

Connecticut Tax Developments

December 2007

CONNECTICUT TAX DEVELOPMENTS 2007 LEGISLATIVE SESSION, REGULATORY DEVELOPMENTS AND CASE LAW

We are pleased to publish our annual review of Connecticut tax developments, featuring summaries of tax legislation enacted by the Connecticut General Assembly, regulatory pronouncements published by the Connecticut Department of Revenue Services and court decisions rendered by Connecticut courts.

Although the initial budget package of each of the Governor and the Democratic legislative majority provided for an increase in the highest marginal rates of the personal income tax, larger than anticipated tax revenues forestalled any tax rate increases this year. Tax legislation, instead, focused on a wide variety of measures, including: exemptions to promote energy conservation and generation initiatives; new and improved tax credit provisions to promote job creation, historic preservation and the film and digital animation industry in Connecticut; new rules governing the service of alias tax warrants and judgment liens on financial institutions; a new requirement that employers allow employees who pay a portion of their health insurance premiums to pay with pre-tax dollars; and increases in both the cigarette and motor vehicle fuels taxes.

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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SALES AND USE TAX

I. Legislative Developments

Streamlined Sales Tax Commission. A Streamlined Sales Tax Commission is established to study and evaluate (i) the changes that would need to be made to the Sales and Use Tax Act in order for Connecticut to become a full member of the Streamlined Sales Tax Governing Board, and (ii) the benefits, to the State and to retailers, if Connecticut were to become a full member. The Commission is to prepare and submit a final report of its findings to the Governor and the General Assembly not later than January 15, 2008. Conn. Pub. Act No. 07-4 (June Spec. Sess.), §100 (*effective June 29, 2007*).

Energy-Related Exemptions. The General Assembly adopted and amended a series of energy-related sales and use tax exemptions:

- A new exemption for the sale and use of solar energy electricity generating systems, passive or active solar water or space heating systems and geothermal systems, including the equipment and installation services related to such systems. Conn. Gen. Stat. §12-412(117), as added by Conn. Pub. Act No. 07-242, §68 (*effective July 1, 2007, and applicable to sales occurring on or after July 1, 2007*).
- A new exemption for the sales and use of ice storage systems used for cooling by a utility ratepayer who is billed by such utility on a time-of-service metering basis, including the equipment and installation services related to such systems. Conn. Gen. Stat. §12-412(118), as added by Conn. Pub. Act No. 07-242, §68 (*effective July 1, 2007, and applicable to sales occurring on or after July 1, 2007*).
- The existing exemption for residential weatherization products is made permanent and amended to: (i) reduce the minimum efficiency percentage of oil furnaces and boilers qualifying for the exemption from 85% to 84%; and (ii) include “ground source”, rather than “ground-based”, heat pumps. (The provision was scheduled to expire June 30, 2007.) The statutory exemption is also expanded to include the sale of compact fluorescent light bulbs. Conn. Gen. Stat. §12-412k, as amended by Conn. Pub. Act No. 07-242, §69 (*effective June 1, 2007*).
- A new exemption for the sale of any household appliance that meets the federal Energy Star standard, provided such sale is made on or after June 4, 2007, and on or before September

30, 2007. Conn. Pub. Act No. 07-242, §70, as amended by Conn. Pub. Act No. 07-1 (*June Spec. Sess.*), §129 (*effective June 26, 2007*).

See DRS Special Notice 2007(3), *2007 Legislation Granting a Connecticut Sales and Use Tax Exemption for Sales of Compact Fluorescent Light Bulbs*; DRS Special Notice 2007 (4), *2007 Legislation Affecting the Sales Tax on Home Weatherization Products*; and DRS Special Notice 2007 (2.1), *2007 Legislation Granting a Connecticut Sales and use Tax Exemption for Sales of Energy Star Rated Household Appliances*.

