



## Connecticut Tax Developments – 2005 Legislative Session Review

July 15, 2005

Although the 2005 legislative session resulted in the enactment of very few meaningful changes in tax policy other than the new estate and gift tax provisions, the session nevertheless proved to be a very stressful and difficult period for taxpayers and tax practitioners. A number of bills received serious consideration that would have significantly changed the way Connecticut taxes businesses and individuals, including: the elimination of virtually all exemptions from the Connecticut sales and use tax; the elimination of virtually all credits and certain exclusions and deductions from the Connecticut corporation business tax; the disclosure of otherwise confidential taxpayer and tax return information of any corporate taxpayer which claims one or more statutory tax credits from the corporation business tax; the adoption of alternate combined reporting for the corporation business tax (an expansive derivative of unitary reporting that would have made the Connecticut franchise tax one of, if not the, most onerous in the country); and the “millionaire’s tax” which, in certain iterations, would have affected taxpayers with incomes that may be better characterized as middle class. Although none of these bills was enacted, we will have to wait and see whether they are signs as to what is to become the law in

the future, as well as what impact the mere consideration of these bills will have on the decisions of businesses and individuals to relocate or to remain in Connecticut.

In the interim, we have summarized below the more substantive changes to Connecticut tax law made this legislative session, including the new estate and gift tax provisions. Please note, however, that the descriptions contained herein are only summaries; the application of the change in tax law to your business or to you, individually, may be impacted by tax law provisions not included in our summary or your particular facts and circumstances. We encourage you to contact any of the members of the State and Local Taxation Practice Group if you have any questions, or if we can be of any assistance:

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## CORPORATION BUSINESS TAX

**Corporation Business Tax Surcharge.** With respect to income years commencing on or after January 1, 2006 and prior to January 1, 2007, an additional tax (or “surcharge”) is imposed equal to twenty per cent (20%) of the corporation business tax otherwise payable for such year. A similar surcharge of fifteen per cent (15%) is imposed with respect to income years commencing on or after January 1, 2007 and prior to January 1, 2008. A corporation must calculate its surcharge based on its liability before any tax credits. Both the 2006 and the 2007 surcharge are applicable regardless of whether a taxpayer’s corporation business tax liability is calculated under Conn. Gen. Stat. §12-214 (regular tax) or §12-219 (capital-based tax); however, neither surcharge is applicable if a taxpayer’s tax liability otherwise is equal to \$250 (i.e., the minimum tax). Conn. Gen. Stat. §§12-214(b)(5) and (6), and Conn. Gen. Stat. §§12-219(b)(5) and (6), as added by Conn. Pub. Act No. 05-251, §§62-63 (*effective June 30, 2005, and applicable to income years commencing on or after January 1, 2006*). [Ed. note. Although a surcharge was in effect for an income year commencing during the year prior to January 1, 2005, no surcharge was imposed for income years commencing on or after January 1, 2005, and prior to January 1, 2006.]

**Business Tax Credit and Tax Policy Review Committee.** The General Assembly renamed the Corporation Business Tax Credit Committee as the new “Business Tax Credit and Tax Policy Review Committee” (the “Committee”), expanded its membership, and broadened the scope of its assignment to include (i) the study and evaluation of all of the existing credits against the corporation business tax, (ii) the evaluation of potential changes or modifications that may be made to such tax, and (iii) the consideration of “further changes in policy regarding the taxation of businesses.” Upon request by the Committee, the Commissioner of Revenue Services (the “Commissioner”) is authorized to provide information to the Committee regarding corporation business tax exemptions and credits, as well as general tax policy. Although the Commissioner is not permitted to disclose the names or addresses of taxpayers, or to produce a copy of a tax return filed with the state, the Commissioner may disclose to the Committee returns and return information of a taxpayer. For a taxpayer which claims a tax exemption or credit, or “implement[s] a change in tax policy,” such information may include a description of the taxpayer’s business activities, the amount of income apportioned to this state and the taxes paid on such income, and the exemption or credit taken and the amount of such exemption or credit. The Committee is to report its findings to the Finance Revenue and Bonding Committee no later than January 1, 2006, and annually thereafter. Conn. Gen. Stat. §12-217z, as amended by Conn. Pub. Act No. 05-251, §64 (*effective July 1, 2005*); Conn. Gen. Stat. §12-15(b), as amended by Conn. Act No. 05-251, §65 and Conn. Pub. Act No. 05-03 (June Sp. Sess.), §§ 5, 36 (*effective July 5, 2005*).

**Examinations and Assessments.** In general, under current law, the statute of limitations for the making of a deficiency assessment with respect to a Connecticut corporation business tax return on which no operating loss is reported is three years from the later of the due date for the filing of the return or the date such return is received by the Commissioner. In the case of returns on which an operating loss is reported, the assessment period expires three years after the later of the due date, or the date of receipt by the Commissioner, of the return on which a carryover of such loss is fully utilized or deemed fully utilized (because such loss is not available for deduction in any subsequent

year). New legislation eliminates the current 30-day window between the time the Department of Revenue Services ("DRS") discovers an error in a return and the time it must notify the taxpayer. In addition, the legislation extends the time limit for deficiency assessments to six years after the later of the due date of a return or the return is filed in the case of any return (i) on which the taxpayer understates its gross income by more than 25% of the amount of gross income stated on the return (not including any portion of an understatement to the extent it is disclosed adequately in the return or a statement attached to the return); and (ii) on which a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code of 1986, as amended (the "Code"). The legislation also extends indefinitely the limitations period for a notice of deficiency assessment in the case of either (i) a failure to file a return (or an amended return if required after an adjustment or correction attributable to a federal audit as required under Conn. Gen. Stat. §12-226); or (ii) a deficiency due to fraud or intent to evade taxes. Finally, if, within 60 days of the end of a limitations period for an income year, the Commissioner receives a written document signed by the taxpayer showing that such taxpayer owes an additional amount of tax for such income year, the Commissioner shall have up to 60 days after the day such written document is received in which to mail a notice of deficiency. Conn. Gen. Stat. §12-233, as amended by Conn. Pub. Act No. 05-116, §2 (*effective June 24, 2005, and applicable to income years commencing on or after January 1, 2005*).

**Listed Transaction Penalty.** For audits of returns commencing on or after January 1, 2006, if any part of the deficiency for which a deficiency assessment is made is due to the taxpayer's failure to disclose on such taxpayer's federal tax return a listed transaction, as defined in Code §6707A, the Commissioner is to impose a penalty equal to 75% of the amount of such deficiency statement. Conn. Gen. Stat. §12-233(b)(1), as amended by Conn. Pub. Act No. 05-116, §2 (*effective from passage and applicable to income years commencing on or after January 1, 2005*), as further amended by Conn. Pub. Act No. 05-260, §7 (*effective July 13, 2005*). [Ed. note. The latter amendment, making the new penalty effective for audits of returns commencing on or after January 1, 2006, means that the penalty can be imposed retroactively to returns filed for tax years ending in 2003 and 2004, and any other open tax years unless the taxpayer participated in the Connecticut Abusive Tax Shelter Compliance Initiative or otherwise disclosed a listed transaction on an original or amended federal tax return. Representatives of the DRS have stated informally that a second initiative will be conducted in the Fall of 2005 to encourage additional taxpayers to disclose their participation in a listed transaction.]

