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## OLR Bill Analysis

sHB 5473 (as amended by House "A")\*

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

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[BACKGROUND](#)

**SUMMARY**

This bill makes numerous tax administration-related changes. Among other things, it:

1. caps at \$5 million the amount of interest (a) added to any tax refund issued by the Department of Revenue Services (DRS) commissioner for a tax period and (b) that a court may award in any tax appeal in connection with a tax refund claim for a tax period (§ 4);
2. establishes conditions under which the DRS commissioner and DRS special police may disclose specified tax return information in connection with criminal investigations (§§ 6 & 7);

3. designates DRS special police as “peace officers,” thus giving them certain powers and legal protections under state law (§§ 8-14);
4. modifies the conveyance tax credit that applies against the personal income tax (§ 20);
5. authorizes the DRS commissioner to impose more than one sales and use tax deficiency assessment (i.e., reassessments) for a tax period (§§ 21-30);
6. generally prohibits the DRS commissioner from collecting a tax after 10 years (a) from the date the tax was reported on a return filed with DRS or (b) in the case of an assessment, from the date the assessment became final (§ 31);
7. requires the DRS commissioner to study the feasibility of selling outstanding tax liabilities and report his findings and recommendations to the Finance, Revenue and Bonding Committee (§ 32);
8. requires the attorney general and DRS commissioner to report to the Finance, Revenue and Bonding Committee on tax enforcement efforts in other states during the 2021 and 2022 calendar years (§ 34); and
9. expands the circumstances under which the DRS commissioner is prohibited from issuing or renewing certain permits or licenses (§ 35).

\*House Amendment “A” eliminates provisions (1) establishing conditions under which the DRS commissioner may sell certain outstanding tax debt to consumer collection agencies, requiring instead that the commissioner conduct a study on the feasibility for doing so, and (2) authorizing the DRS commissioner to enter into agreements with collection agencies and attorneys for collection services to collect a taxpayer’s unpaid taxes within and outside the state. It also adds the provision requiring the attorney general and DRS commissioner to

report to the legislature on tax enforcement efforts in other states during the 2021 and 2022 calendar years.

EFFECTIVE DATE: Upon passage, except the technical corrections to the estate and gift tax laws are effective October 1, 2022, and the amended tax return provisions apply to tax years beginning on or after January 1, 2022.

### **§ 1 — RESPONSIBLE PARTY PENALTY FOR WITHHOLDING TAX**

*Modifies the responsible party penalty for income tax withholding*

By law, anyone required to collect, truthfully account for, and pay 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. 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.

### **§§ 2 & 3 — INCOME TAX REFUNDS DUE TO CHANGES MADE BY ANOTHER JURISDICTION**

*Establishes conditions under which taxpayers must file amended income tax returns, and may file refund claims, because of certain changes and corrections made by another qualifying 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 jurisdiction's tax officials or courts made a change to, or a correction that changes, the amount of tax the taxpayer owes to the jurisdiction (and thus changes the amount of the allowable Connecticut income tax credit). The bill additionally requires taxpayers who claimed this credit to file an amended return for any tax year in which the qualifying jurisdiction's tax officials or courts 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 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.

#### **§ 4 — INTEREST ON TAX REFUNDS**

*Caps at \$5 million the amount of interest (a) added to any tax refund issued by the DRS commissioner for a tax period and (b) that a court may award in any tax appeal in connection with a tax refund claim for a tax period*

The bill caps at \$5 million the amount of interest (1) added to any tax refund issued by the DRS commissioner for a tax period and (2) that a court may award in any tax appeal in connection with a tax refund claim for a tax period.

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

*Limits the period during which taxpayers may file refund claims for closed audit periods*

The bill limits the period during which taxpayers may file refund claims for tax periods for which the results of any DRS-conducted civil audit, investigation, examination, or reexamination have become final. Under the bill, taxpayers must file these claims within six months after the date the results become final by operation of law or by exhaustion of all available administrative and judicial rights of appeal, whichever is later.

Under the bill, after this six-month period, the tax 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.

#### **§§ 6 & 7 — AUTHORIZATION TO SHARE RETURN INFORMATION IN CONNECTION WITH CRIMINAL INVESTIGATIONS**

*Establishes conditions under which the DRS commissioner and DRS special police may disclose specified tax 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 relevant to the investigation. The bill prohibits any police department member 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.

