

## State and Local Tax Practice Group

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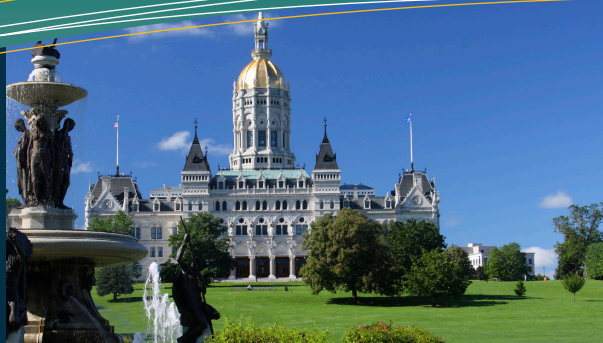
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## 2012 Connecticut Tax Developments

Despite facing a significant projected deficit for the current fiscal year, Governor Malloy generally stood by his promise not to raise taxes further on Connecticut taxpayers after last year's historic tax increases. The projected deficit, however, curtailed any attempt to provide tax relief to Connecticut businesses or individuals, or to enact new tax incentives to promote job growth in the state. The result was a very quiet legislative session as it related to taxes, a welcome relief to many taxpayers after a series of tumultuous years.

The lack of legislative action during the regular, and June and December special sessions did not diminish the public interest in evaluating Connecticut's business tax policy. State Comptroller Kevin Lembo initiated the discussion by seeking to reconvene the Business Tax Credit and Tax Policy Review Committee. Governor Malloy immediately issued Executive Order No. 17 establishing a Governor's Business Tax Policy Review Task Force to: (i) identify specific business tax areas and other issues, including business tax credits or other targeted business tax relief, that should be the focus of future legislation and/or state economic policy; and (ii) evaluate the cost, benefit, efficiency, effectiveness and measurable performance of the current business tax credit structure with respect to economic development, business retention and growth, and employment retention and growth. After a series of hearings and meetings, the Task Force issued a report detailing its findings and recommendations. As part of this process, the State Comptroller also published a set of recommendations. Both the Task Force report and the State Comptroller's recommendations are reviewed in our Alert entitled "Business Tax Policy Change Is In The Air (Again)?" Given the aggregate projected state budget deficit for the next two fiscal years, it remains to be seen what, if any, of the recommendations made will be promoted by the Administration.

This Alert summarizes Connecticut tax legislation enacted (or that became effective), court decisions rendered and administrative guidance published during 2012. Please contact any member of our State and Local Tax Practice Group if you have any questions regarding the new tax law changes or how they affect you or your business.

## SALES TAX

### I. Legislation

**Zappers and Phantom-Ware.** The Connecticut General Assembly enacted legislation making it a crime to willfully and knowingly sell, purchase, install, transfer or possess an automated sales suppression device (also known as a “zapper”) or “phantom-ware.” A zapper is a software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data used to report and verify tax liability. “Phantom-ware” is defined as a hidden programming option embedded in or hardwired into an electronic cash register that may be used to create a virtual second till or eliminate or manipulate sales records. A zapper or phantom-ware, or any device containing either, is contraband and may be confiscated. Conn. Pub. Act No. 12-135, §1 (*effective July 1, 2012*). See DRS Special Notice 2012(4), *2012 Legislation Prohibiting the Use of Zappers*.

**Aircraft Industry Joint Ventures.** Under current law, there is an exemption from the Connecticut sales and use tax for purposes of the rendering of (i) personnel services, (ii) commercial or industrial marketing, development, testing or research services, or (iii) business analysis and management services, when those services are rendered under a joint venture agreement by participants in certain joint ventures. In order to qualify for the exemption, the service provider is required to own not less than a 25% interest in the joint venture, and the exemption, for any single joint venture, is not to be allowed for more than 20 consecutive years (30 consecutive years in the case of a joint venture in the aircraft industry in existence prior to January 1, 1986). During the June special session, the General Assembly amended the exemption provision (i) to allow the 25% interest requirement to be satisfied if the service provider and related members own, in the aggregate, the minimum 25% interest and (ii) to extend the period of the exemption for certain aircraft industry joint ventures from 30 years to 40 years. Conn. Gen. Stat. §12-412(58), as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §124 (*effective July 1, 2012, and applicable to sales occurring on or after that date*).

**Vessel Storage Maintenance or Repair.** Under current law, there is: (i) an exemption from the sales tax for the winter storage or mooring of noncommercial vessels during the period from November 1st through April 30th; and (ii) an exemption from the use tax for the use of a vessel in Connecticut during the period from October 1st through April 30th, exclusively for the purposes of (A) delivery of the vessel to a storage facility or (B) the actual storage, maintenance or repair of such vessel. During the regular legislative session, the General Assembly adopted legislation to extend each of the sales tax exemption period and the use tax exemption period to cover the period from October 1st through May 31st. Conn. Gen. Stat. §12-407 (a)(2)(M), as amended by Conn. Pub. Act No. 12-175, §1 (*effective from passage*); Conn. Gen. Stat. §12-413a as amended by Conn. Pub. Act No. 12-175, §2 (*effective from passage*). **Governor Malloy vetoed the legislation on June 15, 2012.**

### II. Cases

**“Representatives” and Nexus.** In *Scholastic Book Clubs, Inc. v. Commissioner*, 304 Conn. 204 (2012), *cert. denied*, 81 U.S.L.W. 3193 (Oct. 9, 2012), the Connecticut Supreme Court held that the schoolteachers who facilitated and processed orders for books by schoolchildren constituted “representatives” of Scholastic Book Clubs, Inc. (“Scholastic”), within the meaning of Conn. Gen. Stat. §12-407(a)(15)(A)(iv). As such, Scholastic was determined to be engaged in business in the state and to have nexus with Connecticut sufficient to justify the imposition on Scholastic of the obligation to collect and remit sales tax on book sales in Connecticut. The Supreme Court concluded that a formal legal or agency relationship was unnecessary; it was sufficient that the schoolteachers were the “exclusive vehicle” for selling Scholastic’s products

and were not acting in *loco parentis*. The Court further held that the imposition of the Connecticut sales and use tax on Scholastic would not be a violation of the commerce clause of the United States Constitution because “substantial nexus” existed between Scholastic and the state by virtue of the activities of the teachers which, in the eyes of the Court, function “in much the same way as salesmen . . . .”

