Connecticut General Assembly

Office of Fiscal Analysis
Office of Legislative Research

TO: Members of the Finance, Revenue, and Bonding Committee

FROM: OFA & OLR Staff

RE: Items for April 1, 2010 Agenda

FINANCE COMMITTEE BILLS FOR JF CONSIDERATION

1. S.B. No. 1 (COMM) - AN ACT CONCERNING THE PRESERVATION OF JOBS IN CONNECTICUT (JFS)

Fiscal Impact:
The bill is anticipated to result in;

1. A General Fund revenue loss to the Business Entity Tax (BET) of approximately $12.0 million per year beginning in FY 11. Net income data reported by partnerships and pass through entities for personal income tax purposes was used to estimate the number of entities that will qualify for the exemption (approximately 48,000) because the Businesses Entity Tax return does not contain income data.

2. A General Fund to the Personal Income Tax of between $2.7 and $4.8 million in FY 11 and FY 12. The revenue gain is a result of imposing a higher income tax rate on certain bonuses paid to employees of companies receiving Troubled Asset Relief Plan (TARP) assistance.

   The estimate is based on actual 2009 wage and employee data from the Department of Labor (DOL) for Connecticut companies identified as having received TARP funds and information gathered by the New York State Attorney General on companies receiving TARP funds. Based on these sources, it is estimated that fewer than 100 employees in Connecticut will receive qualifying bonuses in excess of $1 million, which would be subject to the higher income tax rate.

   The revenue gain is dependent upon the extent to which; 1) the data on the distribution of bonuses contained in the New York report is substantially different than in Connecticut, 2) actual individual bonus payments are significantly greater than $3 million, 3) companies alter their current bonus payment plans, and 4) actions are taken to minimize the potential increase in tax liability.

3. A General Fund debt service cost for principal and interest payments to issue this amount over 20 years assuming a 5.0% interest rate is $30.5 million that results from authorizing $20 million in General Obligation bonds in FY 11. The first year that the state will experience costs associated with the bonds depends on when they are allocated through the State Bond Commission and when the funds are expended.

4. The Department of Economic and Community Development is anticipated to require two economic and community development agents (AR-25) with a salary of $64,511 each, to administer the direct loans and loan guarantees, for a cost of $129,022 in FY 11 and $132,892 in FY 12, plus fringe benefits[1].

Summary:
The substitute bill:

1. exempts certain businesses with annual net incomes of $50,000 or less from the $250 business entity tax for two years,

2. imposes a temporary tax of 8.97% in lieu of regular state income tax on bonuses of $1 million or more paid or awarded by companies that received direct funding from the federal Troubled Asset Relief Program (TARP) or certain of their affiliates,

3. establishes a program to provide loans and loan guarantees to companies with fewer than 50 employees, and

4. authorizes up to $20 million in state general obligation bonding to fund the program.

EFFECTIVE DATE: Various, see below.

§ 1 – Business Entity Tax Exemption

[1] The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation

The substitute bill exempts certain businesses from the annual $250 business entity tax for 2010 and 2011. The exemption applies to any business that, for the applicable tax year, (1) reports $50,000 or less in net income on its annual informational income return filed with the Department of Revenue Services (DRS) (see BACKGROUND) and (2) employs at least one full-time person in Connecticut for a minimum of eight consecutive months during the year. For purposes of the exemption, a "full-time employee" is an employee, member, or partner who works at least 35 hours per week.

The business entity tax applies to foreign or domestic S corporations, limited liability companies, limited liability partnerships, and limited partnerships that must file annual reports with the secretary of the state.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2010.

§§ 2 & 3 – Tarp Bonus Tax

The substitute bill imposes an 8.97% tax on any bonus totaling $1 million or more paid or awarded to a Connecticut taxpayer during the 2010 and 2011 tax years by a "TARP recipient." Under the bill, a TARP recipient is (1) any entity that received funds directly from the federal Troubled Asset Relief Program (TARP) after October 3, 2008; (2) an entity that, under the federal tax law, is considered part of the same affiliated group as an entity that received TARP funds (see BACKGROUND); or (3) a partnership that is more than 50% owned, directly or indirectly, by one or more of the foregoing entities.

The 8.97% tax on a covered TARP bonus applies in lieu of the 6.5% state income tax otherwise due on Connecticut taxable income over $1 million. Unlike the graduated rates applicable to other taxable income, the flat 8.97% rate applies to the entire covered bonus. The bonus tax is in addition to state income tax due on a taxpayer's other taxable income, if any. Regular state income tax rates and provisions apply to other taxable income.

The TARP bonus tax covers retention or incentive payments or other bonuses over and above a taxpayer's regular periodic pay rate that are either paid in the 2010 or 2011 tax years or paid in the future for work performed during those years. Covered bonuses can be in the form of cash and noncash payments, loans, and arrangements for future payments. In addition, if a TARP recipient reimburses a taxpayer for the bonus tax, the reimbursement is considered part of the bonus and is also subject to the bonus tax.

