PA 21-3—HB 6516
Emergency Certification

AN ACT MITIGATING ADVERSE TAX CONSEQUENCES RESULTING FROM EMPLOYEES WORKING REMOTELY DURING COVID-19, AND CONCERNING THE REMOVAL OF LIENS ON THE PROPERTY OF PUBLIC ASSISTANCE BENEFICIARIES AND A THREE-TIERED GRANTS IN LIEU OF TAXES PROGRAM

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§ 1 — TAXES AND REMOTE WORK DURING THE COVID-19 PANDEMIC

Specifies conditions under which certain residents who worked remotely from Connecticut for employers in other states must be allowed a Connecticut income tax credit for taxes paid to the other state for the 2020 tax year; prohibits DRS from considering the activities of employees who worked remotely in Connecticut due solely to the COVID-19 pandemic in determining whether an employer has nexus with Connecticut for any state tax

Income Tax Credit for Taxes Paid to Other States

By law, Connecticut generally provides a resident taxpayer who works for an out-of-state employer a tax credit for qualifying income taxes he or she paid to the other state for services performed in that state.

For the 2020 tax year, the act extends this tax credit to resident taxpayers who

paid income taxes to another state while working remotely in Connecticut under the following circumstances:

1. the resident paid income tax to another state that uses a "convenience of the employer rule" (see BACKGROUND), including taxes paid for income earned while working remotely from Connecticut by necessity or
2. the resident paid income tax to another state under a law or rule requiring nonresident employees to pay nonresident income tax on income earned while working remotely from Connecticut due to the COVID-19 pandemic if they were performing work within the other state immediately before March 11, 2020.

Under the act, "convenience of the employer rule" means a law or rule that is substantially similar to Connecticut's existing "convenience of the employer rule" law, whether or not it is reciprocal.

Nexus for Connecticut Tax Purposes

The act prohibits the Department of Revenue Services (DRS) from considering the activities of any employees who worked remotely from Connecticut during the 2020 tax year solely due to the COVID-19 pandemic in determining whether an employer has nexus with Connecticut for any state tax. (Tax nexus refers to the amount and type of activity that must be present before a person or business is subject to a state's taxing authority. State law establishes rules for determining tax nexus, subject to federal constitutional restrictions.)
EFFECTIVE DATE: Upon passage

Background

Convenience of the Employer Rule. Some states use the "convenience of the employer rule" (i.e., convenience rule) for sourcing income earned by nonresidents who work for in-state employers at a location outside the state (e.g., from a home office). Under the convenience rule, a nonresident taxpayer's wage income is sourced to the employee's physical location if he or she is working remotely by necessity; alternatively, the income is sourced to the employer's location if the employee is working remotely for his or her convenience.

§§ 2-4 — LIMITING PUBLIC ASSISTANCE RECOVERIES OF REAL PROPERTY

Beginning in FY 22, and unless required by federal law, (1) prohibits the state from recovering cash and medical assistance from liens placed on real property and (2) requires the state to deem any certificate or lien previously filed on such properties released

In Connecticut, the state is entitled to recover public assistance provided by the Department of Social Services (DSS) under its medical assistance (i.e., Medicaid) and cash assistance programs (i.e., State-Administered General Assistance (SAGA), State Supplement Program (SSP), and Temporary Family Assistance (TFA), which replaced Aid to Families with Dependent Children

(AFDC)).

By law, the state generally has a claim against any kind of property or property interest acquired by a public assistance recipient, or their parents if the recipient was a child. These state claims have priority over most other unsecured claims. The state's primary collection mechanisms are to place liens on windfalls, such as inheritances and lawsuits, and recover from estates after the recipient dies.

Beginning July 1, 2021, the act prohibits the state from recovering cash and medical assistance from liens placed on real property, unless required to do so by federal law. In addition, the act requires the state to deem any certificate or lien previously filed on such properties released if federal law does not require recovering the assistance. Generally, federal law requires recovery of certain Medicaid payments (see BACKGROUND).

The act additionally prohibits the state from recovering payments for actions brought by current or former tenants or occupants against owners or lessors of residential premises or manufactured mobile home parks (i.e., tenant-landlord actions). It also makes several technical and conforming changes.

EFFECTIVE DATE: July 1, 2021

Acceptance of Mortgage Notes & Deeds (§ 2)

Prior law authorized the Department of Administrative Services (DAS) commissioner to accept mortgage notes and deeds for payment of claims due for welfare (i.e., cash) assistance or institutional care. The act limits the claims the commissioner may accept to those due for institutional care or state medical assistance, to the extent required by federal law.

Homeowners & Real Property Liens (§ 3)

The law prohibits deeming an individual or his or her dependents ineligible for assistance under the SSP, Medicaid, TFA, SAGA, or SNAP programs for owning an interest in his or her home if the property's equity does not exceed program asset limits. Prior law authorized the DSS commissioner to place a lien against any property to secure the state's claim for public assistance it had paid or would pay under these programs (CGS § 17b-79).