**Section 1983 and the Taxpayer’s Bill of Rights.** At the same time they contested a jeopardy sales and use tax assessment arising from the operation of a restaurant and nightclub, the entity that owns the establishment, and the individual who owns the entity, filed a separate action against the DRS auditor and his supervisor asserting, among other allegations, claims under 42 U.S.C. §§1983 and 1985 for violations of their federal constitutional rights, and under the state Taxpayer’s Bill of Rights, Conn. Gen. Stat. §12-39n. The appeal from the sales and use tax assessment ultimately led to a reduction of the assessment, and the vacating of the penalty and marshal’s fee, but the reduced assessment was upheld by the Connecticut Supreme Court in Alexandre v. Commissioner of Revenue Services, 300 Conn. 566 (2011). The separate action against the auditor and his supervisor was the subject of a successful motion for summary judgment filed by the defendants, with the trial court finding that it lacked subject matter jurisdiction as to the federal statutory and constitutional claims and that section 12-39n does not create or authorize an independent tort cause of action. Although the Connecticut Appellate Court concluded that the plaintiffs’ lawsuit should have been dismissed rather than be the subject of a motion for summary judgment, in J.P. Alexandre, LLC v. Egbuna, 137 Conn. App. 340, cert. denied, 307 Conn. 913 (2012), the Court affirmed the result in favor of the auditor and the audit manager. The Court concluded that: (i) the trial court lacked subject matter jurisdiction as there could be no claim under section 1983 in connection with a state’s collection of taxes if the party has an adequate legal remedy for the claimed violation under state law; (ii) Conn. Gen. Stat. §12-422 provides an adequate legal remedy with respect to sales and use tax assessments; and (iii) the Connecticut Taxpayer’s Bill of Rights does not provide for an express or implied cause of action, and an implied remedy is not needed to ensure its effectiveness because the remedies available to taxpayers in the Connecticut general statutes and the regulations promulgated thereunder “adequately protect the rights in §12-39.”

### **III. Administrative Publication**

**Medical Records Provider.** In DRS Ruling 2012-2, the DRS concluded that a company that provides copies of medical records on behalf of its client healthcare providers must charge sales tax to the parties who request and purchase such copies if the medical record copies are provided in hard copy (as sales of tangible personal property) or by providing on-line access to a data base that contains copies of such records (as a sale of a computer and data processing service). Medical records supplied by fax or electronic mail are not subject to the Connecticut sales or use tax.

DRS Special Notice 2012(5), *2012 Legislative Changes Affecting Sales and Use Taxes, Enhanced 911 and Marijuana and Controlled Substances Tax*

## **CORPORATION BUSINESS TAX**

### **I. Legislation**

**Surcharge Increase.** Pursuant to legislation enacted during the 2011 regular legislative session, and effective for each income year commencing on or after January 1, 2012 and prior to January 1, 2014, the surcharge on the corporation business tax is increased to 20%. As under current law, the surcharge is calculated based upon the tax liability of the Subchapter C corporation, excluding any credits, whether calculated based upon the corporation’s net income or capital base, and is imposed on the corporation unless either (i) the tax liability of the corporation is equal to \$250 (i.e. the

minimum tax) or (ii) the annual gross income of the corporation is less than \$100 million. The \$100 million annual gross income exemption is not available to a corporation that files a combined or unitary return. Conn. Gen. Stat. §§12-214(b)(7) and 12-219(b)(7), added by Conn. Pub. Act No. 11-6, §§76, 79 (*effective May 4, 2011, and applicable to income years commencing on or after January 1, 2011*).

**Estimated Corporation Business Tax Overpayments.** Beginning with a 2011 overpayment applied to the estimated tax due for 2012, if a corporation timely files its Connecticut corporation business tax return, and the return shows an overpayment for the tax year, the corporation will be allowed to credit such overpayment against the corporation's estimated tax for the succeeding tax year, and the payment will be treated as paid on the due date of the first required installment of estimated tax for that succeeding tax year. Such reported overpayments shall be credited against otherwise unpaid installments in the order they ordinarily would become due. Conn. Gen. Stat. §12-242g, as amended by Conn. Pub. Act No. 11-61, §56 (*effective October 1, 2011, and applicable to estimated corporation business tax payments for income years commencing on or after January 1, 2012*).

## **II. Administrative Publication**

DRS Information Publication 2010(13), *Guide to Connecticut Business Tax Credits* (published March 1, 2012).

## **INDIVIDUAL INCOME TAX**

### **I. Legislation**

**Learn Here, Live Here Program.** In 2011, the Connecticut General Assembly enacted legislation authorizing the Department of Economic and Community Development ("DECD") to establish the Learn Here, Live Here Program to assist in the purchase of a first home in Connecticut by a person who graduates on or after January 1, 2014 from either (i) a regional vocational-technical school or (ii) if the person qualified as an in-state student and paid the in-state tuition rate, a Connecticut public institution of higher education. A qualifying person may apply to the DECD to have up to an annual maximum of \$2,500 of their Connecticut income tax liability segregated into a Connecticut first-time homebuyer's account. (The annual total segregated amount for all participants in the program is capped at \$1 million.) For a period up to ten years after graduation, the person may apply to the DECD for a payment to be issued, up to the segregated amount, and used for a down payment on a Connecticut home if it is the first home purchased by the person. If the person ceases to live in Connecticut within five years of the purchase date, the person will be required to repay a percentage of the payment. During the 2012 legislative session, the statute governing the program was amended to expand eligibility to participate in the program to any graduate of a public institution of higher education, a private university or a health care training school in Connecticut, regardless of whether the graduate had qualified as an in-state student and paid the in-state tuition rate. A "health care training school" is defined broadly to include a medical or dental school, chiropractic college, school or college of optometry, chiropody, podiatry, or naturopathy, school of occupational therapy or physical therapy, hospital-based occupational school, school of dental hygiene or any other school or institution giving instruction in the healing arts. Conn. Gen. Stat. §32-4i, as amended by Conn. Pub. Act No. 12-75, §1 (*effective June 6, 2012*).

