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CONNECTICUT TAX DEVELOPMENTS

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2016 Legislative Session: The New Economic Reality

In his February 2016 State of the State address, Governor Malloy announced that his administration would be adopting a new approach to state budgeting in light of what he characterized as "the new economic reality" facing Connecticut and the nation. The Governor's proposed changes to the biennial budget, including significant rescissions, funding reductions and state employee layoffs, touched off a firestorm. Each of the Governor, the Democratic legislative leadership and the Republican legislative leadership submitted one or more budget proposals, and the 2016 legislative year eventually required an extended special session before a revised budget, budget implementation bill and bond authorization legislation could be enacted. Although the Governor largely remained true to his pledge not to increase state taxes, the reduction in state grants, PILOT payments and other financial support for municipalities likely will result in increased municipal property taxes. Despite these efforts, the state finished the fiscal year ended June 30, 2016, with a projected deficit of $279.4 million, requiring a draw on the Budget Reserve Fund (i.e. the state's "rainy day fund").

The 2016 legislative session did witness the passage of significant tax legislation that, in particular, should be of assistance to Connecticut-based businesses which provide services and/or sell goods to out-of-state customers. After last year adopting a general single-factor apportionment formula for the Connecticut corporation business tax, the General Assembly this session enacted market-based rules for the sourcing of business income, retroactively effective for income years commencing on or after January 1, 2016. For businesses operated as Subchapter S corporations, limited liability companies, partnerships and other pass-through entities, the Legislature adopted a general single-factor apportionment formula and market-based sourcing effective for income years commencing on or after January 1, 2017. Unfortunately, the austerity budget did result in a partial roll back of the limitation on the property tax mill rate for motor vehicles, but a number of new property tax relief provisions were enacted, including one for homeowners who are suffering from defective concrete foundations. Finally, the General Assembly established the Connecticut Retirement Security Exchange, a new state-administered retirement savings program that, commencing in 2018, generally will be available to for-profit and non-profit employers in Connecticut.

Despite its attempt to address "the new economic reality," Connecticut will continue to face significant budgetary challenges. The state's general obligation bond rating was cut from "AA" to "AA-" by three ratings agencies in May and July, thus increasing the cost of state borrowing. A study released in June, 2016 for the Mercatus Center at George Mason University ranked the state's fiscal condition, based on short- and long-term debt and other key fiscal obligations, as the worst in the country. The Pew Charitable Trusts ranked the state's debt, as a share of its personal income, as the fifth worst in the nation, and a new data survey from LERETA, a national real estate tax and flood service provider, characterized Connecticut's property taxes as the second highest in the country. On November 15, 2016, the nonpartisan Office of Fiscal Analysis announced that it is projecting a deficit for the current fiscal year of $77.5 million. The Office of Policy and Management subsequently announced that the State was cutting $20 million in educational cost-sharing and freezing $65 million for construction projects in the Local Capital Improvement Program. Of greater concern, OFA also projected a deficit of almost $1.2 billion for the 2018 fiscal year, and over $1.0 billion in each of the next two succeeding fiscal years. The return of large projected deficits is attributable largely to a dramatic $898.7 million increase in fixed costs commencing in the 2018 fiscal year, including debt service payments, Teachers' Retirement Systems contributions and state employee pension and retiree health contributions. Put simply, there is a growing recognition that much more work will need to be done during next year's legislative session for the state to respond adequately to "the new economic reality".

This alert summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published by the Connecticut Department of Revenue Services ("DRS") during the first ten months of 2016. Please contact a member of our State and Local Tax Practice Group if you have questions regarding the new tax law changes or how they may affect you and your business.

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CORPORATION BUSINESS TAX

I. Legislation

Market-Based Sourcing. After last year adopting single-factor apportionment formula and market-based sourcing for gross receipts from the sales of tangible property, the General Assembly has enacted a broader market-based sourcing rule for purposes of the Connecticut corporation business tax. Gross receipts from the following are assignable to Connecticut: (i) sales of tangible property if the property is delivered or shipped to a purchaser within the state (other than a DISC); (ii) services to the extent the services are used at a location in this state; (iii) the rental, lease or license of real or tangible personal property to the extent such property is situated within the state; (iv) the rental, lease or license of intangible property to the extent it is used within the state; and (v) interest managed or controlled within the state. Gross receipts from the sale or other disposition of real, tangible or intangible property are excluded from the calculation of the apportionment fraction if the property is not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Gross receipts other than those described above are assignable to Connecticut to the extent the taxpayer's market for the sales is in Connecticut. A taxpayer may petition the Commissioner if the taxpayer cannot reasonably determine the proper assignment of its income. Conn. Gen. Stat. §12-218(b), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §199 *(effective June 2, 2016, and applicable to income years commencing on or after January 1, 2016)*. [Ed. note. Corporations should evaluate whether and to what extent the new market-based sourcing rules will impact their Connecticut tax liability. If, as a result of the rules, a corporation's estimated tax payments to date are understated, the corporation should consider both a catch-up payment and an approach to the Department of Revenue Services ("DRS") to obtain interest penalty relief. The DRS is currently working on administrative guidance for both corporations and pass-through entities.]

II. Administrative Pronouncements

Combined Unitary Reporting. In DRS Special Notice 2016(1), *Combined Unitary Legislation -- Corporation Business Tax*, the DRS provides extensive and helpful guidance on the new combined unitary reporting requirement effective for income years commencing on or after January 1, 2016, including: (i) the determination of a combined group; (ii) the calculation of a combined group's net income; (iii) the apportionment of a combined group's net income; (iv) the application of net operating losses; (v) the capital base tax; (vi) the application of credits; (vii) the net deferred tax liability deduction; and (viii) the maximum tax calculation. The DRS has supplemented this guidance with a set of frequently asked questions and responses. DRS Office of Counsel Guidance OCG-3.

Net Deferred Tax Liability Deduction. In DRS Office of Counsel Guidance OCG-2, the DRS provides guidance on the calculation of the net deferred tax liability deduction available to publicly traded companies under the new combined unitary reporting regime. On or before July 1, 2017, a combined group must file with the DRS a statement and supporting calculations that specify the amount of any net deferred tax liability deduction the group intends to claim.

PERSONAL INCOME TAX

I. Legislation

Apportionment and Sourcing. Effective for income years commencing on or after January 1, 2017, the General Assembly has changed the personal income tax apportionment formula and sourcing rules for S corporations,

partnerships and limited liability companies taxed as partnerships. The current three-factor apportionment formula, based upon the average of the percentages of property, payroll and gross income in Connecticut, will be replaced with a single-factor apportionment formula based upon a gross income percentage (i.e., dividing the gross receipts from sales earned within Connecticut by the total gross receipts from sales everywhere). Gross receipts from the following are assignable to Connecticut: (i) sales of tangible property when the property is delivered or shipped to a purchaser within the state (regardless of the F.O.B. point or other conditions of the sale); (ii) sales of services to the extent the services are used at a location in this state; (iii) the rental, lease or license of tangible personal property to the extent such property is situated within the state; and (iv) the rental, lease or license of intangible property to the extent it is used within the state. Gross receipts from the sale or other disposition of tangible personal or intangible property are excluded from the calculation of the apportionment fraction if the property is not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Gross receipts from the sale, rental, lease or license of real property are excluded from the gross income percentage. Gross receipts other than those described above are assignable to Connecticut to the extent the taxpayer's market for the sales is in Connecticut. A taxpayer may petition the Commissioner if the taxpayer cannot reasonably determine the proper assignment of its income. Conn. Gen. Stat. §§12-711(c) and 12-712(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §§200-201 *(effective January 1, 2017, and applicable to income years commencing on or after January 1, 2017)*.