**Connecticut Convention Center.** The definition of "carrying on or doing business" in Connecticut, for purposes of the imposition of the Connecticut corporation business tax, is amended to provide for an exclusion for a company participating in a trade show or shows at the Connecticut Convention Center in Hartford, regardless of whether the company has employees or other staff present at such trade shows, provided that: (i) the company's activity at such trade shows is limited to the displaying of goods or the promoting of services; (ii) no sales are made; (iii) any orders received are sent outside of Connecticut for acceptance or rejection and are filled from outside of Connecticut; and (iv) such participation is not more than 14 days, or part thereof, in the aggregate during the company's income year for federal income tax purposes. Conn. Gen. Stat. §12-213(a)(20), as amended by Conn. Pub. Act No. 05-260, §2 (*effective July 13, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

- **Urban and Industrial Site Reinvestment Program Tax Credit.** The provisions governing the urban and industrial site reinvestment program tax credit are amended as follows: (i) the minimum investment required to obtain the credit is reduced from \$20 million to \$5 million (or \$2 million in the case of an investment in an eligible project for the preservation of an historic facility and redevelopment of the facility for mixed uses that includes at least four housing units); (ii) the minimum investment requirement can now be satisfied in conjunction with other taxpayer investments in an eligible project; and (iii) the credit may now be assigned to multiple taxpayers. Conn. Gen. Stat. § 32-9t, as amended by Conn. Pub. Act, No. 05-276, §§ 2-3 (*effective July 13, 2005*).

## SALES AND USE TAX

**Nonresident Contractors.** Nonresident contractors (i.e., contractors who do not continuously maintain a “regular place of business” in Connecticut) performing work in Connecticut currently are, and will continue to be, subject to certain tax security procedures designed to ensure that they properly pay their Connecticut tax liabilities. In accordance with these tax security procedures, a Connecticut customer hiring a nonresident contractor generally must withhold and pay over to the DRS five percent (5%) of the “contract price” if the nonresident contractor does not post a guarantee bond with the State to cover the potential Connecticut taxes attributable to the contract. Effective October 1, 2005, these nonresident contractor tax security procedures are being amended in a number of important ways:

- **Regular Place of Business and Contract Price.** Under current law, a "regular place of business" is any bona fide office, factory, warehouse or other space at which the contractor does business in its own name in a regular and systematic manner, provided such space is continually maintained, occupied and used by the contractor in carrying on its business through its employees regularly in attendance. The definition of "regular place of business" is amended to further require that the contractor's employees at such space "carry on the contractor's business in the contractor's own name." Additionally, the law is clarified to provide that a "regular place of business" does not include a temporary office or location used by the contractor for the duration of a contract, whether or not at the site of construction, or any office maintained, occupied and used by a person affiliated with the contractor. Finally, the law is amended to define the term "contract price" as the total contract price, including deposits, amounts held as retainage, costs for any change orders, and charges for additions.
- **Homeowner and Tenant Exception.** As amended, the tax security provisions will not apply to an owner or tenant of real property used exclusively for residential purposes and consisting of three or fewer dwelling units, in one of which the owner or tenant resides. [Ed. note. The language of the exception is poorly drafted, as the suggestion is made that it is applicable only if the nonresident contractor complies with the bond requirements described below. Representatives of the DRS have provided oral

reassurances that the exception is not predicated on the filing of a bond, and that future written guidance from the DRS will clarify this issue.]

- **Withholding and Liability.** Under current law, unless a guarantee bond is properly posted by the nonresident contractor, a customer must withhold 5% of the contract price and deposit it with the DRS within 30 days after the completion of the contract. The DRS will then issue a receipt for the deposited funds to the customer. The new law will require the customer to withhold 5% from each payment made to the nonresident contractor, unless a certificate of compliance is furnished to the customer by the contractor (see below). Customers will be required to deposit the amount withheld on a quarterly basis with the DRS (and the DRS will no longer issue a receipt for such deposits). So long as a customer withholds and deposits such amounts with the intent to comply with the statutory security procedures, the nonresident contractor will be prohibited from maintaining a cause of action against the customer for any withholding made. However, a customer will remain liable for use taxes due on the purchases of services from the nonresident contractor. A customer who fails to properly withhold and deposit the required 5% amount, or to obtain a certificate of compliance, will be personally liable for the payment of any taxes of the nonresident contractor arising from the project.
- **Audit.** Under current law, if amounts are withheld from a contract price, the nonresident contractor must request in writing a DRS audit to determine if any tax is due. The new law provides that, if the written audit request is not made within three years after the date the final withholding holding payment is deposited with the DRS, the contractor will be deemed to have waived its right to request an audit and to claim a refund. If an audit is conducted, the DRS must issue either a certificate of no tax due or a certificate of tax due. If a certificate of no tax due is issued, the DRS must refund to the nonresident contractor any withheld and deposited amounts within 90 days. If a certificate of tax due is issued, the DRS may refund the amount in excess of any taxes due (plus interest and penalties).
- **Bond.** Under current law, a nonresident contractor can attempt to avoid the withholding requirement by petitioning the DRS to allow the posting of a guarantee bond, equal to 5% of the contract price, within 120 days after the commencement of the contract. The statute is amended to: (i) delete the petition requirement; (ii) require the posting of the bond by the earlier of (A) 120 days after the commencement of the contract or (B) 30 days after the completion of the contract; and (iii) allow either the furnishing of a guarantee bond or the depositing of a cash bond. Upon acceptance of the bond, the DRS will issue a certificate of compliance to the contractor, which can be provided to the customer to prevent the imposition of withholding. A customer who receives a certificate of compliance cannot be held liable for any claim by the DRS for any taxes of the nonresident contractor arising from the activities of the contractor on the project for which the bond was provided.

Conn. Gen. Stat. §12-430(7), as amended by Conn. Pub. Act No. 05-260, §6 (*effective October 1, 2005, and applicable to contracts entered into on or after October 1, 2005*).

