



# Senate

General Assembly

**File No. 736**

January Session, 2023

Substitute Senate Bill No. 1239

*Senate, May 8, 2023*

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING CERTAIN EMPLOYEE STOCK-SHARING ARRANGEMENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2024*) (a) As used in this section:

2 (1) "Company" means an entity subject to the tax under chapter 208  
3 of the general statutes;

4 (2) "Eligible employee" means any full-time employee of the  
5 company, who is based in the United States and is not one of the one per  
6 cent of employees receiving the highest annual compensation from such  
7 company;

8 (3) "Participating employee" means any eligible employee of the  
9 company who participates in a share plan; and

10 (4) "Share plan" means an employee stock-sharing arrangement  
11 offered by a company that provides for making periodic distributions of

12 common stock of such company to participating employees.

13 (b) Any company that offers a share plan to its eligible employees  
14 shall be eligible to receive, for income years commencing on or after  
15 January 1, 2026, an exemption from the additional tax imposed under  
16 subdivision (4) of subsection (b) of section 12-214 of the general statutes  
17 or subdivision (4) of subsection (b) of section 12-219 of the general  
18 statutes, as applicable, if the Commissioner of Revenue Services is  
19 satisfied that such share plan meets the requirements of this section. If  
20 such additional tax expires or is eliminated on or after January 1, 2026,  
21 such company shall be eligible to claim a credit against the tax imposed  
22 under chapter 208 of the general statutes in an amount equal to what  
23 such additional tax would have been if it were still in effect.

24 (c) (1) An employee stock-sharing plan shall not be treated as a share  
25 plan unless:

26 (A) At least eighty per cent of the company's eligible employees are  
27 participating employees;

28 (B) At least some of the company's eligible employees who are  
29 residents of this state are participating employees; and

30 (C) The distributions under such plan:

31 (i) Are made without compensation other than service as an  
32 employee;

33 (ii) May be sold or transferred without restriction after a holding  
34 period not to exceed three years, except that a distribution may be sold  
35 or transferred during such period for any hardship of an employee in  
36 accordance with Section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code  
37 of 1986, or any subsequent corresponding internal revenue code of the  
38 United States, as amended from time to time;

39 (iii) Are made in equal amounts, except as provided in subdivision  
40 (2) of this subsection, to each participating employee, determined in the  
41 aggregate for any calendar year and adjusted with respect to any

42 employee not employed at all times during such calendar year; and

43 (iv) Vest immediately in the recipient, except as provided in  
44 subdivision (3) of this subsection.

45 (2) The requirement under subparagraph (C)(iii) of subdivision (1) of  
46 this subsection shall be treated as met if such requirement is met when  
47 applied to separate groups of participating employees divided under  
48 the terms of the share plan on the basis of the period for which such  
49 employees have been employed by the company.

50 (3) In the case of any employee employed by the company for a  
51 period of less than five years, such employee's interest in any  
52 distribution under a share plan shall vest not later than the date on  
53 which such employee has been so employed for a period of five years or  
54 the first date after such distribution on which there is a change in the  
55 control of such distributing company, whichever is earlier.

56 (d) (1) Any common stock under a share plan received by a  
57 participating employee pursuant to this section shall not be considered  
58 income for purposes of the tax imposed under chapter 229 of the general  
59 statutes.

60 (2) In the case of the disposition during a taxable year by any  
61 employee or former employee of share plan stock received by such  
62 employee or former employee under a share plan, the amount of the  
63 taxpayer's net share plan stock gain that does not exceed the taxpayer's  
64 eligible expenses shall not be considered income for purposes of the tax  
65 imposed under chapter 229 of the general statutes.

66 (3) For purposes of this subsection:

67 (A) "Net share plan stock gain" means, with respect to any taxpayer  
68 for any taxable year, the excess of (i) the aggregate gains from the  
69 disposition of share plan stock during such taxable year, or (ii) the  
70 aggregate losses from such dispositions; and

71 (B) "Eligible expenses" means, with respect to any taxpayer for any

72 taxable year, amounts paid by such taxpayer for:

73 (i) Principal or interest on any qualified education loan, as defined in  
74 Section 221 of the Internal Revenue Code of 1986, or any subsequent  
75 corresponding internal revenue code of the United States, as amended  
76 from time to time;

77 (ii) Medical care not compensated for by insurance or otherwise, for  
78 the taxpayer, the taxpayer's spouse or the taxpayer's dependents; and

79 (iii) Principal or interest on indebtedness secured by the principal  
80 residence of the taxpayer.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2024	New section

**Statement of Legislative Commissioners:**

In Subsec. (c)(1)(C)(ii), "401(k)(2)(B)(i)(v)" was changed to "401(k)(2)(B)(i)(IV)" for accuracy.