II. Administrative Pronouncements

Property Tax Credit. Pursuant to legislation enacted last year, the maximum property tax credit available against the personal income tax is reduced from $300 to $200. *See* DRS Special Notice 2015(7.1), *2015 Legislative Changes Affecting Income Tax Withholding and the Income Tax*.

Innocent Spouse Relief. In DRS Policy Statement 2016(2), the DRS outlines the types of relief that may be available to a taxpayer who otherwise would bear liability due to being a party to a joint Connecticut personal income tax return, including innocent spouse relief, separation of liability and equitable relief. The Policy Statement describes the three types of relief and how a taxpayer may request such relief.

Charitable Contributions and Domicile. The DRS has published Policy Statement 2016(3), *Charitable Contributions Not Considered in Domicile Determinations*. The Policy Statement provides that, when making a domicile determination, the DRS will not consider any charitable contribution, regardless of whether or not the contribution is deductible for federal tax purposes. Donations of uncompensated time also will not be considered in domicile determinations including attendance at a charitable event, volunteer service at a charitable event, volunteer service for the direct benefit of a charitable organization and service on a governing board of directors, an advisory board or a committee of a charitable organization. It should be noted, however, that the Policy Statement provides protection only in so far as that a "day spent in Connecticut solely to donate uncompensated time to a charitable organization will not be considered for purposes of determining Connecticut domicile." According to the Policy Statement, if "activities not considered donations of uncompensated time are performed in Connecticut on the same day," the DRS will consider the day to be a Connecticut day when making a domicile determination.

Status Letters. In DRS Information Publication 2016(10), *Status Letters for Income Tax*, the DRS announced that a taxpayer may request a status letter that will include the following information as of the date the letter is issued: (i) the taxpayer's name and year of the last income tax return received and processed by the DRS; and (ii) any outstanding balance due or an attestation that the income tax liability has been paid.

III. Case Law

Nonqualified Stock Options. In Allen v. Commissioner, 324 Conn. 292 (2016), the Connecticut Supreme Court upheld the constitutionality of Section 12-711(b)-18 of the Regulations of Connecticut State Agencies and the application of the Connecticut personal income tax to income from the exercise of nonqualified stock options where the options were granted as compensation for services rendered in Connecticut. The plaintiff taxpayer had received nonqualified stock options from two different employers during two separate employment stints in Connecticut. In each instance, the taxpayer had exercised certain of the options after leaving his Connecticut employment and moving out of state. After filing Connecticut nonresident tax returns and paying the Connecticut income tax on the income from the exercised options, the plaintiff taxpayer filed refund claims that were denied by the Commissioner. The Supreme Court upheld the denial of the refund claims, holding that: (i) the trial court lacked subject matter jurisdiction over the appeal of the refund claim for the 2002 tax year as it was filed after the expiration of the limitations period for the filing of such a claim; (ii) the Commissioner properly construed section 12-711(b)-18 to provide for the taxation of a nonqualified stock option in Connecticut if, at any time during the period from the year the option was granted to the year the option was exercised, the option holder performed services in Connecticut; and (iii) the application of section 12-711(b)-18 to this situation does not violate the Due Process Clause of the United States Constitution in that the taxpayer's provision of personal services in Connecticut established the necessary connection to the state and, as all of the employment services were rendered in Connecticut, the income was properly apportioned to Connecticut.

SALES TAX

I. Legislation

Federal, State and Local Parking Lots. Reversing a legislative action taken last year, new legislation exempts from the sales and use tax non-metered motor vehicle parking in (i) seasonal lots with 30 or more spaces owned by the United States, the state of Connecticut or any of its political subdivisions, or any federal or state agency; and (ii) municipality-owned lots with 30 or more spaces. (Parking in metered lots or lots with fewer than 30 spaces is exempt from tax.) Conn. Gen. Stat. §12-407(a)(37)(N), as amended by Conn. Pub. Act No. 16-72, §1 *(effective May 27, 2016, and applicable to sales occurring on or after said date)*, and by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §180 *(effective June 2, 2016, and applicable to sales occurring on or after said date)*.

New Sales Tax Exemptions. Effective July 1, 2018, sales of feminine hygiene products and sales of disposable or reusable diapers are exempt from the Connecticut sales and use tax. Conn. Gen. Stat. §§12-412(122) and 12-412(123), as added by Conn. Pub. Act No. 16-3 (May Spec. Sess.) §202 *(effective July 1, 2018, and applicable to sales occurring on and after said date)*.

II. Administrative Pronouncements

Testing Services. In DRS Ruling No. 2016-1, the DRS ruled that testing services used to determine the safety and potency of marijuana for use as a medical drug by humans were not subject to Connecticut sales and use tax because: (i) testing services are not taxable enumerated services; and (ii) Conn. Gen. Stat. §12-412(41) provides for an exemption for sales of services used to determine the probable consequences in relation to human health of the consumption or other use of any product, substance or element.

Snacks and Concentrates. In DRS Ruling No. 2016-2, the DRS ruled that the following are "food products for human consumption" pursuant to Conn. Gen. Stat. §12-412(13): (i) powdered nutritional shake mixes and nutrition bars that contain the nutrients, protein and fibers of whole foods, which are marketed for sale as snacks or meal substitutes ("Snacks"); and (ii) chewable tablets and capsules that are made from fruits, vegetables and grains that have been juiced, dehydrated and powdered ("Concentrates"). The DRS noted that both the Snacks and the Concentrates bear the "Nutrition Box" as described in 21 CFR §101.9.

Herbal Aloe Products. In DRS Ruling No. 2016-3, the DRS concludes that sales of herbal aloe products, sold in various forms such as ready-to-drink, liquid concentrate and powder to be added to water or other beverages, are exempt from the Connecticut sales and use tax as sales of food products for human consumption under Conn. Gen. Stat. §12-412(13).

Orthodontia Equipment and Items. In DRS Ruling No. 2016-4, the DRS ruled that: (i) the exemption from sales and use tax set forth in Conn. Gen. Stat. §12-412(19) for equipment worn as a correction or substitute for any functioning portion of the body includes corrective devices used by dentists and orthodontists (such as braces, caps, wires, headgear, orthodontic mouthpieces and brackets, bonding agents, retainers and rubber bands for braces); (ii) the exemption set forth in Conn. Gen. Stat. §12-412(91) for employee safety apparel includes gloves and masks used by orthodontists and their staff; and (iii) items given for no charge by orthodontists to patients to aid with dental hygiene (e.g., floss threaders, retainer cases and interproximal brushes) are subject to use tax.

Connecticut Credit Unions. Effective July 1, 2016, sales of tangible personal property to, and the storage, use or other consumption of tangible personal property or services by a Connecticut credit union are exempt from sales and use tax pursuant to legislation enacted in 2014.