Media Payroll Services. A new exemption is enacted for any amount charged for separately-stated compensation, fringe benefits, workers’ compensation and payroll taxes or assessments paid to a media payroll services company. A “media payroll services company” is defined as a retailer whose principal business activity is the management and payment of compensation, fringe benefits, workers’ compensation, payroll taxes or assessments to individuals providing services to an eligible production company pursuant to Conn. Gen. Stat. §12-217jj (the film production tax credit provision). Conn. Gen. Stat. §§12-407(a)(8)(B) and 12-407(a)(9)(B) as amended, and Conn. Gen. Stat. §12-407(a)(38) as added, by Conn. Pub. Act No. 07-236, §7-9 (*effective July 1, 2007*). See DRS Policy Statement 2007(4), *Connecticut Tax Treatment of Eligible Production Companies, Payroll Services Companies, and Loan-Out Companies*.

Certified Competitive Video Service. The sales and use tax on a community antenna television (“CATV”) service is expanded so as to include the rendering of a certified competitive video service (or a video programming service provided by a holder of a certificate of cable franchise authority), other than any such service rendered by an employee for his or her employer. Conn. Gen. Stat. §12-407(a)(38) as added, and Conn. Gen. Stat. §12-407(a)(2)(L) as amended, by Conn. Pub. Act No. 07-253, §§30-31 (*effective October 1, 2007*), and by Conn. Pub. Act No. 07-5 (*June Spec. Sess.*), §8 (*effective October 1, 2007*).

Telecommunications Service. For purposes of the Sales and Use Tax Act, the definition of a taxable “telecommunications service” is extended to a broader class of services, referring to the “electronic transmission, conveyance or routing of voice, image, data, audio, video or any other information or signals to a point or between or among points,” including a new express reference to a Voice over Internet Protocol (VoIP) service. Further, gross receipts from the rendering of a taxable “telecommunications service” now also expressly include charges for a vertical service (e.g., caller ID, call waiting), the installation or maintenance of wiring equipment on a customer’s

premises, and directory assistance. Finally, the amending legislation broadens the exemption for radio and TV services and exempts from the definition: (i) digital products delivered electronically; (ii) Internet access services; (iii) certain advertising services; and (iv) certain other services. Conn. Gen. Stat. §§12-407(a)(39) and (40) as added, and Conn. Gen. Stat. §12-407(a)(26) as amended, by Conn. Pub. Act No. 07-253, §§30, 32 (effective October 1, 2007).

Meals Sold through Vending Machines and Honor Boxes. The exemption for sales of “food products” sold through coin-operated vending machines is amended to now cover “meals” sold through coin-operated vending machines or at unattended “honor boxes.” Conn. Gen. Stat. §12-412(27), as amended by Conn. Pub. Act No. 07-4 (June Spec. Sess.), §121 (effective July 1, 2007, and applicable to sales occurring on or after July 1, 2007).

High Mileage Motor Vehicles. The former exemption for high mileage “passenger cars” which expired June 30, 2002, is amended to provide for a new exemption for the sale, between January 1, 2008 and June 30, 2010, of any passenger “motor vehicle”, as defined by Conn. Gen. Stat. §14-1, that has an estimated city or highway gasoline mileage rating of at least 40 miles per gallon. The former exemption required a minimum estimated gasoline mileage rating of at least 50 miles per gallon. Conn. Gen. Stat. §12-412(110), as amended by Conn. Pub. Act No. 07-242, §20, as further amended by Conn. Pub. Act No. 07-4 (June Spec. Sess.), §72 (effective January 1, 2008, and applicable to sales occurring on or after said date).

See generally, *DRS Special Notice 2007(8) 2007, Legislative Changes Affecting Sales and Use Taxes, Machinery Rental Surcharge, and Admission Tax.*

II. Administrative Pronouncements

Informational Publication 2007(10). Sales and Use Tax Exemptions for Prescription and Nonprescription Drugs and Medicines and Health-Related Products.

