires the DRS commissioner to waive penalties, interest, and any addition to tax due for late personal income or PE tax payments for the 2018 tax year if (1) such amounts were increased or created as a result of the PE tax's enactment and (2) taxpayers make the tax payments within one year of their due date. The commissioner may do so regardless of the law requiring the Penalty Review Committee to review and approve tax penalty waivers.

§ 34 — REFERRER NOTICE AND REPORTING REQUIREMENTS

Existing law establishes sales and use tax notice and reporting requirements for referrers (i.e., people and businesses who connect sellers and consumers for a commission or fee).

The bill delays by six months, from July 1, 2019, to January 1, 2020, the date by which referrers must begin providing a quarterly notice to sellers to whom they transferred sales during the previous year. By law, the notice must, among other things, inform sellers of the requirement to collect and remit sales and use tax on sales made to Connecticut purchasers.

It also delays by one year, from January 31, 2020, to January 31, 2021, the date by which referrers must begin submitting an annual report to DRS providing the name and address of each seller who received the quarterly notice in the prior year and each seller that the referrer knows collected and remitted Connecticut sales and use taxes.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 50 Nay 0 (05/01/2019)