The bonus tax does not apply (1) to commissions, welfare or fringe benefits, or expense reimbursements or (2) when taxpayer, without receiving any other benefit from the TARP recipient in return, irrevocably waives his or her right to the full amount of the bonus payment or returns it before December 31 of the applicable tax year.

The tax applies regardless of whether the TARP recipient has repaid the federal government any or all funds it received from the TARP.

Under the bill, TARP recipients that pay or award TARP bonuses of $1 million or more during the 2010 or 2011 tax years must comply with applicable state income tax withholding requirements on those payments.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2010.

§§ 4 & 5 – Small Business Assistance Program

The substitute bill requires the Department of Economic and Community Development (DECD) to establish a program to provide direct loans and loan guarantees to businesses with fewer than 50 employees. It authorizes up to $20 million in state general obligation bonds to fund the program and establishes a separate, nonlapsing small business assistance account in the General Fund to provide the loans and loan guarantees.

As part of the program, the bill allows DECD to:

1. guarantee or promise in advance to guarantee loans or cause the loans to be guaranteed;
2. make direct loans or cause them to be made, if such loans are not available in the private market; and
3. participate in agreements with other state or federal agencies to provide loans or loan guarantees that meet the bill's requirements.

EFFECTIVE DATE: July 1, 2010

BACKGROUND

Informational Return for Pass-Through Businesses

By law, each pass-through business that has income derived from or connected to Connecticut sources must file an annual return containing information about its finances, including its income, and its resident and nonresident partners or members. The requirement applies to S corporations; general, limited, and limited liability partnerships; limited liability companies treated as partnerships under federal tax laws; and trusts and estates (CGS § 12-726).

Affiliated Group

For purposes of identifying TARP recipients, the bill incorporates by reference the federal definition of an "affiliated group." Under federal tax law, an "affiliated group" is a group of corporations or corporate chains connected to the same parent corporation in which (1) one or more of the corporations included in the group directly owns at least 80% of the voting power and 80% of the total value of the common stock of each of the other included corporations and (2) their common parent directly owns at least 80% of the voting power and 80% of the total value of the common stock of at least one of the included corporations (IRC § 1504).

2. S.B. No. 430 (RAISED) AN ACT CONCERNING CERTAIN CIGARETTE TAX VIOLATIONS.

Fiscal Impact:
Changing the penalties for certain violations of the cigarette licensing laws is anticipated to result in a minimal annual revenue loss. Last year the Department Revenue Services processed 40 cigarette tax violations in FY 09. Since current enforcement of these provisions generally results in a court order fine of approximately $100, these violations resulted in a General Fund revenue gain of approximately $4,000. Under the new provisions, the revenue gain would have been $3,600.

Summary:
This bill reduces penalties for certain violations of the cigarette licensing and tax laws.

§ 1 – Sale of Cigarettes or Taxed Tobacco Products Without a License

It is illegal to sell cigarettes or taxed tobacco products without a cigarette dealer's license. Under current law, the penalty for each knowing violation is a fine of up to $500, up to three months in jail, or both. The bill reduces the penalty to an infraction, with a $90 fine, if the violation occurs within 90 days after a dealer's license has expired.

Taxed tobacco products include snuff, cigars, cheroots, pipe tobacco, and similar products.

§ 2 – Sale or Possession of Unstamped Cigarettes

It is illegal to sell, offer to sell, display for sale, or possess unstamped cigarettes, except that a licensed cigarette dealer may legally possess unstamped cigarettes at a licensed location for no more than 24 hours. Under current law, the penalty for a knowing violation is a fine of up to $1,000, up to one year in jail, or both. The bill reduces the penalty to an infraction, with a $90 fine, for any first violation by a licensed dealer who possesses no more than 600 unstamped cigarettes.

EFFECTIVE DATE: July 1, 2010

BACKGROUND

Infractions

Infractions are punishable by fines, usually set by Superior Court judges, of between $35 and $90, plus a $20 or $35 surcharge and an additional fee based on the amount of the fine. There may be other added charges depending upon the type of infraction. With the various additional charges, the total amount due can be over $300 but often is less than $100. An infraction is not a crime; and violators can pay the fine by mail without making a court appearance.

3. S.B. No. 437 (RAISED) AN ACT CONCERNING THE TOBACCO PRODUCTS TAX

Fiscal Impact:
The bill is anticipated to result in a General Fund revenue gain to the Cigarette Tax of approximately $1.3 million per year beginning in FY 11. The estimate assumes that approximately 460,000 ounces of roll-your-own and pipe tobacco is sold in Connecticut each year.

Summary:
The bill changes the tobacco products tax on noncigarette smoking tobacco, including pipe and roll-your-own tobacco, from 27.5% of the wholesale price to 15 cents (150 mills) per 0.0325 ounces, making the tax on such tobacco the same as the tax on cigarettes. (The cigarette tax is 15 cents per cigarette.)

The new tax rate applies to tobacco that is (1) sold loose or in bulk and (2) intended to be consumed by smoking.