**FIN**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Department of Revenue Services	GF - Potential Revenue Loss	See Below	See Below
Department of Revenue Services	GF - Cost	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which creates tax incentives for corporations offering a qualifying employee stock-sharing arrangement, results in (1) a potential General Fund revenue loss beginning in FY 27, and (2) a one-time cost of up to \$75,000 in FY 27 for programming updates to the CTax tax administration system and myconneCT online portal, and for form modification.

**Revenue Impact**

There is a potential General Fund revenue loss beginning in FY 27 to the extent that companies offer such an arrangement and: (1) the corporation business tax surcharge is extended (the current surcharge expired 1/1/23), or (2) the surcharge is not extended and companies are instead eligible to claim tax credits.<sup>1</sup>

Additionally, there is a potential General Fund revenue loss from the personal income tax exemption for qualifying share plan stock, the

<sup>1</sup> For context, in the 2020 income year a total of 3,694 filers paid an aggregate of \$69.7 million in corporate surcharge at the 10% rate.

magnitude and timing of which is dependent on (1) companies offering a qualifying arrangement, and (2) employee stock sales.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to the number and value of qualifying arrangements established in the state.

**OLR Bill Analysis****sSB 1239*****AN ACT CONCERNING CERTAIN EMPLOYEE STOCK-SHARING ARRANGEMENTS.*****SUMMARY**

Starting with the 2026 income year, this bill creates tax incentives for corporations offering an employee stock-sharing arrangement that periodically distributes their common stock to participating employees (i.e., offering a “share plan”). The bill sets the criteria employee stock-sharing plans must meet in order to qualify as a share plan, including requiring that at least 80% of the company’s eligible employees participate in the plan, of which some must be Connecticut residents.

Under the bill, if the revenue services commissioner finds that a corporation’s share plan meets the bill’s requirements, the corporation is either (1) exempt from the corporation business tax surcharge or (2) if the surcharge expires or is eliminated on or after January 1, 2026, eligible for a credit against the corporation business tax equal to the surcharge amount they would have owed had it still been in effect (see BACKGROUND).

The bill also exempts from state personal income tax any (1) share plan stock taxpayers receive and (2) net gain on the stock, up to the taxpayer’s eligible expenses for certain student loans, medical care, and debt.

EFFECTIVE DATE: January 1, 2024

**SHARE PLAN CRITERIA**

Under the bill, the plan’s distributions must meet certain requirements to be treated as a share plan. Specifically, they:

1. must be made without compensation other than the employee's service;
2. may be sold or transferred without restriction after a holding period of up to three years, except that employees may sell or transfer them during the holding period for any hardship, subject to the same conditions that federal law provides for hardship withdrawals from 401(k) plans;
3. must be made in equal amounts to each participating employee, except as described below, determined in the aggregate for any calendar year and adjusted for any employee partially employed during the year; and
4. must vest immediately in the recipient, except as described below.

Under the bill, the requirement that plan distributions be made in equal amounts to participating employees must be treated as met when applied to separate groups of participating employees divided under the share plan's terms based on how long they have been employed by the company.

For those employed by the company for less than five years, their interest in a share plan distribution must vest (1) by the date on which they have been employed for five years or (2) on the first date after the distribution on which there is a change in the distributing company's control, whichever comes first.

#### **INCOME TAX EXEMPTION FOR NET SHARE PLAN STOCK GAIN**

Under the bill, if an employee or former employee disposes (e.g., sells) stock he or she received under a share plan during any tax year, the amount of the "net share plan stock gain" (i.e., aggregate gains or losses from the stock's disposition) that does not exceed his or her "eligible expenses" is exempt from state personal income tax.

"Eligible expenses" are the amount the taxpayer paid during the tax



year for the following:

1. principal or interest on any qualified education loan (i.e., generally debt incurred by the taxpayer solely to pay for qualified higher education expenses (26 U.S.C. § 221));
2. medical care for the taxpayer or his or her spouse or dependents that is not paid for by insurance or otherwise; and
3. principal or interest on any debt secured by the taxpayer's principal residence.

## **BACKGROUND**

### ***Corporation Business Tax Surcharge***

For most income years since 1989, Connecticut law has required certain corporation business taxpayers to pay an additional surcharge equal to a specified percentage of their tax liability before tax credits are applied.

Most recently, a 10% surcharge applied for the 2018 to 2022 income years. It applied to companies with more than \$250 in corporation tax liability that either (1) had at least \$100 million in annual gross income in those years or (2) were taxable members of a combined group that filed a combined unitary return, regardless of the amount of annual gross income.

### ***Related Bill***

sSB 981, favorably reported by the Finance, Revenue and Bonding Committee, extends the 10% corporation business tax surcharge for three additional years, to the 2023 through 2025 income years.

## **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/19/2023)