TAX CREDITS

I. Legislation

Angel Investor Tax Credit. The angel investor tax program, which was to sunset on June 30, 2016, is extended for three years to June 30, 2019, and the tax credits are made transferable, in whole or in part. The tax credits are available through Connecticut Innovations, Inc., may be applied by an accredited investor against the personal income tax and are equal to 25% of the amount that the taxpayer invests in qualified technology-based businesses, up to $250,000. Conn. Gen. Stat. §12-704d, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §183 *(effective July 1, 2016, and applicable to taxable years commencing on or after January 1, 2016)*. [Ed. note. The DRS has suggested orally that the tax credit may only be transferred once.]

Rolling Research and Development Tax Credit Exchange Study. The Commissioner of the Department of Economic and Community Development has been charged with developing legislative recommendations for the establishment of a program that will allow a business to exchange unused research and development tax credits under Conn. Gen. Stat. §12-217n for financial assistance in support of capital projects in Connecticut that propose to result in any of the following: (i) expansion of the scale or scope of that exchanging business; (ii) an increase or retention of employment at such business, or (iii) generation of a substantial return to the state economy. The Commissioner may consult with the Commissioner of Revenue Services, and the recommendations are to be submitted to the General Assembly no later than January 1, 2017. Conn. Spec. Act No. 16-21, §1 *(effective June 7, 2016).*

ESTATE AND GIFT TAX

I. Legislation

Probate Estate Settlement Fees. After receiving criticism for last year's dramatic increase in the probate estate settlement fees imposed on larger estates, the General Assembly enacted a cap on probate fees of $40,000 for estates valued at $8.877 million or more, effective for the estates of decedents who die on or after July 1, 2016. Conn. Gen. Stat. §45a-107, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §193 *(effective June 2, 2016)*; and Conn. Gen. Stat. §45a-107b, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §194 *(effective July 1, 2016)*.

CI Investment Tax Reduction. A reduction in the Connecticut estate tax has been established for decedents who made qualifying investments through a Connecticut Innovations ("CI") investment program for state residents. Under a separate provision in the same legislation, CI is authorized to create a program to solicit investments from state residents and invest funds in venture capital firms with offices in Connecticut. The estate tax reduction is equal to one-half of the amount the decedent invested through the CI program in a private investment fund or fund of funds, provided that: (i) the reduction in tax cannot exceed $5 million for any one decedent; (ii) the investment was made in such fund or fund of funds for at least 10 years; and (iii) the aggregate amount of all taxes reduced cannot exceed $30 million. Conn. Gen. Stat. §12-391(i), as added by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §35 *(effective October 1, 2016, and applicable to estates of decedents dying on or after January 1, 2021)*.

PROPERTY TAX

I. Legislation

Motor Vehicle Mill Rates. Amending legislation enacted last year, the cap on the mill rate for motor vehicles is increased from (i) 32 mills to 37 mills for the assessment year commencing on October 1, 2015, and (ii) 29.36 mills to 32 mills for the assessment years commencing on or after October 1, 2016. For municipalities that set the mill rate for the 2015 assessment year at 32 mills prior to the 2016 legislative amendment, their motor vehicle mill rate (or combined rate with any borough or district) is set at the lesser of: (i) the mill rate previously set for real and personal property other than motor vehicles for the 2015 assessment year; (ii) a rate they set after the 2016 legislation's passage that is less than 37 mills; or (iii) 37 mills. Conn. Gen. Stat. §12-71e, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §187 *(effective June 2, 2016, and applicable to assessment years commencing on or after October 1, 2015)*.

PILOT Payments. The statute that provides for the making of PILOT payments to municipalities to reimburse them for a portion of the revenue loss from certain tax-exempt property until the fiscal year commencing July 1, 2016 is amended to allow municipalities to receive PILOT payments for airports owned by the Connecticut Airport Authority (other than Bradley Airport). Conn. Gen. Stat. §12-19a(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §83 *(effective January 1, 2015)*. New legislation also delays from the 2018 fiscal year to the 2020 fiscal year the implementation of a mechanism for increasing PILOT grants to municipalities with mill rates of at least 25 and a relatively high percentage of tax-exempt property on their grand lists. Conn. Gen. Stat. §§12-18b and 12-18c, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §§190-191 *(effective July 1, 2016)*.

Net Profit Valuation Pilot Program. Under 2014 legislation, the Secretary of the Office of Policy and Management ("OPM") is authorized to establish a pilot program for not more than five municipalities to assess up to three commercial

properties based upon the net profits of the business or businesses occupying such properties. Municipalities have to apply to OPM to participate in the pilot program, and the owner(s) of the properties and the business or businesses occupying such properties must agree to the use of the alternative assessment approach. New legislation amends the statute creating the pilot program to eliminate the three-property limit on the use of net-profit valuation approach, allowing a municipality to assess all commercial property using the approach (with the consent of the property owners and their tenants). Conn. Gen. Stat. §12-63i, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §31 *(effective October 1, 2016)*. [Ed. note. As of the adoption of this legislation, no municipality had applied to participate in the program that was launched in 2014.]

Land Value Taxation Pilot Program. The General Assembly has extended to December 31, 2020 the time period during which the Secretary of the Office of Policy and Management is to select up to three municipalities to participate in a land value taxation pilot program and for those municipalities to prepare and submit a plan for implementation to the General Assembly. Such a plan is to (i) classify real estate included in the grand list as (A) land or land exclusive of buildings, or (B) buildings on land; and (ii) establish a different mill rate for property tax purposes for each class, provided the higher mill rate shall apply to land or land exclusive of buildings. Conn. Gen. Stat. §12-63h(c), as amended by Conn. Pub. Act No. 16-80, §1 *(effective July 1, 2016)*.

Concrete Foundation Tax Relief. Any owner of a residential building who has obtained a written evaluation from a licensed professional engineer indicating that the foundation of the building was made with defective concrete may provide a copy of such evaluation to the local tax assessor and request a reassessment of the building by the assessor. Not later than 90 days after receipt of a copy of such an evaluation or prior to the commencement of the next assessment year, whichever is earlier, the property must be inspected and its assessment must be adjusted to reflect its current value. The property owner may appeal any reassessment pursuant to Conn. Gen. Stat. §12-111. The reassessment shall apply for five assessment years notwithstanding Conn. Gen. Stat. §12-62; however, if the concrete foundation is repaired or replaced during that five-year reassessment period, the property owner must provide notice to the assessor within 30 days of the repair or replacement. The assessor then has the earlier of 90 days after receipt of such notification or the commencement of the next assessment year to inspect the building and adjust its assessment to reflect is current value. Conn. Pub. Act No. 16-45, §2 *(effective May 25, 2016, and applicable to assessment years commencing on or after October 1, 2016)*.