**Connecticut Convention Center.** The statutory provision that defines “engaged in business in this state” for purposes of the imposition of the Connecticut sales and use tax is amended to provide for an exclusion for a retailer, not otherwise engaged in business in Connecticut, participating in a trade show or shows at the Connecticut Convention Center in Hartford, regardless of whether the retailer has employees or other staff present at such trade shows, provided that: (i) the retailer’s activity at such trade shows is limited to the displaying of goods or the promoting of services; (ii) no sales are made; (iii) any orders received are sent outside of Connecticut for acceptance or rejection and are filled from outside of Connecticut; and (iv) such participation is not more than 14 days, or part thereof, in the aggregate during the retailer’s income year for federal income tax purposes. Conn. Gen. Stat. §12-213(a)(20), as amended by Conn. Pub. Act No. 05-260, §5 (*effective July 13, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

**College Textbooks.** The current exemption from the sales and use tax for sales of college textbooks required or recommended for courses to full and part-time students enrolled at institutions of higher education has been extended for sales of such textbooks to students enrolled at authorized private occupational schools, to the extent the textbooks are required or recommended for the private occupational school courses. Conn. Gen. Stat. §12-412(109), as amended by Conn. Pub. Act No. 05-251, §86 (*effective July 1, 2005*).

**Marine Vessel Brokerage Services.** A new exemption from the sales and use tax is adopted for sales of marine vessel brokerage services provided by a marine vessel broker selling such a vessel for the owner. Conn. Gen. Stat. §12-412(116), as added by Conn. Pub. Act No. 05-251, §87 (*effective October 1, 2005*).

## **PERSONAL INCOME TAX**

**Civil Unions.** Effective October 1, 2005, Connecticut will recognize the civil union of two parties of the same sex. According to the legislation: (i) parties to a civil union are to have the same benefits, protections and responsibilities under the law as are granted to spouses in a marriage; (ii) wherever in the general statutes the terms “spouse,” “family,” “immediate family,” “dependent,” “next of kin” or any other term of spousal relationship are used or defined, a party to a civil union shall be included in such use or definition; and (iii) wherever in the general statutes the term “marriage” is used or defined, a civil union generally shall be included in such use or definition. Conn. Pub. Act No. 05-10, §§1-21 (*effective October 1, 2005*). A provision adopted during the June Special Session clarified that, commencing on January 1, 2006, the Connecticut personal income tax provisions (Chapter 229) shall apply to parties to a civil union recognized under the laws of Connecticut as if federal income tax and federal estate and gift tax law recognized such a civil union in the same manner as Connecticut law. Conn. Pub. Act No. 05-03 (June Sp. Sess.), §58 (*effective July 5, 2005, and applicable to taxable years commencing, gifts made, and estates of decedents dying on or after January 1, 2006*). [Ed. note. Although we are awaiting written guidance from the DRS regarding the tax consequences of this legislation, representatives of the DRS orally have represented that parties to a Connecticut civil union will not be permitted, until the 2006 taxable year, to file joint Connecticut income tax returns, change their



Connecticut wage withholding based on the union, make gifts to each other free from the Connecticut gift tax, etc.]

**Property Tax Credit.** The increase in the property tax credit from \$350 to \$500, scheduled to occur this year, has been both delayed and reduced. The credit will remain at \$350 for the 2005 tax year, and increase to only \$400 in 2006 and succeeding tax years. Pursuant to existing law, the tax credit phases out gradually over certain specified levels of Connecticut adjusted gross income. Conn. Gen. Stat. §12-704c(b), as amended by Conn. Pub. Act No. 05-251, §77 (*effective July 1, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

**Single Filer Tax Reduction Delay.** Scheduled increases in (i) a single filer's adjusted gross income exempt from tax and (ii) the income thresholds for reducing a single filer's personal exemption, personal credit and property tax credit, have been delayed for two years. Conn. Gen. Stat. §§12-702(a), 12-703(a)(2), and 12-704c(c), as amended by Conn. Pub. Act No. 05-251, §§74-76 (*effective June 30, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

**Deficiency Assessments.** The period during which a deficiency assessment for a taxable year may be made has been extended: (i) to six years after a return was required to be filed for such taxable year if the taxpayer failed to disclose on the taxpayer's federal tax return a listed transaction, as defined in Code §6707A; and (ii) indefinitely if the taxpayer "willfully attempts in any manner to defeat or evade" the tax. Conn. Gen. Stat. §12-733(c), as amended by Conn. Pub. Act No. 05-116, §4 (*effective June 24, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

**Listed Transaction Penalty.** For audits of returns commencing on or after January 1, 2006, if any part of the deficiency for which a deficiency assessment is made is due to a failure to disclose on the taxpayer's federal tax return a listed transaction, as defined in Code §6707A, the Commissioner is to impose a penalty equal to 75% of the amount of such deficiency assessment. Conn. Gen. Stat. §12-728(a)(2), as amended by Conn. Pub. Act No. 05-260, §8 (*effective July 13, 2005*). [Ed. note. The latter amendment, making the new penalty effective for audits of returns commencing on or after January 1, 2006, means that the penalty can be imposed retroactively to returns filed for the 2003 and 2004 tax years and any other open tax years unless the taxpayer participated in the Connecticut Abusive Tax Shelter Compliance Initiative or otherwise disclosed the listed transaction on an original or amended federal tax return. Representatives of the DRS have stated informally that a second initiative will be conducted in the Fall of 2005 to encourage additional taxpayers to disclose their participation in a listed transaction.]

**Military Retirement Pay.** In calculating Connecticut adjusted gross income, a new subtraction modification will take effect in 2008 permitting a taxpayer to reduce federal adjusted gross income by fifty per cent (50%) of the income received from the United States government as retirement pay by a retired member of the Armed Forces or the National Guard (to the extent such income was included in gross income for federal income tax purposes). Similar amendments are made to the definitions of "adjusted federal tentative minimum tax" and "adjusted federal alternative minimum taxable income." Conn. Gen. Stat. §12-701(a)(20), (24) and (30), as amended by Conn.

Gen. Pub. Act No. 05-251, §§71-73 (*each effective June 24, 2005, and applicable to taxable years commencing on or after January 1, 2008*).

**Military Family Relief Fund.** A Military Family Relief Fund is created as a separate, nonlapsing General Fund account, to be used to make grants to immediate relatives of Connecticut-domiciled, armed forces members on active duty. For tax years starting on or after January 1, 2005, a Connecticut taxpayer may contribute irrevocably all or a part of his or her personal income tax refund to the Fund by indicating this intent on his or her Connecticut income tax return. Conn. Pub. Act No. 05-03 (June Sp. Sess.), §11 (*effective July 1, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

## **REAL ESTATE CONVEYANCE TAX/ CONTROLLING INTEREST TRANSFER TAX**

**Two-Year Extension of Additional Municipal Conveyance Tax.** The provision increasing the municipal real estate conveyance tax rate from eleven-one hundredths of one percent (0.11%) to one-fourth of one percent (0.25%), scheduled to sunset June 30, 2005, has been extended until June 30, 2007. Conn. Gen. Stat. §12-494(a), as amended by Conn. Pub. Act No. 05-268, §1 (*effective July 1, 2005*).