Beginning July 1, 2021, the act prohibits the commissioner from placing these liens on real property to recover cash assistance or medical assistance, unless required by federal law. It also requires the state to deem any certificate or lien previously filed on the property released if federal law does not require recovering the assistance. (PA 21-2, June Special Session (JSS), § 455, makes a technical change to specify that she may only place these liens on real property to recover cash assistance or medical assistance for amounts required to be recovered under federal law.)

Liens on Real Property Windfalls (§ 4)

The law gives the state a claim that generally has priority over all other

unsecured claims when a recipient of aid under SSP, Medicaid, AFDC, TFA provided to anyone over age 18, or SAGA acquires property of any kind or interest in the property. This includes windfalls such as lottery winnings, proceeds from a lawsuit, and inheritances.

By law, the state's claim against the windfall from a lawsuit or inheritance generally equals the lesser of the amount of assistance paid or 50% of the windfall proceeds. For windfalls other than from a lawsuit or inheritance (e.g., lottery win), the state's claim is for the lesser of 100% of the proceeds or the full amount of assistance provided (CGS §§ 17b-93, -94). (PA 21-2, JSS, §§ 456-458, further limits the state's claim against lawsuit proceeds and inheritances to the amount of the assistance paid that the state must recover under federal law. In the case of a liable parent whose windfall is not subject to recovery under federal law, the state's claim is capped at the 50% of the lawsuit proceeds or inheritance received by the parent or the amount of assistance the parent owes, whichever is less. As under existing law, lawsuit proceeds are calculated after payment of all lawsuit-connected expenses (e.g., attorney fees).)

The act prohibits the state from applying liens on real property to enforce its claim beyond the amount that federal law requires to be recovered. Beginning July 1, 2021, the act prohibits the state from recovering cash assistance or medical assistance from a lien filed on any real property, unless required by federal law. It requires the state to deem released any lien on real property filed under CGS § 17b-93 before July 1, 2021, on such property, estate, or claim of any kind, if federal law does not require the assistance recovery. (Beginning July 1, 2021, PA 21-2, JSS, §§ 456-458, expands the prohibition on these recoveries to also include claims filed against property, a property interest, or estate or claim of any kind, and proceeds from a lawsuit or estate, unless the state must recover the assistance under federal law and the provisions of CGS § 17b-93. The act also expands upon the types of previously filed claims under CGS § 17b-93 that must be deemed released as of July 1, 2021, to include state claims against property, a property interest, or estate or claim of any kind, and proceeds from a lawsuit or estate, filed by or on behalf of the state if the recovery is not required by federal law and the statute's provisions.)

The law prohibits the state from recovering certain payments (e.g., housing relocation assistance). The act additionally prohibits the state from recovering payments for actions brought by current or former tenants or occupants against owners or lessors of residential premises or manufactured mobile home parks (i.e., tenant-landlord actions). The act specifies that these exemptions do not apply to recoveries required under federal law.

Background

Medicaid Recoveries Under Federal Law. When Medicaid began in 1965, states had the option to recover certain Medicaid costs spent on recipients age 65 or older after they died. This changed in 1993 when Congress passed the Medicaid Estate Recovery Program as part of an omnibus budget act (§ 5112). The program generally requires states to recover Medicaid long-term care and

related costs (i.e., for nursing facility services, home and community-based services, and related hospital and prescription drug services) from the estates of deceased recipients who incurred these costs from the age of 55 and older. The 1993 federal law also gave states the option to recover all other Medicaid expenses provided to these individuals, except Medicare cost-sharing paid on behalf of Medicare Savings Program beneficiaries.

However, Congress retained the existing prohibition on estate recovery in cases where there is a surviving spouse, a child under the age of 21, or a child of any age who is blind or disabled (although the law allows recovery in some circumstances after the spouse dies or non-disabled child reaches age 21). In the cases of property, the law also carved out other exceptions for adult children who have served as caretakers in the homes of the deceased; property owned jointly by siblings; and income-producing property, such as farms.

States must also establish procedures for deferring or fully or partially waiving estate recovery when it would cause an undue hardship to the recipient's heir or surviving relative.

Related Acts. PA 21-65 requires DAS to make a reasonable effort to inform next of kin in writing when a person supported or cared for by the state dies and leaves only a small personal estate, that the state intends to become the estate's legal representative to secure partial or full reimbursement of the state's claim. (PA 21-2, JSS, § 454, made the same small state administration changes, effective October 1, 2021, but § 496 of the act repealed them effective June 23, 2021.)

