

# Connecticut Tax Developments

*December 2006*

## 2006 LEGISLATIVE SESSION, REGULATORY DEVELOPMENTS AND CASE LAW

### IN SUMMARY:

### CORPORATE BUSINESS TAX

### SALES AND USE TAX

### PERSONAL INCOME TAX

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### OTHER TAX CREDITS

We are pleased to publish our annual review of Connecticut tax developments, featuring summaries of tax legislation enacted, regulatory pronouncements published and judicial decisions issued during 2006. The year was marked by a series of pro-taxpayer developments, including the repeal of the 2007 corporation business tax surcharge, the adoption of multiple new tax credits, the rewriting of the property tax revaluation procedures and the enactment of a new phased-in exemption for manufacturing equipment and machinery. The summaries are organized by the type of tax involved to facilitate your review of the developments that most affect you and/or your business.

Please note that the descriptions contained herein are only summaries; the application of a 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 member of the State and Local Taxation Practice Group if you have any questions:

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## CORPORATION BUSINESS TAX

### I. LEGISLATIVE DEVELOPMENTS

Please note that the credits discussed in this section apply to the corporation business tax only. Credits that apply to multiple tax types, including the corporation business tax, are discussed in the “Other Tax Credits” section of this outline.

**Corporation Business Tax Surcharge.** During the 2005 legislative session, the General Assembly enacted a surcharge that requires a corporate taxpayer to pay an additional tax of: (i) twenty per cent (20%) of the corporation business tax otherwise payable for the year, for the income year commencing on or after January 1, 2006 and prior to January 1, 2007 (the “2006 Surcharge”); and (ii) fifteen per cent (15%) of the corporation business tax otherwise payable for the year, for the income year commencing on or after January 1, 2007 and prior to January 1, 2008 (the “2007 Surcharge”). This session, the General Assembly repealed the 2007 Surcharge, but left in place the 2006 Surcharge. As a reminder, a corporation must calculate its surcharge based upon its liability before any credits. The surcharge is 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, the surcharge is not applicable if a taxpayer’s tax liability otherwise is equal to \$250 (i.e., the minimum tax). Conn. Gen. Stat. §§12-214(b)(6) and 12-219(b)(6), as repealed by Conn. Pub. Act No. 06-186, §§66-67 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*).

**Employment Expansion Project Tax Credits.** In *Bell Atlantic NYNEX Mobile, Inc. v. Commissioner*, decided last year, the Connecticut Supreme Court held that a partnership or other pass-through entity generally is not considered a “taxpayer” for purposes of earning, and then allocating among its corporate owners, corporation business tax credits. Under new legislation,

if a pass-through entity, such as a partnership or limited liability company taxed as a partnership, sponsors a qualifying “employment expansion project,” the entity may now pass-through to its corporate owners corporation business tax credits for which the pass-through entity would qualify if it were a corporation. An “employment expansion project” is one that: (i) will create at least 400 permanent, full-time jobs new to Connecticut over a maximum of five full income years after the issuance of an eligibility certificate by the Department of Economic and Community Development (“DECD”) (with job number targets for each of those five years); (ii) needs the pass-through of the tax credits to attract the project to Connecticut; (iii) “will be economically viable and will generate direct and indirect economic benefits to the state”; and (iv) in the judgment of the DECD, is consistent with the strategic economic development priorities of the state and the municipality or municipalities in which the new jobs are to be created. A pass-through entity sponsor must apply to the DECD for approval of an employment expansion project. If the pass-through entity sponsor qualifies, its corporate owners are entitled to share the tax credits attributable to its activities based upon their respective distributive shares of the profit or loss of the sponsor. The credits can be used by corporations in a combined return. In addition, the new legislation allows the credits to be assigned to another corporate owner of the same sponsor, but only with respect to the year for which the credit could have been claimed by the assignor, and no further assignment may be made. Conn. Pub. Act. No. 06-187, §19, as amended by Conn. Pub. Act No. 06-189, §§20-22 (*effective June 9, 2006, and applicable to projects with a commencement date on or after September 1, 2005*).

**Tax Credits for Movie and Digital Media Production.** A new, nonrefundable production tax credit is available in an amount up to 30% of certain “production expenses or costs” if more than \$50,000 of such expenses or costs are incurred in Connecticut for a “qualified production”. A “qualified production” is

defined as the process of producing any type of entertainment content, including motion pictures, documentaries, music videos, video games, commercials, certain television programming and digital media content. The production tax credit may be claimed for the income year in which the final certification for the state certified qualified production is made by the Connecticut Commission on Culture and Tourism ("CCCT"), and may be carried forward and used to offset tax in the immediately succeeding three years. The credit is transferable, but cannot be used to reduce any taxpayer's liability to less than zero. Conn. Pub. Act No. 06-83, §20, as amended by Conn. Pub. Act No. 06-186, §83, and Conn. Pub. Act No. 06-187, §79 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*).

**Return and Credit Documentation.** To facilitate the future electronic filing of corporation business tax returns, the document substantiation requirements to claim certain tax credits have been revised. The following is a list of documents that a corporate taxpayer no longer needs to append to its return in order to claim such credits (typically in favor of a rule requiring that such documentation be provided only upon a request by the Commissioner of Revenue Services):

- DRS decision granting the tax credit for a donation of a computer or computers to schools, pursuant to Conn. Gen. Stat. §10-228b(c).
- CCCT tax credit voucher for rehabilitating, or contributing to the rehabilitation of, an historic home, pursuant to Conn. Gen. Stat. §10-416(j).
- DECD eligibility certificate for the tax credit for locating a manufacturing facility in an enterprise zone, or in a municipality with an entertainment zone and meeting employment criteria, pursuant to Conn. Gen. Stat. §12-217e(f).
- DECD eligibility certificate or memorandum of understanding for the rolling tax credit for research and development expenses, pursuant to Conn. Gen. Stat. §§12-217n(e) and (f).
- Connecticut Housing Finance Authority ("CHFA") documentation for the tax credits for taxpayer-provided housing for low and moderate income employees, pursuant to Conn. Gen. Stat. §12-217p(d). [Ed. note. Please note that this tax credit was repealed during the 2006 legislative session.]
- Election by lessor and lessee that lessor may take the tax credit for personal property taxes paid on electronic data processing equipment, pursuant to Conn. Gen. Stat. §12-217t(d).
- DECD eligibility certificate for the tax credit for financial institutions constructing new facilities and creating new jobs, pursuant to Conn. Gen. Stat. §12-217u(j).
- DRS decision approving a credit application under the Neighborhood Assistance Act, pursuant to Conn. Gen. Stat. §12-636.
- DECD eligibility certificate for the tax credit for investing in eligible urban or industrial site reinvestment projects, pursuant to Conn. Gen. Stat. §32-9t(k).
- DECD eligibility certificate and certification for the tax credit for investing in an eligible insurance reinvestment fund, pursuant to Conn. Gen. Stat. §38a-88a(h).

Conn. Pub. Act No. 06-159, §§1, 2, 7-11, 19-21 (*effective June 6, 2006, and applicable to taxable years commencing on or after January 1, 2006*).

**Apprenticeship Training Tax Credit.** The provision governing the tax credit for hiring construction trade apprentices is amended as follows: (i) to eliminate the requirement that the four-year apprenticeship training program be jointly administered with a union; (ii) to delay the award of the credit until the income year in which both completion and notification of completion of the program occurs; and (iii) to increase the

maximum amount of the credit allowed with respect to an apprentice to the lesser of \$4,000 or 50% of the actual wages paid over the first four income years of such apprenticeship. Conn. Gen. Stat. §12-217g(c), as amended by Conn. Pub. Act No. 06-174, §1 (*effective July 1, 2006*).

**New and Modified Tax Credits.** Please see the section, *infra*, entitled “Other Tax Credits” for a description of new tax credits (e.g., Job Creation Tax Credit, Displaced Worker Tax Credit and Historic Structures Tax Credit) and of modifications to existing tax credits (e.g., Urban and Industrial Sites Reinvestment Program, Rental Housing Assistance Trust Fund Program, and the tax credit for computer equipment donations).

## II. ADMINISTRATIVE PRONOUNCEMENTS

Please note that a complete list of administrative pronouncements issued by the Department of Revenue Services to date in 2006 is provided at the end of this outline and are available on the Department’s website at [www.ct.gov/drs](http://www.ct.gov/drs) under the “Publications” heading.

**Special Notice SN 2006(8), 2006 Legislative Changes Affecting the Corporation Business Tax.** The Department of Revenue Services provides a summary of the 2006 legislative changes affecting the corporation business tax in this special notice.

## SALES AND USE TAX

### I. LEGISLATIVE DEVELOPMENTS

**Residential Weatherization Products.** The provision governing the temporary exemption from the sales and use tax for sales of “residential weatherization products” (e.g., insulation, programmable thermostats, water heaters and boilers, etc.) which expired April 1, 2006, is amended to exempt sales of such products made from June 1, 2006 to June 30, 2007. Conn. Pub. Act No. 05-4 (October 25 Spec. Sess.), §2, as amended by Conn. Pub. Act No. 06-187, §18 (*effective June 1,*

2006). See DRS Special Notice (SN) 2006-1, *Sales Tax Holiday for Home Weatherization Products*.

**Joint Venture Agreement Services.** The limited exemption from the sales and use tax for the sale of personnel, management or commercial or industrial marketing, development, testing or research services, when made pursuant to a joint venture agreement by a joint venturer in a joint venture the purpose of which is directly related to the production or development of new or experimental products or systems and the marketing or support thereof, is amended to: (i) permit the joint venture to be in the form of a limited liability company (and the joint venturer to be a member thereof); and (ii) extend the period for which the exemption is available from 10 to 20 years after the date of the joint venture’s creation. Conn. Gen. Stat. §12-412(58), as amended by Conn. Pub. Act No. 06-187, §80 (*effective May 26, 2006*).

**Hybrid Passenger Cars.** The exemption for sales of hybrid passenger cars is clarified by defining the hybrid technology that must be utilized by a car in order to qualify for the exemption. The statute now provides, among other requirements, that the hybrid car have an EPA estimated highway mileage of 40 miles per gallon or more. Conn. Gen. Stat. §12-412(115), as amended by Conn. Pub. Act No. 06-161, §5 (*effective October 1, 2006*).

