Testimony of Joseph Brennan  
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Testifying on  
HB 7410: AN ACT CONCERNING CERTAIN TAX RECOMMENDATIONS OF THE COMMISSION ON FISCAL STABILITY AND ECONOMIC GROWTH AND ESTABLISHING A STEM SCHOLARSHIP PROGRAM

Good afternoon Senator Fonfara, Representative Rojas, Senator Witkos, Representative Davis and members of the Finance, Revenue and Bonding Committee. My name is Joe Brennan and I am president and CEO of the Connecticut Business and Industry Association (CBIA), which represents thousands of large and small companies throughout Connecticut.

CBIA appreciates the Commission on Fiscal Stability and Economic Growth’s efforts to put forward a report that modernizes our state tax policy to promote economic growth while also addressing Connecticut’s multi-billion-dollar budget deficits and long-term fiscal issues. We support many aspects of HB 7410 and realize that addressing our challenges requires shared sacrifice. However, we urge the full legislature to do more to cut state spending, rather than relying on tax and fee increases.

The commission sought to rebalance our tax code to improve our economic competitiveness and stimulate greater economic growth. Importantly, the Tax Foundation estimates that Connecticut’s tax competitiveness improves from 47th to 39th with passage of this bill. And the bill achieves this without costing the state as it is revenue neutral.

I’d like to offer some comments and suggestions on several aspects of HB 7410 for your consideration:

• Like the governor’s proposed budget in SB 877, we believe there is a drafting error related to the business-to-business sales tax exemption for the digital downloading of canned software as it relates to the sale for resale of such software. Attached to this testimony is proposed language that would resolve this drafting error. This language has been reviewed by the state Department of Revenue Services.

• HB 7410 takes steps to eliminate Connecticut’s gift and estate taxes. Connecticut is one of only 12 states to have an estate tax and the only state in the country that has an estate and gift tax. These taxes create disincentives for individuals to remain in the state, particularly in their retirement years. Further, both the gift and estate tax create financial burdens impacting the ability of business owners to transfer their business to family members upon retirement or death.

• Section 28 aligns Connecticut tax policy for net operating loss deductions with the federal tax law by allowing businesses to deduct up to 80% of their tax liability rather than the current cap at 50%. The adoption of the federal standard makes our tax policy more competitive with other states and allows businesses struggling with Connecticut’s sluggish economy the opportunity to recover.
CBIA also supports the elimination of the capital base tax. The capital stock tax is a tax on the net worth of a business paid for “the privilege of carrying on or doing business in the state.” However, other states have realized that a capital stock tax can be destructive as it creates a disincentive to accumulating wealth or assets. It is particularly problematic for businesses with necessarily long R&D cycles, like the biopharma industry, before products can be released for sale. For this reason, many states are phasing out the capital stock tax or reducing the tax rate.

In addition to the points above, I’d like to offer a few comments regarding the effort in HB 7410 to modernize the sales and use tax through a significant expansion of the number of qualifying goods and services. These are essentially the same comments as those offered on the Governor’s tax bill that similarly, but more expansively, increased the number of services subject to the sales and use tax. We believe that any tax increase should be a last resort in balancing the state budget. This is particularly true in light of recent news that Connecticut’s revised 2018 job growth numbers were only half preliminary reports, with private sector gains originally reported at 23,100 jobs revised down to 9,700. It’s clear the state’s economy has still not fully recovered from the last recession and we must be very cautious about any additional tax increases on our businesses and residents.

Sales taxes on services impact taxpayers in many ways, usually depending on, among other factors, industry, company size, and location. For example, if a company sells its services only within the state and not near the state’s borders, then a services tax can be an administrative burden but not a competitive one. However, if a company sells its services into a jurisdiction that does not impose a similar tax, or if a business is located near the border of another state that does not impose a similar tax, then this becomes a competitiveness issue.

