

# A Summary of Connecticut's New Transfer Tax Scheme

By Donna D. Vincenti

Connecticut has de-coupled from the federal estate tax; its transfer tax revenue will no longer be dependent on the allowance of a state death tax credit under federal law. The Connecticut succession tax was repealed, and, in its place, a unified state estate and gift tax was passed by the legislature. On June 30, 2005, Governor M. Jodi Rell signed it into law. The changes to Connecticut's transfer tax system are retroactive, effective with respect to estates of persons dying on or after January 1, 2005, and for gifts made commencing January 1, 2005. This article summarizes the provisions of the new law (Public Act 05-251), as amended by HB 7502 (Public Act 05-3 of the June Special Session (the "Implementer Bill")) and SB 2001 (Public Act 05-5 of the June Special Session).

## REPEAL OF THE CONNECTICUT SUCCESSION TAX

Section 66 of Public Act 05-251 repeals the last vestiges of the Connecticut succession tax. The succession tax on property passing to Class B and Class C beneficiaries is repealed effective for estates of persons dying on or after January 1, 2005.

## Filing Requirements

The Implementer Bill clarifies that a succession tax return will no longer be required for estates of decedents dying on or after January 1, 2005, by adding a new subsection (e) to C.G.S. § 12-359.

## The Connecticut Succession Tax Lien

The Implementer Bill also clarifies that the commissioner of Revenue Services will no longer be required to issue a release of succession tax lien (and a lien for succession taxes will no longer arise) for estates of decedents dying on or after January 1, 2005. A lien will arise with respect to the estate tax, which will now include Connecticut taxable gifts (see "Connecticut Estate Tax Lien" under "Connecticut Estate Tax" section below).

## THE CONNECTICUT GIFT TAX

Public Act 05-251 repeals prior gift tax law effective for calendar years commencing on or after January 1, 2005. The prior tax was scheduled to be phased out to an annual exemption of \$1 million as of January 1, 2010. Enacted in its place is a unified estate and gift tax with an inde-

pendent rate schedule mirroring the state death tax credit table under prior federal law and a cumulative, combined exemption of \$2 million.

## Property Subject to Tax

A gift tax is imposed on "Connecticut taxable gifts" made by a donor during a calendar year commencing on or after January 1, 2005, including all Connecticut taxable gifts made by the donor for all prior calendar years commencing on or after January 1, 2005. "Connecticut taxable gifts" are, in the case of a Connecticut resident, taxable gifts made during a calendar year commencing on or after January 1, 2005, wherever located, excepting gifts of real or tangible personal property located outside the state. In the case of a non-resident, Connecticut taxable gifts are gifts of real estate or tangible personal property located within the state. Taxable gifts are transfers by gift that are included in taxable gifts for federal gift tax purposes. Therefore, gifts within the annual exclusion (currently \$11,000) or the exclusions for direct payment of medical and educational expenses from the federal gift tax would be exempt from Connecticut gift tax.

## Determination and Rate of Tax

The tax on Connecticut taxable gifts for the calendar year, including Connecticut taxable gifts for all prior years commencing on January 1, 2005, is determined under the rate table set forth in the statute. A credit is then allowed against the tax for any taxes paid for prior periods under the new law. The tax commences with aggregate Connecticut gifts exceeding \$2 million. Thus, a \$2 million "exemption" is provided for Connecticut taxable gifts made on or after January 1, 2005 (so long as Connecticut taxable gifts do not exceed \$2 million).

The tax table imposes a gift tax beginning at 5.085 percent on the excess of Connecticut taxable gifts over \$0 (as opposed to the excess over \$2 million). Therefore, a tax of \$101,700 is payable on aggregate Connecticut taxable gifts of \$2,000,001 made on or after January 1, 2005.

## THE CONNECTICUT ESTATE TAX

A fully de-coupled Connecticut estate tax is imposed on the "Connecticut taxable estate" at the same rates and subject to the same \$2 million exemption as under the gift tax, applicable to estates of persons dying on or after January 1, 2005.

### Property Subject to Tax

#### *Residents*

The "Connecticut taxable estate" is the gross estate, for federal estate tax purposes, less allowable deductions, plus the aggregate amount of Connecticut taxable gifts, made by the decedent for all calendar years beginning on or after January 1, 2005. The deduction for state death taxes paid under Section 2058 of the Code, however, is disregarded. In the event of repeal of the federal estate tax, all references to federal law mean federal law as in effect on the date prior to repeal.