**Aircraft Parts and Repair Services.** Prior law provided for an exemption from the sales and use tax for repair or replacement parts, and repair services, for aircraft that are owned or leased by a certificated air carrier or that have a maximum certificated takeoff weight of 6,000 pounds or more. Repair or replacement parts and repair services are now exempt from the sales and use tax for all aircraft, or in the significant overhauling or rebuilding of aircraft or aircraft parts or components on a factory basis. Conn. Gen. Stat. §§12-412(76) and (77), as amended by Conn. Pub. Act No. 06-186, §74 (*effective July 1, 2006*). [Ed. note. Please note that the DRS has revised the applicable sales and use tax

exemption certificate required to claim this exemption, CERT-110, *Aircraft Repair Services, Aircraft Repair and Replacement Parts*.]

**Connecticut Center for Science and Exploration.** An exemption from the sales and use tax is enacted for the sale and use of any service or tangible personal property to be incorporated into or used or otherwise consumed in the construction of the Connecticut Center for Science and Exploration. Conn. Gen. Stat. §§12-412(1) and 32-651, as amended by Conn. Pub. Act No. 06 187, §§82-83 (*effective July 1, 2006*.) [Ed. note. The DRS has issued a letter dated October 14, 2005, explaining the application of certain sales tax exemptions to the construction and site preparation of the Science Center and adjoining garage for all periods prior to July 1, 2006.]

**Yoga Instruction.** Health and athletic club services generally are subject to the sales and use tax. Under new legislation, the sale or use of yoga instruction provided at a yoga studio is exempted from the sales and use tax on health and athletic club services. Conn. Gen. Stat. §12-407(a)(37)(FF), as amended by Conn. Pub. Act No. 06-187, §81 (*effective July 1, 2006*).

## II. ADMINISTRATIVE PRONOUNCEMENTS

**Announcement AN 2006(7), *Purchases of Tangible Personal Property by Contractors for Construction Contracts with Qualified Entities*.** This Announcement describes actions the Department of Revenue Services (DRS) will follow to address issues raised in meetings between the DRS and tax practitioners about contractors using sales and use tax exemption certificates signed by a qualified entity (e.g., manufacturer) to purchase tangible personal property under the qualified entity's sales and use tax full exemption under Conn. Gen. Stat. §12-412 or partial exemption under Conn. Gen. Stat. §12-412i. These issues relate to a section added to Informational Publication 2004(29), *Building Contractors' Guide*, imposing restrictions on purchases by contractors of tangible personal property used in clean rooms that

would require the qualified entity to be the actual "purchaser". In response to these issues, the

- DRS will modify the existing language relating to contractors' exempt purchase of tangible personal property contained in IP 2004(29),
- DRS will continue dialogue with practitioners and taxpayers about the process contractors must follow to purchase tangible personal property exempt from sales and use tax for a qualified entity.
- DRS will follow its historic practice of determining whether the contractor's purchase of tangible personal property is used for its ultimate exempt purpose.

(Effective upon issuance and applicable to open periods.)

**Informational Publication IP 2006(13), *Sales and Use Taxes on Returned Goods, Even Exchanges, and Trade-Ins*.** This informational publication discusses the sales and use tax treatment by retailers of customer returns of goods, exchanges, manufacturers' warranties, retailers' warranties, and trade-ins; as well as the procedures for replacing items of tangible personal property under manufacturers' warranties or retailers' warranties.

- **Returned Goods.** The customer is entitled to a refund of sales tax based on the portion of the purchase price returned by the retailer to the customer as long as the customer returns the item to the retailer for cash or credit within 90 days from the date of purchase.
- **Even Exchanges of Goods.** If a customer purchases a taxable item of tangible personal property from a retailer and exchanges it for an identical or similar item priced the same, there is no tax due on the exchange even if the original item is exchanged after 90 days from the date of purchase. Even exchanges also include taxable items of tangible personal property replaced with identical or similar items by the retailer because of a defect



or malfunction under a manufacturer's warranty or the retailer's warranty when no cash changes hands.

- **Trade-Ins.** The tax applies to the sales price or gross receipts of the item being purchased after the trade-in credit is deducted by the retailer as long as the retailer resells the item being traded-in in the regular course of business.

(Effective upon issuance.)

**Special Notice SN 2006(7), 2006 Legislative Changes Affecting Sales and Use Taxes and Admission Tax.** The Department of Revenue Services provides a summary of the 2006 legislative changes affecting the sales and use tax and the admissions tax in this special notice.

## II. CASE LAW DEVELOPMENTS

**Message Center Management, Inc. v. Law, Sup. Ct. J.D. New Britain, Docket No. CV054006475-S** (August 29, 2006).

The plaintiff, a developer and operator of wireless communication sites, appealed from a decision by the Commissioner of Revenue Services imposing sales and use taxes upon the plaintiff based upon the claim that the plaintiff was engaged in property management services. The plaintiff's business model generally consisted of approaching property owners in connection with establishing antennae sites for wireless communications, pursuant to a "management agreement." Under a typical agreement, the plaintiff would promote the licensing of the site for the location of communications antennae and related equipment and collect licensing revenue from an unrelated wireless carrier. The plaintiff would then pay a portion of any licensing revenue it collected to the property owner. In holding that the plaintiff's services did not constitute taxable property management services, the Court noted that, contrary to the custom among property managers generally, the plaintiff (i) is not paid by the property owner, but rather paid a portion of

licensing revenue to the property owner; (ii) does not provide insurance protection for the property owner; (iii) has a short term arrangement for the management of the property; (iv) does not pay for operational expenses, marketing expenses or improvements to the property; and (v) does not contract in his or her own name with vendors. Notwithstanding that the agreements entered into between the plaintiff and the property owners were called "management agreements," the Court ruled that the dominant economic characteristics of the transactions cannot be classified as management services under Conn. Gen. Stat. §12-407(a)(37)(I). Rather, the plaintiff is a source of income for the non-exclusive use of a portion of the owner's property paid for by a wireless carrier.

**TradeSource, Inc. v. Kemper Construction, Inc., 96 Conn. App. 806 (2006).**

Reversing a lower court decision, the Connecticut Appellate Court held that a provider of employment services could not maintain an action against its client, a building contractor, for sales tax on its service charges. The Court ruled that the contract executed by the parties provided unambiguously for the payment by the contractor of certain hourly rates for the employment service, and the service provider could not add any other charges, including sales tax. *But see H.B. Maynard & Co., Inc. v. Stanadyne, Inc.*, 1991 Conn. Super. LEXIS 621 (March 19, 1991) (retailer permitted to sue for uncollected sales tax).

**DaimlerChrysler Corp. v. Law, Sup. Ct. J.D. New Britain, Docket No. CV-05-4007725S** (Oct. 25, 2006).

The Tax Session of the Superior Court granted the Commissioner's motion to dismiss an appeal filed by an automobile dealer from a denial of a sales tax refund request. The dealer had sought a refund of the sales tax payments the dealer had reimbursed to its customers in connection with the return of cars under Connecticut's Lemon Law, Conn. Gen. Stat. §42-179 (which requires a dealer to provide another car in exchange for the "lemon" car or to refund all amounts

paid for the “lemon” car, including sales tax). The Court held that, because the Lemon Law does not provide for a refund by the State of sales tax reimbursed by the dealer, the dealer has no cause of action for a refund because of the doctrine of sovereign immunity. The dealer could not avail itself of the refund provisions under the Connecticut Sales and Use Tax Act.

**Peruta v. Emcon Cheshire, Ltd.**, Sup. Ct. J.D. New Britain, Docket No. HHB-CV054004390-S (June 8, 2006).

Plaintiffs brought suit against the operator of a food market charging that the food market improperly charged sales tax on the plaintiffs’ purchase of a rotisserie chicken and/or cobb salad in violation of Conn. Gen. Stat. §12-412. The Court dismissed the plaintiffs’ claim for a refund of improperly collected sales tax, because the plaintiffs had failed to exhaust their administrative remedies by seeking a refund of the improperly collected taxes from the Commissioner of Revenue Services.

## PERSONAL INCOME TAX

### I. LEGISLATIVE DEVELOPMENTS

**Non-Resident Owners of Pass-Through Entities.** The provisions governing the taxation of nonresident individual owners of certain pass-through entities (i.e., partners of a partnership, members of a limited liability company that is taxed as a partnership, and shareholders of S corporations) transacting business in Connecticut are amended to: (i) eliminate the ability of the pass-through entity to file a group return on behalf of its nonresident owners; (ii) eliminate the requirement for the pass-through entity to file quarterly returns and pay estimated tax on behalf of its resident owners; (iii) require the pass-through entity to file an annual return and pay the income tax at the highest marginal rate (5%) on each nonresident owner’s distributive share of Connecticut source income from the entity (unless that

share is less than \$1,000); (iv) extend until the fifteenth day of the fourth month following the close of the entity’s taxable year (typically April 15th) the deadline by when an entity must furnish a form to an owner regarding the amount of tax paid on behalf of the owner; (v) exempt a nonresident owner from filing a separate Connecticut nonresident return income tax return if (A) the only Connecticut source income of the owner and his or her spouse is from one or more pass-through entities and the entities each file a return and pay the tax on the owner’s behalf or (B) the aggregate Connecticut source income of the owner and his or her spouse is less than \$1,000; (vi) enables the Commissioner to assert a deficiency assessment against either the pass-through entity or the nonresident owner (although any assessment against a nonresident owner must be limited to the nonresident owner’s share); and (vii) requires the Commissioner to refund or credit a tax overpayment to the pass-through entity or the nonresident owner, no later than three years from the due date of the return (or if extended, the earlier of the extended due date of the return or the date the return is filed). Conn. Gen. Stat. §§12-719(b) and (c), as amended by Conn. Pub. Act No. 06-159, §§5, 6 (*effective June 6, 2006, and applicable to taxable years commencing on or after January 1, 2006*). See DRS Information Publication 2006(22), *Connecticut Income Tax Changes Affecting Pass-Through Entities*.