#### **§§ 8-14 — DRS SPECIAL POLICE**

*Designates DRS special police as "peace officers," giving them certain powers and legal protections under state law*

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 under the state's Blue Alert system, which can be used to apprehend anyone suspected of killing or seriously injuring a peace officer or to 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.

## **§§ 15 & 16 — NONRESIDENT COMPOSITE INCOME TAX RETURNS**

*Codifies an existing DRS policy by allowing pass-through entities to elect to remit composite income tax on behalf of their nonresident members*

### ***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 filing their PE tax returns and (2) file 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 member's PE tax credit. The amount due on any member's behalf 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 the PE remitted 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 the PE made 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.

### **§§ 17-19 — TECHNICAL CORRECTIONS TO THE ESTATE AND GIFT TAX LAWS**

*Makes technical corrections to the estate and gift tax laws*

The bill reestablishes definitions of "federal basic exclusion amount" under 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 (2) for the gift tax, 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.

## **§ 20 — CONVEYANCE TAX CREDIT AGAINST THE INCOME TAX**

*Modifies the conveyance tax credit that applies against the personal 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 tax paid they paid in excess of 1.25% on the portion of sales price exceeding \$800,000. (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.

## **§§ 21-30 — SALES AND USE TAX REASSESSMENTS**

*Authorizes the DRS commissioner to impose more than one sales and use tax deficiency assessment (i.e., reassessments) for a tax period*

### ***Deficiency Assessments and Reassessments***

The bill authorizes the DRS commissioner to impose more than one sales and use tax deficiency assessment (i.e., reassessments) for a tax period. Current law allows him to impose only one assessment per tax period, except (1) in the case of fraud or tax evasion, where a return was filed, or (2) if he finds new information warranting more than one assessment, regardless of whether a return was filed.

The bill subjects these reassessments to the same requirements that

apply to deficiency assessments under existing law, including interest, penalty, notice, and statute of limitations provisions. (With certain exceptions, the DRS commissioner generally has three years from the tax return's due date to make a deficiency assessment. This three-year limitation does not apply under specified conditions (e.g., in the case of fraud or tax evasion) or if the taxpayer did not file a return for the filing period.) The bill also makes numerous conforming changes throughout the sales and use tax law.

Existing law authorizes the commissioner to issue a written notice of estimate, assessment, and penalty to sales and use taxpayers that fail to file a tax return. The bill specifies that these provisions do not preclude the commissioner from issuing a deficiency assessment or reassessment for any period for which he has issued such a written notice.

### ***Jeopardy Tax Collections***

The bill similarly authorizes the DRS commissioner to impose reassessments in sales and use tax jeopardy tax collections (i.e., when the commissioner takes action to collect sales and use taxes that are assessed but not yet due when he believes that the tax will be jeopardized by delay). It subjects these reassessments to the same requirements that currently apply to jeopardy assessments.

### ***Written Protests***

Current law authorizes taxpayers against whom a sales and use tax assessment or jeopardy assessment has been made (or any person directly interested) to petition for a reassessment within 60 days after receiving notice of the assessment. The bill instead allows them to file a written protest for the assessment and extends this same authorization to taxpayers against whom a reassessment or jeopardy reassessment has been made. The bill also makes conforming changes.

## **§ 31 — STATUTE OF LIMITATIONS ON COLLECTION ACTIONS**

*Generally prohibits the DRS commissioner from collecting a tax after 10 years (1) from the date the tax was reported on a return filed with DRS or (2) in the case of an assessment, from the date the assessment became final*

The bill generally prohibits the DRS commissioner from collecting a tax after 10 years (1) from the date the tax was reported on a return filed

with DRS or (2) in the case of an assessment, from the date the assessment became final. Any taxes that remain unpaid after the 10-year period are deemed abated as of the first day of the 11<sup>th</sup> year succeeding the date on which the return was filed or the assessment became final, as applicable.

The 10-year statute of limitations does not apply to any taxes (1) for which the commissioner has entered into a compromise or closing agreement or (2) that have been secured by recording a lien on taxpayer's real or personal property.