EFFECTIVE DATE: July 1, 2010

4. S.B. No. 444 (RAISED) AN ACT CONCERNING REVISIONS TO THE NONRESIDENT CONTRACTOR BOND STATUTE

Fiscal Impact:
The provisions of the bill will result in a minimal cost savings to the Department of Revenue Services due to administrative operating efficiencies.

Summary:
To provide security for Connecticut taxes in connection with a nonresident contractor's in-state activities, current law requires a person doing business with a nonresident (out-of-state) contractor to either (1) withhold and deposit with DRS 5% of the contract price or (2) obtain proof from the contractor that he or she has posted a bond for the equivalent amount with DRS.

This bill revamps these security requirements to, among other things:

1. require DRS to publish a list of nonresident contractors and subcontractors who are registered with DRS for tax purposes, have filed all required tax returns, and, if required, have posted a bond with DRS;

2. impose the bond requirement only on nonresident general or prime contractors and the hold-back requirement only on nonresident subcontractors who are not on the DRS list;

3. require general contractors, rather than customers, to hold back funds from their unlisted subcontractors;

4. require customers contracting with nonresident, unlisted general or prime contractors to obtain proof that the contractor has posted the required bond.

Current law makes anyone who does business with a nonresident contractor without complying with the security requirements personally liable for the nonresident contractor's taxes stemming from the project. The bill applies this liability to anyone who does business with an unlisted prime or general contractor without obtaining proof that the unlisted contractor has posted the required bond. It also caps the customer's liability at 5% of the contract price. The bill specifies that the personal liability applies to sales, use, or withholding taxes the contractor owes that arise from his activities under the contract. The customer must also pay any use taxes due on purchases of services from the unlisted contractor in connection with the project.

The bill exempts contracts whose total price for the entire project is less than $250,000. In addition, as under current law, the tax security requirements do not apply to a homeowner's or tenant's contract involving his own residence with three or fewer units.

As under current law, the "contract price" covers all contract charges, including deposits, retainage, change orders, or charges for add-ons.

EFFECTIVE DATE: July 1, 2010

Nonresident Contractor List

The bill requires the DRS commissioner to publish on its website, a list of every nonresident contractor and subcontractor who:

1. has (a) been registered with DRS for all applicable taxes (sales and use and income taxes) for at least three years before it concludes a contract covered by the bill's security requirements, (b) filed all required tax returns, and (c) no outstanding tax liabilities with DRS; or

2. (a) is registered with DRS for all applicable taxes, (b) has filed all required tax returns and has no outstanding liabilities with DRS, and (c) has posted a valid bond with DRS in an amount the commissioner determines up to a maximum of six times the contractor's average tax liability. The bond must be with a surety company authorized to do business in Connecticut.

DRS must update the list as needed and at least annually.

Under the bill as under current law, a nonresident contractor or subcontractor is one who does not continuously maintain or occupy any Connecticut office, factory, warehouse, or other space where it regularly and systematically does business in its own name through employees who are (1) in regular attendance and (2) carrying on the contractor's business in the contractor's own name.

Tax Security Requirements for Unlisted Nonresident Contractors

Current law allows two alternative methods of ensuring tax security when a person, other than a homeowner having work done on his own residence, hires a nonresident contractor for a project in this state. The first is for the customer to withhold 5% of the contract price and deposit it with DRS. The second is for the nonresident contractor to post a bond equal to that amount with DRS.

This bill eliminates the customer hold-back option and imposes the bond requirement only on unlisted nonresident contractors who qualify as "general or prime" contractors. The bill divides nonresident contractors into two categories:

1. "prime or general" contractors, who make contracts with those who own or control property to perform services, furnish materials, or both on construction projects involving the property, and

2. subcontractors, who contract with either prime or general contractors or other subcontractors to perform part of the contract work.

Bond Requirement for Unlisted General Contractors. The bill requires every unlisted prime or general contractor that makes a contract for a project in Connecticut to post a bond with DRS equal to 5% of the contract price. The bond is to secure payment of required taxes by both the general or prime contractor and his subcontractors.

Hold-Back Requirements for Unlisted Subcontractor. The bill requires any resident, listed, or unlisted general or prime contractor that does business with an unlisted subcontractor to hold back 5% of its payments to the subcontractor until the subcontractor furnishes a certificate of compliance from DRS authorizing the general contractor to release all or part of the hold-back (see below). The contractor must keep the hold-backs in a special fund in trust for the state. The bill eliminates requirements that hold-backs be periodically transferred to DRS and that DRS hold the money in a special trust fund.

General or prime contactors must give unlisted subcontractors written notice of the hold-back requirements by the time the subcontractor begins work under the contract. As under current law, no subcontractor may sue a general or prime contractor for holding back payments to comply with the bill.