Local Economic Development Property Tax Incentive. Current law authorizes a municipality to exempt some or all of the increase in the fair market value of a property that is to be developed or improved for certain uses. New legislation gives more latitude to a municipality to set the terms and conditions for fixing an assessment on such property by eliminating all statutory criteria other than limiting the maximum period the benefit can be extended to ten years. The legislation does limit, however, the ability to grant such a benefit for improvements for permanent or transient residential use to a property consisting of four or more dwelling units. Conn. Gen. Stat. §12-65b, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §32 *(effective October 1, 2016, and applicable to assessment years commencing on or after October 1, 2016).*

Elderly Property Tax Relief. The rules governing the following three property tax relief programs have been amended: (i) the state-funded Tax Relief Program for Elderly and Totally Disabled Homeowners (i.e., the Circuit Breaker Program) (Conn. Gen. Stat. §12-170aa); (ii) the local option Elderly Property Tax Freeze Program (Conn. Gen. Stat. §12-170v); and (iii) the state-funded Elderly Property Tax Freeze Program, which has been closed to new applications since 1980 (Conn. Gen. Stat. §12-129b). The amendments: (i) push back the date when homeowners must file their biennial reapplication for property tax relief from March 15 to April 15; (ii) push back the deadline, from April 1 to April 30, by when assessors must notify taxpayers for whom they did not receive an application by the filing deadline; and (iii) provide that an assessor

can provide such notice by regular mail evidenced by a certificate of mailing instead of by certified mail. Conn. Gen. Stat. §§12-129c(a), 12-170w(a) and 12-170aa(e), as amended by Conn. Pub. Act No. 16-143, §§1-3 *(effective October 1, 2016).*

Tax Freeze Program. Under the Tax Freeze Program, municipalities freeze at a specific year's level the amount of property taxes owed by certain qualified elderly homeowners, and OPM is to reimburse municipalities for the resulting lost tax revenue. The Program has been closed to applicants since 1979. Under new legislation, OPM is required to proportionately reduce reimbursements it issues to municipalities under the Program if appropriations for the Program are less than the amount required for the reimbursements. Conn. Gen. Stat. §12-129d(c), as added by Conn. Pub. Act No.16-3 (May Spec. Sess.), §81 *(effective July 1, 2016)*.

Renters' Rebate Program. Pursuant to the Renters' Rebate Program, the state provides grants to qualified low-income renters who are elderly or totally disabled based upon their income and rent and utility expenses. The governing statute is amended to reduce Program grants on a proportionate percentage basis as necessary to keep within available appropriations. Conn. Gen. Stat. §12-170f(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §82 *(effective July 1, 2016).*

Property Tax Relief for Retired Volunteer Firefighters, Fire Police Officers and Emergency Medical Technicians. The optional municipal property tax exemption that a municipality can adopt for a nonsalaried local emergency management director and for volunteer firefighters, fire police officers, emergency medical technicians, paramedics, civil preparedness staff, active members of a volunteer canine search and rescue team, active members of a volunteer underwater search and rescue team or ambulance drivers is extended to any individuals who are retired volunteer firefighters, fire police officers or emergency medical technicians who have completed at least 25 years in such service in the municipality. The relief may take the form of a tax (i) abatement of up to $1,000 in property taxes due in any fiscal year or (ii) exemption applicable to the assessed value of real or personal property up to $1 million divided by the mill rate at the time of assessment. Conn. Gen. Stat. §12-81w, as amended by Conn. Pub. Act No. 16-99, §1 *(effective July 1, 2016).*

Child Care Service Tax Abatements. The statute allowing a municipality to provide an exemption from property tax for property of a business which offers child care services to residents of the municipality is amended. The exemption, which currently provides that the exemption is not available to a business that is regularly engaged in the construction or operation of child day care facilities, now provides further that it is not available to a business regularly engaged in the construction or operation of child care centers (a technical change from "child day care facilities"), group child care homes or family child care homes. The exemption is in the amount of (i) up to 100% of the assessed value of the property of the business used in providing the child care services; and (ii) up to 10% of the balance of the assessed value of the property of the business. Conn. Gen. Stat. §12-81n, as amended by Conn. Pub. Act No. 16-163, §5 *(effective June 9, 2016)*.

Current Additional Veterans Tax Abatement. Conn. Gen. Stat. §12-81(19) provides generally for a mandatory property tax exemption for certain veterans. Conn. Gen. Stat. §12-81f allows a municipality to provide an additional property tax exemption to the veteran provided that the veteran's income does not exceed: (i) an income limit set annually by the OPM (for 2015, the limit was $35,200 for unmarried veterans and $42,900 for married veterans) or (ii) an amount established by the municipality (that may not exceed the OPM limit by more than $25,000). The limit on the permissive additional exemption, which may be an amount up to $10,000 or 10% of the assessed value, has been increased to an amount up to $20,000 or 10% of such assessed value. Conn. Gen. Stat. §12-81f, as amended by Conn. Pub. Act No. 16-191, §1 *(effective October 1, 2016, and applicable to assessment years commencing on and after October 1, 2016).*

New Additional Disabled Veterans Tax Exemption. Veterans having a disability are eligible for a larger state-mandated

property tax exemption (Conn. Gen. Stat. §12-81(19)) than those available to wartime veterans (Conn. Gen. Stat. §12-81(20)). New law allows a municipality to provide an additional property tax exemption to those disabled veterans if their income does not exceed the income limits applicable to the additional property tax exemption for wartime veterans (see the preceding summary). The additional exemption must be at least $3,000 and applied to the assessed value of the eligible veteran's property. Conn. Gen. Stat. §12-81f(b), as added by Conn. Pub. Act No. 16-191, §1 *(effective October 1, 2016, and applicable to assessment years commencing on or after October 1, 2016)*.

Interest Waiver for Active Service Members. New legislation changes from voluntary to mandatory municipal relief from interest on any property tax or installment that is payable by any resident of the state who (i) is a member of the armed forces of the United States or of any state or of any reserve component thereof, (ii) has been called to active service in the armed forces of the United States, and (iii)(A) is serving outside of the state on the final day that payment of such property tax or installment or part thereof is due, or (B) has been residing in the state for less than one year since returning from serving outside of the state. Any interest waived pursuant to the statute will be reinstated if the member of the armed forces fails to pay the amount of any such delinquent property tax after residing in the state for at least one year after returning from serving outside of the state. Conn. Gen. Stat. §12-146e, as amended by Conn. Pub. Act No. 16-191, §2 (effective October 1, 2016, and applicable to assessment years commencing on and after October 1, 2016); Conn. Gen. Stat. §§12-146c and 12-146d, as repealed by Conn. Pub. Act No. 16-191, §3 *(effective October 1, 2016)*.

For Sale or Lease Signs. New legislation exempts from the municipal tax on tangible personal property any sign placed on a property indicating that the property is for sale or lease. Conn. Gen. Stat. §12-41(c), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §203 *(effective July 1, 2016)*.

II. Case Law

Standing and Jurisdiction. In Fairfield Merrittview Limited Partnership v. Norwalk, 320 Conn. 535 (2016), the Connecticut Supreme Court reversed the decision of the Appellate Court holding that the trial court lacked subject matter jurisdiction to hear the plaintiffs' appeal of a property tax assessment pursuant to Conn. Gen. Stat. §12-117a. The case involved real property that had been transferred by a partnership to a limited liability company ("LLC") with similar owners. A year after the transfer, the property was revalued as part of a city-wide revaluation, and the revaluation card listed the partnership as the owner. The LLC took an appeal to the Board of Assessment Appeals, which was denied, and the denial letter was addressed to the partnership. The partnership took an appeal pursuant to section 12-117a, but filed a motion to amend the appeal to add the LLC within thirty days. The motion was granted without objection by the City. The Supreme Court held that the motion to amend constituted a motion to substitute or addition a party plaintiff and, pursuant to Conn. Gen. Stat. §52-109, is effective retroactively to cure any deficit. The Court further held that it was irrelevant that the trial record did not clearly establish that the LLC filed the Appeal to the Board of Assessment Appeals; section 12-117a only requires that the property owner appeal an adverse decision of a board of assessment appeals.