**Property Tax Credit.** The maximum property tax credit against the personal income tax for taxable years commencing on or after January 1, 2006, is increased from \$400 to \$500. Conn. Gen. Stat. §12-704c(b), as amended by Conn. Pub. Act No. 06-186, §79 (*effective July 1, 2006, and applicable to taxable years commencing on or after January 1, 2006*).

**CHET Contributions.** When calculating Connecticut adjusted gross income, taxpayers may now deduct contributions to a qualified state tuition program (a Section 529 plan) established and maintained by this state or any official, agency or instrumentality of the

state (i.e., the Connecticut Higher Education Trust (“CHET”)). There is no minimum time the contribution to a CHET account must remain in the account, and there are no Connecticut income tax consequences of a rollover or transfer from a CHET account to a non-CHET account under the qualified state tuition plan of another State. The annual limit for the CHET contributions deduction is \$5,000 for each individual taxpayer, and \$10,000 for taxpayers filing a joint return (or a taxpayer filing as a “qualifying widow(er) with dependent child”). The limit is applied on an aggregate basis to all contributions made by the taxpayer to all CHET accounts, and not on a per-beneficiary basis. Taxpayers may carry forward any unused deductions for the five following years, subject to the annual maximum deduction in each of those years. Conn. Gen. Stat. §§12-701(a)(20)(B), as amended by Conn. Pub. Act No. 06-186, §§76-78 (*effective July 1, 2006, and applicable to taxable years commencing on or after January 1, 2006*). [Ed. note. The DRS has published on its website a series of questions and answers setting forth additional guidance on the new deduction.]

**Special Notice 2006(11), 2006 Legislative Changes Affecting the Income Tax.** The Department of Revenue Services provides a summary of the 2006 legislative changes to the income tax in this special notice.

## II. REGULATIONS

**Final Regulations.** On April 11, 2006, the DRS published final Connecticut income tax regulations (67 Conn. L. J. 41 at 6C) to: (i) eliminate the manual signature requirement for return preparers and to provide that returns are “signed” in the manner prescribed in the form instructions; (ii) eliminate references to obsolete forms and add references to the new composite return for partnerships and S corporations; (iii) eliminate references to the former imposition of the corporation business tax on S corporations; (iv) replace a reference to the A.F.D.C. with a reference to the current program, T.A.N.F.; (v) replace the reference to the identification number of nonresident aliens from social security numbers to

individual taxpayer identification numbers; and (vi) make changes to certain withholding tax regulations.

## III. CASE LAW DEVELOPMENTS

**Blasko v. Commissioner**, 98 Conn. App. 439 (2006).

The Connecticut Appellate Court upheld a lower court ruling that the taxpayers could claim and use a Connecticut alternative minimum tax credit accrued from 1997 to reduce their Connecticut income tax liability for 1998. The Court overruled the Commissioner's denial of the tax credit based upon a technical reading of the governing statute because the denial would undermine the legislative purpose of the credit, which is to remunerate the taxpayer for taxes previously paid on deferred income. The decision is noteworthy for the Court's willingness to provide equitable relief when a tax statute would work an “absurd result” inconsistent with legislative intent.

**Dark-Eyes v. Commissioner**, 276 Conn. 559 (2006).

Taxpayer, an enrolled member of the federally-recognized Mashantucket Pequot Tribe, claimed an exemption from Connecticut state income taxation with respect to income earned from sources on an Indian reservation while living on property owned by the Tribe designated as a private settlement under the federal Mashantucket Pequot Indian Claims Settlement Act. At issue in the case was whether the taxpayer resided in “Indian country” as that term is defined for purposes of federal law. The Court concluded that the land upon which the taxpayer resided did not fall within the meaning of “Indian country”, because it was not within the bounds of an existing Indian reservation and did not otherwise constitute a “dependent Indian community” during the years at issue. Rather, the land was purchased by the Tribe, with the Tribe's own funds, from a private land owner, and only became property of the U.S. Government, held in trust for the Tribe (reservation property), pursuant to an express acceptance of the property by the Government effected after the taxpayer moved away from the property.



Because the property upon which the taxpayer resided was found not to be “Indian country” during the years in question, the taxpayer was subject to state taxation to the same degree as all other citizens of the state.

**Chatterjee v. Commissioner**, 277 Conn. 681 (2006).

The Connecticut Supreme Court affirmed the trial court’s holding that the Commissioner of Revenue Services’ authority to grant a refund of erroneously or illegally collected taxes under Conn. Gen. Stat. §12-39s is committed to the sole discretion of the Commissioner and, therefore, Connecticut courts lack jurisdiction to review a denial of a refund claim under section 12-39s.

**Dickey v. Connecticut Department of Revenue Services**, 2006 Conn. Super. LEXIS 911 (2006).

The Tax Session of the Superior Court granted a motion to dismiss an action for an income tax refund because it initially was filed as a small claims action in the Stamford-Norwalk Superior Court rather than with the Tax Session in New Britain Superior Court.

**Gavigan v. Commissioner**, 2006 Conn. Super. LEXIS 282 (2006). The Tax Session of the Superior Court denied an appeal filed by tax protestors from tax assessments imposed as a result of the tax protestors’ failure to report income earned on their Connecticut tax returns, or to amend those returns after the Internal Revenue Service had adjusted the gross income reported on their 1998 and 1999 federal tax returns.

## PROPERTY TAX

### I. LEGISLATIVE DEVELOPMENTS

**Revaluation Reform.** The General Assembly enacted legislation which reorganizes and makes changes to the statutes governing the municipal revaluation of property, authorizes the Office of Policy Management (“OPM”) to adopt regulations for the gathering, recording and maintaining data collected during the

revaluation process, and establishes a working group to recommend how revaluation can be improved. Among the changes made are the following:

- **Revaluation Rules.** Under prior law, assessors generally were required to (i) revalue property every five years and (ii) physically inspect property every ten years. Under new law, assessors remain obligated to revalue property every five years. However, in lieu of a physical inspection every ten years, an assessor may send a questionnaire to each property owner to verify the accuracy of the information on the assessor’s records. Assessors must physically inspect only those properties for which the assessor does not receive satisfactory information. In addition, prior to the completion of a revaluation, the inspector must conduct a “field review” of the property in its neighborhood setting.
- **Revaluation Methods.** The new law provides guidelines with respect to revaluation methods. Under the law, an assessor must use generally accepted mass appraisal methods. These methods may include the market sales comparison approach to value, the cost approach to value, and the income approach to value.
- **Public Inspection.** Under existing law, assessors are required to maintain for public inspection any criteria, guidelines, price schedules or statement of procedures used in their revaluation of property. The material is to be retained until the next revaluation of property becomes effective. The new law imposes an additional public discourse requirement. Under the new law, assessors must also maintain a record of all real property sales in each neighborhood for the twelve-month period preceding the effective date of a revaluation. However, these records need only be maintained for the twelve-month period beginning on the effective date of the revaluation.

- Revaluation Notice and Penalty.** Under prior law, the chief executive of a municipality was required to notify the OPM of the implementation of a revaluation no later than five business days after the date on which final action with respect to the establishment of a mill rate was taken. Under new law, the OPM must be notified no later than thirty days after the date on which the assessor signs a grand list that reflects assessments derived from a revaluation. A municipality that fails to timely effect a revaluation will be subject to a penalty equal to the forfeiture of: (i) 50% of the municipality's Mashantucket Pequot and Mohegan Fund grant; plus (ii) 100% of the municipality's Local Capital Improvement Program grant. The penalty can be waived for reasonable cause (as defined in the statute), but only if (i) the written request for the waiver is timely filed with OPM (no sooner than 30 business days after the assessor signed the grand list reflecting the outdated values and no later than 30 days after the start of the fiscal year in which the penalty applies), and (ii) sanctions are imposed by the municipality against a non-complying revaluation company, if any. A waiver cannot be granted for consecutive years without the approval of the General Assembly.
- Deferral.** Under old law, a municipality could defer a revaluation if statistics showed little or no change in property values since the last revaluation. The new law eliminates this deferral option.
- Postponement.** Under new law, as under old law, a town's chief executive can grant a one- and two-month extension to the assessor and the board of assessment, respectively, for cause if requested, but cannot postpone the revaluation for a longer period without OPM approval. Similarly, OPM retains the ability to grant postponements for up to one year. However, OPM is now statutorily prohibited from granting postponements for consecutive years. A postponement, if granted, will prevent the imposition of a penalty, but will shorten the deadline by when the assessor must complete the grand list from 60 days to 30 days after OPM's approval.
- Revaluation Phase-Ins.\*** Under old law, increased property values due to a revaluation could be gradually phased in over several years. The new law, increases the number of years over which such increased values can be phased in to a maximum of five years. In addition, the rules governing such phase-ins are amended. The new laws (i) increase the number of available methods for effectuating a phase-in; (ii) require newly-constructed property to be phased in the same manner as other comparable property; (iii) require OPM to reflect phased-in-property values when calculating payment in lieu of taxes ("PILOT") payments; (iv) require the municipality's legislative body to approve the adoption of the phase-in method and term; and (v) permit the legislative body of the municipality to approve the discontinuance of a phase-in at any time prior to the completion of the phase-in term, provided that the discontinuance is approved on or before the assessment date that is the commencement of the assessment year in which such discontinuance is effective.

Conn. Gen. Stat. §§12-62, 12-62c, 12-117, 7-328(a), 12-19b, 12-20b(a) and 12-129p, as amended, and §§12-62a(e) and (f), 12-62h, 12-62; and 12-62k as repealed, by Conn. Pub. Act No. 06-148, §1-10 and Conn. Pub. Act No. 06-176, §3 (*generally effective June 9, 2006, and applicable to assessment years commencing on or after October 1, 2006*). [\*Ed. note. Public Act Nos. 06-148 and 06-176 both purport to amend section 12-62c, governing the phase-in of a property revaluation. According to an OPM representative, the Legislative Commissioners' Office is currently working on a codification of the two acts to try and harmonize their language.]