**Indefinite Extension of Additional Municipal Conveyance Tax.** Last year, the General Assembly extended indefinitely the statutory authorization to increase the municipal real estate conveyance tax an additional one-fourth of one percent (.25%), so that an aggregate municipal real estate conveyance tax can now be imposed at the rate of one-half of one percent (.50%) by the 17-targeted investment communities and any town that has a manufacturing plant that qualifies for enterprise zone benefits. This authorization was amended to provide that the increase may be up to one-fourth of one percent (0.25%), permitting a municipality to adopt a lower additional tax. Conn. Gen. Stat. §12-494(c), as amended by Conn. Pub. Act No. 05-268, §2 (*effective July 1, 2005*). [Ed. note. As of June 1, 2005, only two of the 18 eligible municipalities, New Haven and Stamford, have not adopted the maximum increase.]

**Limited Liability Companies and Members.** A new exemption from the real estate conveyance tax is adopted for “deeds to or from any limited liability company when the grantors or grantees are the same individuals as the principals or members of the limited liability company.” Conn. Gen. Stat. §12-504(c)(15), as added by Conn. Pub. Act No. 05-190, §7 (*effective July 1, 2005, and applicable to sales, transfers or charges in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).

**Other Exemptions.** The statutory exemptions to the real estate conveyance tax are renumbered and certain additional changes are made:

- The current exemption for “deeds releasing any property which is a security for a debt or other obligation” is replaced with an exemption for “deeds of foreclosure”.



- The current exemption for “property transferred as a result of death by devise or otherwise...” is restated as “property transferred as a result of death when no consideration is received....”
- The current exemption for land subject to a deed covenant to refrain from selling, transferring or developing such land in a manner inconsistent with its classification as farm land, forest land or open space land for a period of not less than 8 years from the date of transfer is amended to require that any action by a taxpayer to enforce such a covenant must be commenced prior to the ninth year following the date of the deed.

Conn. Gen. Stat. §12-504c, as amended by Conn. Pub. Act No. 05-190, §7 (*effective July 1, 2005, and applicable to sales, transfers or changes in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).

**Farm Land, Forest Land and Open Space Land.** Under current law, property properly classified by the record owner as farm land, forest land and open space land is exempt from the real estate conveyance tax if sold following the end of the tenth year after the date of such classification. If sold prior to then, the transfer is subject to a conveyance tax at an annually declining rate (i.e., the tax is equal to 10% of the sales price if sold within the first year following the date of classification, 9% of the sales price if sold within the second year following the date of classification, etc.). If there is a change in the use of the property within such ten-year period, the record owner is to pay a conveyance tax based on such declining tax rate schedule as applied to the fair market value of the property as determined by the assessor. This latter provision has been amended to provide that: (i) the value of such property shall be the fair market value thereof as determined by the assessor in conjunction with the most recent revaluation; and (ii) the date used for purposes of determining such tax “shall be the date on which the use of such property is changed, or the date on which the assessor becomes aware of a change in the use of such property, whichever occurs first.” In addition, the provision governing appeals to the Board of Assessment Appeals from the imposition of the tax under sections 12-504a to 12-504f is amended to provide that, if the time for appealing to the Board of Assessment Appeals has passed, a taxpayer may appeal at the next regularly scheduled meeting. Conn. Gen. Stat. §§12-504d and 12-504e, as amended by Conn. Pub. Act No. 05-190, §§8-9 (*effective July 1, 2005, and applicable to sales, transfers or changes in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).

## **CONNECTICUT ESTATE, GIFT & SUCCESSION TAXES**

The Connecticut General Assembly overhauled the Connecticut estate, gift and succession taxes during the 2005 legislative session. These changes were, in large part, a result of modifications to the federal estate tax and the resulting decrease in the revenue states, including Connecticut, receive from their own death tax regimes. Connecticut and many other states have responded by revising their death taxes to ameliorate the impact of the federal changes on state revenues. The legislation passed by the General Assembly eliminates the Connecticut succession tax and modifies the Connecticut estate and gift taxes by creating a uniform tax on transfers that is similar to the unified system that existed for federal estate and gift taxes prior to 2005.

**Connecticut Estate Tax.** Prior to 2005, the Connecticut estate tax was pegged to the maximum permitted state death tax credit (with the exception of a temporary Connecticut estate tax imposed on the estates of decedents who died between July 1, 2004 and December 31, 2004). Due to changes in federal law, the state death tax credit was eliminated for decedents dying in 2005 and thereafter which simultaneously would have eliminated the Connecticut estate tax.

The new legislation essentially reinstates the Connecticut estate tax with a \$2 million exemption. It imposes a tax on transfers whether by gift during life (see Connecticut gift tax below), or at death, that exceed a combined \$2 million. Therefore, Connecticut taxable gifts (made after January 1, 2005) are included in the gross estate at death for Connecticut estate tax purposes. Although estates of less than \$2 million are not subject to tax, executors must file a Connecticut estate tax return with the probate court rather than the Department of Revenue Services.

The legislation retains the existing definition in Connecticut law of property subject to Connecticut estate tax. Specifically, for Connecticut residents, transfers at death of all property, excluding real or tangible personal property located in another state, is subject to Connecticut estate tax. As under prior law, the legislation permits a credit against Connecticut estate tax for death or inheritance taxes paid to other states.

The legislation also permits a separate election to qualify property for the marital deduction, even if an election is not made for federal purposes. This enables decedents' estates to qualify property in excess of the Connecticut estate tax exemption for the marital deduction while taking advantage of the full federal estate tax exemption. The benefit of the marital deduction also applies to partners in Connecticut civil unions commencing for the estates of decedents dying after December 31, 2005.

The legislation has a particularly harsh impact on those estates just slightly in excess of \$2 million. A Connecticut taxable estate of \$2 million has no Connecticut estate tax liability. However, a taxable estate with only one dollar of additional assets (\$2,000,001) does not pay tax on that dollar only, as under current law, but instead, must pay a Connecticut estate tax of approximately \$101,700 because the entire taxable amount is subject to a 5.085% Connecticut estate tax for that bracket.

Conn. Gen. Stat. §§12-391 and 12-392, as amended by Conn. Pub. Act No. 05-251, §§69-70 (*effective June 30, 2005, and applicable to estates of decedents who die on or after January 1, 2005*) and Conn. Pub. Act No. 05-03 (June Sp. Sess.) §55 (*effective July 5, 2005*).

**Connecticut Gift Tax.** Under current law, Connecticut imposes a gift tax on taxable gifts in excess of \$25,000 per year (over and above the permitted \$11,000 annual exclusion per beneficiary). The \$25,000 Connecticut gift tax exemption was scheduled to increase in \$25,000 increments each year until 2009 when there would be a \$1,000,000 exemption for Connecticut gift tax.