Releasing Bonds and Hold-Backs

Under current law, a contractor who posted a bond or whose payments were withheld must file a written request, within three years after the final payment to DRS, that the DRS commissioner audit his records for the project to determine if he owes taxes. If a contractor fails to file his request in time, he waives his right both to an audit and any refund of excess amounts withheld or excess bond amounts. DRS must refund excess amounts from the bond or hold-back within 90 days after completing its audit and issuing a certificate of no tax due.

The bill establishes separate procedures for releasing bond obligations and hold-backs.

Bond Obligations

The bill requires the DRS commissioner to release an unlisted general or prime contractor from its bond obligation once the contractor satisfies the commissioner, by submitting necessary documentation that includes any DRS prescribed forms, that:

1. the contractor and its subcontractors have paid all the taxes they owe in connection with the contract or

2. the contractor has (a) paid all taxes it owes in connection with the contract, (b) held back the required 5% of its payments to any unlisted subcontractors, and (c) has released the hold-backs to a subcontractor in accordance with a certificate of compliance from DRS authorizing it to release all or part of those amounts.

Hold-Backs – Certificate of Compliance

Once its work on the contract is completed, the bill requires an unlisted subcontractor to file a written request that the DRS commissioner issue a certificate of compliance authorizing the general contractor to release all or part of his hold-backs. After receiving the request and whatever documentation and forms the commissioner considers necessary, the commissioner must review it in the context of generally accepted construction industry cost guidelines for the scope and type of project involved. The commissioner has 120 days after receiving the required documentation to issue a certificate allowing release of all or part of the hold-backs. If no certificate is issued within that time, the commissioner is deemed to have issued one.

If the certificate authorizes the general contractor to release the full amount of the hold-back, the contractor must do so; if the certificate authorizes release of part of the hold-back, the general contract must pay the required amount to the subcontractor and pay the balance to DRS. In the latter case, the contractor is liable neither to the subcontractor for failing to pay the full amount nor to the commissioner for failing to pay the subcontractor's taxes arising from the project.

The bill imposes a 10% penalty if the general contractor fails to pay DRS any balance of a partially released hold-back within 30 days after the date "such written notice" (possibly this refers to the assessment notice – see below?) was mailed. The bill allows DRS to use existing tax collection procedures to collect the required payment and the penalty from the general contractor.

Under the bill, such a partial release of hold-backs must be treated as a notice of assessment under the sales and use tax law. That law requires the commissioner to give written notice of the assessment, either by personal service or by mail, at the address appearing in DRS records. (It is unclear whether the assessment notice goes to the general contractor or the subcontractor.)

The certificate of compliance does not prevent the commissioner from exercising his authority to examine an unlisted subcontractor's tax returns, books, and records, and, if appropriate, making an assessment against the subcontractor for tax deficiencies stemming from activities other than the project to which the certificate of compliance applies.

Authorized Disclosures by DRS

In addition to requiring DRS to publish the nonresident contractor list, the bill also allows DRS to:

1. disclose, to a person doing business with an unlisted subcontractor and who is required to hold-back a portion of the subcontractor's payments, whether or not the subcontractor has requested or been issued a certificate of compliance, and give the person a copy of the certificate;

2. disclose, to a person doing business with an unlisted prime or general contractor, whether that contractor has posted the required bond; and

3. verify, upon request, whether a contractor or subcontractor is a resident contractor.

5. S.B. No. 445 (RAISED) AN ACT ENHANCING THE ABILITY OF THE DEPARTMENT OF REVENUE SERVICES TO COLLECT OUTSTANDING TAXES.

Fiscal Impact:
There will be a revenue increase to the General Fund to the degree that the provisions of the bill result in the collection of delinquent taxes. The value of delinquent taxes as of 6/30/09 was approximately $315 million.

Summary:

§ 1 - Proof of State Tax Payment as a Condition of Issuing State Professional, Occupational, or Business Licenses

The substitute bill allows the DRS commissioner, in consultation with other commissioners of agencies that issue licenses or similar credentials granting permission to engage in any profession, occupation, or business, to adopt regulations requiring license applicants to verify that they owe no state taxes. If the applicant is not an individual, verification must include the principals, as defined in the regulations, of the business seeking a license. Substitute language will clarify that DRS and the licensing agency will specify the verification procedure and that it will not be the responsibility of the individual applicant.

The requirement covers taxes, penalties, and interest due to the state and for which all administrative or judicial remedies for disputing amounts owed have expired or been exhausted. The requirement does not apply to payments owing under a payment agreement between DRS and a taxpayer that is not in default.

Under the regulations, if a license applicant owes state taxes, the DRS commissioner must give notice and provide an opportunity for a hearing, the subject of which must be limited to verifying that the applicant owes state taxes. The sole right to a hearing under the bill belongs to the DRS commissioner, not the agency issuing the license.

The regulations must require the license to be issued, regardless of whether the applicant owes state taxes, if the applicant establishes to the DRS commissioner's satisfaction that failure to issue the license will cause undue hardship.