### **II. Case**

**Jeopardy Assessment Appeal.** In *Cunningham v. Commissioner*, 2012 Conn. Super. LEXIS 1390 (May 30, 2012), the Tax Session of the Superior Court granted the Commissioner's motion to dismiss an appeal of a jeopardy income tax



assessment because the taxpayer had failed to file timely an administrative appeal with the Commissioner within ten days of the service of the jeopardy assessment. The taxpayer asserted that an administrative appeal had been timely filed within ten days of the date the taxpayer had received notice of the assessment. The Court disagreed that the ten-day appeal period commenced as of the taxpayer's receipt of the notice of the assessment, holding that by statute (Conn. Gen. Stat. §12-2f) service was made as of the time the notice of the jeopardy assessment was mailed by first class mail. In addition, the Court ruled that the taxpayer's constitutional rights had not been infringed even though the taxpayer did not actually receive the notice until eight days into the ten-day appeal period.

## PROPERTY TAX

### I. Legislation

**Partially Completed New Construction.** In *Kasica v. Columbia*, 2011 Conn. Super. LEXIS 2523 (Oct. 6, 2011), the Superior Court questioned the practice of assessors that assess partially completed new construction based upon the percentage of completion of that new construction. Although the lower court's decision is on appeal, the Connecticut General Assembly intervened by amending the property tax statutes to provide expressly that partially completed new construction of real estate shall be liable for the municipal property tax based upon the assessed value of such new construction as of October first of the assessment year. Conn. Gen. Stat. §§12-53a(a), 12-62c(c) and 12-64(a), as amended by Conn. Pub. Act No. 12-157, §§1-3 (*effective October 1, 2012, and applicable to assessment years commencing on or after said date*).

**Municipal Property Tax Audits.** The penalty for the failure to appear or cooperate with a municipal property tax audit is changed from (i) a fine of not more than \$100 and/or imprisonment of not more than 30 days to (ii) a class D misdemeanor. Conn. Gen. Stat. §12-53(c)(4), as amended by Conn. Pub. Act No. 12-80, §57 (*effective October 1, 2012*). In a similar manner, the penalty for the failure of the custodian of any municipal books and records to cooperate with a state audit is changed from (i) a fine of not more than \$200 and/or imprisonment of not more than 60 days to (ii) a class D misdemeanor. Conn. Gen. Stat. §12-6, as amended by Conn. Pub. Act No. 12-80, §119 (*effective October 1, 2012*).

**Jeopardy Tax Collections.** Under current law, a municipal tax collector may take immediate action to collect a tax that is assessed but is not yet due if the tax collector believes that the collection of the tax will be jeopardized by delay. New legislation now requires that a tax collector: (i) exercise "due diligence" to determine whether the collection of tax will be jeopardized by delay prior to commencing a jeopardy tax collection action; and (ii) upon commencing a jeopardy tax collection action, provide notice of the collection proceeding to the taxpayer and to the chief elected official or chief executive officer of the municipality in which the property is located. The written notice must contain a detailed explanation supporting the determination that the collection of the tax will be jeopardized by delay. Conn. Gen. Stat. §12-163, as amended by Conn. Pub. Act No. 12-26, §1 (*effective October 1, 2012, and applicable to assessment years commencing on or after said date*).

**Rental Rebate Application Period.** The period during which a qualifying renter of real property or of a mobile manufactured home, if age 65 or older or permanently disabled, may file an application for a state refund of utility and rent payments is expanded from the former period from May 15th through September 15th, to an extended period from April 1st through October 1st. Conn. Gen. Stat. §12-170f, as amended by Conn. Pub. Act No. 12-69, §1 (*effective October 1, 2012*).

**Medical Statements for Tax Exemptions and Applications for Tax Relief.** Under current law, certain statutes that allow for the grant of a property tax exemption or relief for blind and disabled persons, or that grant an extension of time for an application for tax relief due to illness or incapacitation, require a statement or certificate from a physician. Effective October 1, 2012, these statutes are amended also to permit an advanced practice registered nurse to provide such a statement or certificate on a taxpayer's behalf. Conn. Gen. Stat. §§12-94, 12-129c, 12-170f(a), 12-170w(a) and 12-170aa(f), as amended by Conn. Pub. Act No. 12-197, §§26-30 (*effective October 1, 2012*).

**Revaluation Decrease Phase-In.** Under existing law, a municipality has the option to phase-in for a period of up to five years all or part of the increases in real property assessments after a property revaluation. For the October 1, 2012 assessment year only, a municipality similarly may phase-in all or part of the post-revaluation decreases in real property assessments. The new legislation establishes three phase-in methods for phasing in decreases that are comparable to the methods for phasing in increases: a dollar phase-in; a ratio phase-in; and a ratio phase-in by property class. The municipality's legislative body must approve the phase-in, and may discontinue the phase-in before it is completed. Conn. Gen. Stat. §§12-62c, 10-261a(a) and 10-261b(b), as amended by Conn. Pub. Act No. 12-2 (June Spec. Sess.), §§168-170 (*effective July 1, 2012, and applicable to assessment years commencing October 1, 2012*).

**Computer-Assisted Mass Appraisal (CAMA) System Grants.** Under current law, a municipality may obtain financial assistance under a state program for costs associated with developing or modifying systems used for tax assessment and collection functions. New legislation prohibits the Secretary of the Office of Policy and Management from accepting or approving any application for a grant-in-aid under the program after June 30, 2012. Conn. Gen. Stat. §12-62f(c), as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §106 (*effective July 1, 2012*).