Waste-to-Energy Facility. In Wheelabrator Bridgeport, L.P. v. Bridgeport, 320 Conn. 332 (2016), the Connecticut Supreme Court considered two appeals taken from the assessment of both real and personal property taken by the lessee of real property and operator of a waste-to-energy facility. The Court ruled that: (i) Conn. Gen. Stat. §22a-270b provides that a lessee of such a facility and its personalty is to be deemed the owner of the property and has standing to appeal from both real and personal property tax assessments; (ii) the trial court had improperly rejected the discounted cash flow approach to the valuation of the property as a matter of law (noting that the expert witnesses for both sides testified that the approach was the best method for valuing the property); (iii) the trial court may properly consider evidence that a municipality engaged in wrongdoing for purposes of determining whether a taxpayer is entitled to interest

on overpayments to the municipality; (iv) a person who otherwise would be qualified as an expert witness to testify regarding the value of real property is not disqualified merely because the person is not a licensed real estate appraiser in Connecticut; and (v) the trial court properly excluded the addition of a "developer's profit" in the City appraiser's valuation because there was no evidence that the trial court erred in determining that the historical cost of the facility did not already include a developer's profit. The Court remanded the appeals to the trial court to reconsider the appropriate valuation method and valuation for the property and, in doing so, to confirm whether the personal property was valued as part of the valuation of the facility and realty.

Statute of Limitations. In Cornelius v. Arnold, 168 Conn. App. 703 (2016), the Connecticut Appellate Court affirmed the grant of summary judgment in favor of the assessor for the Town of Farmington because the appeal from a property tax assessment was commenced more than one year after the October 1, 2011 assessment date. The Appellate Court ruled that: (i) the one-year limitations period provided for in Conn. Gen. Stat. §12-119 commences with the October 1st assessment date; and (ii) there was no basis for the plaintiff's claim of equitable tolling of the limitations period as he conceded that he knew of and had objected to the assessment prior to the end of the limitations period.

Forest Land Classification. In Imperial Development, LLC v. Coventry, 2016 Conn. Super. LEXIS 684 (Apr. 1, 2016), the plaintiff had owned 58 lots on two sections of property that had been classified as forest land. The owner subsequently posted a performance bond, built four roads through the property and sold approximately 40 of the lots for development, leaving the remaining 18 lots covered with trees. The trial court held that the Town had improperly removed the forest land classification from the remaining lots as their use had not changed, regardless of whether they were being marketed for development.

Tax Sale Proceeds. In A1Z7, LLC v. Mollo, 2016 WL 2602672 (Super Ct. Apr. 15, 2016), the plaintiff purchaser of a property through a tax sale made a claim against the excess proceeds from the sale pursuant to Conn. Gen. Stat. §12-157(i). Although the Superior Court ruled that section 12-157(i) governed the disposition of excess funds obtained as a result of a tax sale, it held that a claimant for such funds must have had an already-perfected claim at the time of the sale. The plaintiff's claim for amounts due under a lease and for trash-hauling fees were not choate claims and, therefore, were not perfected at the time of trial.

Reservoir Land. In Second Taxing District of the City of Norwalk v. Wilton, 2016 WL4471103 (New Britain Sup. Ct. July 22, 2016), the plaintiff appealed the assessment of certain reservoir land used in its water supply system. The Superior Court noted that Conn. Gen. Stat. §12-76(a) requires that land owned for the purpose of creating or furnishing a supply of water is to be assessed at what its fair market value would be if it were "improved farm land with a continuing farming use." "Improved farmland with a continuing farming use," in turn, is defined by the courts to refer "to land developed for basic farming purposes such as the cultivation of garden vegetables, corn, hay, pasture use as well as farmland used for dairying and forestry." The Court ruled that, for purposes of establishing the tax value of such farm land, comparable land does not include land that is used for commercial purposes (such as a vineyard or to grow tobacco) rather than for traditional farming use.

Forestry and Farm Equipment. In Acerbo v. Columbia, 2016 WL 6499098 (New Brit. Sup. Ct. Oct. 11, 2016), the plaintiff appealed the denial of his applications to have three pieces of equipment used in his forestry business declared exempt from personal property taxation pursuant to Conn. Gen. Stat. §12-91. The Superior Court granted the plaintiff's motion for summary judgment holding that: (i) "farming" includes "forestry"; (ii) the "town in which such farm is located" is the town in which the forestry business is based and its equipment is stored, even if the equipment may be used to engage in forestry activities in other towns; and (iii) the plaintiff's harvesting activities constituted "forestry" even though it did not include "sustainable forestry", which would include growing, maintaining or replanting of trees.

Purchased Exempt Property. In Brass City Residences, Inc. v. Waterbury, 2016 WL 6603575 (Waterbury Super. Ct. Oct. 11, 2016), the plaintiff purchased City property in February 2014. Pursuant to Conn. Gen. Stat. §12-81(4), the City removed the property as tax-exempt after the sale. The plaintiff took no action to challenge the prorated assessment until October 28, 2014, when it filed a complaint, eventually making a claim pursuant to Conn. Gen. Stat. §12-119. The Superior Court granted summary judgment for the City holding that the relevant assessment period was the October 1, 2013 assessment year and the statute of limitations for bringing a claim under section 12-119 had expired on October 1, 2014.

MISCELLANEOUS

I. Legislation

Outstanding Returns and Licenses/Permits. Prior to issuing or renewing a (i) cigarette dealer, distributor or manufacturer license, (ii) tobacco product distributor or unclassified importer license, or (iii) sales tax seller's permit, the Commissioner of Revenue Services may determine whether the applicant has failed to file any state tax returns and, if it is determined that the applicant has failed to file any return, the Commissioner is prohibited from issuing or renewing such license or permit until the applicant files all outstanding returns or makes some other arrangement satisfactory to the Commissioner. Conn. Gen. Stat. §12-39o, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §198 *(effective January 1, 2017)*.