**Manufacturing Machinery and Equipment.** Under current law, an exemption from the municipal property tax exists generally for new and newly-acquired manufacturing machinery and equipment, including that used for biotechnology, for the first five full assessment years following the assessment year in which such machinery or equipment is acquired. Under new legislation, the existing five-year exemption program is continued until the assessment year beginning October 1, 2011, and modified to expressly apply additionally to machinery and equipment used in connection with “recycling” (defined as the processing of solid waste to reclaim material). (Recycling machinery and equipment located in a resource recovery facility are not eligible for the exemption.) Conn. Gen. Stat. §12-81(72)(A), as amended by Conn. Pub. Act No. 06-83, §10, and as further amended by Conn. Pub. Act No. 06-186, §84 (*effective July 1, 2006, and applicable to assessment years commencing on or after October 1, 2006*). In addition, a new property tax exemption for other manufacturing machinery and equipment is phased in twenty per cent (20%) each year for the next five assessment years beginning with the October 1, 2006 assessment year. All manufacturing machinery and equipment will be exempt beginning with the October 1, 2011 assessment year. (The terms “machinery”, “equipment” and “biotechnology” shall have the same meanings they have under the current limited property tax exemption, with the exception of recycling machinery and equipment.) Conn. Gen. Stat. §12-81(76), as added by Conn. Pub. Act No. 06-83, §9 (*effective July 1, 2006*). See OPM Intergovernmental Policy Division Guidelines for October 1, 2006 Grand List. [Ed. note. Due to an error, the exemption for recycling machinery and equipment was not included in new section 12-81(76) which will be effective commencing with the October 1, 2011 assessment year. According to an OPM representative, this error is to be corrected during the 2007 legislative session.]

- **Annual Declaration Supplement.** For the assessment years commencing on October 1, 2006, October 1, 2007, October 1, 2008, October

1, 2009, October 1, 2010 and October 1, 2011, a taxpayer whose property qualifies for a property tax exemption under section 12-81(72) (manufacturing machinery and equipment) must submit a supplement to the taxpayer’s annual declaration of tangible personal property that provides the following information about the exempt machinery and equipment: (i) the assessment year during which such property was acquired and installed; (ii) the original cost of acquisition (including transportation and installation costs); (iii) the value of such property, depreciated in accordance with a schedule supplied by the assessor; (iv) the total of the original cost of acquisition for all such property; and (v) the total depreciated value of such property for all such property. Municipal assessors are to determine the depreciated value of all machinery and equipment in the same manner as they did for the assessment year commencing October 1, 2005, and may not alter the depreciation schedule in a manner that would result in an assessment increase for such property. Conn. Gen. Stat. §12-63(c), as added by Conn. Pub. Act No. 06-83, §11 (*effective July 1, 2006*).

- **State PILOT Payments.** State PILOT payments to municipalities will remain at 80% of the revenue loss attributable to the existing five-year property tax exemption (without proration), plus the full amount of any revenue loss attributable to the phased-in property tax exemption for older machinery and equipment. (Starting with the fiscal year beginning July 1, 2013, PILOT payments are frozen at 100% of the property taxes a municipality would have received for manufacturing machinery and equipment in the October 1, 2011 assessment year.) Conn. Gen. Stat. §12-94b, as amended by Conn. Pub. Act No. 06-83, §§12-14, and Conn. Pub. Act No. 06-186, §85 (*effective July 1, 2006, and applicable to assessment years commencing on or after October 1, 2006*).

**Veterans' Disability Payments.** New legislation excludes veterans' disability payments when determining a taxpayer's income for purposes of the income-based property tax exemptions for veterans, the blind and people with total disabilities. Conn. Gen. Stat. §12-81I, as amended Conn. Pub. Act No. 06-153, §1 (*effective October 1, 2006*).

**Residential Property Tax Relief.** The special property tax relief provisions for apartment property and residential property, codified in section 12-62d, is amended such that, a municipality (i.e., City of Hartford) which had implemented the tax relief and the property tax surcharge provided in section 12-62d, and for which a revaluation would result in apartment property and residential property experiencing an increase of 20% in the share of the total grand levy for all property, may adopt a new property tax system that will: (i) allow the municipality to phase-in the impact of the revaluation through an average annual property tax increase of 3.5% for apartment property and residential property; and (ii) require the municipality to phase out proportionately any property tax surcharge on property other than apartment property and residential property such that the surcharge will not exceed 7.5% of the property tax for the assessment year commencing on October 1, 2010. Conn. Pub. Act No. 06-183, §2 (*effective July 1, 2006, and applicable to assessment years commencing on or after October 1, 2006*). Conn. Gen. Stat. §12-62d is repealed, Conn. Pub. Act No. 06-183, §3 (*effective July 1, 2006, and applicable to assessment years commencing on or after October 1, 2010*).

**Telecommunications Property.** Municipal tax collectors are authorized to impose the same interest penalty on delinquent property tax payments due with respect to telecommunications property as may be imposed with respect to other types of property (i.e., 1.5% of the delinquent tax for each month or part thereof from the date the tax was due until it is paid). Conn. Gen. Stat. §12-80a(b), as amended by Conn. Pub. Act No. 06-183, §1 (*effective June 7, 2006, and applicable to*

*assessment years of municipalities commencing on or after October 1, 2006*).

**Tax Relief for Elderly Taxpayers.** A municipality may now limit the liability of certain elderly taxpayers for real estate taxes. Upon approval of its legislative body, a municipality can agree to cap the property tax on homes owned by, or leased to (if the lessee is liable for such property tax), a "qualified taxpayer" at the lesser of the tax due for (i) the assessment year commencing October 1st of the year immediately preceding the year in which the initial application for relief is made or (ii) any subsequent assessment year. A "qualified taxpayer" is a person that (i) as of the prior December 31st (A) is at least age 70 or has a spouse living with him or her who is at least age 70, or (B) is at least age 62 and the surviving spouse of a taxpayer who was entitled to the tax relief at the time of the taxpayer's death, provided that they were living together at the time of the taxpayer's death; (ii) occupies the property as his or her home; (iii) lived in Connecticut for at least one year before filing a claim for tax relief; (iv) has qualifying income (both taxable and nontaxable, but not Medicaid payments) in the immediately preceding tax year that does not exceed the limits for the "circuit breaker" Elderly/Disabled Tax Relief Program (or assets in excess of any asset limit imposed by the municipality); and (v) submits evidence of his or her income, in a signed affidavit to the assessor in the town where the application is filed. (After the first year a claim for such tax relief is filed and approved, the taxpayer must file an application biannually on a form prepared by the local assessor.) The tax relief can be prorated in the event the qualifying taxpayer only owns a fractional share of the home, or the home is sold after November 1st and prior to August 1st during the assessment year. Conn. Pub. Act No. 06-176, §1 (*effective October 1, 2006, and applicable to assessment years commencing on or after October 1, 2006*).

**Open Space Land Abatement.** A municipality may, by ordinance adopted by its legislative body, establish a program under which property taxes may be abated in exchange for the transfer to the municipality of development rights, conservation easements, rights-of-way or any combination thereof, to open space land. The abatement may not exceed the market value of the open space land, may be transferable to any other taxable property in the municipality owned by the applicant and may exist for a period of time to be determined by the legislative body of the municipality. “Open space land” is defined broadly to include any area of land, including forest land, the preservation or restriction of the use of which would, among other things, maintain and enhance the conservation of natural or scenic resources, preserve historic sites or promote orderly urban or suburban development. Conn. Pub. Act No. 06-128, §1 (*effective October 1, 2006, and applicable to assessment years commencing on or after October 1, 2006*).

**Blighted Housing Assessment.** Any municipality that has adopted housing blight prevention regulations pursuant to Conn. Gen. Stat. §7-148(c)(7)(H)(xv) may now adopt an ordinance providing for a special assessment on housing that is blighted. Conn. Pub. Act No. 06-185, §1 (*effective July 1, 2006*). The same act provides that any expense that a board of health or other enforcing agency incurs in executing an order relating to health or sanitary code violations or a housing code violation, that remains unpaid for 60 days after it is due, constitutes a real estate lien as long as a notice is recorded in the land records and indexed in the name of the property owner not later than 30 days after the imposition of the expense. The legislation also requires a municipality, when issuing an order to a property owner to correct such a violation or to pay any municipal costs and expenses, to simultaneously send a copy of the order to each of the real estate’s lien holders by first class mail. Conn. Gen. Stat. §§47a-53 and 47a-58, as amended by Conn. Pub. Act No. 06-185, §§2-4 (*effective October 1, 2006*).

**Tax Collector Certification.** By law, OPM appoints a committee for the development and maintenance of a program and procedures for the training, examination and certification of tax collection personnel. The governing statute is amended to provide that: (i) the OPM employee on the committee need not be knowledgeable regarding Connecticut property tax collection practices; (ii) OPM, and not the committee, is empowered to adopt regulations based upon the standards developed by the committee; and (iii) OPM may now revoke, suspend or deny, in addition to grant and rescind, a certification. Conn. Gen. Stat. §12-130a, as amended by Conn. Pub. Act No. 06-88, §1 (*effective July 1, 2006*).

**State Land Purchases.** A municipality that purchases land from the State of Connecticut may now, with the approval of its legislative body, enter into an agreement (i) exempting that land from all or any portion of the property tax imposed by the municipality, and (ii) providing for payments in lieu of, or fixing, property taxes for such property or a portion thereof. Conn. Pub. Act No. 06-194, §24 (*effective July 1, 2006*).

## II. CASE LAW AND RELATED DEVELOPMENTS

**Sheridan v. Killingly**, 278 Conn. 252 (2006).

A taxpayer appealed a tax assessment by the Town of Killingly in connection with property subdivided into tracts leased to individual tenants. The property owner claimed that the only viable valuation method was an income capitalization computation based upon the actual rents it received from the tenants. The Town, however, used a hybrid valuation method, which considered the value of the tenants’ leasehold interests using a comparable sales method. Zoning restrictions precluded the sale of individual tracts. However, there was evidence that some tenants had sold their leasehold interests in the tracts for amounts greater than would have been expected if actual rents had reflected the fair market value of those tracts. The Supreme Court held that a leased property might have



a fair market value that exceeds the capitalized value of the actual rental income (particularly if the owner is charging below-market rent). The Court further ruled that that excess value may be taken into account in assessing the true and actual value of the property. The Court reasoned that, even though the tenant, not the owner, receives the economic benefit of that excess value, the excess value is an indicator of the actual value of the owner's interest. Further, the Court held that the Town was authorized to use a comparable sales approach to determine the true and actual of the leasehold tracts in excess of the capitalized value based on actual income.