## ***II. Cases***

**Tax Sale and Unrecorded Deed.** In Cornelius v. Rosario, 138 Conn. App. 1, cert. denied 307 Conn. 934 (2012), a property owner who had failed to record his deed sought to challenge a tax sale of the property by the City of Hartford based upon property taxes not paid by the property owner. The Connecticut Appellate Court held that the property owner had standing under Conn. Gen. Stat. §12-159 to bring the action based upon the allegation that the owner's predecessor in title had not received adequate notice pursuant to Conn. Gen. Stat. §12-157. The Court, however, affirmed the trial court's grant of summary judgment in favor of the City holding that: (i) notice to the property owner's predecessor in interest satisfied due process requirements when, after having had its initial mailing to the predecessor in interest returned as "undeliverable," the City posted a notice in the City Hall and in the Hartford Courant; (ii) an unrecorded deed or other unrecorded interest is not "reasonably ascertainable" requiring notification of a tax sale; and (iii) the trial court did not err in denying the property owner the right to testify at the hearing on the motion for summary judgment and in not ordering *sua sponte* the filing of post-argument affidavits.

**Comparable Sales Approach.** In Massey v. Branford, 2012 Conn. Super. LEXIS 67 (Jan. 9, 2012), the Superior Court upheld the property tax appeal filed by the plaintiffs, whose expert valued the residential property using the comparable sales approach. In reaching its decision, the Court rejected the town's argument that an opinion based upon comparable sales must address all sales made in the town, rather than a small number of sales that the plaintiffs' appraiser had concluded involved the properties most similar to the residence owned by the plaintiff.

**Insurance Proceeds.** In Plymouth v. Structus, LLC, 2011 Conn. Super. LEXIS 2890 (Nov. 10, 2011), the town sued both a property owner and its creditor mortgagee to collect upon a lien for unpaid property taxes. The town sought to

collect the proceeds of an insurance policy that the mortgagee had been forced to purchase when the property owner had failed to do so pursuant to the terms of the mortgage loan. The proceeds were alleged to be due and owing because the building on the site had collapsed due to snow. The Court held that the town could not assert that it had a lien on the insurance proceeds under Conn. Gen. Stat. §49-73a because the lien statute refers only to damages caused by fire. The Court denied the creditor/mortgagee's motion for summary judgment on the town's equitable claim of unjust enrichment, however, because there was insufficient evidence as to whether the amount of the insurance proceeds would exceed the creditor/mortgagee's loss. The creditor/mortgagee subsequently filed a second motion for summary judgment with evidence establishing that the insurance proceeds were less than the outstanding debt. In Plymouth v. Structus, LLC, 2012 Conn. Super. LEXIS 1722 (July 3, 2012), the Court granted summary judgment for the creditor/mortgagee, rejecting the town's argument that the creditor/mortgagee had unclean hands because, had it brought a foreclosure action earlier, there may have been sufficient funds to pay the town's tax lien.

**Loss of Open Space Classification.** In Frederick C. Machholz, Jr., Trustee v. Bloomfield, 2011 Conn. Super. LEXIS 3038 (Dec. 2, 2011), the taxpayer appealed the termination of the open space classification for property that had held such classification for 30 years and whose use had not changed. The Court denied the appeal, holding that the termination was valid because the 2009 zoning regulations changed the definition of open space and the taxpayer did not have a vested right in the classification.

**Unlicensed Appraisers.** In Wheelabrator Bridgeport, L.P. v. Bridgeport, 2012 Conn. Super. LEXIS 964 (Apr. 9, 2012), the City moved to strike the testimony of two witnesses who testified on behalf of the taxpayer in a valuation dispute because they were not licensed appraisers. The Court denied the motion to strike, holding that so long as the appraiser qualifies as an expert witness, no other qualification is needed.

**Non-Maintained Road.** In Marchegian Sportsman Club, Inc. v. Guilford, 2012 Conn. Super. LEXIS 420 (Feb. 10, 2012), the Court upheld a property tax appeal filed by the plaintiff club. The Court found that the taxpayer's valuation was more credible than that proposed by the assessor in large part because the only access to the club's property was an A3 road that was not maintained by the town and because the topography of the site would limit development.

**Owner-Occupied Commercial Property.** In Home Depot USA, Inc. v. Danbury, 2012 Conn. Super. LEXIS 1297 (May 16, 2012), the taxpayer appealed a real property tax assessment against an owner-occupied home improvement store in a location recognized by both parties as a favorable commercial location. Although both of the appraisers employed the income capitalization approach to value the property, the Court rejected the use of that valuation approach for owner-occupied commercial property, concluding that it was neither permitted by statute (citing Conn. Gen. Stat. §12-63b) nor practical given the lack of information regarding rental history, expenses, etc. The Court opted, instead, to use the sales approach relying on national sales of similar large commercial properties.

**Island Farm.** In Betts Island Oyster Farms, LLC v. Norwalk, 2012 Conn. Super. LEXIS 2366 (Sept. 18, 2012), the named plaintiff instituted a tax appeal challenging the loss of the classification of its land as a "farm." The Superior Court sustained the tax appeal, holding that: (i) the failure of the appeal to name as an additional party an individual who additionally owned an interest in the property did not mean that the court had to dismiss the action for lack of subject matter jurisdiction for lack of an indispensable party because that individual could be subsequently named as a party; (ii) the failure of the appeal to allege expressly ownership of the property, an application to the board of assessment appeals and aggrievement on the part of the plaintiff is not fatal to the appeal because such allegations could be discerned from the other statements contained in the appeal, the defendant's answer, and the facts established at the hearing; and (iii)

there was no evidence that the use of the small island for honey bees and fruit trees was any different than when the property was first classified as a farm.

**Island Property.** In Zesiger v. Norwalk, 2012 Conn. Super. LEXIS 2148 (Aug. 22, 2012), a property owner appealed the assessment of each of an island residential property and of a waterfront parcel that the owner used as a garage and departure point. Although the Superior Court lamented the lack of comparable sales and rejected the attempt by the owner's appraiser to split the island into a two-acre residential lot and the remainder of the island as excess acreage, the Court meaningfully reduced the assessments. The Court ruled that, since the waterfront parcel was used to service the island property, its highest and best use was as a service property, and the parcel could not be valued as residential property.

