
OLR Bill Analysis

SB 424 (File 485, as amended by Senate "A")*

AN ACT CONCERNING REAL ESTATE AND THE PROBATE COURTS.

SUMMARY

This bill creates a process by which a person who has title interest in real property subject to liens for unpaid probate fees can petition the probate court to have the liens released.

Among other things, the bill:

1. establishes the circumstances under which a petition can be filed and requires that it be accompanied by an affidavit (or affidavits) with specific statements by the petitioner or his or her attorney;
2. generally, requires the petitioner to submit an estate tax return;
3. requires the court to determine if the bill's requirements have been met and issue an invoice for the probate fees and interest, which the petitioner must pay to the court; and
4. requires the court to release the lien and issue a certificate of release within 10 days after all requirements have been met.

The bill also specifies that no one is entitled to a refund for any probate court fee paid for settling a decedent's estate, in which the basis for the fee was the gross estate for succession tax purposes (§ 2).

Lastly, the bill releases liens imposed under the succession and estate tax laws in effect before January 1, 2005. It also deems certain other estate tax liens to be released 10 years after a decedent's death.

*Senate Amendment "A" (1) allows a petition to release a probate fee lien to be filed in the probate court for the district in which the decedent was domiciled at death; (2) requires the supporting affidavit to include

evidence that the heirs, beneficiaries, and transferees failed or refused to file, instead of cooperate in completing, an estate tax return; (3) specifies that when all known real property is listed in the petition, it is done to the petitioner's best knowledge; (4) allows the probate court to take action on a petition with or without a hearing; and (5) related to the refund of certain probate fees, removes the provision that specified that the probate court has no obligation to inform a petitioner that an estate tax return was received.

EFFECTIVE DATE: Upon passage

PROCESS TO RELEASE PROBATE FEE LIENS

Petition to the Probate Court

The bill allows a person who has title interest in real property that is subject to a lien for probate fees to petition the probate court for a release of the lien if:

1. the lien arises out of a decedent's retained life use or survivorship interest in the property;
2. the decedent died more than 10 years before the petition was filed;
3. a proceeding to settle the decedent's estate has not been started in a Connecticut probate court;
4. a Connecticut estate or succession tax return for the decedent's estate has not been filed with the probate court or the Department of Revenue Services (DRS);
5. DRS has not assessed an estate tax; and
6. based on the value of all known property and taxable gifts, a Connecticut estate tax could not be assessed in connection with the decedent's estate.

Under the bill, the petition must be filed with the probate court for the district in which the decedent was domiciled at death or last resided or, if the decedent was not a state resident at death, for the district where

the real estate is situated.

Petitioner's Affidavit

Under the bill, the lien release petition must be accompanied by an affidavit or affidavits from the petitioner or the petitioner's attorney. The affidavits must include:

1. a statement that the petitioner did not receive the title interest from the decedent as its immediate successor in interest in the chain of title or as a devise or distribution from the decedent's estate;
2. a statement that the affiant (i.e., person making the sworn statement in the affidavit) does not have the information required to file a complete Connecticut estate tax return;
3. evidence that demonstrates that a diligent search was made to locate the decedent's heirs, beneficiaries, and transferees;
4. a statement that any heirs, beneficiaries, or transferees who were located failed or refused to file a Connecticut estate tax return; and
5. a recitation of facts known to the affiant regarding the bill's requirements.

The bill specifies that any affidavits submitted by the petitioner's attorney must be made based on the attorney's own knowledge and must not be construed to be submitted on behalf of the attorney's client.

Estate Tax Return

The bill requires the petitioner, except as allowed by the above affidavit, to submit an estate tax return reporting (1) the value of the real property that is the subject of the petition and (2) to the best of the petitioner's knowledge, the value of all other property the decedent owned at the time of death and taxable gifts made by the decedent on or after January 1, 2005.

Probate Court's Determination

The bill requires the probate court, upon receiving the petition and any affidavits and estate tax return, to determine whether the petition meets the bill's requirements. The bill allows the court to act on the petition with or without a hearing.

Probate Court Fees

Under the bill, if the court determines that the petition meets the bill's requirements, the court must (1) calculate the probate fees on the decedent's estate based on the value of all known property and taxable gifts reported on the estate tax return, together with any applicable interest, and (2) issue an invoice for the fees and interest to the petitioner.

The bill requires the petitioner to pay the applicable probate fees and interest to the probate court.

Certificate of Release

The bill requires the probate court to release a lien in these cases after it receives the probate fees and interest. Specifically, the court must issue certificates of release within 10 days after receiving the fees and interest.

The bill requires the lien release petitioner to include in the petition, to the best of his or her knowledge, all known real property to which the lien applies. A lien release obtained under this new process applies only to the real property reported on the estate tax return. Any other real property interest of the decedent must continue to be subject to all applicable liens.

Refund of Fees After the Release

Under the bill, if the probate court receives an estate tax return for the decedent's estate and the applicable probate fees and interest after issuing a certificate of release, the court must refund the petitioner's probate fees on his or her request. The petitioner is not entitled to a refund of any interest.

§ 3 — RELEASE OF SUCCESSION AND ESTATE TAX LIENS

PA 05-257 eliminated the succession tax, and the former estate and

gift tax, replacing them with a new uniform estate and gift tax. By law, the succession tax applied to the estates of decedents who died on or before January 1, 2005. A 2018 law (PA 18-26) limited succession tax filing requirements to those estates.

The bill generally releases certain liens imposed under the state's succession and estate tax laws in effect before January 1, 2005.

Specifically, the bill deems as released, any lien on real estate in Connecticut for the:

1. succession tax, except for estates of decedents who died on or before January 1, 2005, and that had filed a succession tax return or been assessed a tax by the DRS commissioner before October 1, 2018, or
2. estate tax, as in effect before January 1, 2005, and that had filed a return or been assessed a tax by the DRS commissioner before the passage of this act (May 27, 2022).

Regardless of any other state tax law, under the bill, any lien on real estate in Connecticut for the estate tax, as in effect after December 31, 2004, is deemed released 10 years after the decedent's death, except for estates that have filed a return or been assessed an estate tax before 10 years after the decedent's death.

Under the bill, no lien that is released under the provisions above can serve as the basis for a refund claim or result in a refund of any payments that were made or otherwise applied by the DRS commissioner against the taxes that gave rise to the liens.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (03/29/2022)