**Route 188, LLC v. Middlebury**, 93 Conn. App. 120 (2006).

In an appeal from a lower court finding that the Town of Middlebury had over assessed a parcel, the Town claimed that the lower court's valuation of the parcel was inaccurate because it failed to take into account the enhanced "assemblage" value of the parcel, when combined with a second lot for development. The Appellate Court recognized the principal of assemblage as a valid valuation method. However, it determined that the trial court's decision not to apply assemblage because of the speculative future use of the lots was adequately supported by the record and, further, was not vital to the trial court's finding that the property was over assessed by the town.

**Sun Valley Camping Cooperative, Inc. v. Stafford**, 94 Conn. App. 696 (2006).

The taxpayer, an owner of a campground divided into 303 campsites, protested the Town of Stafford's tax assessment. At trial, the court reassessed the value of the property using a comparable sales approach, which established the value of the entire parcel by multiplying the number of units of the cooperative by the average individual unit value. The Connecticut Supreme Court rejected this valuation approach and found that the trial court's valuation violated Conn. Gen. Stat. §47-204(a).

The Court ruled that section 47-204(a) requires the assessment and taxation of cooperative property as a whole, without regard to the value of individual units.

**Cadlerock Properties Joint Venture, L.P. v. Ashford**, 98 Conn. App. 556 (2006).

The Connecticut Appellate Court upheld the trial court's decision not to lower a property's fair market value because it is environmentally contaminated. The subject property had been acquired from an affiliate of the taxpayer which had refused to remediate the contamination voluntarily at the request of the DEP. Conn. Gen. Stat. §12-63e provides that an assessor need not account for an environmentally hazardous condition on a property if the condition was caused by the owner of the property or if a notice of the condition was filed on the land records before the owner acquired the property. Although a notice was not filed on the land records until after the taxpayer acquired the property, the taxpayer had actual notice of the condition.

**Dominion Nuclear v. Waterford**, Sup. Ct. J.D. New London, Docket No. CV030566126-S (April 7, 2006).

In a decision dated May 27, 2005, the Superior Court held that the certifications issued to Northeast Utilities by the Department of Environmental Protection ("DEP") exempting certain air pollution control structures or equipment from property taxation pursuant to Conn. Gen. Stat. §12-81(52) are personal to the taxpayer (Northeast Utilities) that initially obtained such certifications, and may not be assigned to the purchaser of such structures and equipment (Dominion Nuclear). Dominion Nuclear moved to reopen this case and partially vacate the Court's prior decision in light of the Connecticut legislature's subsequent enactment in 2005 of certain amendments to section 12-81(52). Specifically, Dominion claimed that the amendments grandfathered its exemption and clarified the legislature's intent to allow the exemptions to pass to a subsequent owner. The Court rejected this argument,

holding that, although the legislature may have meant to permit an exemption to pass to a new owner or lessee, the statute was amended to permit only a “continuation of the exemption”. Since Dominion did not continuously maintain the exemption from the time of its purchase of the facility in 2001 (because Dominion had failed to claim the exemption for the grand list of October 1, 2001), the Court ruled that Dominion did not satisfy the requirements for the exemption set forth in the statute, and denied its motion to vacate the earlier decision.

**Connecticut College v. New London**, 2006 Conn. Super. LEXIS 1787 (June 13, 2006).

The Superior Court held that a college sports arena that, when the college is not in session, is made available for public skating, for local community groups and schools and for an annual home show, was still exempt from property taxation under Conn. Gen. Stat. §12-81(8) (which provides a real property tax exemption for certain colleges, including Connecticut College, provided such real property does not afford an annual income of more than six thousand dollars). The Court determined that the \$6,000 income limitation applies only to productive, investment-type property, and not for property used in the furtherance of the College’s tax-exempt educational function. Because the Court found that the arena is primarily used for educational purposes and that the home show was only an incidental use, the Court overturned the City’s attempt to revoke the tax-exempt status of the arena.

**Trumbull v. Palmer**, 2006 Conn. Super. LEXIS 923 (Mar. 23, 2006).

The Town of Trumbull brought a foreclosure action of municipal tax liens on defendant’s real property for the years 1992 through 1998. The Court ruled that the Town’s tax liens were invalid and unenforceable because the filing and recording of the liens violated an automatic stay that went into effect on May 17, 1990, when the defendant filed a Chapter 11 bankruptcy petition. Moreover, the Court held that the Town violated 11 U.S.C. §362(a)(4) by trying to perfect an

interest that arose after the defendant filed for bankruptcy. The Court acknowledged that the Bankruptcy Reform Act of 1994 provides an exception to 11 U.S.C. §362(a)(4) for statutory tax liens that come due after the date of bankruptcy; however, this exception did not apply because the defendant filed for bankruptcy prior to the enactment of the Bankruptcy Reform Act.

**Bridgeport Aviation v. Stratford**, 2005 Conn. Super. LEXIS (Dec. 23, 2005).

The Superior Court held that the lessee of property located at the Sikorsky Memorial Airport in Stratford could not be assessed real property taxes by the Town of Stratford because the Airport is owned by the City of Bridgeport and is exempt from property taxation under Conn. Gen. Stat. §12-74. The fact that the City of Bridgeport and the Town of Stratford had entered into a settlement agreement as a result of prior litigation providing for the taxation of Airport property leased to private parties, and that the taxpayer’s lease required it to pay all property taxes levied against the leased property, did not overrule the exemption granted by section 12-74.

**Norwich v. Gaudreau**, 2006 Conn. Super. LEXIS 432 (Feb. 9, 2006).

The Superior Court granted a motion to consolidate a foreclosure of a property tax lien with a pending property tax appeal. The decision to consolidate is within the discretion of the trial court. The Court held that the amount of taxes due must be determined to foreclose the tax lien; therefore, the actions should be consolidated.

**Avon Realty, LLC v. Avon**, Super Ct. J.D. New Britain, Docket No. CV 04 0527376-S (Mar. 24, 2006).

In a property tax case involving the valuation of a nursing home, the Superior Court found that the value of, and transfer restrictions on, the licenses necessary to operate the nursing home required an allocation of 20% of the nursing home’s going concern value to intangibles and the remaining 80% to real estate. The

Court then deducted from the resultant valuation an amount for furniture, fixtures and equipment and an amount for mandatory capital repairs to determine the fair market value of the property.

**The Cruess Realty Co. v. Waterbury**, 2006 Conn. Super. LEXIS 2821 (September 15, 2006).

The Superior Court upheld an appeal from a property tax assessment of a nursing home on the basis that the City's assessor had failed to properly account in his valuation for the functional obsolescence of the buildings and the fact that the business was failing.

**Executive Square, L.P. v. Wethersfield**, 2006 Conn. Super. LEXIS 86 (Jan. 4, 2006).

This is a property tax case regarding valuation of property used as a low- to middle-income residence for the elderly. Initial financing for the project was provided by, and the project continues to run under a regulatory agreement with, the Connecticut Housing Finance Authority ("CHFA"). Generally, tenant rents are subsidized through Section 8 funding. These rent subsidies are computed based upon a number of factors, including the mortgage rate on the underlying property. In the instant case the mortgage rate (and thus the contract rent paid by the tenants) is artificially high, compared with current market rates; however, the owner had no incentive to re-negotiate or refinance the mortgage, since its income is capped under its agreement with CHFA (Thus, if the rate were reduced, the rent subsidy would be reduced proportionately). Accordingly, the property owner claimed that the assessed value should discount the actual rental income to reflect the lower rents that would be closer to the actual market rate for comparable housing. The Court rejected the property owner's argument, and concluded that the method of valuation in Conn. Gen. Stat. § 8-216a(a) (which looks to "actual rental income") is mandatory for low or mid-income rental housing for the elderly. This section directs an assessor to apply a capitalization rate to the net rental income. Section 8-216a "trumps" Conn. Gen. Stat. §§12-63 and 12-63b(a) with respect to the consideration of market

rent and contract rent in determining the fair market value of such housing projects.

**Maurer v. Madison**, Super. Ct. J.D. New Haven, Docket No. CV030478708-S (January 30, 2006).

Rejecting a special defense filed by the Town of Madison, the Superior Court ruled that a taxpayer may challenge an assessment of tax under Conn. Gen. Stat. §12-117a, despite having paid the tax without protest. According to the Court, section 12-117a does not indicate that the validity of an appeal challenging an assessment is conditioned in any way on the partial or full payment of the tax bill, whether protested or not.

**Fitzsimons v. Madison**, 2006 Conn. Super. LEXIS 769 (March 13, 2006).

Similar to the decision in *Maurer*, the Superior Court rejected the Town's special defense that the taxpayer's payment of the entire tax without making a formal protest to the tax collector barred the taxpayer from appealing the assessment. However, since Conn. Gen. Stat. §12 117a requires that only 90% of the assessment under appeal be paid, the excess over such amount is a voluntary payment; accordingly, should the taxpayer be entitled to a refund, the taxpayer will not be entitled to receive interest on that excess.

**Lawrence Mall of New Haven, Inc. v. West Haven**, Super. Ct. J.D. Waterbury, Docket No. X06CV030183330-S (March 20, 2006).

The Superior Court ruled that the City is not constitutionally required to provide prior notice that a 15% collection fee will be imposed on a delinquent taxpayer if the taxpayer's real property taxes were not paid on time. Pursuant to Conn. Gen. Stat. §12-166, a tax collector is authorized to proceed to collect any unpaid tax "as it has been increased by interest, penalty, fees and charges . . ." Section 12-166 expressly provides that the fees and charges which may be collected include "collection fees of a collection agency".