### **§ 32 — DRS STUDY ON SALE OF OUTSTANDING TAX LIABILITIES**

*Requires the DRS commissioner to study the feasibility of selling outstanding state tax liabilities and report his findings and recommendations to the legislature by January 1, 2023*

The bill requires the DRS commissioner to study the feasibility of selling outstanding state tax liabilities. The study must:

1. identify the current balance of these liabilities and their breakdown by tax type;
2. analyze or project the amount of revenue the state could generate from selling these liabilities; and
3. provide the commissioner's conclusion as to whether the state should sell them, and if he so concludes, identify any legislative changes required to do so.

The commissioner must submit the study's findings and recommendations to the Finance, Revenue and Bonding Committee by January 1, 2023. He may consult with any people, businesses, and state agencies he deems necessary or appropriate for the study and may enter into a contract with a public or private entity to prepare the report.

### **§§ 33 & 34 — OUT-OF-STATE DEBT COLLECTIONS**

*(1) Extends existing laws on enforcing tax debts in other states to the District of Columbia and (2) requires the attorney general and DRS commissioner, by February 15, 2023, to report to the legislature on these enforcement efforts during the 2021 and 2022 calendar years*

#### ***Enforcement of Tax Debts in Other States***

Existing law allows the attorney general, at the DRS commissioner's request, to bring suit in the appropriate court in any other state to collect any tax legally due to Connecticut. It also allows any political subdivision of the state to bring these suits to collect any tax due to it. The bill allows the attorney general and political subdivisions to also file these suits in the District of Columbia.

The law similarly requires state courts to enforce liabilities for taxes imposed by other states and their subdivisions that are similar to those imposed in Connecticut as long as the other state extends the same privilege to Connecticut and its subdivisions. The bill extends these same provisions to taxes imposed by the District of Columbia and makes conforming changes to the related procedures for enforcing these taxes.

### ***Legislative Report***

The bill requires the attorney general and DRS commissioner, by February 15, 2023, to jointly report to the Finance, Revenue and Bonding Committee on the attorney general's enforcement efforts under this law. The report must cover the 2021 and 2022 calendar years and include the (1) number of these suits the attorney general brought during this period, (2) states in which they were brought, and (3) amount of taxes recovered as a result.

### **§ 35 — CONDITIONS FOR LICENSE OR PERMIT ISSUANCE OR RENEWAL**

*Expands the circumstances under which the DRS commissioner is prohibited from issuing or renewing certain permits or licenses*

Existing law bars the DRS commissioner from issuing or renewing certain permits or licenses for any applicant who he determines (1) has failed to file any required tax returns or (2) owes any state taxes for which all administrative or judicial remedies have expired or been exhausted. The bill additionally bars him from issuing or renewing these licenses or permits if he determines that the applicant has a "related person" with outstanding returns or taxes. The related person must file any outstanding returns and pay any taxes owed, or arrange to do so, to the commissioner's satisfaction before the commissioner

may issue or renew the license or permit. These same requirements apply to the applicants under existing law.

Under the bill, a “related person” is a person or entity (i.e., corporation, partnership, association, or trust) that (1) controls or is controlled by the applicant, (2) is controlled by another person or entity that controls the applicant, or (3) is a member of the same controlled group as the applicant. In the case of a corporation, “control” means directly or indirectly owning 50% or more of the combined voting power of all classes of its stock. In the case of a trust, control means directly or indirectly owning 50% or more of the beneficial interest of the trust’s principal or income. Ownership is defined as in federal income tax law.

By law, these provisions apply to applicants for a (1) cigarette dealer, distributor, or manufacturer license; (2) tobacco product distributor or unclassified importer license; or (3) sales tax seller’s permit.

### **§ 36 — PERSONAL INCOME TAX STUDY**

*Requires the DRS commissioner to study alternative approaches for imposing the personal income tax with respect to taxpayer residency*

The bill requires the DRS commissioner to study alternative approaches for imposing the personal income tax with respect to taxpayer residency. The study must identify legislative changes to (1) improve income tax collection or (2) implement an alternative approach for imposing the tax.

### **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)).

***Related Bill***

sHB 5475 (§§ 15-17), favorably reported by the Finance, Revenue and Bonding Committee, includes the same corrections to the estate and gift tax laws.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 43    Nay 8    (04/06/2022)