As part of the new unified transfer tax system, the exemption for taxable gifts made during life is \$2 million commencing January 1, 2005. As under current law, taxable gifts are those in excess

of the annual exclusion amount. The new Connecticut gift tax rates are identical to those of the Connecticut estate tax and contain the same “cliff” in the rates. As discussed above, taxable gifts made after January 1, 2005 will be included in the gross estate at death for Connecticut estate tax purposes. Similar to existing Connecticut law for married couples, gifts between partners in a civil union are not subject to Connecticut gift tax for gifts made after December 31, 2005.

Conn. Gen. Stat. §§12-642 and 12-643, as amended by Conn. Pub. Act No. 05-251, §§67-68 (*effective June 30, 2005, and applicable to calendar years commencing on or after January 1, 2005*).

**Connecticut Succession Tax.** The Connecticut succession tax has been eliminated for all classes for the estates of decedents dying after December 31, 2004. [Ed. note. Prior to this legislation, Classes A (spouse) and AA (parents, children, grandchildren and great-grandchildren) were exempt from Connecticut succession tax. The succession tax applicable to Class B beneficiaries (siblings, nieces and nephews, etc.) was scheduled to be eliminated in 2006 and eliminated in 2008 for Class C beneficiaries (more remote relatives and unrelated beneficiaries).] Conn. Gen. Stat. §§12-344, as amended by Conn. Pub. Act No. 05-251, §66 (*effective June 30, 2005, and applicable to calendar years commencing on or after January 1, 2005*).

## PROPERTY TAX

### **Farm Land, Forest Land and Open Space Land.**

- The statutes governing the classification, transfer and taxation of farm land, forest land and open space land are amended to provide expressly that such classifications are deemed to be personal to the particular owner who requests and receives such classification and shall not run with the land. If the use of such land is changed, or the land is sold or transferred by the record owner who obtained such classification, the classification shall cease upon such change in use, or upon such sale or transfer. In the case of a sale or transfer, the new record owner must file a timely revised application for the classification with the assessor. In that regard, the section governing the classification of land as forest land is amended to provide expressly that the application must be submitted to the assessor by October 1<sup>st</sup>. (The sections governing the classification of land as farm land and open space land have their own deadlines.) Conn. Gen. Stat. §§12-107c - 12-107e, 12-504a and 12-504h, as amended by Conn. Pub. Act No. 05-190, §§3-6 and 10 (*effective July 1, 2005, and applicable to sales, transfers or changes in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).
- Under current law, a tax assessor files annually with the town clerk, for recording on the land records, a certificate for any land classified as farm land, forest land or open space land, setting forth the date of the initial classification and the obligation to pay the conveyance tax to the extent required by law. Effective July 1, 2005, the town clerk must notify the tax assessor of the filing in the land records of the sale of any such land and, upon receipt of such notice, the tax assessor is to inform the new owner of the tax

benefits of classification of such land as farm land, forest land or open space land. Conn. Gen. Stat. §12-504f, as amended by Conn. Pub. Act No. 05-190, §11 (*effective July 1, 2005*).

- The Commissioner of Agriculture is authorized to provide an advisory opinion, upon request by any municipality, state agency, tax assessor or landowner, as to what constitutes agriculture or farming, or regarding classification of land as farm land or open space land pursuant to Conn. Gen. Stat. §§12-107b to 12-107f. Conn. Gen. Stat. §22-4c(a)(4), as added by Conn. Pub. Act No. 05-160 (*effective July 1, 2005*).

**Alias Tax Warrants.** In an effort to encourage the service of alias tax warrants, the governing law is amended to: (i) increase from 10% to 15% the share of taxes collected that a state marshal or constable receives when executing an alias tax warrant and collecting delinquent municipal taxes (plus allowable expenses); and (ii) increases the minimum fee for serving tax warrants from \$20 to \$30. Conn. Gen. Stat. §12-162, as amended by Conn. Pub. Act No. 05-135, §2 (*effective June 24, 2005, and applicable to the execution of tax warrants issued on or after July 2, 2003*).

**Special Contaminated Property Remediation and Insurance Fund.** Under current law, a municipality is required to contribute to the Special Contaminated Property Remediation and Insurance Fund a portion of the property taxes collected on certain contaminated sites for the five assessment years after they are remediated. This requirement, which was scheduled to sunset on December 31, 2005, has been repealed effective July 13, 2005. Conn. Gen. Stat. §12-63f, repealed by Conn. Pub. Act No. 05-285, §4 (*effective July 13, 2005*).

**Buffers to Inland Wetlands Area.** Property required as a buffer pursuant to any permit issued by an inland wetlands agency under regulations adopted under Conn. Gen. Stat. §22a-42a must be assessed at a value equal to the value of such property if it were an inland wetland or watercourse area. Conn. Pub. Act No. 05-190, §1 (*effective July 1, 2005*).

**Farm Building Exemption.** The current exemption from the property tax that can be adopted by a municipality for any building used actually and exclusively in farming, to the extent of an assessed value of \$100,000, is amended to: (i) broaden its scope to include any building used to provide housing for seasonal employees of such farmer; and (ii) enable the municipality to establish the amount of the exemption up to \$100,000 with respect to each eligible building. Conn. Gen. Stat. §12-91(c), as amended by Conn. Pub. Act No. 05-228, §8 (*effective July 11, 2005, and applicable to assessment years commencing on and after October 1, 2005*).

**Interest Abatement.** A municipality may, by ordinance, provide that no interest shall be charged or collected for a period of one year on any property tax payable by a Connecticut resident for real property assessed on the 2003 grand list, provided that such resident is domiciled with, and the spouse of, a member of the armed forces of the United States or of any state or of any reserve component thereof who: (i) has been called to active service for military operations that will entail military action in Iraq; and (ii) is serving in the Middle East on the final day that payment of such property tax is due. Conn. Pub. Act. No. 05-03 (June Sp. Sess.), §9 (H.B. 7502) (*effective July 5, 2005*).