Connecticut Retirement Security Exchange. New legislation establishes the Connecticut Retirement Security Authority (the "Authority"), a quasi-public agency of the State of Connecticut, and the Connecticut Retirement Security Exchange (the "Program), the purpose of which is to promote and enhance retirement savings for private sector employees in Connecticut. The Authority is to establish criteria and guidelines for qualified retirement investment choices that will be offered pursuant to the Program by multiple vendors selected by the Authority. The criteria and guidelines will establish a cap on annual fees and require the provision of historical investment performance. The legislation mandates that qualified employers that do not otherwise offer an employer-sponsored retirement plan must automatically enroll eligible covered employees in the Program and setup payroll deductions for such covered employees in order to facilitate participation in the Program. The new legislation applies to "qualified" employers, which generally are for-profit and non-profit entities that employ five (5) or more individuals who made more than $5,000 in the preceding calendar year (but smaller employers may voluntarily participate as well but cannot require any employee to enroll in the Program). Governmental entities are not covered by this new legislation. Qualified employers are required to disseminate to covered employees materials prepared by the Authority regarding enrollment and participation in the Program no later than January 1, 2018 and annually thereafter. The employer must then automatically enroll covered employees at a contribution rate of 3% of the participant's taxable wages within sixty (60) days of the distribution of the materials. Covered employees may select a different contribution rate or may opt out of the Program completely by electing a contribution level of $0. Employer contributions are prohibited in the Program. The new law also provides for the establishment of a Roth IRA for each participant in the program in order to hold the contributions made into the Program. If a participant does not affirmatively select a specific vendor or investment option in the Program, the participant's contribution will be invested in an age-appropriate target date fund rotationally assigned by the Program. "Covered employees" include those individuals (i) who have been employed by a "qualified employer" for at least one hundred and twenty (120) days, (ii) are at least nineteen (19) years old, and (iii) perform certain enumerated services within Connecticut. All contributions in the Program will be held in trust or custodial accounts as required by the Internal Revenue Code. The Authority will be controlled by a Board of Directors (the "Board"), which will consist of fifteen voting members. The members are to include the State Treasurer, the State Comptroller, the Secretary of OPM, the Banking Commissioner, the Labor Commissioner, and legislators from

both parties, among others. All appointments to the Board will be made no later than January 1, 2017. The Board is the entity responsible for administering and managing the Program, which includes establishing procedures for the Program, selecting vendors, providing account statements, investment options and fee information and other communications regarding the program to enrolled participants. Conn. Pub. Act No. 16-29, §§1-2 *(effective May 27, 2016)*, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §§95-96 *(effective June 2, 2016)*; Conn. Pub. Act No. 16-29, §§3-12 *(effective May 27, 2016)*, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.) §§97-105 *(effective January 1, 2017)* and §207 *(effective June 2, 2016)*; Conn. Pub. Act No. 16-3 (May Spec. Sess.) §106 *(effective January 1, 2018)*; Conn. Gen. Stat. §§1-79(12), 1-120(1), 1-124, and 1-125, as amended by Conn. Pub. Act No. 16-29, §§14-17 and 21 *(effective July 1, 2016)*, as further amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §207 *(effective June 2, 2016)*; Conn. Gen. Stat. §§31-71e and 31-71j, as amended by Conn. Pub. Act No. 16-29, §§18-19 *(effective January 1, 2016)*, as further amended by Conn. Pub. Act No. 16-3, (May Spec. Sess.), §108 *(effective January 1, 2017)*, §109 *(effective July 1, 2016)* and §207 *(effective June 2, 2016)*; and Conn. Pub. Act No. 16-29, §20 *(effective May 27, 2016),* as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §207 *(effective June 2, 2016)*.

Commission on Economic Competiveness. In 2015, the General Assembly established a 13-member Commission on Economic Competiveness to assess how the state's tax policies affect business and industry and develop policies to promote economic growth. New legislation expands the Commission's membership to 23, including the chairs and ranking members of each of the Finance, Revenue and Bonding Committee, and the Commerce Committee (or their designees), an appointee of the Governor and the CTNext chair or designee. Conn. Gen. Stat. §2-124(b), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §21 *(effective June 2, 2016)*.

Tax Incidence Study. By law, the DRS must submit to the Finance, Revenue and Bonding Committee, and post on the DRS website, biennial reports on the overall incidence of the income tax, sales and excise taxes, the corporation business tax and property tax. The due date of the report currently due on or before February 15, 2017, is extended to February 15, 2018. Conn. Gen. Stat. §12-7c(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §192 *(effective June 2, 2016).*

First Five Plus Program Extended. The First Five Plus Program provides substantial financial assistance and tax incentives to eligible business development programs that create jobs and make capital investments within the law's timeframes. Projects qualify if they can (i) create at least 200 new jobs within 24 months after the assistance is approved or (ii) invest at least $25 million and create at least 200 new jobs within five years after the assistance is approved. Under new legislation, the Program has been extended three years, from June 20, 2016 to June 30, 2019, and the maximum number of business development projects that can be funded under the Program increased from 15 to 20. The 2016 legislation also expands those business development projects that are to be given a preference to include those that are: (i) located in one of the state's distressed municipalities (as defined in Conn. Gen. Stat. §32-9p) or (ii) part of an industry that the state's strategic economic plan targets for assistance. (The state's 2015 plan targets for priority investment health care, bioscience, insurance and financial services, advanced manufacturing, digital media, tourism and green technologies industries.) Finally, the preference that involves the relocation of jobs to Connecticut is restated such that those jobs do not have to be relocated from outside of the United States, but now must involve research, invention or innovation. Conn. Gen. Stat. §32-4l, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §18 *(effective July 1, 2016)*.

Hospital User Fee. In 2015, the Connecticut Hospitals Association filed applications with each of the Commissioner of Revenue Services and the Commissioner of Social Services seeking a declaratory ruling finding the hospital user fee to be violative of both certain state statutes and provisions of the United States and Connecticut Constitutions. In response to

the filings, the General Assembly adopted legislation that purports to clarify the 2011 legislation that established the hospital user fee, including the role of the General Assembly in the setting of the fee and the definition of "net patient revenue." The governing statute also is amended to provide that the hospital tax rate conform with the state budget and that, when determining the tax assessment base year, the DSS Commissioner ensure that it conforms with the adopted budget. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §121 *(effective June 2, 2016)* and §123 *(effective July 1, 2016)*. Conn. Gen. Stat. §12-263b(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §120 *(effective June 2, 2016, and applicable to calendar quarters commencing on or after July 1, 2011).* [Ed. note. *See* Administrative Pronouncements below.]

Ambulatory Surgical Centers Tax. The Secretary of OPM, in consultation with the Commissioners of the DRS and DSS, is charged with the conduct of a study of the impact of the gross receipts on ambulatory surgical centers ("ASCs") enacted in 2015. The study is to include a review of, and recommendations concerning, (i) the rate of tax and the amount of any exemptions, (ii) the fairness of such tax as applied to ASCs of varying sizes and capacities, (iii) the relationship of the tax to the operating costs of ASCs, (iv) the impact of the tax on the ability of ASCs to make debt service payments or capital improvements, (v) the implications of the tax on the hours of operation of ASCs, and (vi) other possible tax structures. The report is due on or before February 1, 2017, to the Committees on Public Health and Finance, Revenue and Bonding. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §197 *(effective June 2, 2016)*.

Payment Settlement Entities. New legislation directs the Commissioner of Revenue Services to make "reasonable efforts" to facilitate the issuance of tax warrants on "payment settlement entities" (i.e., credit card settlement entities such as VISA and American Express) for payments made by such entities to retailers in Connecticut. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §182 *(effective June 2, 2016)*.

Admissions Tax Municipal Surcharge. New legislation authorizes any municipality, by ordinance, to impose a surcharge on the admission charge for any event that is held at a facility located within the municipality. The surcharge cannot: (i) exceed 5% of the amount of the admission (10% of the amount of the admission at the Dunkin' Donuts Park); and (ii) be imposed on (A) events from which all proceeds go to a tax-exempt organization (if the organization engages in and assumes the financial risk associated with the presentation of such event); or (B) any pari-mutual or off-track betting facilities already subject to a local admissions tax. A municipality also may, as part of the ordinance, exempt additional events or facilities from the surcharge. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §186 *(effective June 2, 2016)*.