§§ 5-8 — PAYMENT IN LIEU OF TAXES (PILOT) GRANTS

Establishes a minimum reimbursement rate for PILOT grants and a method for prorating the grants when appropriations are not enough to fund the full grant amounts; requires OPM to disburse from MRSA an amount sufficient to fund the prorated PILOT grants

Proration Method (§ 5)

Connecticut's PILOT program provides grants to (1) municipalities for state-owned property, municipally owned airports, and Indian reservation land, and (2) municipalities and taxing districts for private, nonprofit college and hospital property. (PA 21-2, June Special Session (JSS), § 445, makes taxing districts eligible for the state, municipal, and tribal property PILOTs.) Existing law establishes reimbursement rates for PILOT-eligible property (e.g., 45% of lost property tax revenue for most state-owned real property and 77% for nonprofit college and hospital property) and requires additional payments for municipalities that host specified properties or institutions.

Under prior law, if the state's annual appropriation was not enough to fully fund the PILOTs, the grants had to be reduced according to a formula that made smaller reductions to the 35 municipalities and districts with the highest percentage of tax-exempt property on their grand lists. Beginning in FY 22, the act eliminates this proration method and instead establishes a new one based on each municipality's (1) equalized net grand list (ENGL) per capita, (2) designation as an alliance district, and (3) percentage of state-owned property. It

also requires that municipalities and districts receive PILOT grants that equal or exceed the grants they received in FY 21.

Under the act, the Office of Policy and Management (OPM) must list municipalities, boroughs, and districts based on their ENGL per capita, using grand list data for the fiscal year three years prior to the year in which the PILOT grant is to be paid (e.g., FY 19 ENGL data for grants paid in FY 22). Boroughs and districts receive the same ENGL per capita as the municipality in which they are located.

If the amount appropriated for PILOT grants is not enough to fully fund them, the act requires that (1) municipalities (including boroughs) and districts be divided into three tiers based on their ENGL per capita and (2) each tier receive the grant percentage shown in the table below. Regardless of its ENGL per capita, a municipality must be classified as a tier one municipality if (1) it is designated as an alliance district or (2) more than 50% of its property is state-owned real property.

Prorated PILOT Grants Under the Act

Tiers	*Percentage of PILOT Grant*
Tier One: ENGL per capita of less than $100,000 Any municipality designated as an alliance district Any municipality in which more than 50% of the property is state-owned real property	50%
Tier Two: ENGL per capita of at least $100,000 but no more than $200,000	40%
Tier Three: ENGL per capita exceeding $200,000	30%

Under the act, if the annual appropriation is not enough to fund PILOT grants at the percentages shown in the table above, then the grants to each municipality and district must be proportionately reduced, but they cannot be less than what was received in FY 21. (PA 21-2, JSS, §445, specifies that this minimum applies to the total amount of PILOT grants paid to a municipality or district.) Conversely, if the annual appropriation exceeds the amount required to fund PILOT grants at these percentages, then the grants must be proportionately increased.

The act also makes numerous technical and conforming changes and eliminates obsolete provisions.

PILOTs for Specified Municipalities and Properties (§§ 5 & 7)

Bridgeport. The act requires that an additional $5 million PILOT grant be paid annually to Bridgeport. The grant must be (1) paid by September 30 each year from the state's PILOT appropriation and (2) in addition to the amount due to Bridgeport under the requirements described above. (PA 21-2, JSS, §§ 444 & 445, instead requires this grant to be funded from the municipal revenue sharing

account (MRSA) distribution for PILOT grants, except as provided under the act for FYs 22 and 23).

U.S. Department of Veterans Affairs (VA) Connecticut Healthcare Systems Campuses. By law, the PILOT reimbursement rate for VA Connecticut Healthcare Systems campuses is 100%. Under existing practice, these PILOT grants are paid in full and not subject to proration when the PILOT appropriation is not enough to fully fund the program. The act conforms to this practice and retains the 100% reimbursement rate for these properties, excluding them from the prorated PILOT allocation formula described above. (PA 21-2, JSS, § 444, requires this grant to be funded from the MRSA distribution for PILOT grants, except as provided under the act for FYs 22 and 23).

CT Port Authority. The act restores a provision that applied prior to FY 19, which deemed property and facilities owned by the Connecticut Port Authority to be state-owned real property for purposes of the PILOT program and required the state to provide a PILOT to the municipality in which such property and facilities are located. (PA 21-2, JSS, § 445, increases the PILOT reimbursement rate for such Connecticut Port Authority property and facilities to 100%, rather than the 45% reimbursement rate that generally applies to state-owned property.)

MRSA and Select PILOT Account (§§ 6 & 8)

Beginning in FY 22, the act requires OPM to disburse from MRSA an amount sufficient to pay the prorated PILOT grants described above. (PA 21-2, JSS, § 448, supersedes this requirement for FYs 22 and 23 and instead requires that PILOT grants be paid from the funds appropriated in these fiscal years for the grants and the remaining balance due be paid from MRSA.)

The act eliminates the select PILOT account, which under prior law was a separate, nonlapsing General Fund account funded by disbursements from MRSA. Prior law required OPM to use funds directed to the select PILOT account from MRSA to pay a specified portion of the increased PILOT grants to municipalities and districts under the prior proration method.

EFFECTIVE DATE: July 1, 2021