



STATE OF CONNECTICUT DEPARTMENT OF REVENUE SERVICES

TESTIMONY PRESENTED TO THE JUDICIARY COMMITTEE FEBRUARY 21, 2020

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Testimony in Opposition to House Bill No. 5050 (Raised), An Act Concerning the Duration and Release of Estate and Probate Fee Liens and the Repeal of the Succession Tax

Senator Winfield, Representative Stafstrom, Ranking Members, and Distinguished Members of the Judiciary Committee, thank you for the opportunity to present written testimony in opposition to House Bill No. 5050 (Raised), *An Act Concerning the Duration and Release of Estate and Probate Fee Liens and the Repeal of the Succession Tax*.

As an initial matter, I understand that it has been represented to the Judiciary Committee that the Department of Revenue Services (“Department”) supports House Bill No. 5050. That is not accurate. The Department does not support House Bill No. 5050. Any representations to the contrary should be disregarded as they were made without my authorization.

As to the specifics of House Bill No. 5050, there are several provisions in the bill that will negatively impact the Department and the taxpayers of the State. Specifically, sections 5 and 43 move a significant position within the Department to the Office of the Attorney General and impact the Department’s authority to litigate tax appeals before the Tax and Administrative Appeals Session of the Connecticut Superior Court (“Tax Court”).

By way of explanation, Section 43 repeals numerous provisions of the General Statutes, including Conn. Gen. Stat. § 12-389. Conn. Gen. Stat. § 12-389 is important for several reasons. First, as you may be aware, Conn. Gen. Stat. § 12-389 provides for a significant position within the Department, the Department’s First Assistant Commissioner. The Department’s First Assistant Commissioner serves as the Department’s General Counsel and is responsible for and oversees the Department’s Legal Services Bureau, which is comprised of the Department’s Appellate Division, the Department’s Litigation Division, the Department’s Criminal Investigation Division, and the Department’s Security Division. The Legal Services Bureau is comprised of approximately 40 employees.

Conn. Gen. Stat. § 12-389 also provides the Department with the authority to litigate tax appeals before the Tax Court. Recognizing the specialized nature of tax appeals, the Department and the Office of the Attorney General jointly submitted legislation to the General Assembly in 2003

proposing to transfer responsibility for litigating tax appeals from the Office of the Attorney General to the Department. The General Assembly agreed with this joint proposal and added language to Conn. Gen. Stat. § 12-389 authorizing the Department to litigate tax appeals. I believe that this decision has been more than validated as, over the nearly seventeen years since the amendment to Conn. Gen. Stat. § 12-389 was enacted, the Department has prevailed in 87% of the cases that have been litigated to decision before the Tax Court.

As noted above, section 43 repeals Conn. Gen. Stat. § 12-389 and, in so doing eliminates the First Assistant Commissioner position and abolishes the Department's authority to litigate tax appeals. Section 5 is an entirely new provision that purports to restore both the First Assistant Commissioner position and maintain the Department's ability to litigate tax appeals. However, upon review, section 5 does neither of these things. Rather the appointment of First Assistant Commissioner is committed to the sole discretion of the Attorney General, thereby shifting essential executive branch functions from the Department to the Office of the Attorney General.

Under current law, the First Assistant Commissioner is a classified position filled by the Commissioner of Revenue Services. In the proposed legislation, section 5 provides the Attorney General with the discretionary authority to appoint a First Assistant Commissioner, although he may choose to delegate this authority to the Department. As such, section 5 effectively removes the First Assistant Commissioner position from the Department and transfers that position to the Office of the Attorney General.

Movement of this position would serve to shift authority for overseeing certain vital statutorily prescribed functions assigned by the General Assembly to the Commissioner of Revenue Services, including but not limited to administrative review of taxpayer protests, criminal investigations, and internal security, to the Office of the Attorney General. Put simply, removal of such functions would result in the Commissioner of Revenue Services being unable to satisfy his statutorily prescribed responsibilities.

Moreover, given the discretionary nature of section 5, the Attorney General is neither obligated nor required to appoint a First Assistant Commissioner. Even if he does make such an appointment, as the position has been transferred to the Office of the Attorney General the Department's authority to litigate tax appeals would revert to the Office of the Attorney General. The Department does not support such a change as the rationale behind the 2003 legislation described above remains true today. Tax appeals are highly specialized and require expertise to successfully litigate. To that end, in 2003 before the Department assumed responsibility for litigating tax appeals there were nearly 300 tax appeals pending before the Tax Court. That backlog had been eliminated, thanks to the hard work of the Department's First Assistant Commissioner and the tax attorneys at the Department who achieved an 87 % success rate. These statistics speak for themselves. It is the best interests of the State to continue with the current system and have the tax attorneys at the Department who have been trained in this specialty to continue their good work. Given that House Bill No. 5050 moves the First Assistant Commissioner position to the Office of the Attorney General and potentially undercuts the Department's authority to litigate tax appeals, which it has done so successfully over the past seventeen years, the Department cannot and does not support House Bill No. 5050.

That said, I understand that portions of this bill are supported by the Connecticut Bar Association (“CBA”). Out of respect for the CBA and its members, I convened a meeting earlier this week with representatives of the CBA at which I explained the Department’s concerns with the bill as currently drafted. I am pleased to report that the CBA understands my concerns and is committed to eliminating the objectionable language. I anticipate receiving a revised draft from the CBA shortly. Therefore, in order to allow the Department and the CBA the opportunity to develop mutually acceptable language, I respectfully request that the Judiciary Committee defer action on House Bill No. 5050 at this time.

Thank you again for the opportunity to submit testimony to the Judiciary Committee and for the Committee’s consideration of the Department’s request to defer action on House Bill No. 5050.