**Appeal by Lessee.** In Stamford Windustrial Co. v. Stamford, 2012 Conn. Super. LEXIS 1715 (July 5, 2012), the Superior Court granted the motion to dismiss filed by the City of Stamford on the ground that the lessee lacked standing to file the appeal from a property tax assessment on the leased property because neither the lease nor a notice of the lease had been recorded on the City's land records. According to the Court, Conn. Gen. Stat. §12-117a does not grant standing to appeal an assessment to the lessee of property with an unrecorded lease.

**Commercial Property/No Parking.** In Sono Equities, LLC v. Norwalk, 2012 Conn. Super. LEXIS 2417 (Sept. 28, 2012), the Superior Court ruled in favor of a taxpayer which sought a reduction in the assessment of a multi-tenant office building based upon the lack of on-site parking for tenants.

**Farmland Classification Removal.** In consolidated property tax appeals, Sayers v. Danbury, 2012 Conn. Super. LEXIS 2423 (Sept. 27, 2012), the taxpayers challenged the removal of a farm land exemption for their properties on the basis that (i) they hold a nursery license, (ii) they operate a topsoil farm on the properties, and (iii) the properties previously were used and classified as farm land and that such classification should continue because, due to flooding, the evolution of the land limits its use to dirt farm operations. The Superior Court denied the appeals ruling that (i) the mere holding of a nursery license is insufficient if the taxpayer does not conduct nursery operations on the properties, (ii) a dirt farm is inconsistent with the purpose of the farm land exemption which is to preserve farm land and conserve the state's natural resources, and (iii) a farm land classification is forfeited if there is a change in the use of the land.

**Assessor-Attorney Communications.** In Noble v. Norwalk, 2012 Conn. Super. LEXIS 2017 (Aug. 3, 2012), a taxpayer who filed an appeal from a property tax assessment sought discovery of email communications between the City attorney and the City Assistant Tax Assessor who had been named by the City as an expert witness for the City. The City challenged the requested disclosure on the basis that they were privileged attorney-client communications and that certain communications occurred before the Assistant Tax Assessor was named an expert. Although the City later volunteered to disclose certain email communications it asserted were relevant to the expert's conclusions, the Court ruled that all communications with the City Assistant Tax Assessor were required to be disclosed because his designation as an expert waived the attorney-client communication privilege.

**Collection v. Foreclosure Action.** In Stratford v. Ross & Roberts, Incorporated, 2012 Conn. Super. LEXIS 2045 (Aug. 9, 2012), the town sought to foreclose on a real property tax lien. The property owner filed an answer and special defense asserting that the underlying assessment was invalid because two-thirds of the building upon which it was based had been razed prior to the assessment date, and noting that the property owner had pending a timely-filed appeal of the



assessment. The town filed a motion to strike the special defense arguing that: (i) the holding of Hartford v. Faith Center, Inc., 196 Conn. 487 (1985), supports the argument that a taxpayer cannot assert the invalidity of an assessment in defense of a collection action; and (ii) section 12-117a expressly provides that the pendency of a tax appeal does not suspend the right of a municipality to collect up to ninety percent of the tax due. The Superior Court denied the motion to strike and concluded that the Faith Center decision and section 12-117a applied only to an action to collect taxes by a municipality pursuant to section 12-161. A foreclosure action is an equitable action, and a special defense based upon the invalidity of the underlying assessment should be allowed.

**Shed and Forest Land Classification.** In Kronenberger v. Haddam, Docket No. CV 11-6011314S (Super. Ct. Oct. 26, 2012), a taxpayer challenged the declassification by the town assessor of two acres of the taxpayer's land as forest land because he had placed a 12-foot x 12-foot pre-fabricated shed on the property. The Superior Court held that the shed, which was not habitable and was used for the storage of the taxpayer's tools, could not be deemed a residence or dwelling, and was not employed for a commercial or industrial use. Accordingly, the assessor had no grounds to declassify the parcel involved or to impose an assessment based upon that declassification.

**Detached Property and Farm Land Classification.** In NF & W Cooke Limited Partnership v. Branford, 2012 WL 5447973 (Super. Ct. Oct. 11, 2012), the taxpayer challenged the loss of farm land classification of a wooded lot that had been detached from a working farm as a result of the construction of Interstate 95. (The issue had arisen because of a sale of the land and re-application for the farm land classification.) The Superior Court denied the appeal finding that the 1.5 mile distance between the working farm and the unused wood lot did not permit treatment of the lot as part of a "farm unit" eligible for the farm land classification.

**Intervenor Condominium Association.** In Noble v. Norwalk, 2012 Conn. Super. LEXIS 2179 (Aug. 28, 2012), the Superior Court upheld the right of a condominium association, pursuant to Conn. Gen. Stat. §47-244(a)(4), to intervene in a property tax appeal filed by some 400 unit owners. The Court held that the association's rights under section 47-244(a)(4) are not limited to appealing on behalf of unit owners the portion of an assessment based upon the valuation of the common elements of the association; rather, the association has the power to litigate on behalf of two or more unit owners "on matters affecting the common interest community."

## **MISCELLANEOUS TAXES**

### ***I. Legislation***

**Credit Cap Reduction.** Prior to the 2011 tax year, the amount of tax credit or credits allowable against a taxpayer's insurance premium/subscriber charge tax liability generally could not exceed 70% of the amount of tax due. During the 2011 legislative session, the Connecticut General Assembly adopted legislation generally lowering the cap on credits to 30% of the amount of tax due for the 2011 and 2012 tax years; however, the legislation added three special rules: (i) the cap was lowered only to 55% for each of the film production tax credit, the entertainment industry infrastructure tax credit and the digital animation production companies' tax credit provided in Conn. Gen. Stat. §§12-217jj, 12-217kk and 217ll; (ii) the 70% cap remained applicable to the Connecticut insurance reinvestment fund tax credit provided in Conn. Gen. Stat. §38a-88a; and (iii) the legislation established the order in which credit types must be claimed against the insurance premium/subscriber charge tax. During the December 2012 special session, the Connecticut General Assembly amended the first of the three special rules by providing that the 55% cap would apply only to the digital animation production companies' tax credit for the 2012 tax year (thereby subjecting the other two "film" tax credits to the lower 30% cap).