**Air and Water Pollution Control Structures and Equipment.** The statutory exemptions from the property tax for air pollution control structures and equipment and water pollution control structures and equipment are amended to: (i) extend the exemption for water pollution control structures and equipment to both purchased and leased equipment (similar to the exemption for air pollution control structures and equipment); (ii) provide that the owner or lessee of the structures or equipment (rather than the “person claiming the exemption”) shall file an application for exemption with the local assessor or board of assessors, together with the certification of the Commissioner of Environmental Protection, on or before November 1<sup>st</sup> of an assessment year; and (iii) require, in the event of a change in the name of the owner or lessee of any structure or equipment for which an exemption is granted, that the new owner or lessee file a revised application with the local assessor or board of assessors on or before November 1<sup>st</sup> immediately following the end of the assessment year during which such change occurs (except that, for the assessment year commencing October 1, 2005, a revised application may be filed when there has been a change in the name of the owner or lessee during any assessment year and the exemption shall continue to be granted for each assessment year following such change). The amended exemptions also provide that, if a revised application is required from a new owner or lessee, the new owner or lessee shall not be required to obtain or provide a certification from the Commissioner of Environmental Protection, and shall be entitled to a continuation of the exemption, if the subject structures or equipment have not been altered in any manner. Conn. Gen. Stat. §§12-81(51) and (52), as amended by Conn. Pub. Act No. 05-03 (June Sp. Sess.), §§37-38 (*effective July 5, 2005*). [Ed. note. This legislation is intended to overrule and/or ameliorate, in whole or in part, the holding in Dominion Nuclear v. Waterford, Docket No. CV 03-0566126S (New London Sup. Ct., May 27, 2005) (DEP certification of air pollution control structures and equipment is not assignable to purchaser of structures and equipment).]

## **MISCELLANEOUS TAXES**

**Surcharge on Rental Machinery.** A new 1.5% surcharge is imposed on “machinery” rented within Connecticut by a “rental company” to a lessee for a period of less than 31 days. “Machinery” is defined as heavy equipment without an operator that may be used for construction, mining or forestry, including, but not limited to, bulldozers, earthmoving equipment, well-drilling machinery and equipment or cranes. A “rental company” is any business entity engaged in the business of renting machinery in Connecticut and that uses for rental purposes five or more pieces of machinery. The surcharge must be separately stated on the invoice for each piece of machinery, is in addition to any other tax due on the transaction and is to be included in gross receipts for purposes of the sales and use tax. The surcharge is to be used by the lessor to pay any property tax and/or registration and titling fees due to the Connecticut Department of Motor Vehicles, and the excess is to be remitted to the DRS, together with an annual return (due on or before February 15<sup>th</sup>) indicating the amount of surcharges received and taxes and fees paid. Conn. Gen. Stat. §12-692, as amended by Conn. Pub. Act No. 05-163, §1 (*effective July 1, 2005*).



**Nursing Home Resident User Fee.** A new resident user fee will be imposed on each nursing home in Connecticut as part of legislation that is intended to permit the State to receive federal financial participation matching funds and to pay increased Medicaid rates to nursing homes, intermediate care facilities and residential care homes. The Department of Social Services (“DSS”) is directed to file an amendment to its Medicaid State Plan to implement the new fee and to secure a waiver of the federal requirements for uniform and broad-based user fees in accordance with 42 CFR 433.68 (to exempt from the fee any nursing facility owned by certain continuing care communities and to charge a lower fee to certain municipal-owned nursing homes and nursing homes licensed for more than 230 beds). For each calendar quarter commencing on or after July 1, 2005, a resident user fee, which is to be treated as a tax, is imposed on each nursing home in Connecticut, which fee shall be equal to the product of (i) the nursing home’s total resident days during the calendar quarter multiplied by (ii) a user fee determined by July 1, 2005, and annually thereafter, by the DSS. (The user fee initially is to be calculated by taking the sum of each home’s anticipated nursing home net revenue over the twelve-month period ending on June 30<sup>th</sup> of the succeeding calendar year, multiplying that sum by 6%, and then dividing the product by the sum of each nursing home’s anticipated resident days during that same 12-month period. The user fee is to be recalculated by the DSS in the event federal approval is granted of the waiver of federal requirements for uniform and broad-based user fees in accordance with 42 CFR 433.68.) The fee for a calendar quarter is to be paid to the DRS by electronic funds transfer and the nursing home must file electronically a quarterly return, due on or before the last day of the month immediately succeeding the end of that calendar quarter (i.e., October 31, 2005, in the case of the calendar quarter commencing July 1, 2005). Delinquent amounts are subject to interest and a penalty, and may be set-off against amounts otherwise payable by the DSS to the delinquent nursing home. [Ed. note. Please note that the new resident day user fee is not to be collected until all necessary approvals are in effect to secure federal financial participation matching funds, and such collection is to cease in the event such approvals are withheld or withdrawn. The increased Medicaid rates are contingent upon the ongoing receipt of such matching funds. In addition, for the fiscal year ending June 30, 2006, any nursing home experiencing a “net gain in revenue” must apply at least 85% of such net gain to increased employee wages and benefits and additional direct and indirect component staffing. (The net gain may not be applied to wage and salary increases provided to the administrator, assistant administrator, owners or related party employees.) “Net gain in revenue” is defined as (i) (A) the difference between the rate in effect June 30, 2005, and the rate in effect on July 1, 2005, multiplied by (B) the number of resident days eligible for state payment for the period between July 1, 2005, and June 30, 2006, less (ii) state revenue taxes accrued for the period between July 1, 2005, and June 30, 2006. Any revenue not so properly applied must be remitted to the State.] Conn. Gen. State §§17b-340(f)(4), (g) and (h)(1) amended, and new sections enacted, by Conn. Pub. Act No. 05-251, §§78-85 (*effective July 1, 2005*).

**Unemployment Compensation Experience Rated Tax System.** Under a new law intended to meet the minimum requirements of the federal SUTA (State Unemployment Tax Acts) Dumping Prevention Act of 2004 (Public Law 108-295): (i) it shall be a violation of law if a person acquires the assets, organization, trade or business of an employer solely or primarily for the purpose of obtaining a lower contribution rate to the Unemployment Compensation Fund, the result of which shall be that the person shall be required to pay contributions at the



greater of (A) the “new” employer rate provided in Conn. Gen. Stat. §31-225a(d) (i.e., the rate at which an employer which has not been chargeable with benefits for a sufficient period of time to have such employer’s rate otherwise computed), or (B) the person’s charged tax rate; and (ii) if an employer transfers all or a portion of its assets, organization, trade or business to another employer which shares substantially common ownership, management or control, then (A) the unemployment experience of the transferring employer will be transferred to the receiving employer, and (B) the contribution rates of both employers will be recalculated effective upon the date of transfer. A person who violates either of the two foregoing new provisions can be fined up to \$2,000 and/or imprisoned for up to one year. A knowing violation or attempted violation by a person of either of the preceding new provisions can result in: (i) if the person is an employer, such person will be assigned a penalty rate of contributions of two per cent (2%) of taxable wages for the year during which the violation or attempted violation occurred and for the following three years; and (ii) if the person is not an employer, a civil penalty of between \$500 and \$5,000. Conn. Pub. Act No. 05-85 (*effective for unemployment compensation tax years beginning on and after January 1, 2006*).