**Lestorti v. Waterbury**, 2006 Conn. Super. LEXIS 1356 (May 2, 2006).

The Court held that Conn. Gen. Stat. §12-71b(g) creates a rebuttable presumption that a vehicle owned by a resident of Connecticut, but not registered in the state, most frequently leaves from or remains in the Connecticut, thus making the vehicle subject to the Connecticut property tax. Here, the plaintiff failed to rebut the presumption by not presenting any credible evidence showing the vehicle was not located in Connecticut, including checks for services or repairs, records, or witness testimony.

**Baker Residential, Ltd. v. Middlebury**, 2006 Conn. Super. LEXIS 2071 (July 11, 2006).

The Superior Court upheld the taxpayer's appeal of a property tax assessment under Conn. Gen. Stat. §12-119, because the Town's assessor had increased the assessed value of the subject property as a common interest ownership community after the necessary local regulatory approvals had been obtained, but before a declaration of common interest ownership community had been recorded on the land records. Since no such declaration had been filed, and no separate units had been created, the assessor's act of basing the increased assessed value on a common interest community standard was determined to be misfeasance.

**Regency Condominium Assn., Inc. v. Board of Tax Review Appeals of Bridgeport**, 2006 Conn. Super. LEXIS 2704 (September 12, 2006).

The Superior Court rejected an appeal filed by a condominium association arising from an assessment of personal property tax on a desk and vacuum cleaner owned by the association. The Court held that such items of personal property are not common elements, the value of which are included in the value of each unit. Instead, they are separate items of personal property taxable to the association.

**Albemarle Weston Street, LLC v. Hartford**, No. CV 05 4006029S (New Britain Super. Ct. September 22, 2006).

The Superior Court upheld an appeal from a proposed reassessment of a multi-tenant commercial building on the basis that the property was being used differently than it was at the time of the last revaluation. The Court held that Conn. Gen. Stat. §12-55 does permit an assessor to adjust valuations between municipal-wide revaluations to correct mistakes or inequalities. In the instant case, however, the City failed to establish the change in use in order to justify the proposed reassessment.

**Goodspeed Airport, LLC v. East Haddam**, No. CV 04 0104527S (Middletown Super. Ct. November 7, 2006).

The taxpayer sought an open space designation for 43.04 acres of a parcel of land totaling 57.12 acres, representing the portion of the parcel not used in the operation of a small airport. The assessor denied the request on the basis that the exception to operate the site as an airport applied to the entire site (in the absence of a specific zoning requirement for an airport). The Superior Court disagreed, holding that the assessor should grant the designation if the portion of the parcel satisfied the requirements of the Town's plan of development for open space.

**Hotshoe Enterprises, LLC v. Hartford**, No. CV 05 4007951S (New Britain Super. Ct. November 30, 2006).

The Superior Court granted the appeals of property tax assessments filed by taxpayers who had purchased condominium hangar units at Brainard Airport in Hartford. Since the Airport is owned by the State of Connecticut, and the condominium hangar units were purchased from a lessee of the State (and are subject to that lease), the units are exempt from property taxation pursuant to Conn. Gen. Stat. §12-64(c) (which exempts land belonging to the State of Connecticut at any state-owned airport).

Connecticut Attorney General Opinion, No. 02-22-2006 (February 22, 2006).

This opinion is addressed to the Secretary of the Office of Policy Management (OPM) in response to questions raised in connection with the following: Two municipalities created distinct personal property tax districts with separate mill rates for personal property that were greater than citywide mill rates for real property and motor vehicles. Under the “Distressed Municipalities Program,” Conn. Gen. Stat. §32-9s, and “Newly Acquired Machinery, Equipment and Commercial Vehicle Program,” Conn. Gen. Stat. §12-94b, the OPM may provide grants for certain property that is tax exempt. The amount of the grants is based upon the tax that would have been paid to the municipality if the property were not tax exempt. The OPM wished to recoup the portion of the grants that it considers to be an overpayment resulting from the higher mill rates applied in the two distinct personal property tax districts.

The opinion concedes that there is no clear statutory or case-law prohibition against establishing different mill rates for real and personal property within a tax or sub tax district. Nevertheless, there is no clear statutory authority for such action. Thus, the opinion advises that the OPM or the municipalities may wish to seek legislative clarification on this issue.

In connection with specific payments, the opinion holds that, even if the separate mill rates were impermissible, too much time has passed for the OPM to offset against future grant payments any overpayments made in 1999, 2000, or 2001. Specifically, the OPM may not modify a grant pursuant to section 32-9s later than one year after the date a claim is filed. Likewise, for section 12-94b claims, the OPM must modify or deny a claim by the December 1st that is two years after the end of the assessment year for which the local assessor approved the tax exemption that is the subject of the grant.

## ESTATE AND GIFT TAXES

### I. LEGISLATIVE DEVELOPMENTS

**Failure to Pay Penalty.** A minimum penalty is now imposed for the failure to timely pay the estate tax. The penalty is the greater of (i) \$50 or (ii) 10% of the amount that is shown as due on the return and that is not timely paid. Conn. Gen. Stat. §12-392(a)(1), as amended by Conn. Pub. Act No. 06-194, §17 (*effective June 9, 2006*).

**Appeals.** Taxpayers wishing to appeal an order, decision, determination or disallowance relating to the estate and gift taxes, other than a determination of domicile, should now appeal such matters to the Superior Court for the Judicial District of New Britain rather than the probate court, pursuant to the same process applicable to the appeal of admissions, cabaret and dues tax matters. Domicile determinations shall continue to be appealable to the probate court for the district where the deceased lived (or where the Commissioner contends the deceased lived) or, if the deceased was not a Connecticut resident, for the district where the taxable property is located. Conn. Gen. Stat. §12-395, as amended by Conn. Pub. Act No. 06-194, §18 (*effective June 9, 2006*).

**Undisclosed Gifts.** Except in the case of fraudulent or willfully false returns filed in an attempt to evade the gift tax, the period of limitations for the DRS to assess additional gift tax is three years from the later of (i) the due date of the original return or (ii) the date the return is actually filed. An exception to the three-year limitation period is enacted to allow the DRS to impose a gift tax assessment at any time with respect to a gift that is not adequately disclosed or not disclosed at all. Conn. Gen. Stat. §12-644, as amended by Conn. Pub. Act No. 06-194, §19 (*effective June 9, 2006, and applicable to gifts made during calendar years commencing on or after January 1, 2006*).



**Gift Tax Return Due Date.** In general, gift tax returns and payments are due by April 15th of the year after the calendar year in which the donor made the gift. The law is amended so that, if the donor dies during the calendar year in which the gift was made, (i) the gift tax return must be filed on or before the last date, including extensions, for the filing of the estate tax return and (ii) the due date for the payment of the gift tax is the date nine months after the donor's death. Conn. Gen. Stat. §§12-645 and 12-647, as amended by Conn. Pub. Act No. 06-194, §§20-21 (*effective June 9, 2006, and applicable to gifts made during calendar years commencing on or after January 1, 2006*).

**Gift Tax Overpayments.** Under new law, the DRS must pay interest on gift tax overpayments at the rate of two-thirds of one per cent per month or fraction thereof from the later of the due date of the return or the date of payment. (This is similar to the rule for the estate tax overpayments.) Conn. Gen. Stat. §12-647(d), as added by Conn. Pub. Act No. 06-194, §21 (*effective June 9, 2006, and applicable to gifts made during calendar years commencing on or after January 1, 2006*).

## II. ADMINISTRATIVE PRONOUNCEMENTS

**Out-of-State Property.** The Office of the Attorney General issued an Opinion dated August 1, 2006, confirming that the new unified gift and estate tax enacted as part of Connecticut Public Act No. 05-251, is not to be imposed against real or tangible personal property located outside of Connecticut. Attorney General Opinion No. 2006-018. [Ed. note. As a result of the Opinion, the DRS has amended the estate tax return to allow a credit for the lesser of the amount of state death tax actually paid to another state or the proportion the out-of-state real or tangible personal property bears to the total gross estate for federal estate tax purposes as applied to the Connecticut estate tax as calculated. A legal challenge has been filed asserting that out-of-state property should not be included at all in a decedent's taxable estate (for fear that such property might cause a small non-taxable

estate to become a taxable estate). Taxpayers who filed a 2005 CT-706/709 that included out-of-state property in the decedent's taxable estate should consult with a tax advisor to see if a refund claim should be filed. Such a refund claim should be filed on a 2005 Form CT-706/709 by checking the "amended" box but attaching a 2006 Schedule D.]

**Special Notice SN 2006(5), *Legislation and Other Developments Affecting the Connecticut Estate and Gift Taxes*.** The Department of Revenue Services provides a summary of the 2006 legislative changes affecting the estate and gift tax in this special notice.

## OTHER TAX CREDITS

### I. LEGISLATIVE DEVELOPMENTS

#### **Urban and Industrial Sites Reinvestment Program.**

Under current law, taxpayers that invest in certain urban reinvestment or industrial investment projects are eligible for credits against state taxes equal to a percentage of their investment. Under new legislation, the range of projects in which a taxpayer can make an investment and receive a tax credit under the Urban and Industrial Sites Reinvestment Program is expanded. Specifically, the definition of an "eligible municipality" has been expanded to include any municipality the DECD determines "is connected with the relocation of an out-of-state operation or the expansion of an existing facility that will result in a capital investment by a company of not less than fifty million dollars." Further, the procedure for obtaining legislative approval of tax credits in excess of \$20 million for a single investment are revised. The credit applies to the corporation business, insurance premium, air carrier, railroad company, cable and satellite TV, and utility company taxes. Conn. Gen. Stat. §32-9t(a)(12), as amended by Conn. Pub. Act No. 06-187, §12 (*effective May 26, 2006*); Conn. Gen. Stat. §32-9t(q), as amended by Conn. Pub. Act No. 06-189, §18 (*effective October 1, 2006*).