Admissions Tax Exemptions. Two new exemptions from the admissions tax are adopted for (i) any event presented at the Dunkin' Donuts Park in Hartford, and (ii) on or after July 1, 2017, to any athletic event presented by a member team of the Atlantic League of Professional Baseball at the New Britain Stadium. Conn. Gen. Stat. §12-541(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §185 *(effective June 2, 2016)*.

Municipal Revenue Sharing. Under legislation enacted in 2015, the Commissioner of Revenue Services was to direct to the Municipal Revenue Sharing Account ("MRSA"): (i) 4.7% of sales tax revenue from May 2016 through April 2017; (ii) 6.3% of sales tax revenue from May and June 2017; and (iii) 7.9% of sales tax revenue from July 2017 and thereafter. As part of its budget adjustment legislation, the General Assembly eliminated the sales tax diversion to MRSA for the 2017 fiscal year (July 1, 2016-June 30, 2017). Conn. Gen. Stat. §12-408(1), as amended by Conn. Pub. Act No. 16-2 (May Spec. Sess.), §40 *(effective June 2, 2016)*. The Legislature also created a new Municipal Revenue Sharing Fund ("MRSF"), and appropriated $185 million for the 2017 fiscal year for the Fund. Conn. Pub. Act No. 16-2 (May Spec. Sess.), §§41 *(effective June 2, 2016)*, 42 *(effective July 1, 2016)* and 46 *(effective July 1, 2016)*, as further amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §190 *(effective July 1, 2016)*. Although OPM was to use MRSA funds to distribute motor vehicle property grants and municipal revenue sharing grants to municipalities commencing in the 2017 fiscal year,

the 2016 budget adjustment legislation eliminated the 2017 fiscal year motor vehicle property tax grants and modified the municipal revenue sharing grant amounts for that fiscal year (which shall be paid from the MRSF). The grants are to be available again in the 2018 fiscal year, but the motor vehicle property tax grant formula is modified so that a municipality's grant is equal to the difference between (i) the amount of property taxes a municipality (and any district located therein) levied on motor vehicles for the October 1, 2013 assessment year, and (ii) the amount of such levy would have been if the mill rate on motor vehicles for said year was 32 mills. (The prior law's formula used 29.36 mills for the 2018 and later fiscal years.) Conn. Gen. Stat. §4-66l, as amended by Conn. Pub. Act No. 16-2 (May Spec. Sess.), §42 *(effective July 1, 2016).*

Knowledge Center Enterprise Zones. New legislation authorizes the DECD Commissioner to establish up to ten knowledge center enterprise zones in state-designated distressed municipalities. A higher education institution may submit to the DECD a proposal to establish such a zone by providing the following information: (i) the zone's geographical scope, which may extend for up to a two-mile radius beyond the institution's boundaries; (ii) the nature of the business and industry that will be developed in the zone; (iii) how the business and industry align with the institution's mission and will collaborate with the institution to create jobs; (iv) the number of jobs, state and local revenue loss, and economic and community development anticipated from the zone's establishment; and (v) the institution's experience collaborating with businesses or planning for such collaboration. Businesses which locate in a knowledge center enterprise zone will receive the same benefits, subject to the same conditions, as those located in general enterprise zones, including: (i) property and real estate conveyance tax exemptions and corporation business tax credits mainly for developing facilities; and (ii) a ten-year corporation business tax credit for any newly-formed corporation locating in the zone. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §24 *(effective October 1, 2016).*

Deeds Pursuant to Judgment of Loss Mitigation. New legislation creates a new process whereby a court may enter a judgment of loss mitigation which allows (i) certain "underwater mortgages" to be modified without a junior lienholder's consent or (ii) the mortgagor (borrower) to satisfy his or her obligation by conveying the property using a transfer agreement. A deed made pursuant to a judgment of loss mitigation is exempted from the real estate conveyance tax. Conn. Gen. Stat. §12-498(a)(9), as amended by Conn. Pub. Act No. 16-65, §91 *(effective October 1, 2016)*.

ABLE Accounts. New legislation requires the State Treasurer, in consultation with the DRS, to submit a report to the Banking Committee "concerning any mechanism for converting" a Section 529 education savings plan (such as a CHET account) into a state Achieving a Better Life Experience (ABLE) account, and any appropriations or revisions to the General Statutes the Treasurer deems necessary to ensure the successful operation of a federally qualified ABLE program. The ABLE program is intended to encourage and help eligible individuals and families save private funds to pay for qualifying expenses related to disability and blindness. ABLE accounts funds are to be held in the Connecticut ABLE Trust and to be exempt from federal, state and local taxation. Conn. Pub. Act No. 16-65, §72 *(effective May 26, 2016)*.

New State Tax Study. Despite the conduct of multiple state tax studies during the last few years, and the work of the permanent Commission on Economic Competitiveness, the General Assembly has mandated that the Commissioner of Revenue Services "conduct a study concerning the state laws governing the sales and use tax, the personal income tax and the corporation business tax." A report on the study is to be filed with the Finance, Revenue and Bonding Committee no later than January 1, 2017. Conn. Spec. Act No. 16-14, §1 *(effective October 1, 2016).*

Sikorsky Aircraft Retention Package. During the September Special Session, the General Assembly enacted special legislation in an attempt to retain Sikorsky Aircraft (which is described generally in the legislation as an "eligible taxpayer" engaged in the aerospace industry that operates its primary helicopter production facility for its current United States

government programs in Connecticut). DECD is authorized to enter an assistance agreement with an "eligible taxpayer" and offer certain incentives with respect to an aerospace manufacturing project that is certified by DECD and that meets certain requirements over a minimum period, including minimum job payroll, capital investment and supplier spending requirements, and capital expenditures. The two types of incentives made available are grants of up to $140 million, to be funded with General Obligation bonds, and sales and use tax offsets of up to $80 million. The DECD may authorize up to $5.714 million per year in sales and use tax offsets for a certified aerospace manufacturing project, and the company can carry forward up to three years any unused offset for a tax year. Conn. Pub. Act. No. 2016-1 (Sept. Spec. Sess.), §§ 1-2 *(effective September 29, 2016).*

II. Administrative Pronouncements

Hospital User Fee. On September 22, 2016, the DRS and the Department of Social Services published Declaratory Ruling No. 2016-1 in response to a request by the Connecticut Hospital Association and various of its member hospitals challenging the tax on the net patient revenue of hospitals under Chapter 211a of the Connecticut General Statutes (the "Hospital User Fee"). In the 179-page ruling, the agencies ruled that: (i) the General Assembly did not unlawfully delegate authority to set the tax rate for the Hospital User Fee to the agencies and, therefore, did not violate Article Second of the Connecticut Constitution; (ii) the application of the Hospital User Fee did not involve the enactment by either agency of an illegal regulation in violation of the Uniform Administrative Procedure Act; (iii) the Hospital User Fee does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (iv) the agencies have not implemented the Hospital User Fee in a manner inconsistent with Chapter 211a or Title XIX of the Social Security Act (which governs the Medicaid program); and (v) the agencies have not administered the Hospital User Fee in an arbitrary or capricious manner, and have not abused the discretion afforded them under Chapter 211a.