The General Assembly did provide relief, however, for any underpayment of estimated tax for the 2012 tax year that results from this change in law. Conn. Gen. Stat. §§12-211a(a) and 12-204c(a), as amended or limited by Conn. Pub. Act No. 12-1 (Dec. Spec. Sess.), §§42 and 43 (*effective December 24, 2012*).

**Petroleum Products Gross Earnings Tax.** The General Assembly enacted a cap on the application of the Connecticut Petroleum Products Gross Earnings Tax to the first sale of gasoline or gasohol within Connecticut to the first three dollars per gallon. Despite this clear language, however, the Department of Revenue Services has issued guidance providing that a party who makes its first sale of gasoline or gasohol in the state and does not separately state the tax on its invoice (i.e. the price includes the tax) must apply the tax up to a price of \$3.225 per gallon. The same legislation also prohibits a retailer from including in its billing any amount representing the petroleum products gross earnings tax that is in excess of its actual tax liability. Conn. Gen. Stat. §12-587(a), as amended and supplemented by Conn. Pub. Act No. 12-4, §§1-2 (*effective April 3, 2012*). See DRS Special Notice 2012(3), *2012 Legislation Capping the Petroleum Products Gross Earnings Tax on First Sales of Gasoline and Gasohol*.

**Job Expansion Tax Credit.** In 2011, a new job expansion tax credit was enacted for jobs created between January 1, 2012 and January 1, 2014 that can be applied against the insurance premium, corporation business, utility company or personal income tax. To be eligible to claim the credit, the taxpayer must apply to the Department of Economic and Community Development ("DECD"), be subject to one of the foregoing taxes and have been in business for at least 12 consecutive months prior to the date of the taxpayer's application to the DECD. The credit is \$500 per month for each new employee who is a Connecticut resident, or \$900 per month, if, at the time of hiring, the new employee is (i) receiving unemployment compensation benefits or has not had a full-time job since exhausting his or her unemployment benefits, (ii) a current armed forces member or one who was honorably discharged or released from active service, or (iii) receiving vocational rehabilitation services from the Bureau of Rehabilitative Services. During the recently-concluded June special session, the General Assembly extended the availability of the \$900 per month credit to the hiring of a new employee who, at the time of hiring, is (i) receiving employment services from the Department of Mental Health and Addiction Services or (ii) participating in employment opportunities and day services, as defined in Conn. Gen. Stat. §17a-226, operated or funded by the Department of Developmental Services. To be eligible for the credit, the job must not have existed in Connecticut before the DECD application, and it must require the new employee to work at least (i) 35 hours per week for at least 48 weeks per calendar year or (ii) 20 hours per week for at least 48 weeks per calendar year if the employee is receiving vocational rehabilitation services or unemployment compensation or has not had a full-time job since exhausting his or her unemployment benefits. (A new employee does not count if the employee was employed in Connecticut by a related person during the prior 12 months, owns the business or is a member or partner in it, or no longer works for the business at the end of its income year.) In addition, to be eligible for the credit, the taxpayer must employ a certain minimum number of new employees based upon the number of employees of the taxpayer as of the time of the filing of the DECD application: (i) at least one new job for an employer that already then employs not more than 50 full-time employees; (ii) at least five new jobs for an employer that already employs more than 50 but not more than 100 full-time employees; and (iii) at least ten new jobs for an employer that already then employs more than 100 full-time employees. The credit must be claimed in the income year in which the job is created, but can be claimed for each of the two subsequent years if the employee held the job for the full year. Unused credits will expire and cannot be refunded. Shareholders of subchapter S corporations and partners of partnerships may claim the credit. The new job expansion credit is subject to the same aggregate \$20 million-per-year cap that currently applies to the three existing job creation credits. Conn. Gen. Stat. §12-217pp, as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §199 (*effective July 1, 2012, and applicable to income or taxable years commencing on or after January 1, 2012*).

**Unemployment Compensation Trust Fund Tax.** Legislation was enacted during the recently concluded session changing the method by which the tax rate for the balance of the unemployment compensation fund for employers is calculated and increasing the amount that can be retained by the Unemployment Compensation Trust Fund. Under current law, the Fund's goal is 0.8% of the total wages paid by contributing employers. To increase the future long-term solvency of the Fund, and to satisfy a requirement to qualify for potential interest-free borrowing from the federal government in the event of a future insolvency of the Fund, commencing with the 2013 calendar year, the goal will be based on an "average high cost multiple" or AHCM. The AHCM is calculated with reference to the average recessionary level of unemployment compensation benefits paid. The AHCM will be 0.5 in 2013, and will increase by 0.1 each year until it reaches 1.0 in 2019. The Fund administrator must lower the rate when the Fund exceeds the goal, the rate may not exceed 1.4%, and the rate cannot be set at a figure that will result in the Fund exceeding its goal. Conn. Gen. Stat. §31-225a(f), as amended by Conn. Pub. Act No. 12-46, §1 (*effective October 1, 2012*).

**Alcoholic Liquor Taxes.** As part of the legislation expanding the days and hours for liquor sales, the General Assembly established a 15-member Competitive Alcoholic Liquor Pricing Task Force to examine, review and analyze Connecticut alcoholic liquor taxes, quantity and volume discounts, existing liquor permit restrictions, and minimum pricing and price posting laws. The task force is to submit a report on its findings and recommendations to the General Law Committee by January 1, 2013. Conn. Pub. Act No. 12-17, §14 (*effective May 14, 2012*).

**Hospital Tax.** During the June special session, the General Assembly enacted legislation amending the provisions governing the hospital tax providing that for the fifteen-month period commencing July 1, 2012, (i) the rates of such tax, (ii) the base year on which the tax shall be assessed, and (iii) the hospitals exempt from the outpatient portion of the tax based on financial hardship, shall be the same as in effect on January 1, 2012. Conn. Gen. Stat. §12-263b(a), as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §4 (*effective June 15, 2012*).