**Insurance Retaliatory Tax Laws.** Connecticut generally imposes on a non-Connecticut domiciled insurer premium, income and other taxes, and fees, fines, penalties, licenses, deposit requirements and other obligations, prohibitions or restrictions (collectively “Obligations”), to the extent that the jurisdiction in which that non-Connecticut insurer is domiciled imposes such Obligations on Connecticut-domiciled insurers and those Obligations are in excess of the Obligations imposed by Connecticut. This retaliatory law currently does not apply to ad valorem taxes on real or personal property, personal income taxes, fees for agents’ licenses, certain special purpose assessments or premium taxes on special health care plans as defined under Conn. Gen. Stat. §38-564. This carve-out has been amended so that it is applicable except in the case where the other jurisdiction imposes upon Connecticut-domiciled insurers retaliatory charges for such taxes, fees or assessments. Conn. Gen. Stat. §12-211, as amended by Conn. Pub. Act No. 05-100 (*effective October 1, 2005*).

**Health Care Center Tax.** New exemptions from the tax on the total net direct subscriber charges received by a health care center are adopted for any new or renewal contract or policy entered into on or after July 1, 2005, to provide health care coverage to (i) employees of community action agencies and their dependents, or (ii) retired members (i.e., individuals eligible for a retirement benefit from the Connecticut municipal employees’ retirement system) and their dependents, each under a plan procured under Conn. Gen. Stat. §5-259 (the “Municipal Employee Health Insurance Plan”). Conn. Gen. Stat. §12-202a, as amended by Conn. Pub. Act No. 05-238, §2 (*effective July 1, 2005, and applicable to income years commencing on or after January 1, 2005*).

**Dry Cleaning Establishment Remediation Account.** Under current law, each dry cleaning establishment pays a surcharge of 1% of its gross receipts at retail for any dry cleaning service. The surcharge receipts are deposited in the “dry cleaning establishment remediation account”. The Department of Economic and Community Development can make grants from such account to an owner or operator of a dry cleaning establishment for the purposes of the containment and removal or mitigation of environmental pollution on or at the site of the dry cleaning establishment or for measures undertaken to prevent such pollution which are

approved by the Commissioner of Environmental Protection. The governing statute has amended to, among other things: (i) expand the class of applicants eligible for such grants to include an owner of property on which an eligible dry cleaning business has been in operation for at least one year prior to the approval of the application and there exists a dry cleaning establishment at the time of release of the funds; (ii) increase the maximum grant per year from \$50,000 to \$300,000 for each applicant; and (iii) allow the dry cleaning establishment remediation account to be used to fund environmental site assessments. Conn. Gen. Stat. §12-263m, as amended by Conn. Pub. Act No. 05-176, §1 (*effective July 1, 2005*).

### **Cigarette Taxes.**

- **Chain Stores.** The statutory definition of “chain store” for purposes of certain cigarette tax statutes is amended to limit its application to only an operator, and not also a franchisor, of “five or more retail establishments with common ownership and control.” The statutes in question relate to what is required in connection with an initial application for a distributor’s license and the provisions relating to the required percentage mark-up of cigarettes. Conn. Gen. Stat. §§12-286(a)(1) and 12-326a(a)(3), as amended by Conn. Pub. Act No. 05-96 (*effective July 1, 2005*).
- **Tobacco Product Manufacturers.** On or before July 1, 2005, the DRS is to compile and publish a directory of tobacco product manufacturers that are complying with the tobacco settlement agreement with the State, together with their cigarette brands and brand families. Conn. Gen. Stat. §4-28m. It is illegal to sell, offer to sell, distribute, or possess for sale in Connecticut cigarettes whose manufacturer or brand family is not listed in the directory. In addition, any tobacco manufacturer selling cigarettes to consumers in Connecticut, either directly or through a distributor, dealer or other intermediary, must obtain and renew annually a cigarette manufacturer’s license from the DRS. The Commissioner of the DRS is now directed not to include or to retain in the directory of tobacco product manufacturers the name or brand families of any manufacturer which fails to secure and retain such license. Conn. Gen. Stat. §12-285b, as amended by Conn. Pub. Act No. 05-260, §1 (*effective July 1, 2005*). [Ed. note. In DRS Announcement (AN) 2005(13), the DRS announced the publishing of the Connecticut Tobacco Directory on its website. A tobacco product manufacturer can be listed on the website if it files a current and accurate Form TPM-2, *Certification for Listing in Connecticut Directory*, setting forth all brand families on the form.]
- **Cigarette Vending Machines.** Under prior law, a licensed distributor or dealer who owned or operated more than five cigarette vending machines has to file a monthly report containing certain specified information. Such reports were required to be filed semi-annually by owners or operators of less than five vending machines. The governing statute has been revised to grant to the Commissioner discretion to decide when reports are to be filed by any licensed distributor or dealer who operates cigarette vending machines, as well as what is to be included in such report. Conn. Gen. Stat. §12-293a(b), as amended by Conn. Pub. Act No. 05-260, §3 (*effective July 13, 2005*).

- **Tobacco Products Distributors/Licensed Unclassified Importers.** In general, each licensed tobacco products distributor and licensed unclassified importer is required to file a monthly report, which is to be accompanied by the tax shown to be due on the report. The reporting statute has been amended to: (i) provide that licensed distributors which do not acquire untaxed tobacco products need only file an annual return, on or before July 25<sup>th</sup> of each year, for the twelve-month period ending June 30<sup>th</sup>, but must maintain certain purchase and sale records; (ii) eliminate the Commissioner's authority to adopt regulations requiring distributors and unclassified importers to report the names and addresses of customers; and (iii) authorizes the Commissioner to adopt regulations to exempt unclassified importers from current licensing and monthly reporting requirements, but to require them to report untaxed tobacco products in their possession. Conn. Gen. Stat. §12-330d, as amended by Conn. Pub. Act No. 05-260, §4 (*effective October 1, 2005, and applicable to returns for periods commencing on or after October 1, 2005*).

**Petroleum Products Gross Earnings Tax.** The quarterly gross earnings tax on companies that distribute products in Connecticut which contain, or are made from, petroleum or a petroleum derivative is increased from the current 5% tax rate to: (i) 5.8% for all calendar quarters commencing on or after July 1, 2005, and prior to July 1, 2006; (ii) 6.3% for all calendar quarters commencing on or after July 1, 2006 and prior to July 1, 2007; (iii) 7% for all calendar quarters commencing on or after July 1, 2007 and prior to July 1, 2008; (iv) 7.5% for all calendar quarters commencing on or after July 1, 2008 and prior to July 1, 2013; and (v) 8.1% for all calendar quarters commencing on or after July 1, 2013. Conn. Gen. Stat. §12-587, as amended by Conn. Pub. Act No. 05-4 (June Sp. Sess.), §40 (*effective July 1, 2005*). See DRS Special Notice 2005(3), *2005 Legislative Changes Affecting the Petroleum Products Gross Earnings Tax Effective July 1, 2005*.