EFFECTIVE DATE: July 1, 2010

§ 2 – Costs of Suing in Other States' Courts to Collect State Taxes

Under current law, the attorney general is authorized to file civil actions to collect state taxes. This bill allows the state treasurer; DRS commissioner; any other state official, board, or commissioner authorized to collect state taxes; and their authorized deputies to file civil actions in other states' courts to collect Connecticut taxes and, if they prevail, to recover all costs, fees, and expenses in connection with the action, plus reasonable attorneys' fees.

EFFECTIVE DATE: July 1, 2010

§§ 3-7 – Personal Liability of "Responsible Person" for Paying Certain Taxes

The bill extends and makes uniform provisions making those responsible for paying certain taxes on behalf of a business personally liable for those taxes if they willfully fail to collect, truthfully account for, and pay the taxes or file a required return.

By law, an officer, partner, or employee of a business who is responsible for paying certain taxes on the business' behalf is personally liable for the unpaid tax, plus interest and penalties, if (1) he or she willfully fails to collect or pay it or file appropriate returns and (2) the tax cannot otherwise be collected from the business. The dissolution of the business does not free the person from liability. DRS must credit any amount collected from such a person against the taxes owed by the business.

Changes Applicable to All Covered Taxes. Under current law, personal liability provisions apply to those who, on behalf of a business, are required to file returns for and pay sales and use; motor vehicle fuels; admissions and dues; and personal income withholding taxes. This bill makes the following changes in the personal liability provisions of these taxes. It:

1. designates the person who is personally liable for willfully failing to pay the taxes as the "responsible person;"

2. eliminates the commissioner's authority to waive the responsible person's penalty;

3. allows a responsible person penalized under the bill to recover the penalty from the business; and

4. requires that, for purposes of the determining responsible person's liability, "willfully" failing to pay taxes means the same thing as under the federal tax law (IRC § 6672 – see BACKGROUND).

In addition, the bill allows a responsible person penalized by the DRS commissioner for a business' unpaid taxes to ask for a hearing according to existing tax appeal procedures. However, if the business has also filed a petition for a reassessment or a written request for a hearing, as applicable, covering the same tax period, the bill limits the responsible person's hearing to the issue of whether or not he or she is a responsible person.

Additional Changes Applicable to Employer Withholding Taxes. In addition to the changes described above, the bill adds the following to the existing employer withholding tax penalty provisions. It:

1. extends penalties to a person who is not an employer or payer required to withhold Connecticut income taxes, if the person is a "responsible person" who willfully fails to collect, truthfully account for, and pay the taxes;

2. specifies that the responsible person is liable not only for the unpaid taxes but also for any penalty and interest attributable to the willful failure to pay, if the amounts due cannot be collected from the business;

3. requires DRS to collect amounts owed from the responsible person using all statutorily allowed state tax collection methods, including tax warrants, liens on the person's property, and foreclosure against that property;

4. applies the amounts collected from a responsible person against the amounts owed by the business; and

5. specifies that dissolution of the business does not relieve the responsible person of his or her personal liability.

The bill defines a "responsible person" for purposes of these provisions to include any of the following that has a duty to (1) file a withholding tax return on behalf of an employer or payer and (2) collect, truthfully account for, and pay withholding tax on the employer's or payer's behalf:

1. an individual, corporation, partnership, or limited liability company and
2. a member, officer, or employee of any of these entities, including a dissolved corporation.

EFFECTIVE DATE: Upon passage

BACKGROUND

Meaning of "Willfully" Under Federal Tax Law

IRC § 6672, which this bill incorporates by reference, does not define "willfully." It imposes penalties for (1) willfully failing to collect federal taxes and truthfully account for, and pay, them or (2) willfully attempting to evade or defeat federal taxes. It exempts from the penalties any unpaid, volunteer member of a nonprofit, tax-exempt organization's board of directors or trustees if the person:

1. serves solely in an honorary capacity,
2. does not participate in the organization's day-to-day financial operations, and
3. has no actual knowledge of the failure for which the penalty is imposed.

6. **S.B. No. 477 (RAISED) - AN ACT CONCERNING A TAX CREDIT FOR MAKING JOBS ACCESSIBLE TO EMPLOYEES WITH AUTISM SPECTRUM DISORDERS.**

Fiscal Impact:
There will be a revenue loss to the General Fund to the degree that companies paying Corporation Tax use job coaches that qualify for the credit.

Summary:

The bill establishes a corporation tax credit for the amount a corporation pays during an income year for a job coach for an employee with autism spectrum disorders. The job coach can be a company employee, employed by another entity, or self-employed. A corporation can claim a credit for a single employee's job coach for up to two calendar years. The bill limits the credit to the amount the corporation pays for the job coach's actual time with the employee. Unused credits may be carried forward for up to five successive income years.

The bill requires the Department of Developmental Services' division of autism spectrum services to provide guidelines to corporations on (1) hiring and supporting those with autism spectrum disorders and (2) appropriate training for job coaches.

EFFECTIVE DATE: July 1, 2010 and applicable to income years starting on or after January 1, 2010.