This Informational Publication describes the sales and use tax exemptions for certain nonprescription drugs and medicines, prescription drugs and medicines, smoking cessation products, and health-related products and equipment. This Informational Publication also clarifies that appetite suppressants are exempt from tax as dietary supplements.

Informational Publication 2007(23). Disaggregated Sales Tax Report.

Consolidated sales tax filers are required to file annually a Disaggregated Sales Tax Report with the

Department of Revenue Services. There is no tax or payment due with this report. This report can only be filed electronically through the Taxpayer Service Center (formerly Fast-File). The first report was due on October 1, 2007. A “consolidated sales tax filer” is defined as:

- A retail business with two or more establishments for which a Connecticut sales and use tax permit is required;
- Has been issued two or more seller's permits; and
- Files a single OS-114, *Sales and Use Tax Return*, to report and pay sales tax.

The disaggregated sales tax is the separately-stated amount of sales tax collected by a retailer in each municipality where the business maintains a location. The report must contain sales and use tax for each quarter of the fiscal year beginning July 1 and ending June 30. The consolidated sales tax filer must report for each municipality:

- The gross receipts from the sale of goods;
- The sales of goods for resale;
- The gross amount of sales tax paid.

Policy Statement 2007(5). Sales Tax Treatment of Coupons, Scan Cards, Cash Equivalents, Promotional Items, and Rebates.

This Policy Statement describes the calculation of gross receipts subject to the sales and use tax when coupons, electronic price reduction cards (scan cards), or other price discount incentives such as rebates are used to make purchases of tangible personal property or taxable services. The terms “sales price” and “gross receipts” are defined in Conn. Gen. Stat. §§12-407(a)(8)(A) and (9)(A) to exclude cash discounts allowed and taken on sales, and to exclude the full face value of any coupon used by a purchaser to reduce the price paid to the retailer for an item of tangible personal property, whether or not the retailer will be reimbursed for the coupon, in whole or in part, by the manufacturer of the item of tangible personal property or by a third party. While most coupons and similar forms of discounts reduce the amount subject to sales tax, certain exceptions apply, such as a rebate paid by a manufacturer or third party because a rebate is a separate transaction from the sale. Additionally, certain promotional items provided at no charge to the customer may require the retailer to self-assess use tax.

Special Notice 2007(1). Sales and Use Taxes on Health and Athletic Club Services.

Special Notice 2003(7.1) has been revised to reflect the exclusion of yoga instruction provided at a yoga studio from taxable health and athletic club services. Sales and use taxes are imposed on health and athletic club services. Payments made to health and athletic clubs, such as service fees, membership fees, initiation fees, application fees, and similar fees, are subject to sales and use taxes.

Ruling 2007-3. Sales and Use Tax – Leasing/Telecommunications Services.

- Facts. The company owns fiber optic cable that supports voice, data and Internet applications. The fiber optic cable is contained in a conduit which houses both “dark fiber” and “lit fiber.” Dark fiber is used by customers to transmit communications without the use of a transmitter provided by the company. Instead, customers provide their own transmission equipment and connect it to the dark fiber in order to utilize its abilities. In the case of a lit fiber service, the fiber optic cable is energized by the company and the customer is provided with transmission equipment.
- Issues. 1) Whether under Conn. Gen. Stat. §§12-407(a)(2)(J) and 12 407(a)(2)(K) the company is leasing tangible personal property subject to sales and use tax with respect to its dark fiber; and 2) whether the company is providing a “telecommunication service” subject to the sales and use tax with respect to its lit fiber service.
- Ruling. The company installs fiber optic cable with the intention of leasing dark fiber or selling its lit fiber services to customers. In fact, the cable is an indispensable element to the company’s business that would not be transferred as a sale of realty if a customer sells its building. Fiber optic cable is not considered a fixture; accordingly, the lease of dark fiber is not a lease of real property. Furthermore, under Conn. Gen. Stat. §12-41(c), an annual declaration of tangible personal property includes cables, wires and conduits and other fixtures of electric companies. Thus, fiber optic cable remains tangible personal property after its installation and the lease of dark fiber is subject to the sales and use tax. Under the current and amended definitions of “telecommunications service”, as set forth in Conn. Gen. Stat. §12 407(a)(26)(A) and 2007 Conn. Pub. Act No. 253, §32, the company’s lit

fiber services involves the transmission of a customer’s communications and, thus, is the rendering of a telecommunications service subject to the sales and use tax.