Although in the case of a resident of this state, Connecticut taxable gifts exclude real and tangible personal property located outside of the state, the Connecticut taxable estate appears to include real and tangible personal property wher-

ever located by reference to the gross estate for federal tax purposes. A reduction in the tax is provided for estate or succession taxes paid to any other state in the amount of the lesser of the amount of taxes paid to such other state (if any), or a fraction of the tax otherwise payable to Connecticut, the numerator of which is the value of the gross estate over which the other state has jurisdiction (to the extent that Connecticut would assert jurisdiction with respect to that state's residents) and the denominator of which is the value of the gross estate. The presumption of residency under prior law is maintained.

#### *Non-residents*

In the case of a non-resident, only real property situated in the state and tangible personal property located in the state are subject to Connecticut jurisdiction for tax purposes. The tax is that portion of the tax determined under the table that the property located in the state bears to the value of the decedent's gross estate.

## Determination and Rate of Tax

The tax is determined based on the table set forth in the statute, which is identical to the table set forth in the gift tax statute. A credit against the estate tax is allowed for any taxes paid for Connecticut taxable gifts made on or after January 1, 2005. Again, the tax is imposed on the excess of the Connecticut taxable estate over \$0, so that a tax of \$101,700 will be payable on an estate (including Connecticut taxable gifts) of \$2,000,001.

## Availability of Independent State QTIP Election

For purposes of determining the tax due, all of the deductions available under the Internal Revenue Code are to be taken into account (excepting the deduction for state death taxes under Section 2058 of the Code, as provided in subsection (c)(1) of C.G.S. § 12-391). Specific reference is made to the qualified terminable interest property (QTIP) marital deduction under Section 2056(b)(7) of the Code. The

statute states that a QTIP election "may be made for state estate tax purposes regardless of whether any such election is made for federal estate tax purposes." DRS has taken the position that if a QTIP election is made for federal estate tax purposes, the election is binding on the estate, and no independent Connecticut QTIP election can be made.

The value of the gross estate of a surviving spouse includes the value of any property in which the decedent had a qualifying income interest for life for which a state QTIP election is made.

The Implementer Bill makes clear that parties to a civil union will be entitled to a marital deduction as if such a deduction were permitted under federal law for gifts made on or after January 1, 2006, and for estates of persons dying on or after that date.

## Filing Requirements

The filing requirements are expanded from those under prior law. In the case of residents, estates of all persons who die on or after January 1, 2005, must file a Connecticut estate tax return, and in the case of non-residents, all estates in which the gross estate includes real or tangible personal property located in the state must file a return. The tax is due nine months from death, as under prior law (the filing period had been reduced to six months under the temporary estate tax established by Public Act 03-1 § 59 of the June Special Session). The Implementer Bill provides that, where the decedent's Connecticut taxable estate exceeds \$2 million, the return is to be filed with the commissioner of Revenue Services with a copy of the return filed with the probate court of the district in which the decedent resided at his or her death, or, in the case of a non-resident, the district in which real or tangible personal property is located. If the Connecticut taxable estate is \$2 million or less, the return need only be filed with the probate court. The probate judge then reviews the return and issues an opinion to the executor that the estate is not subject to tax.

DRS has developed one return for reporting both gifts and transfers at death, Form CT-706/709. An abbreviated form,

the CT-706NT (looking much like the Form S-2 succession tax return) has been developed for filing in non-taxable estates. Both are available with instructions on the DRS Web site at [www.ct.gov/drs](http://www.ct.gov/drs).

## Connecticut Estate Tax Lien

The Implementer Bill addresses the release of the lien for estate taxes, and provides that if the Connecticut taxable estate is \$2 million or less, the certificate of release of lien shall be issued by the probate court.

## Miscellaneous Provisions

Subsections (a) and (b) of C.G.S. § 12-391 retain prior law for estates of persons

dying prior to January 1, 2005. The Implementer Bill clarifies that the estates of persons who died between July 1, 2004, and December 31, 2004, remain subject to the “temporary” estate tax under section 59 of Public Act 03-1. Finally, Section 113 of Public Act 05-251 repeals C.G.S. § 12-396, a statement of the intent to obtain for the state the benefit of the credit allowed under the Internal Revenue Code for state death taxes paid.

## DETERMINATION OF PROBATE FEES

The greatest of the inventory, the gross estate for succession tax purposes, the gross estate for estate tax purposes, or the Connecticut taxable estate will now provide the basis for the calculation of the probate courts’ fees. **CL**

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## NOTES

1. HB 7502 § 51.
2. P.A. 05-251 §§ 67 and 69.
3. P.A. 05-251 § 67; to be codified as C.G.S. § 12-642 (a)(3).
4. P.A. 05-251 § 69.
5. C.G.S. § 12-391(c)(1).
6. C.G.S. § 12-391(e)(2).
8. C.G.S. § 12-391(f)(1).
9. Special Note (SN) 2005(10), dated October 7, 2005.
10. HB 7502 § 58. The civil union legislation was effective October 1, 2005.
11. PA 05-5 § 15.