7. **H.B. No. 5478 (RAISED) - AN ACT CONCERNING A PROPERTY TAX EXEMPTION FOR MOTOR VEHICLES LEASED BY DISABLED PERSONS.**

Fiscal Impact:
Municipalities electing to extend the property tax exemption for specially equipped vehicles leased by person with disabilities will experience a minimal reduction to their grand list because it is likely that a small number of vehicles will be exempted.

Summary:

§ 1 – Property Tax Exemption for Vehicles Equipped for Use by People with Disabilities

By law, towns may exempt from local property taxes any vehicle specially equipped for use by a person with disabilities that is owned either by the person or the person's parent or guardian. The bill extends this authority to also allow municipalities to exempt specially equipped vehicles leased by a person with disabilities or his or her parent or guardian.

EFFECTIVE DATE: Upon passage and applicable to assessment years starting on or after October 1, 2009.

§ 2 – Property Tax Exemption for Vehicles Equipped for Disabled Veterans

The bill extends the municipal option property tax exemption for vehicles owned by disabled veterans to include those leased by such veterans, if the vehicle is specially equipped for the disabled veteran's use. By law, the exemption must be a uniform percentage of the vehicle's assessed value and the veteran must qualify for statutory property tax exemptions for veterans with (1) VA disability ratings of 10% or more (CGS § 12-81 (20)) or (2) severe service-connected disabilities involving the loss or loss of use of one or more limbs (CGS § 12-81 (21)).

EFFECTIVE DATE: Upon passage and applicable to assessment years starting on or after October 1, 2009.

8. H.B. No. 5494 (RAISED) AN ACT CONCERNING VARIOUS CHANGES TO TITLE 12. (JFS)

Fiscal Impact:

Expanding the Corporation Tax exclusion to require companies also to exclude any federally deductible dividends paid from a "captive" real estate investment trust (REIT) unless the captive REIT is subject to the tax is expected to result in a revenue gain to the General Fund. The magnitude of the increase is unknown at this time but it should be noted that recent financial press reports indicate that other states are challenging such arrangements in court to recover significant amounts of tax revenue.

The other provisions in the bill are not expected to have a fiscal impact.

Summary:

§ 1 – Disallowance of Corporation Tax Deduction for Captive Real Estate Investment Trust (REIT) Dividends

In calculating net income for Connecticut corporation tax purposes, current law requires companies to exclude from their dividends deduction any dividends they receive from certain real estate investment trusts (REITs). This bill expands the exclusion to require companies also to exclude any federally deductible dividends paid from a "captive" real estate investment trust (REIT) unless the captive REIT is subject to the Connecticut corporation tax.

A REIT is like a mutual fund that pools resources from investors to own either real properties such as apartments, shopping malls, or office buildings, or mortgages. Under federal law, qualifying REITs receive special tax treatment. To qualify, a REIT must:

1. be managed by one or more trustees or directors;

2. signify ownership in the form of either transferable shares or transferable certificates of beneficial interest;

3. be an entity that would otherwise be subject to federal corporation tax;

4. not be either a financial institution or an insurance company;

5. have at least 100 shareholders;

6. not be closely held;

7. derive at least 95% of its gross income from dividends, interest, and rents and other transactions involving real property with at least 75% from real property transactions; and

8. hold at least 75% of the total value of its assets in the form of real property and no more than 25% in securities (IRC § 856).

The bill defines a "captive REIT" as one that (1) for any taxable year, qualifies for special federal tax treatment (see above); (2) is not regularly traded in established securities markets; and (3) has more than 50% of its shares directly or constructively owned or controlled by a single entity subject to the federal tax law on corporate distributions.

A REIT is not considered a "captive REIT" if more than 50% of its shares are owned by a qualifying foreign REIT (i.e., one organized in a country that has a tax treaty with the U.S. that addresses the tax treatment of REITs) and if, in turn, more than 50% of the foreign REIT's shares are directly or constructively owned by an entity that:

1. for any taxable year, qualifies for special federal tax treatment as a REIT;

2. is exempt from federal taxes;

3. is also a qualifying foreign REIT; or

4. is a REIT that (a) will become regularly traded in an established securities market, (b) has at least 100 shareholders, and (c) is not closely held.

Under the bill, REIT shares are considered to be "constructively owned" by a person if they are owned by (1) the person's spouse or his natural or adopted children, parents, or grandparents; (2) a partnership, S corporation, or trust in proportion to the person's ownership share in the entity; or (3) a corporation in proportion to the person's ownership share, provided the person owns at least 10% of the corporate shares (IRC § 318 (a) as modified by IRC § 856 (d)(5)).

Current law already excludes dividends received from certain REITs from allowable inter-company dividend deductions. The current exclusion applies to REITs whose dividends are not deductible under the federal tax code (IRC § 243(d)(3)) and to dividends received from REITs established on or after April 1, 1997. The law also excludes dividends from pre-April 1, 1997 REITs that (1) did not have at least $500 million in assets contributed to it before April 1, 1997, (2) did not elect to be a REIT under federal tax law before April 1, 1998, and (3) did not have at least one investor not related to the dividend's payee contributing at least 5% of the fair market value of the REIT's capital assets as of the last day of the period for which the dividend is paid (CGS § 12-217(a)(3)).

