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## OLR Bill Analysis

### sSB 1077

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

#### **SUMMARY**

This bill makes the following tax-related changes:

1. codifies an existing Department of Revenue Services (DRS) policy by allowing pass-through entities to elect to remit composite income tax on behalf of their nonresident members (§§ 1 & 2);
2. makes technical corrections to the estate and gift tax laws (§§ 3-5);
3. modifies the conveyance tax credit that applies against the personal income tax (§ 6);
4. generally prohibits taxpayers from filing refund claims for closed audit periods (§ 7);
5. establishes conditions under which taxpayers must file amended income tax returns, and may file claims for refunds, as a result of certain changes and corrections made by another qualifying jurisdiction (§§ 8 & 9);
6. modifies the responsible party penalty for income tax withholding (§ 10);
7. establishes conditions under which the DRS commissioner and DRS special police may disclose specified tax return information in connection with criminal investigations (§§ 11 & 12); and
8. designates DRS special police as “peace officers,” thus giving

them certain powers and legal protections under state law (§ 13).

EFFECTIVE DATE: Upon passage, except the technical corrections to the estate and gift tax laws are effective October 1, 2021, and the amended tax return provisions apply to tax years beginning on or after January 1, 2021.

## **§§ 1 & 2 — NONRESIDENT COMPOSITE INCOME TAX RETURNS**

### ***Composite Return Election***

The bill codifies an existing DRS policy by allowing pass-through entities (PE) (i.e., affected business entities) to elect, on an annual basis, to remit composite income tax on behalf of their nonresident members. (Under the policy, if a PE makes this election, its nonresident members are excused from filing their own Connecticut personal income tax returns if they have no Connecticut source income other than from the electing PE.) Under the bill, the PEs must (1) make this election by the due date or extended due date for remitting their PE tax returns and (2) remit the composite returns subject to any requirements and conditions the DRS commissioner prescribes in the return form and instructions.

### ***Calculating the Tax Due***

A PE that makes this election must remit to DRS the composite income tax, plus any applicable interest and penalties, on behalf of each of its nonresident individual members. Under the bill, these payments are considered personal income tax payments by the nonresident individuals for the taxable period.

The composite income tax due on behalf of each nonresident individual member is (1) each member's distributive share of the PE's Connecticut source income multiplied by 6.99%, minus (2) each nonresident member's PE tax credit. The amount due on behalf of any member may not be less than zero. Composite income tax payments are due at the same time as PE tax payments, and subject to the same penalties and interest.

***Nonresident Filing and Payment Requirements***

Under the bill, if the only Connecticut source income for the nonresident member (or in the case of joint filers, the nonresident member and spouse) is from one or more electing PEs, the composite income tax return and payment remitted by the PE on his or her behalf satisfies his or her Connecticut income tax filing and payment requirements. But the nonresident member (or member and spouse) is not excused from filing a separate Connecticut income tax return if he or she has Connecticut source income from sources other than the electing PE. Any such member must receive credit for the composite income tax payment made by the PE on his or her behalf.

In either case, the DRS commissioner may make any deficiency assessments against the PE or the member, but the member's assessment must be limited to his or her share of the deficiency. These deficiency assessments generally must be made within three years after the PE annual return's filing, except as provided under existing law for income tax collections in which a taxpayer has not filed a return, committed fraud, or otherwise intended to evade the taxes due.

**§§ 3-5 — TECHNICAL CORRECTIONS TO THE ESTATE AND GIFT TAX LAWS**

The bill reestablishes definitions of “federal basic exclusion amount” for purposes of the estate and gift tax laws and corrects a reference to the taxable threshold for filing estate tax returns with the DRS commissioner.

Under the bill, “the federal basic exclusion amount” is the dollar amount published annually by the Internal Revenue Service (1) at which a decedent would be required to file a federal estate tax return based on the value of his or her gross estate and federal taxable gifts, or for the gift tax, (2) over which a donor would owe federal gift tax based on the value of the donor's federally taxable gifts. The same definitions applied under prior law.

**§ 6 — CONVEYANCE TAX CREDIT AGAINST THE INCOME TAX**

Current law allows taxpayers who paid conveyance tax at the 2.25%

marginal rate to claim a property tax credit against their state income tax liability based on the amount they paid in conveyance tax at this rate. The bill instead allows them to claim a credit equal to the difference between the 2.25% rate and the 1.25% rate. (By law, the 2.25% rate applies to any portion of a residential dwelling's sales price that exceeds \$2.5 million; the 1.25% rate applies to any portion that exceeds \$800,000 and is less than or equal to \$2.5 million.)

As under existing law, taxpayers may use the conveyance tax payment as the basis for the property tax credit for three years, beginning in the third tax year after the year in which the taxpayer paid the conveyance tax. The credit in each year cannot exceed 33.3% of the eligible tax payment. The bill also makes technical changes.