The legislature must pass a budget that enhances rather than impedes businesses’ ability to remain competitive. Analysis should be done to determine the competitive impact of each of the proposals listed before any final action is taken.

Further, we ask the committee to be mindful of the impact of any tax changes on small businesses that may also be hit with higher costs due to a proposed paid family and medical leave mandate and a steeply higher minimum wage.

We thank the committee for the opportunity to comment on HB 7410.
Sec. 3. Subdivision (13) of subsection (a) of section 12-407 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019):

(13) "Tangible personal property" means personal property[which] that may be seen, weighed, measured, felt or touched or[which] that is in any other manner perceptible to the senses,[including] "Tangible personal property" includes (A) digital goods, (B) canned or prewritten computer software, [Tangible personal property includes] including canned or prewritten software that is electronically accessed or transferred, other than when purchased by a business for use by such business, and any additional content related to such software, and (C) the distribution, generation or transmission of electricity.

New section:

Sec. x. Subdivision (5) of section 12-410 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019):

(5) (A) For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax, a sale of any service described in subdivision (37) of subsection (a) of section 12-407 shall be considered a sale for resale only if the service to be resold is an integral, inseparable component part of a service described in said subdivision that is to be subsequently sold by the purchaser to an ultimate consumer. The purchaser of the service for resale shall maintain, in such form as the commissioner requires, records that substantiate: (i) From whom the service was purchased and to whom the service was sold, (ii) the purchase price of the service, and (iii) the nature of the service to demonstrate that the services were an integral, inseparable component part of a service described in subdivision (37) of subsection (a) of section 12-407 that was subsequently sold to a consumer.

(B) Notwithstanding the provisions of subparagraph (A) of this subdivision, no sale of a service described in subdivision (37) of subsection (a) of section 12-407 by a seller shall be considered a sale for resale if such service is to be subsequently sold by the purchaser to an ultimate consumer that is affiliated with the purchaser in the manner described in subparagraph (A) of subdivision (62) of section 12-412.

(C) For purposes of the provisions of subparagraph (A) of this subdivision, the sale of canned or prewritten computer software shall be considered a sale for resale if such software is subsequently sold, licensed or leased unaltered by the purchaser to an ultimate consumer. The purchaser of the software for resale shall maintain, in such form as the commissioner requires, records that substantiate: (i) From whom the software was purchased and to whom the software was sold, licensed or leased, (ii) the purchase price of the software, and (iii) the nature of the transaction with the ultimate consumer to demonstrate that the same software was provided unaltered to the ultimate consumer.
(D) (i) For purposes of the provisions of subparagraph (A) of this subdivision, the sale of digital goods shall be considered a sale for resale if the digital goods are subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, as an integral, inseparable component part of a service described in subdivision (26), (27), (37), or (39) of subsection (a) of section 12-407 by the purchaser of the digital good to an ultimate consumer. The purchaser of the digital goods for resale shall maintain, in such form as the commissioner requires, records that substantiate: (I) From whom the digital goods were purchased and to whom the services described in subdivision (26), (27), (37), or (39) of subsection (a) of section 12-407 was sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, (II) the purchase price of the digital goods, and (III) the nature of the transaction with the ultimate consumer.

(ii) For purposes of the provisions of subparagraph (A) of this subdivision, the sale of services described in subdivision (37) of subsection (a) of section 12-407 shall be considered a sale for resale if such services are subsequently resold as an integral inseparable component part of digital goods sold by the purchaser of the services to an ultimate consumer of the digital goods. The purchaser of the services described in subdivision (37) of subsection (a) of section 12-407 for resale shall maintain, in such form as the commissioner requires, records that substantiate: (I) From whom the services described in subdivision (37) of subsection (a) of section 12-407 were purchased and to whom the digital goods were sold, licensed, or leased, (II) the purchase prices of the services described in subdivision (37) of subsection (a) of section 12-407, and (III) the nature of the transaction with the ultimate consumer.