**Roll-Your-Own Cigarettes.** In response to the Tracey's Smoke Shop and Tobacco decision summarized on page 10, the General Assembly enacted legislation defining a cigarette rolling machine and providing that persons who own, lease, possess, control, operate or otherwise use a cigarette rolling machine at a retail establishment or commercial premises, or permit someone to do so, shall be deemed to be a tobacco product manufacturer that is required to secure and retain a cigarette manufacturer's license (and a cigarette distributor's license if they intend to distribute the cigarettes). Conn. Pub. Act No. 12-1 (June Spec. Sess.), §123 (*effective October 1, 2012*).

**Connecticut Innovations, Inc. Sales and Use Tax Exemption Program.** The sales and use tax exemption program for large-scale development projects formerly administered by the Connecticut Development Authority will now be administered by Connecticut Innovations, Inc. ("CII"). CII may extend the exemption to the purchase and use of tangible personal property and services incorporated into or consumed to develop, construct, rehabilitate, renovate or repair projects approved under procedures adopted by the CII Board of Directors. Conn. Gen. Stat. §32-46, as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §170 (*effective July 1, 2012*).

**Manufacturing Reinvestment Account.** Under legislation enacted in 2011 and amended this year, the Department of Economic and Community Development is authorized to select not more than 100 manufacturers, each of which must have not more than 50 employees, to participate in a program pursuant to which the manufacturers may be able to reduce their liability for Connecticut tax. A qualifying manufacturer will be entitled to establish an interest-bearing manufacturing reinvestment account with a Connecticut bank and contribute annually to that account an amount not to exceed the lesser

of (i) \$50,000 in income years commencing in 2011 (\$100,000 in income years commencing in 2012 or thereafter) or (ii) the manufacturer's gross receipts. Such contributions will be deductible for purposes of the corporation business tax to the extent not deductible for federal income tax purposes. The manufacturer may use distributions from the account to purchase machinery or equipment for use in Connecticut, or manufacturing facilities located in Connecticut, or for workforce training, development or expansion in Connecticut. Any money remaining in the account at the end of the five years, including any interest earned thereon, is to be returned to the taxpayer. Distributions from the fund, if they were deducted for state tax purposes, will be subject to tax in Connecticut as follows: (i) if the distribution is used for a qualified purchase, the taxpayer is required to include in its calculation of Connecticut taxable income only one-half of the amount of the distribution; and (ii) if the distribution is used for an ineligible use, or is part of the return of the balance of the account after five years, the taxpayer must include the entire amount in the calculation of its taxable income. The account can accumulate interest free from state tax until distribution. Conn. Gen. Stat. §§32-9zz(c), 32-9zz(d), 12-217(a)(1), 12-213(a)(9) and 12-701(a)(20), as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §§193-197 (*effective from passage and applicable to taxable years commencing on or after January 1, 2011*).

**Captive Insurance Regulatory and Supervision Account.** During the October 2011 special session, the General Assembly revised and expanded the laws governing captive insurance companies, including their taxation and the creation of a Captive Insurance Regulatory and Supervision Account to be funded by the fees and assessments received from such companies. New legislation has eliminated the Special Account, and the governing statute now provides that all fees and assessments received by the Insurance Department are to be deposited into the Insurance Fund. Conn. Gen. Stat. §38a-91nn, as amended by Conn. Pub. Act No. 12-1 (June Spec. Sess.), §216 (*effective July 1, 2012, and applicable to calendar years commencing on or after January 1, 2012*).

**Enhanced Emergency 9-1-1 Fee.** Under current law, telecommunications service providers are required to assess an enhanced emergency 9-1-1 fee against subscribers and to remit the fee monthly to the State. The statutes governing the fee have been amended to replace the monthly assessment for a prepaid wireless telecommunications service with a per-transaction assessment equal to the monthly rate assessed against other telecommunications service subscribers (which is capped at 50 cents per line per month). Retailers are to remit the fee, less one percent of such fee for the retailer's administrative expenses, to the Department of Revenue Services. The Department is to establish registration and payment procedures similar to those contained in the Connecticut Sales and Use Taxes Act. If a retailer separately states the fee on its invoice, the fee cannot be included in the base for measuring any tax, fee, surcharge or other charge imposed upon the retailer by the state or any political subdivision of the state. Conn. Gen. Stat. §28-30b, as amended and supplemented by Conn. Pub. Act No. 12-153, §§1-3 (*effective January 1, 2013*).

**Veterans' Charitable Organizations.** Effective October 1, 2012, no person, firm or corporation that holds itself out as a representative of a veterans' charitable organization shall, with intent to defraud, solicit a contribution for the organization that inures to or is intended to inure to anyone other than the organization. A violation of this prohibition is a class C misdemeanor. A "veteran's charitable organization" is any person, firm or corporation that is or purports to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy purpose relating to or on behalf of veterans. On or before July 1, 2013, the Commissioner of Veteran's Affairs is to publish a list of qualified veterans' charitable organizations. [Ed. note. There are additional federal and state statutes prohibiting the fraudulent solicitation of charitable contributions.] Conn. Gen. Stat. §27-100f, as amended by Conn. Pub. Act No. 12-195, §1 (*effective from passage*) and Conn. Pub. Act No. 12-195, §2 (*effective October 1, 2012*).



**Aging in Place Task Force.** The General Assembly has established a task force to study how Connecticut can encourage “aging in place” to support municipalities in preparing for and assisting our elderly population to remain in their Connecticut residences. The task force’s charge includes an examination of tax incentives. Conn. Pub. Act No. 12-6, §1 (effective May 2, 2012).

## **II. Case**

**Roll Your Own Cigarettes.** In *State v. Tracey’s Smoke Shop and Tobacco, LLC*, 2012 Conn. Super. LEXIS 572 (Feb. 24, 2012), the Superior Court concluded that the defendant tobacco store that sold loose tobacco and hollow paper tubes, and rented to customers use of roll-your-own-cigarette machines located in the store, became a cigarette manufacturer under state law when it assisted customers in the operation of the machines and the manufacture of the cigarettes. Since customers could rent the machines even if they had not purchased tobacco at the store and there was no guarantee that a certain number of cigarettes would be produced, the Court limited the injunctive relief requested by the State only to prohibit the defendant tobacco store from assisting customers in the use of the roll-your-own cigarette machines (or from offering or advertising for sale cigarettes manufactured on premises). [Ed. note. Please note the legislation enacted in response to this decision, summarized above.]