## **TAX PROCEDURE**

**Penalty for Abusive Tax Shelter Promoters.** A new Connecticut penalty is imposed on any person who engages in the activities described in Section 6700 of the Internal Revenue Code (i.e., organizing or promoting a tax shelter and, in doing so, making false or fraudulent statements, or gross valuation overstatements), and who is subject to the federal fifty per cent (50%) penalty imposed thereunder, whether or not such penalty is imposed. The Connecticut penalty is equal to fifty per cent (50%) of the gross income derived from, or to be derived from, such activities by such person. Conn. Pub. Act No. 05-116, §1 (*effective June 24, 2005, and applicable to any open tax period*).

**Tax Refund Anticipation Loans.** Last year's legislation regulating the making of an income tax refund anticipation loan is amended to provide that: (i) such a loan can only be made at a location at which the principal business is tax preparation; and (ii) the interest rate for such a loan cannot exceed (A) sixty per cent (60%) per annum for the initial 21 days of the loan, and (B) twenty per cent (20%) per annum for the period commencing on the 22<sup>nd</sup> day of such loan and ending on the date of payment. Conn. Gen. Stat. §42-480, as amended by Conn. Pub. Act No. 05-107 (*effective October 1, 2005*).

**Tax Revenues.** The laws governing the recording of certain tax receipts is amended to allow the State comptroller to record as revenue for any fiscal year any tax payments the DRS receives within five business days after the last day of July immediately following the end of such fiscal year (or August 15, in the case of the corporation business tax). Conn. Gen. Stat. §§3-114c through 3-114h, 3-114m and 3-114n, as amended by Conn. Pub. Act No. 05-145 (*effective June 24, 2005*).

## **ESCHEAT**

**Gift Certificates.** The statutes governing the escheat of abandoned property to the Treasurer of the State of Connecticut are amended, effective October 1, 2005, to: (i) exclude gift certificates; (ii) repeal the three-year presumption for the abandonment of gift certificates; and (iii) provide that, any person who, prior to August 16, 2003, failed to report or deliver abandoned gift certificates to the Treasurer shall not be liable to the Treasurer for interest or any other penalty relating to such failure. In addition, the issuer or seller of a gift certificate no longer is required to obtain, and maintain a record of, the address of the owner of the gift certificate. Conn. Gen. Stat. §§3-65b and 42-460 as amended, Conn. Gen. Stat. §3-73a(e) as added, and Conn. Gen. Stat. §3-60d as repealed, by Conn. Pub. Act No. 05-189, §§1-4 (*effective October 1, 2005*). Commencing July 13, 2005, the issuer or seller of a gift certificate cannot impose a dormancy charge or fee, abandoned property charge or fee, unclaimed property charge or fee, escheat charge or fee, inactivity charge or fee, or any similar charge, fee or penalty for inactivity with respect to the gift certificate (or to include language on the gift certificate suggesting that the certificate is subject to such a fee). Conn. Gen. Stat. §3-65c, as amended by Conn. Pub. Act No. 05-273, §1 (*effective July 13, 2005*).

## **SOLICITATION OF CHARITABLE FUNDS ACT**

In general, unless otherwise exempted, a charitable organization which seeks to solicit charitable contributions in the state of Connecticut currently is obligated to register first with the Connecticut Department of Consumer Protection (“DCP”) and, thereafter, to file an annual report, including a financial statement, with the DCP. The Solicitation of Charitable Funds Act (the “Act”) is amended in a number of meaningful ways, including the following:

**Annual Registration.** The former one-time registration and annual reporting scheme is replaced with a new annual registration requirement. An organization subject to the Act is now required to file an annual application for registration which must include: (i) a registration statement; (ii) a fee of \$25; and (iii) an annual financial report for the organization, including a financial statement (which must be accompanied by an audit report of a certified public accountant if the organization had gross revenue in excess of \$200,000 for such year, not including grants or fees from government agencies or the revenue derived from funds held in trust for the benefit of the organization). An application for registration shall be deemed approved unless the DCP notifies the organization within ten days after receipt of the application for registration that the application is not in compliance with the Act. An organization can appeal a rejection of its registration

application, but must file the appeal within seven days of the notice of noncompliance. The DCP must then hold a hearing within seven days of receipt of the appeal, and render a determination no more than three days after such hearing.

**Due Date and Penalty.** The annual application for registration is due no later than five months after the end of such organization's fiscal year. Upon written request and good cause shown, the DCP can grant an extension of time, not to exceed 180 days, for the filing of an organization's annual financial report (during which time the previous registration will remain in effect). An untimely registration application is subject to a late fee of \$25 for each month, or part thereof, the application is late (other than any month for which an extension has been granted). The DCP also can require an organization to file an annual financial report for each year it was required, but failed, to file an application for registration or an annual financial report.

**Disclosure.** The information contained in an organization's financial report must now be made available to the public.

**Consolidated Registration.** A chapter, branch or affiliate in Connecticut of a registered parent organization shall not be required to file a separate registration provided the parent organization files a consolidated annual registration for itself and its chapter, branch or affiliate. A consolidated annual registration can be filed regardless of whether the parent organization has its principal office in Connecticut.

**Prohibitions.** The list of actions that constitute violations of the Act is amended to make it a violation of the Act for (i) any charitable organization, "or any person engaged in the conduct of the affairs of a charitable organization" to engage in any financial transaction which is not related to the accomplishment of its charitable purpose, or which jeopardizes or interferes with the ability of the organization to accomplish its charitable purpose; and (ii) any person "to appropriate any property of a charitable organization for a private use." Violations of the Act currently are subject to the imposition of a fine up to \$5,000 and/or a period of imprisonment for up to one year.

**Paid Solicitors.** Under current law, a paid solicitor for a charitable organization must first register with the DCP and file, prior to the commencement of each solicitation campaign, a copy of the solicitor's written contract with the organization and a completed solicitation notice. The Act is amended to: (i) increase the paid solicitor registration fee from \$125 to \$500; (ii) require the DCP, prior to the commencement of any solicitation campaign, to publicize such solicitation through the issuance of a press release and the posting on the DCP web site of information describing the terms of the contract with the paid solicitor, the dates of the campaign and the percentage of raised funds to be retained by the paid solicitor; and (iii) make available to the public the information contained in the financial report for a solicitation campaign filed by a paid solicitor.

Conn. Gen. Stat. §§21a-190b, 21a-190c, 21a-190f and 21a-190h, as amended by Conn. Pub. Act No. 05-101, §§1-5 (*effective June 7, 2005, except for the amendments to the paid solicitor provisions that are effective October 1, 2005*). [Ed. note. Please note that any organization registered on September 30, 2005, shall be deemed to be registered until the last day of the fifth month after the close of the fiscal year in effect on September 30, 2005.]