Cigarette Taxes. Pursuant to legislation enacted last year, the cigarette tax is increased from $3.65 to $3.90 per pack on July 1, 2016. Similar to prior tax rate increases, a "floor tax" of 25 cents is imposed on each pack of cigarettes that a dealer or distributor has in inventory at the earlier of close of business on 11:59 p.m. on June 30, 2016. *See* DRS Special Notice 2016(3), *2015 Legislative Changes Affecting the Cigarette Tax Effective July 1, 2016*.

Prepaid Wireless E 9-1-1 Fee. The DRS has announced that, effective July 1, 2016, the prepaid wireless E 9-1-1 fee has been reduced from 51 cents to 47 cents. DRS Special Notice 2016(4), *Change to the Prepaid Wireless E 9-1-1 Fee*.

Conversion Factors on Motor Vehicle Fuels. The DRS has announced the conversion factors for motor vehicle fuels occurring in gaseous form applicable for the 12-month period commencing on July 1, 2016. DRS Special Notice 2016(2), *Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Form Beginning July 1, 2016.*

FUTA Tax Reduction. The Connecticut Department of Labor announced on March 31, 2016, that Connecticut employers should see a reduction in the FUTA tax rate from the 2.7% rate in 2015 to 0.6% in 2016 now that the state has repaid the federal loan that was needed to continue paying unemployment insurance benefits during the recession. The federal loan was paid off on March 24, 2016.

Diesel Fuel Tax Rate. The fuels tax rate on diesel fuel will be reduced from 50.3 cents per gallon to 41.7 cents per gallon for the twelve-month period commencing on July 1, 2016. DRS Announcement 2016(5).

Connecticut Tax Panel Report. On December 31, 2015, the State Tax Panel that was established in 2014 pursuant to Conn. Pub. Act No. 14-217, §137 issued its final report. The State Tax Panel was comprised of a panel of experts in tax

law, tax accounting, tax policy, economics and state, local and business finance and was charged with reviewing the state's overall state and local tax structure. The members of the panel were appointed jointly by the Governor and the chairs and ranking members of the Committee. One of the appointees to the Panel was Louis B. Schatz of Shipman & Goodwin. The panel was charged with considering and evaluating options to modernize tax policy, structure and administration with respect to (i) efficiency, (ii) cost of administration, (iii) equity, (iv) reliability, (v) stability and volatility, (vi) sufficiency, (vii) simplicity, (viii) incidence, (ix) economic development and competitiveness, (x) employment, (xi) affordability and (xii) overall public policy. A link to the Panel's Final Report can be found here: https://www.cga.ct.gov/fin/tfs/20140929_State%20Tax%20Panel/CT%20State%20Tax%20Panel%20Final%20Report.pdf?_cldee=bHNjaGF0ekBnb29kd2luLmNvbQ%3d%3d.

Real Estate Conveyance Tax Return. The October 2016 revision of Form OP-236, *Real Estate Conveyance Tax Return*, will be available only on the DRS website as a fillable document. Taxpayers may continue to use the old carbon copy returns until the supply is exhausted. DRS Announcement 2016(7), *Major Revision to the Connecticut Real Estate Conveyance Tax Return*.

III. Case Law

Interest on Appeal. In Dish Network, LLC v. Sullivan, 2016 Conn. Super. LEXIS 750 (Apr. 11, 2016), the Tax Session of the Superior Court ruled on a motion for interest by the plaintiff taxpayer and satellite television provider. The Court previously had issued a decision on the taxability of certain services under the gross earnings tax and had approved a joint stipulation by the parties as to the amount of refund due to the taxpayer based upon the Court's taxability decision. The Court held that the applicable interest statute was not Conn. Gen. Stat. §12-268c(b)(1), which allows for interest to be paid on a refund due to an overpayment, but rather was Conn. Gen. Stat. §12-268l, which permits a court to grant such relief, including interest, as is equitable as part of a tax appeal. The Court then concludes that it "did not grant relief" as contemplated by section 12-268l, but merely approved a stipulation that was negotiated by the parties and, therefore, no claim for interest could be granted unless it was part of the stipulation.

ADMINISTRATIVE PRONOUNCEMENTS

Announcements

AN 2016(1), Assessments Refunded by the Connecticut Insurance Guaranty Association
AN 2016(2), 2016 Revisions of Forms TPM-1, TPM-2, and TPM-4
AN 2016(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2016(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2016(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2016(3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2016(4), List of DRS-Registered Natural Gas Suppliers
AN 2016(5), Motor Vehicle Fuels Tax Rate on Diesel Fuel Decreased Effective July 1, 2016
AN 2016(6), Revocation of Policy Statement 2001(2), Room Occupancy Tax and Sales and Use Tax on Campground and Cottage Rentals
AN 2016(7), Major Revision to the Connecticut Real Estate Conveyance Tax Return

Informational Publications

IP 2016(1), Connecticut Circular CT Employer's Tax Guide
IP 2016(2), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax
IP 2016(3), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax
IP 2016(4) Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements
IP 2016(5), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes
IP 2016(6), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics
IP 2016(7), Is My Connecticut Withholding Correct?

IP 2016(8), Connecticut Tax Guide for Payers of Nonpayroll Amounts
IP 2016(9), Attorney Occupational Tax and Client Security Fund Fee
IP 2016(10), Status Letters for Income Tax
IP 2016(11), Q&A on Estimated Corporation Business Tax and Worksheet CT-1120AE
IP 2016(12), Forms 1099-R, 1099-MISC, and W-2G Electronic Filing Requirements for Tax Year 2016
IP 2016(13), Form W-2 Electronic Filing Requirements for Tax Year 2016
IP 2016(14), Q&A on the Business Entity Tax
IP 2016(16), Q&A on Estimated Corporation Business Tax and Worksheet CT-1120AE
IP 2016(17), Status Letters
IP 2016(18), Q & A: Income Tax Credit for Property Taxes Paid to a Connecticut Political Subdivision
IP 2016(19), Q & A on the Connecticut Individual Use Tax

Policy Statements

PS 2016(2), Innocent Spouse Relief, Separation of Liability, and Equitable Relief
PS 2016(3), Charitable Contributions Not Considered in Domicile Determinations
PS 2016(4), Designated Private Delivery Services and Designated Types of Services

Special Notices

SN 2016(1), Combined Unitary Legislation - Corporation Business Tax
SN 2016(2), Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Form Beginning July 1, 2016
SN 2016(3), 2015 Legislative Changes Affecting the Cigarette Tax Effective July 1, 2016
SN 2016(4), Change to the Prepaid Wireless E 9-1-1 Fee
SN 2016(6), Important Legislative Changes Passed in 2016 or Affecting 2016 Periods

Rulings

Ruling No. 2016-1, Sales and Use Taxes, Testing Services
Ruling No. 2016-2, Sales and Use Taxes, Food Products, Nonprescription Drugs and Medicines
Ruling No. 2016-3, Sales and Use Taxes, Food and Beverages, Nonprescription Drugs and Medicines
Ruling No. 2016-4, Sales and Use Taxes, Medical Equipment, Orthodontist

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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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