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2010.

§ 2 – Technical

The bill corrects an incorrect reference.

EFFECTIVE DATE: Upon passage

§§ 3, 10 & 11 – Amended Tax Returns

A corporation taxpayer must, within 90 days of filing an amended federal corporate return, file amended state corporation tax return. The bill changes the start of the 90-day filing period from the date the taxpayer files its amended federal return to the date of the final federal determination on the amended federal return. It also specifies that the requirement to file an amended state return applies when the taxpayer files an amended return with any federal official or agency, not just the IRS.

The bill makes similar changes in the statutes concerning (1) amended income tax returns filed with other states, other states' political subdivisions, or the District of Columbia that change the amount of taxes the person must pay to the other jurisdiction from that reported on his or her Connecticut income tax return and (2) amended Connecticut informational income tax returns required from those who file amended federal returns.

The bill requires DRS to treat any such amended state return requiring a tax refund as having been filed in "processible form" (for a corporation tax return) or as having "sufficient required information" (for an income tax return) once the taxpayer submits proof of the final determination from the federal government or other jurisdiction, as applicable. By law the state must pay interest of 0.66% per month if it fails to pay a tax refund within 90 days after a final tax filing deadline or the date the return was filed, whichever is later. The 90-day period starts when the return is filed in a processible form or is determined to contain sufficient required information.

EFFECTIVE DATE: Upon passage and applicable to income years or tax years, as appropriate, starting on or after January 1, 2010.

§ 4 – Sales Tax Permits Held by Inactive Sellers

By law, all those engaged in the business of selling in Connecticut must hold a DRS-issued sales tax permit. This bill allows only those who are actively conducting business as sellers to hold such permits and requires inactive sellers to surrender their permits for cancellation.

The law already allows the DRS commissioner, after notice and hearing, to revoke a permit when a seller has filed four successive monthly or quarterly sales tax returns showing no sales. The bill:

1. changes the commissioner's action from a permit revocation to a cancellation;

2. allows the commissioner to also cancel a permit if a seller's returns show no sales for two successive annual periods;

3. extends the commissioner's required written notice of a permit cancellation hearing from 10 to 30 days; and

4. eliminates a requirement that, if the commissioner gives notice of the hearing by mail, that it be by registered or certified mail.

EFFECTIVE DATE: July 1, 2010

§ 5 – Motor Carrier Road Tax Reports

The bill eliminates the DRS commissioner's authority to adopt alternate motor carrier road tax report filing deadlines by regulation. It thus requires all carriers filing quarterly operating reports to file them annually on the last days of January, April, July, and October.

Under current law, the commissioner may exempt carriers that either (1) operate only in Connecticut or (2) buy all their fuel in the state from quarterly reporting and instead require them to file annual reports. The bill requires the commissioner to exempt motor carriers that both operate and buy all their fuel only in Connecticut from all reporting. It requires all other carriers to file quarterly reports and eliminates the annual reports.

EFFECTIVE DATE: July 1, 2010 and applicable to quarters beginning on or after January 1, 2010.

§§ 6-8 – Neighborhood Assistance Act Tax Credits

The Neighborhood Assistance Act (NAA) provides business tax credits to companies that invest in certain municipally approved community activities and programs.

The bill eliminates municipalities' role in approving tax credit proposals from individual businesses (§ 7). Under current law, the DRS commissioner must refer each such proposal to the municipal agency in charge of overseeing the credit-eligible program. The agency has 30 days to approve or disapprove the application. Failure to act constitutes disapproval. The bill also eliminates municipal approval or disapproval as a factor in the DRS commissioner's decision to approve a tax credit application. Instead, it requires to commissioner to decide based on whether the application was (1) submitted on time (i.e., between September 15^{th} and October 1) and (2) complies with the NAA's requirements.

The bill also increases the NAA credit for business investments in community-based alcoholism prevention or treatment programs from 40% to 60% of the investment, thus making it match the 60% credits generally applicable to most other NAA activities (§ 8).

Finally, the bill makes a technical change (§ 6).

EFFECTIVE DATES: July 1, 2010 for the provision eliminating the municipal approval requirement and upon passage for the other provisions. The technical change applies to income years starting on or after January 1, 2010.

§ 9 – Electronic Funds Transfer and Electronic Filing Requirements

The bill reduces the threshold at which the DRS commissioner may require taxpayers and employers to pay taxes or transfer withholding taxes electronically.

Under current law, the commissioner can impose electronic payment requirements on those whose annual tax liability or employer withholding tax payment requirements are more than $10,000. The bill reduces the thresholds to (1) $4,000 or more in annual tax liability and (2) more than $2,000 in annual withholding tax payments.

The bill also requires any taxpayer that is required to file tax returns, statements, and other documents electronically to also pay the taxes electronically. The payment requirement does not apply to tax return preparers.