III. Case Law Developments

Daimler Chrysler Corp. v. Law, 284 Conn. 701 (2007). Under Connecticut’s lemon law, Conn. Gen. Stat. §§42-179 - 42-190, a consumer may return to a manufacturer a materially defective new motor vehicle that cannot be repaired. The car manufacturer must then refund to the consumer the vehicle’s contract price plus all collateral charges, including the sales tax paid by the consumer. In this action, a car manufacturer sought from the state a refund of the sales tax it reimbursed to consumers under the lemon law. The Connecticut Supreme Court upheld the trial court’s dismissal of the action on the ground that it was barred by the doctrine of sovereign immunity because: (i) the car manufacturer was neither the direct seller nor the purchaser of the car and, therefore, could not avail itself of the refund provisions under the Connecticut Sales and Use Taxes Act; and (ii) Connecticut’s lemon law does not provide for a refund provision. A claim for money damages against the state under such circumstances must be brought through the office of the Claims Commissioner pursuant to chapter 53 of the Connecticut General Statutes, a procedure the plaintiff failed to employ.

Message Center Management, Inc. v. Commissioner, 282 Conn. 706 (2007). The Connecticut Supreme Court affirmed the decision of the Tax Session of the Superior Court holding that a developer and operator of wireless communication sites does not provide a taxable property management service to the owners of the sites. Although the agreement between the developer and the owner is stylized a “management agreement”, the developer bears the expense and risk of the project, which the Court found is contrary to the standard property management agreement.

Key Air, Inc. v. Law, 2007 Conn. Super. LEXIS 3101 (December 5, 2007). The Tax Session of the Superior Court held that the training of pilots employed or retained by a certificated air carrier which provides pilots for customers which own planes with a take-off weight in excess of 6,000 pounds is exempt from the sales and use tax on training services pursuant to Conn. Gen. Stat. §12-407(a)(37)(J)(iii).

Rainforest Café Inc. v. Commissioner, 2007 Conn. Super. LEXIS 1582 (June 21, 2007). The taxpayer developer of a restaurant was held liable for the sales and use tax attributable to the construction of the restaurant, despite the fact that the purchase price paid by the developer to a nonresident contractor was

inclusive of such tax. The nonresident contractor did not remit the tax to the Department of Revenue Services and neither the developer nor the nonresident contractor had complied with the nonresident contractor security rules set forth in Conn. Gen. Stat. §12-430(7). These rules generally require a taxpayer to withhold and remit to the Department five percent of the purchase price payable to a nonresident contractor if the nonresident contractor does not furnish a certificate of compliance from the Department. (Such certificate of compliance is issued by the Department if the nonresident contractor timely posts a guarantee or cash bond with the Department.) The decision is marked by the Court's novel justification for ruling against the taxpayer's defense based upon the three-year limitations period. The Court ruled that the statute of limitations is not available as a defense in the case of fraud or intent to evade (Conn. Gen. Stat. §12-415(f)), and the taxpayer's failure to comply with the nonresident contractor security rules constituted "intent to evade".