#### **§ 7 — LIMITATION ON CLAIMS FOR REFUNDS FOR CLOSED AUDIT PERIODS**

The bill generally prohibits taxpayers from filing refund claims for tax periods for which the results of any civil audit, investigation, examination, or reexamination conducted by the DRS commissioner have become final by operation of law or by exhaustion of all available administrative and judicial rights of appeal. Under the bill, the period covered by the audit, investigation, examination, or reexamination must be closed and the taxpayer may not file any additional refund claims for the period, except for specified refund claims authorized under existing corporation business and personal income tax laws.

#### **§§ 8 & 9 — INCOME TAX REFUNDS DUE TO CHANGES MADE BY ANOTHER JURISDICTION**

By law, taxpayers must file an amended personal income tax return if they claimed a credit for income tax paid to a qualifying jurisdiction (e.g., another state) on their original return and the tax officials or courts of the qualifying jurisdiction made a change to, or a correction that changes, the amount of the taxpayer's allowable credit (and thus changes the amount of Connecticut income tax due). The bill additionally requires taxpayers who claimed this credit to file an amended return for any tax year in which the tax officials or courts of the qualifying jurisdiction issued an assessment against the taxpayer

for failing to file an income tax return with the jurisdiction.

As under existing law, taxpayers must file these amended returns within 90 days after the final determination of the amount of tax due to the other jurisdiction. Under the bill, if a taxpayer files an amended return as a direct result of paying such an assessment to a qualifying jurisdiction, the taxpayer is eligible for a refund for any resulting Connecticut income tax overpayment only if the amended return is filed within five years after the original Connecticut income tax return was due. Amended returns filed more than five years after this date are ineligible for a refund under the bill.

**§ 10 — RESPONSIBLE PERSON PENALTY FOR WITHHOLDING TAX**

By law, anyone required to collect, truthfully account for, and pay over Connecticut personal income tax who willfully fails to do so, or who willfully attempts to evade or defeat the tax or its payment, is liable for a penalty equal to the total amount of tax evaded or not collected, accounted for, or paid over. The bill additionally makes them liable for any penalty or interest attributable to these actions. Under the bill, the penalty amount for which a person may be personally liable under this provision must be collected according to existing state income tax collection laws.

**§§ 11 & 12 — AUTHORIZATION TO SHARE RETURN INFORMATION IN CONNECTION WITH CRIMINAL INVESTIGATIONS**

The bill allows DRS special police, in connection with their official criminal tax investigation duties and the enforcement of any state criminal law, to disclose return information if doing so is necessary to obtain information that is not otherwise reasonably available (see BACKGROUND).

The bill also allows the DRS commissioner, subject to any terms and conditions he prescribes, to disclose returns and return information to authorized members of organized local police departments upon a written request by the department's police chief. The request must:

1. establish the return or return information's relevance to an authorized investigation into a state criminal law violation being conducted by the department;
2. establish that no other source of such information is available to the department; and
3. include the name of each department member who will be authorized to receive the information.

The DRS commissioner may disclose the information if he deems it to be relevant to the investigation. The bill prohibits any member of the police department who receives the information from disclosing it except in connection with a criminal prosecution, including related judicial proceedings, when the information is directly involved in and necessary to the prosecution. Violators are subject to a fine up to \$1,000, up to one year in prison, or both.

#### **§§ 13-20 — DRS SPECIAL POLICE**

The bill expands the definition of "peace officer" to include DRS special police and makes conforming changes. Under current law, DRS special police have many, but not all, the powers and protections afforded to peace officers. By designating them as peace officers, the bill specifically allows them to, among other things:

1. use a hand-held cellphone while driving while performing official duties within the scope of their employment (CGS § 14-296aa);
2. be considered peace officers for purposes of the state's Blue Alert system, which can be used to apprehend anyone suspected of killing or seriously injuring a peace officer or locate any officer who is missing (CGS § 29-1k);
3. obtain a motor vehicle's event data recorder pursuant to a search warrant (CGS § 14-164aa); and
4. be considered peace officers subjected to a substantial risk of

bodily injury at the scene of 1st degree arson (CGS § 53a-111).

By law, the DRS special police are appointed by the emergency services and public protection commissioner and have all the powers of state police.

## **BACKGROUND**

### ***Tax Returns and Return Information***

By law, a “return” is any of the following filed with the DRS commissioner by, on behalf of, or with respect to, anyone: (1) a tax or information return; (2) an estimated tax declaration; (3) a refund claim; or (4) any license, permit, registration, or other application. The term also covers amendments or supplements, including supporting schedules, attachments, or lists that supplement or are part of a filed return.

“Return information” includes:

1. a taxpayer’s identity;
2. the nature, source, or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax under- or over-reporting, or tax payments; and
3. any other data received, recorded, prepared, or collected by or furnished to the DRS commissioner regarding (a) a return or (b) any determination of liability for a tax, penalty, interest, fine, forfeiture, or other imposition or offense (CGS § 12-15(h)(1) & (2)).

## **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable  
Yea 46 Nay 0 (04/22/2021)