## **III. Administrative Publications**

**Storm Sandy.** In response to the effects of Storm Sandy, the Department of Revenue Services extended the deadline for state tax filings and payments due the week of October 29, 2012 to the end of the business day on November 7, 2012. The deadlines include filings of monthly and quarterly sales and use tax returns and income tax withholding. The Department also waived state commercial tax registration requirements for out-of-state fuel suppliers, storm contractors and others coming into Connecticut on an emergency basis. The Department subsequently issued a notice that it will also consider taxpayer hardship claims related to Storm Sandy. If a taxpayer believes that he or she is entitled to relief, they should complete the 2012 Storm Sandy Relief Request Form, which is available on the DRS website.

**Electronic Payment Plan Option.** In a press release dated November 15, 2012, the Commissioner announced a new program whereby taxpayers who cannot pay in full the amount of a tax bill from the Department may elect to enter into an electronic payment plan through the Taxpayer Service Center (“TSC”). Taxpayers interested in an electronic payment plan can visit the IRS website at [www.ct.gov/DRS](http://www.ct.gov/DRS) and select the TSC button.

**Hospital Hotel.** In DRS Ruling 2012-1, the DRS ruled that a nonprofit, charitable hospital that operates a hotel need not collect and remit the hotel occupancy tax on rooms made available primarily for the convenience of its patients and their families, visiting medical personnel and recruitment candidates, but is required to collect and remit the tax on rent received from members of the general public.

**Diesel Fuel.** Pursuant to Conn. Gen. Stat. §12-458h, the Commissioner of Revenue Services is required annually to calculate the rate for the motor vehicle fuels tax for diesel fuel. By letter dated May 23, 2012, the Commissioner announced that the diesel fuel tax rate will increase by five cents to 51.2 cents per gallon effective July 1, 2012 through June 30, 2013. *See* DRS Announcement 2012(7), *Motor Vehicle Fuels Tax Rate on Diesel Fuel Increased Effective July 1, 2012*.

**Historic Structures Rehabilitation Tax Credit.** The DRS published as final the regulations governing the historic structures rehabilitation tax credit established pursuant to Conn. Gen. Stat. §10-416a. See Reg. Conn. State Agencies §§10-416a-1 through 10-416a-12. The tax credit is administered by the DECD and is available to an owner rehabilitating a certified historic structure for residential use or to a taxpayer named by the owner as contributing to the rehabilitation.

**Historic Preservation Tax Credit.** The DRS published as final the regulations governing the historic preservation tax credit established pursuant to Conn. Gen. Stat. §10-416b. See Reg. Conn. State Agencies §§10-416b-1 through 10-416b-13. The tax credit is available to an owner rehabilitating a certified historic structure for nonresidential use or mixed residential and nonresidential use (or to a taxpayer named by the owner as contributing to the rehabilitation).

## **ADMINISTRATIVE PRONOUNCEMENTS**

### **Announcements**

AN 2012(1), Information for Married Individuals Who Are Both Employed and File a Joint Connecticut Income Tax Return

AN 2012(2), Assessments Refunded by the Connecticut Insurance Guaranty Association

AN 2012(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2012(3.1), Quarterly List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2012(3.2), Quarterly List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2012(3.3), Quarterly List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2012(4), Taxability of Social Security Benefits for Connecticut Income Tax Purposes

AN 2012(5), Annual Revision of Forms TPM-1, TPM-2, and TPM-3

AN 2012(6), Connecticut Premiums Tax on Insureds Directly Procuring, Continuing or Renewing Insurance from a Nonadmitted Insurer

AN 2012(7), Motor Vehicle Fuels Tax Rate on Diesel Fuel Increased Effective July 1, 2012

AN 2012(8), Taxability of Children's and Adult Diapers

### **Informational Publications**

IP 2012(1.1), 2012 Connecticut Employer's Tax Guide Circular CT

IP 2012(2.2), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2012(3.2), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2012(4.2), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2012(5.2), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2012(6.2) Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2012(7.1), Is My Connecticut Withholding Correct?

IP 2012(8), Connecticut Tax Guide for Payors of Nonpayroll Amounts

IP 2012(9), Connecticut Earned Income Tax Credit Recordkeeping Suggestions for Self-employed Persons



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12 Porter Street  
Lakeville, CT 06039-1809  
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[www.shipmangoodwin.com](http://www.shipmangoodwin.com)

IP 2012(12), Annual One-Week Sales and Use Tax Exclusion for Clothing and Footwear

Costing Less Than \$300

IP 2012(15), Connecticut Income Tax Information for Armed Forces Personnel and Veterans

IP 2012(17), Q&A: Income Tax Credit for Property Taxes Paid to a Connecticut Political  
Subdivision

IP 2012(22), Forms 1099-R, 1099-MISC and W-2G Electronic Filing Requirements for Tax Year  
2012

IP 2012(23), Form W-2 Electronic Filing Requirements for Tax Year 2012

## Special Notices

SN 2012(2), 2011 Legislative Changes to the Procedures Governing Nonresident Contractors

SN 2012(3), 2012 Legislation Capping the Petroleum Products Gross Earnings Tax on First  
Sales of Gasoline and Gasohol

SN 2012(4), 2012 Legislation Prohibiting the Use of Zappers

SN 2012(5), 2012 Legislative Changes Affecting Sales and Use Taxes, Enhanced 911 and  
Marijuana and Controlled Substances Tax

SN 2012(7), Prepaid Wireless E 9-1-1 Fee

## Policy Statements

PS 2012(2), Designated Private Delivery Services and Designated Types of Service

## Our State and Local Tax Practice

The attorneys in the **State and Local Taxation Practice** at Shipman & Goodwin LLP are regularly called upon to advise businesses, executives and individual clients on all aspects of state and local tax matters. Additionally, our tax lawyers represent clients in connection with state and local tax audits, refund requests and appeals from state or local assessments.

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