Sikorsky Aircraft Corp. v. Law, 2007 Conn. Super. LEXIS 1184 (May 16, 2007). The Tax Session of the Superior Court overruled the Commissioner's denial of the taxpayer's request for a refund of all sales and use taxes paid in connection with the purchase of various items of aircraft manufacturing personal property. The Commissioner conceded that the subject property qualified for the 50% exemption under the Manufacturing Recovery Act, Conn. Gen. Stat. §12-412i, but challenged the application of the full exemption for aircraft manufacturing materials, tools, fuel, machinery and equipment, Conn. Gen. Stat. §12-412(78), on the basis of the fact that the subject purchased property had been used for research and development in addition to manufacturing. The Court concluded that the use of such property for research and development was irrelevant in that section 12-412(78) requires only that the property (i) be used or consumed by an aircraft manufacturer, (ii) operating an aircraft manufacturing facility in Connecticut, and (iii) such property is used in such facility. See Pratt & Whitney v. Commissioner, and Hamilton Standard v. Commissioner, 2002 Conn. Super. LEXIS 2236 (July 3, 2002).

TAX CREDITS

I. Legislative Developments

Job Creation Tax Credit. Last year, the General Assembly enacted a new tax credit which can be used against the corporation business, insurance premium and utility company taxes. The credit, which is available to a company that relocates to Connecticut and creates

at least 50 new full-time jobs as a result, is equal to as much as 25% of the state income tax withheld from the wages attributable to such newly-created positions in the state. This credit provision has been substantially amended to: (i) extend the tax credit to any company (not just a relocated company) that creates at least 10 new full-time jobs in Connecticut; and (ii) increase the maximum credit from 25% to 60% of the state income tax withheld from the new employees' wages for up to five successive years. A company desiring to claim the credit must still apply to the Commissioner of the Department of Economic and Community Development ("DECD"), but the Commissioner must now additionally conclude that the proposed job growth conforms to the State Plan of Conservation and Development. Conn. Gen. Stat. §12-217ii, as amended by Conn. Pub. Act No. 07-250, §18 (*effective July 1, 2007, and applicable to income years commencing on or after January 1, 2007*).

Neighborhood Assistance Tax Credit. The maximum credit under the Neighborhood Assistance tax credit program is increased from 60% to 100% for a business firm's investment in energy conservation projects in low income housing developments or properties occupied by charitable organizations. The credit statute also is amended to include investments in such projects in properties owned (as well as occupied) by charitable organizations. Conn. Gen. Stat. §§12-633 and 12-635, as amended by Conn. Pub. Act No. 07-242, §72 (*effective July 1, 2007*), and by Conn. Pub. Act No. 07-5 (June Spec. Sess.), §§11-12 (*effective October 6, 2007*).

Historic Preservation Tax Credit. Tax credits currently exist for the rehabilitation of certified historic commercial and industrial properties for residential uses only. Effective for income years commencing on or after January 1, 2008, these credits are supplemented by a new tax credit for rehabilitating a certified historic structure for mixed residential and nonresidential uses consistent with the historic character of the property or the district in which it is located. The credit shall be for up to 25% of the actual qualified rehabilitation expenditures (or 30% of such expenditures if a minimum percentage of the units are affordable to low-and moderate-income people), and may be applied against the corporation business, insurance premium, air carriers, railroad companies, CATV and satellite transmission businesses or utility companies tax. Individuals, limited liability companies, corporations and other businesses are eligible for the credit if they have title to the property and rehabilitate it, and the residential portion of the structure occupies at least one-third of the floor area. To ensure that any rehabilitation for which the credit is claimed meets all statutory requirements, the taxpayer must ask the

Connecticut Commission on Culture and Tourism (“CCCT”) to reserve credits on its behalf before the rehabilitation commences (and obtain the approval of DECD if affordable housing is involved), and then notify CCCT regarding the completion of the project. The CCCT and DECD can request additional information, and charge fees, as part of the application and review processes, and the credit can be used in the tax year when the substantially rehabilitated property is placed in service. The Act authorizes up to \$50 million in credits per three-year cycle (beginning with the 2009 fiscal year), although CCCT must stop reserving credits if the aggregate credits total \$32.5 million during the first year, or \$45 million in the second year, until it obtains approval from the Commerce and Finance, Revenue and Bonding Committees. The credit can be passed through to an entity’s owners, it is transferable and it can be carried forward for up to the succeeding five years. Conn. Pub. Act No. 07-250, §§19-22 (effective from June 14, 2007 and July 1, 2007, and applicable to income years commencing on or after January 1, 2008).