**Rental Housing Assistance Trust Fund Program.** The Program, which is also known as the Housing Tax Credit Program and which is administered by CHFA, generally allocates tax credits to businesses that contribute funds to nonprofit housing organizations that sponsor or develop housing programs designed to benefit low- and moderate-income residents. The governing statute is amended to increase the annual aggregate amount of tax credits that can be awarded from \$5 million to \$10 million; provided that, until November 1st of each year: (i) \$2 million (formerly \$1 million) of the total amount of all tax credits under the statute are set aside for the Supportive Housing Pilots Initiative or, now, the Next Steps Initiative; and (ii) \$1 million of the total amount of all tax credits under the statute are set aside for workforce housing. On or after November 1st of each year, any unused portion of such tax credits becomes available for any other housing program eligible for tax credits. The statute also is amended to increase, from \$400,000 to \$500,000, the aggregate amount of annual funding available to an organization conducting one or more eligible housing programs. The tax credits may be used to offset state corporation business, insurance premium, air carrier, railroad company, cable and satellite TV, and utility company taxes. Conn. Gen. Stat. §8-395, as amended by Conn. Pub. Act No. 06-186, §65 (*effective July 1, 2006*).

**Computer Equipment Donations.** The existing tax credit for businesses that donate new or used computers to public schools is extended to cover donations to private schools. The maximum credit is 50% of the computer's fair market value, and used computers may be no more than two years old. The credit applies to the corporation business, insurance premium, air carrier, railroad company, cable and satellite TV, and utility company taxes. Conn. Gen. Stat. §10-228b, as amended by Conn. Pub. Act No. 06-145, §1 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*).

**Job Creation Tax Credit.** A new credit against the insurance premium, corporation business and utility company taxes is created for any taxpayer who creates at least 50 new, full-time jobs in Connecticut pursuant to a relocation to Connecticut. The credit, which is administered by the DECD, may be allowed in each of five successive years in an amount up to 25% of the income tax deducted and withheld from the wages of the new employees and paid over to the state during that year (subject to an annual cap for the credit awarded to all taxpayers of \$10 million). The credit may be claimed, however, only for the income year in which it is earned; any unused credits will expire. To be eligible for the credit, the taxpayer must not have been conducting business in Connecticut before applying to the DECD for eligibility, and the relevant jobs must (i) have not existed in Connecticut before the application, (ii) require at least 35 hours of work per week and not be temporary or seasonal, and (iii) be filled with newly-hired employees. The credit is subject to recapture, on a sliding scale, in the event the number of new employees (who are not replaced) falls below that for which the taxpayer claimed the credit. An application for the credit must be filed with the DECD, and must contain sufficient evidence that the relocated business will be financially viable and will provide the net benefits desired for the local economy. The applicant must later provide information to the DECD regarding the actual jobs created in order to obtain a certificate of eligibility. Conn. Pub. Act No. 06-186, §80 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*).

**Displaced Worker Tax Credit.** A new \$1,500-per-worker tax credit against the insurance premium, corporation business and utility company taxes is created for any company that, on or after January 1, 2006, hires a worker who (i) was employed in Connecticut and (ii) was let go by a previous employer as a direct result of a business restructuring in which at least 10 Connecticut workers were terminated by the same employer. To receive the credit, the new employer

must (i) pay the worker at least 75% of his or her previous annual wages or salary for the first 12 months of employment, (ii) not be a related party to the former employer at the time of termination, and (iii) not claim both the new credit and the existing credit for hiring a displaced electrical worker (Conn. Gen. Stat. §12-217bb) for the same employee. The credit is allowed for the income year during which the displaced worker completes his or her first 12 months of employment with the new employer. The credit cannot exceed the total tax due and only one credit is allowed per qualifying worker. Conn. Pub. Act No. 06-186, §81 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*).

**Historic Structures Tax Credit.** A new credit against the insurance premium, corporation business, air carriers, railroad companies, express, telegraph or cable, CATV and satellite television businesses and utility companies taxes is created for expenses incurred to rehabilitate historic commercial and industrial properties for residential use. The credit is administered by the CCCT. Applying for the credit is a two-step process: (i) an owner must first request that the CCCT reserve credits on the owner's behalf and must submit specific construction plans and specifications and an estimate of qualified rehabilitation expenses for CCCT approval; and (ii) the owner must later request a credit voucher after demonstrating that the rehabilitation is complete and that the owner incurred the qualified expenses. The amount of the credit is equal to the lesser of (i) the amount pre-approved by the CCCT for the project, or (ii) 25% of the actual construction costs associated with the rehabilitation not exceeding \$2.7 million. An owner can claim the credit in the tax year when the substantially rehabilitated certified structure is placed in service, or can assign the credit. Multiple owners may pass the credit through to those persons designated as partners, members or owners. The credit holder can carry forward any unused portion of the credit for the next five years or until the credit is used, and may be able to claim a part of the credit when a

project is completed and placed in service in phases. The aggregate annual credits authorized cannot exceed \$15 million. Conn. Pub. Act No. 06-186, §82 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*).

**Employer Assisted Housing Tax Credit.** The employer housing assistance tax credit is repealed. Conn. Gen. Stat. §12-217p, as repealed by Conn. Pub. Act No. 06-189, §23 (*effective June 7, 2006*).

## II. REGULATIONS

**Final Regulations.** On May 23, 2006, the DRS published final regulations (67 Conn. L. J. 47 at 6B) under the R.E. Van Norstrand Neighborhood Assistance Act, Conn. Gen. Stat. §12-630aa et seq., to reflect legislative amendments made during the 1995 and 2003 legislative sessions.

## III. CASE LAW DEVELOPMENTS

**Icon Holding Corporation v. Commissioner**, Super. Ct. J.D. New Britain, Docket No. CV054007463-S (June 28, 2006).

Plaintiff appealed from a decision of the Commissioner of Revenue Services disallowing a tax credit claimed on its 1997 corporation business tax return pursuant to Conn. Gen. Stat. §12-632, based upon investments made by the plaintiff in various qualified programs pursuant to the R.E. Van Norstrand Neighborhood Assistance Act. The Commissioner had denied the credit upon determining that the plaintiff had failed to comply with the requirement under section 12-632(j) that total contributions in one year equal or exceed total contributions in the prior year. The Court held that it could not, under its equitable powers, grant relief to the plaintiff who failed to comply with the statutory requirements necessary to receive a tax credit under section 12-632. Tax credits are a matter of legislative grace and are strictly construed; the burden of proving entitlement to a tax credit rests with the taxpayer.

## MISCELLANEOUS TAXES AND ISSUES

### I. LEGISLATIVE DEVELOPMENTS

**Business Entity Tax.** The provisions of the business entity tax are amended to clarify that S corporations, limited liability companies, limited liability partnerships and limited partnerships are subject to the \$250 business entity annual tax whether: (i) they are formed under the laws of Connecticut or of another jurisdiction; (ii) they are registered with the Connecticut Secretary of State or are required to register with the Connecticut Secretary of State and have failed to do so; and (iii) they are transacting business in this state for the entire year or only a portion thereof. Conn. Gen. Stat. §12-284b, as amended by Conn. Pub. Act No. 06-159, §14 (*effective June 6, 2006*).

**Enterprise Zones.** Enterprise zones are areas targeted for economic development. A business can receive tax benefits for developing facilities, acquiring machinery and equipment, and creating jobs in an enterprise zone. The system for evaluating the state's 17 enterprise zones is revised. Conn. Gen. Stat. §32-70a, as amended by Conn. Pub. Act No. 06-101, §1 (*effective July 1, 2006*).

**Petroleum Gross Earnings Tax.** A new exemption from the petroleum gross earnings tax is enacted for any commercial heating oil blend that contains 10% or more of alternative fuels derived from agricultural produce, food waste, waste vegetable oil or municipal solid waste. This exemption is applicable to, among other fuels, biodiesel or low sulfur dyed diesel fuel, but only when such fuels are used for commercial heating. Conn. Gen. Stat. §12-587(b)(2), as amended by Conn. Pub. Act No. 06-143, §2 (*effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*). See DRS Special Notice (SN) 2006(2), *2006 Legislative Changes Affecting the Petroleum Products Gross Earnings Tax Effective July 1, 2006*.

**Utility Companies Tax.** The application of the gross earnings tax to a municipal electrical utility is modified

so as to approximate, but not be identical to, the tax treatment of an electric distribution company, which is taxable only on its gross earnings from providing electric transmission services and electric distribution services. Under the former law, a municipal electrical utility paid a tax of 4% on its gross receipts from its residential customers and 5% on its gross receipts from its nonresidential customers. As of July 1, 2006, a municipal electrical utility now pays a tax of 6.8% on its gross receipts from transmitting power to residential customers and 8.5% of its gross receipts from transmitting power to nonresidential customers; however, a municipal electrical utility is no longer subject to tax on its revenues from generating power. Conn. Gen. Stat. §§12-213(a)(1), 12-264, 12-265, 12-268a, 12-268c(a)(1), and 12-268d(a), as amended by Conn. Pub. Act No. 06-186, §§68-73 (*effective July 1, 2006*). See DRS Special Notice 2006(6), *2006 Legislative Changes Affecting Municipal Electric Utilities*.

**Gross Earnings Tax on Railroad Express Services, Telegraph and Cable Businesses, CATV and Satellite Television Businesses.** The gross earnings tax on railroad express companies and on telegraph and cable companies is eliminated, and other obsolete provisions are deleted. Conn. Gen. Stat. §§12-256 and 12-258, as amended by Conn. Pub. Act No. 06-159, §§12-13 (*effective October 1, 2006, and applicable to quarterly periods commencing on and after said date*).

**Alcoholic Beverages Tax.** The statutes are amended to: (i) require that the monthly reports filed by a distributor be signed under penalty of false statement (rather than under oath) by the treasurer of the distributor or an authorized agent or officer, Conn. Gen. Stat. §12-437 as amended by Conn. Pub. Act No. 06-159, §18 (*effective October 1, 2006, and applicable returns for calendar months commencing on or after said date*); and (ii) eliminate the requirement that a distributor who ships alcoholic beverages to a military reservation in Connecticut automatically file a duplicate invoice with the DRS showing the amount shipped and

its classification under the alcoholic beverages tax law. Such duplicate invoice need only be provided upon request. Conn. Gen. Stat. §12-436, as amended by Conn. Pub. Act No. 06-159, §17 (*effective June 6, 2006*). See DRS Special Notice (SN) 2006(4), *2006 Legislative Changes Affecting the Alcoholic Beverages Tax*.