For the 2009 tax year, DRS requires payers who file 25 or more Forms W-2, 1099-R, 1099-MISC or W-2G to file them electronically.

EFFECTIVE DATE: July 1, 2010

§§ 12 & 13 – Repealed Sections

Small and Medium-Sized Business Users' Committee. The bill eliminates a committee to advise and make recommendations to the DRS commissioner on how to improve the department's "user friendliness." The committee is composed of the DRS commissioner and the chairs and ranking members of the Commerce and Finance Committees or their designees, two members appointed by the governor, and 10 members as shown below appointed by the legislative leaders.

Appointed By	***Qualifications***
Senate president pro tempore	Finance Committee member
House speaker	Appropriations Committee member serving on subcommittee overseeing DRS
Senate majority leader	One representative of a small or medium-sized business and one CPA
House majority leader	One representative of a small or medium-sized business

	and one tax attorney
Senate minority leader	One representative of a small or medium-sized business and one tax attorney
House minority leader	One representative of a small or medium-sized business and one CPA

State Tax Review Commission. The bill eliminates the State Tax Review Commission. The commission was established in 1991 and has been inactive since 1994. Its original charge was to evaluate the state's tax system and make a report by December 15, 1992. In 1993, the legislature expanded its charge and required it to make reports every year by December 15. The commission filed reports in December 1992 and January 1994, but then fell into inactivity. The legislature repealed the statutory authorization for the commission in 1997, but the governor vetoed the bill on other grounds.

Report on Cigarette Tax Enforcement. The bill eliminates a requirement that the DRS commissioner report annually on the department's cigarette sales enforcement activities to the Public Health and Children's committees and the state agency the governor designates as responsible for reducing smoking by minors. The first report was due January 1, 1998. The Legislative Library has no record of any reports being submitted.

EFFECTIVE DATE: Upon passage

9. H.B. No. 5495 (RAISED) AN ACT ESTABLISHING THE RIVER FALLS IMPROVEMENT DISTRICT WITHIN THE TOWN OF SEYMOUR (JFS)

Fiscal Impact:
There is no state or municipal fiscal impact because the language specifies that any revenue bonds issued by the River Falls Improvement District are not the responsibility of the State of Connecticut or the Town of Seymour. The bill could result in an increase in Seymour's grand list if it increases property values in the town.

Summary:
The law allows voters in any town to create a special taxing district to provide various services. The bill establishes a procedure, which largely mirrors the statutory procedure, for Seymour to form the River Falls Improvement District.

The bill allows the special district to provide such services as fire protection; financing and maintaining roads, trees, and infrastructure improvements; building and managing sewer and sewage treatment facilities and utility improvements and connections; dredging, making bulkhead repairs, and performing environmental remediation; and establishing and operating a community water system. It gives the district the power to charge reasonable taxes, fees, rents, benefit assessments, and taxes on land and buildings in the district, after notice and public hearings.

The bill allows the district to issue 30-year bonds to finance the improvements and to secure them by the district's full faith and credit; district fees, revenues, or benefit assessments; or a combination of the two. The district must enter into an interlocal agreement with the town of Seymour before issuing any bonds. While the bonds are outstanding, the district's powers may not be impaired in any way that would adversely affect the bondholders' interests. Bonds are not considered debts of the state or of the town of Seymour.

The bill designates district bonds as urban renewal project debt for purposes of Seymour's municipal debt limit. By law, a town and all its sub-districts may incur maximum urban renewal debt of 3.25 times their aggregate annual receipts. The limit for debt issued for most other purposes is 2.25 times aggregate annual receipts. While any construction or development financed by the bonds is taking place, the bill requires the district board to submit quarterly project activity reports to the OPM secretary and the Finance, Revenue and Bonding Committee chairpersons.

The bill establishes procedures for forming, operating, and terminating the district, with approval of district voters. Under the bill, district voters are people who (1) live in the district; (2) are liable for at least $1,000 in property assessments to it; or (3) own or have an interest in real property located in it, such as banks holding mortgages.

The bill exempts district revenues and real and personal property from state and municipal taxes. District bond principal and interest are exempt from state taxes other than state estate and gift, franchise, and excise taxes. But the state and Seymour can still levy taxes on the incomes and properties of the people and businesses living or operating in the district.

After being established, the district must hold an organizational meeting, at which district voters must fix its annual meeting date and elect a president, vice-president, five directors, a clerk, and a treasurer. Seymour's first selectman may appoint one director. At least three directors must be Connecticut residents. Fifteen district voters or a majority of those owning interests in real property in the district are a quorum for transacting business, as long as the property owners present represent at least 50% of the total property assessments in the district.

If Seymour chooses, it may, by vote of its board of selectmen, merge the district into the town if the district does not issue any bonds within four years of its creation or after all its bonds are paid off. In that case, district property must be distributed to the town.

The bill requires that it be liberally construed to effect its purposes.

EFFECTIVE DATE: July 1, 2010