Film Production Tax Credit. Originally enacted last year, the film production tax credit generally is a transferable credit equal to 30% of eligible film and digital media production expenses for “qualified productions” that exceed \$50,000. The governing statute is amended to allow the credit to apply against the insurance premium tax, as well as the corporation business tax, and to modify the rules applicable to the tax credit as follows:

- Qualified Productions. The definition of “qualified production” is expanded expressly to include videos, “sound recordings” (music, poetry or a spoken-word performance, but not audio portions of dialogue or words spoken as part of a picture, video, theatrical production, news coverage or athletic event) and certain interactive web sites (the production costs of which exceed \$500,000 per income year). The express exclusion for any ongoing program created primarily as news, weather or financial market reports is limited to such programs on television, and the exclusion for productions containing any material that is obscene is redefined with reference to the federal statute (18 U.S.C. § 2257) requiring records to be maintained with respect to sexually explicit content. Newly-excluded is any production featuring current events, sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service and a production used for corporate training, in-house corporate advertising or similar production.
- Eligible Expenses. In general, “eligible production expenses or costs” must be incurred in Connecticut. For a limited period, however, from January 1, 2009 to December 31, 2011, a taxpayer may apply towards the credit 50% of such expenses or costs if they are incurred outside of Connecticut and used in Connecticut. Eligible production expenses or costs are further redefined: (i) no longer to include expenses for purchasing intellectual property rights; (ii) commencing January 1, 2008, no longer to include compensation over \$15 million paid to any individual working on the production or to any entity that represents such individual; (iii) no longer to limit talent fees for extras, principal day players and atmosphere; and (iv) to exclude production equipment expenses if they are eligible for the film infrastructure credit (discussed below).
- Tax Credit Vouchers. The tax credit certificate issued by the CCCT is now a “tax credit voucher”, which can be issued on an annual basis rather than only after a production is finished.
- Credit Transfers. The credit now cannot be transferred more than three times, and both the transferor and the transferee are to submit jointly a written notification of the transfer to the CCCT not later than 30 days after the transfer.
- Penalty. A new penalty, equal to the amount of the credit, is imposed on any eligible production company that willfully submits false or fraudulent information to the CCCT.
- Post-Certification Remedies. A new limitation is imposed, preventing the Commissioner of Revenue Services and the CCCT, once a tax credit voucher has been issued, from conducting any further or additional review, examination or audit of the expenditures or costs for which the credits were issued except in the case of possible material misrepresentation or fraud. If a material misrepresentation or fraud has occurred, such that the voucher should not have been issued or should have been issued for a lesser credit, the sole remedy of the Commissioner and the CCCT is to collect the amount of the credit from the eligible production company, and not from any transferee of the credit. Conn. Gen. Stat. §12-217jj, as amended by Conn. Pub. Act No. 07-236, §1, as further amended by Conn. Pub. Act No. 07-4 (June Spec. Sess.), §§69-70 (effective July 1, 2007, and applicable to income years commencing on or after January 1, 2007),

and by Conn. Pub. Act No. 07-5 (*June Spec. Sess.*), §13 (*effective October 6, 2007*).