**Cigarette Taxes.** The statutory requirement that a retailer who sells both cigarettes and other taxed tobacco products maintain both a cigarette dealer's license and a tobacco distributor license is amended so that a retailer of taxed tobacco products need only obtain and maintain a cigarette dealer's license. Other conforming changes to the governing statutes are made so that a retailer of taxed tobacco products is subject to the same requirements and penalties as a retailer of cigarettes. Those businesses dealing with untaxed tobacco products will still have to maintain a tobacco products distributor or unclassified importer license, although an "unclassified importer" is now defined as any person, other than a distributor, who imports untaxed tobacco products into Connecticut for his or her *personal* use. Additionally, the requirement that tobacco retailers file annual reports with the DRS by July 25th is eliminated. Finally, the requirement that a tobacco products license be displayed is made applicable only to a distributor's license, and the license must now be displayed "conspicuously". The DRS is to publish a list of all licensed distributors on its website. Conn. Gen. Stat. §§12-285(a)(5), 12-286(d) and (e), 12-287, 12-330a, 12-330b, 12-330c and 12-330d, as amended by Conn. Pub. Act No. 06-194, §§10-16 (*effective July 1, 2006*). See DRS Special Notice (SN) 2006(3), *2006 Legislative Changes Affecting the Tobacco Products Tax*.

**Admissions Tax Exemptions.** A new exemption to the admissions tax is enacted for admission to Nature's Art, an interactive earth and science nature center near Waterford, and, commencing November 1, 2006, admission to any event held at Dodd Stadium or at the Arena at Harbor Yard. Conn. Gen. Stat. §12-541, as

amended by Conn. Pub. Act No. 06-186, §75 (*effective May 7, 2006, and applicable to admission charges imposed on or after April 1, 2006*).

**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 DECD has the authority to 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 is amended to, among other things: (i) afford the DECD flexibility in deciding whether to make a grant; (ii) allow an applicant to receive grants up to \$300,000 per eligible dry cleaning establishment, instead of capping at \$300,000 the total amount an applicant may receive each year; (iii) expand the definition of an eligible dry cleaning establishment to include any dry cleaning establishment doing business at the site for at least one year, rather than requiring the applicant/owner of the establishment to have conducted business at that site for a year or more; and (iv) make ineligible for a grant an applicant if either the applicant or the dry cleaning establishment is in arrears with regard to the payment of any state or local tax or the dry cleaning establishment surcharge. Conn. Gen. Stat. §12-263m, as amended by Conn. Pub. Act No. 06-61, §1 (*effective May 19, 2006*).

**Disclosure of Returns and Return Information.** The Department is authorized to disclose returns and return information to the Office of Fiscal Analysis ("OFA") for purposes of revenue estimating and forecasting, and OFA may disclose such information to a third party under contract to OFA to provide such services. The return information is to be supplied by the DRS for all taxpayers for any tax type and is not to contain certain



identifying information. Conn. Gen. Stat. §§12-7b and 12-15(b), as amended by Conn. Pub. Act No. 06-159, §§3-4 and Conn. Pub. Act No. 06-194, §7 (*effective July 1, 2006*).

**Tax Liens.** The Commissioner of Revenue Services is authorized to use an electronic signature on any certificate of lien or certificate discharging such a lien. Prior-filed liens using an electronic signature are validated. Conn. Gen. Stat. §12-35b, as amended by Conn. Pub. Act No. 06-194, §9 (*effective June 9, 2006*).

## II. REGULATIONS

**Final Regulations.** On May 23, 2006, the DRS published final regulations (67 Conn. L. J. 47 at 5B that: (i) defines “school bus” for purposes of the motor carrier road tax; (ii) allows cigarette distributors which do not acquire unstamped cigarettes to report that fact on their annual license renewal application rather than on a separate form; and (iii) repeals the following regulations: Conn. Agencies Reg. §§12-293a(c)-1, 12-449-1a, 12-449-2a, 12-484-2 through 12-484-6, 12-487-1a, 26-237c(c)-1, 26-237c(f)-1a, 12-449-3a(c), 12-449-4a(c), 12-449-5a(c), 12-449-6a(e), 12-449-8a(f), 12-449-10a(h) and 12-449-12a(c).

## III. CASE LAW DEVELOPMENTS

**Old Farms Associates v. Commissioner**, 279 Conn. 465 (2006).

Reversing a 2005 Superior Court decision, the Connecticut Supreme Court held that a seller of land could not be held liable for conveyance tax based upon the consideration paid by the buyer of the land to a builder for the construction of a house on the land. In so holding, the Court rejected the DRS’s contention that, because the land seller and the house builder were related entities, the land seller owed conveyance tax based upon the total purchase price of both the land and the newly-constructed house. The Court stressed that the land-selling and home-constructing entities were separately organized for valid business reasons. Additionally, the Court dismissed the DRS’s claim that a payment to the construction company was the functional equivalent of an indirect payment to the land seller. The decision was based, in large part, upon the legislative history of the conveyance tax statute and accompanying DRS regulation, both of which supported the taxpayers’ claim that the conveyance tax can be levied only upon the consideration actually received by the land seller. ▲

## ADMINISTRATIVE PRONOUNCEMENTS

### ANNOUNCEMENTS

AN 2006 (1), Identification of Recent Amendments to the International Fuel Tax Agreement  
Approved by the Department of Revenue Services

AN 2006 (2), Annual Revision of Forms TPM-1, TPM-2, TPM-3, and Revision of Form TPM 4

AN 2006 (3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2006 (3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2006 (3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2006 (3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2006 (4), Obtaining Connecticut Publications in Booklet Form

AN 2006 (5), Assessments Refunded by Connecticut Insurance Guaranty Association

AN 2006 (6), Information for Married Individuals Who Are Both Employed and Are Filing a Joint Connecticut Income Tax Return

AN 2006 (7), Purchases of Tangible Personal Property by Contractors for Construction Contracts with Qualified Entities

**INFORMATIONAL PUBLICATIONS**

- IP 2006 (1), Connecticut Circular CT Employer's Tax Guide
- IP 2006 (2.3), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax
- IP 2006 (3.3), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax
- IP 2006 (4.3), Numerical Index to Rulings and Administrative Pronouncements as Affected, if at all, by Later-Issued Rulings and Pronouncements
- IP 2006 (5.3), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Tax
- IP 2006 (6.3), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics
- IP 2006 (7), Is My Connecticut Withholding Correct?
- IP 2006 (8.1), Status Letters for Income Tax
- IP 2006 (9), International Fuel Tax Agreement Manual
- IP 2006 (12), Q & A on Purchases of Vessels
- IP 2006 (13), Sales and Use Taxes on Returned Goods, Even Exchanges, and Trade-Ins
- IP 2006 (14), Federal/State Electronic Filing Handbook
- IP 2006 (16), Q&A: Income Tax Credit for Property Taxes Paid to a Connecticut Political Subdivision
- IP 2006 (19), Guide to Calculating Annualized Estimated Corporation Business Tax Installments and Worksheet CT-1120AE
- IP 2006 (22), Connecticut Income Tax Changes Affecting Pass-Through Entities
- IP 2006 (23), Connecticut Income Tax Information for Armed Forces Personnel and Veterans
- IP 2006 (24), Estimated Connecticut Income Taxes
- IP 2006 (25), A Guide to Calculating Your Annualized Estimated Income Tax Installments and Worksheet CT-1040 AES
- IP 2006 (26), Licensed Cigarette Dealer's Guide to Connecticut Cigarette Tax Laws and Other Cigarette-Related Laws
- IP 2006 (27), Guide to Connecticut Cigarette Tax Laws and Other Cigarette-Related Laws for Persons Operating and Servicing Fewer Than 25 Cigarette Vending Machines
- IP 2006 (28), Licensed Stamping Distributor's Guide to Connecticut Cigarette Tax Laws and Other Cigarette-Related Laws
- IP 2006 (29), Licensed Non-Stamping Distributor's Guide to Connecticut Cigarette Tax Laws and Other Cigarette-Related Laws
- IP 2006 (30), Guide to Connecticut Cigarette Tax Laws and Other Cigarette-Related Laws for Persons Operating and Servicing 25 or More Cigarette Vending Machines
- IP 2006 (31), Licensed Tobacco Products Distributor's Guide to Connecticut Tobacco Products Tax Laws and Other Tobacco Products-Related Laws
- IP 2006 (33), Annual Wage Information on Magnetic Media, Form W-2 Magnetic Media Filing Requirements for Tax Year 2006
- IP 2006 (34), Annual Informational Returns on Magnetic Media for Forms 1098, 1099-MISC, 1099-R, 1099-S, and W-2G.

**POLICY STATEMENTS**

- PS 2006 (1), Income Tax Withholding for Athletes or Entertainers
- PS 2006 (3), Purchases of Meals or Lodging by Exempt Entities
- PS 2006 (4), Tax Exempt Purchases by Connecticut State Agencies
- PS 2006 (6), Sales and Use Tax Exemption for Newspapers and Magazines
- PS 2006 (9), Sales Tax Exemptions for Purchases for Use in Audio or Video Production

## SPECIAL NOTICES

SN 2006 (1.1), Sales Tax Holiday for Home Weatherization Products

SN 2006 (2), 2006 Legislative Changes Affecting the Petroleum Products Gross Earnings Tax Effective July 1, 2006

SN 2006 (3), 2006 Legislative Changes Affecting the Tobacco Products Tax

SN 2006 (4), 2006 Legislative Changes Affecting the Alcoholic Beverages Tax

SN 2006 (5), 2006 Legislative and Other Developments Affecting the Connecticut Estate and Gift Taxes

SN 2006 (6), 2006 Legislative Changes Affecting Municipal Electric Utilities

SN 2006 (7), 2006 Legislative Changes Affecting Sales and Use Taxes and Admission Tax

SN 2006 (8), 2006 Legislative Changes Affecting the Corporation Business Tax

SN 2006(10), One Week Sales and Use Tax Exclusion in August for Clothing and Footwear Under \$300

SN 2006 (11), 2006 Legislative Changes Affecting the Income Tax

## RULINGS

None



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