Film Infrastructure Investment Tax Credit. A new transferable, nonrefundable tax credit against the corporation business tax and the insurance premium tax is adopted for investments in state-certified capital projects to provide basic buildings, facilities or installations needed for the functioning of the digital media and motion picture industry in Connecticut. The amount of the credit depends upon the infrastructure project's costs as follows: (i) a credit of 10% of the investment for projects costing more than \$15,000, but less than \$150,000; (ii) a credit of 15% of the investment for projects costing \$150,000 or more, but less than \$1 million; and (iii) a credit of 20% of the investment for projects costing \$1 million or more. Unused credits may be carried forward for up to three years. Eligible expenditures include: expenses incurred for leased or purchased buildings, facilities or installations, and the equipment necessary for a film, video, television, digital production facility or digital animation production facility; project development costs; development (including design and consulting fees), preproduction, production, post-production and distribution equipment and system access; and fixtures and other equipment. A taxpayer must apply to the CCCT for an eligibility certificate not later than 90 days after the first expenses or costs are incurred. The taxpayer may thereafter apply for a tax credit voucher, based upon the tax credit certification letter, but no tax credit voucher may be issued until it is established that the project is at least 60% complete. Notice of any credit transfer must be provided to the CCCT by the transferor and the transferee. Credits may not be transferred more than three times. Once a tax credit voucher is issued, limitations are imposed upon the ability of the Commissioner and the CCCT to audit and recapture the credit similar to those now applicable to the film production tax credit. Conn. Pub. Act No. 07-236, §2 (*effective July 1, 2007, and applicable to income years commencing on or after January 1, 2007*), as amended by Conn. Pub. Act No. 07-5 (*June Spec. Sess.*), §14 (*effective October 6, 2007*).

Digital Animation Production Credit. A separate, transferable, nonrefundable tax credit is enacted against the corporation business tax and the insurance premium tax for digital animation production companies undertaking digital animation production activity in Connecticut equal to 30% of production expenses or costs over \$50,000. To qualify for the credit, a company must (i) be exclusively engaged in production activity, (ii) maintain a studio in Connecticut, (iii) employ at least 200 full-time employees, and (iv) be certified by CCCT and comply with its regulations. The aggregate tax credits that CCCT may reserve are

limited to \$15 million, and a company that receives a digital animation credit is not eligible to apply for or receive a film production tax credit. The new credit generally has the same application, transfer, post-certification remedy and other requirements as the film production credit, with the following exceptions: (i) eligible digital animation production expenses must be incurred in Connecticut; (ii) intellectual property purchase expenses are eligible for the credit if they are less than 35% of the company's expenses or costs in any income year; (iii) expenses for the following additional types of costs are explicitly eligible: actors, voice talent, rent, utilities, insurance, administrative and systems support, and short film production and distribution; and (iv) a digital animation company cannot apply to the CCCT for credit vouchers more than twice during the company's income year. Conn. Pub. Act No. 07-236, §3, as amended by Conn. Pub. Act No. 07-4 (*June Spec. Sess.*), §71 (*effective July 1, 2007, and applicable to income years commencing on or after January 1, 2007*), and by Conn. Pub. Act No. 07-5 (*June Spec. Sess.*), §15 (*effective October 6, 2007*).

II. Administrative Pronouncements

Policy Statement 2007(4). Connecticut Tax Treatment of Eligible Production Companies, Payroll Service Companies, and Loan-Out Companies.

This Policy Statement explains the treatment of eligible production companies, payroll service companies, and loan-out companies for purposes of the Connecticut income tax, Connecticut income tax withholding, Connecticut business entity tax, Connecticut corporation business tax, and Connecticut sales and use tax.

III. Case Law Developments

Achillion Pharmaceuticals, Inc. v. Law, 2007 Conn. Super. LEXIS 1266 (May 31, 2007). The Tax Session of the Superior denied each party's motion for summary judgment in an appeal involving the application of the rolling research and development ("R&D") tax credit statute, Conn. Gen. Stat. §12-217n, and the R&D tax credit exchange statute, Conn. Gen. Stat. §12-217ee, which permits qualified small businesses to exchange their unused R&D credits for a discounted amount of 65 cents on the dollar. The taxpayer claimed a rolling R&D tax credit for 2003 and, because it had no Connecticut tax liability that year, applied in 2003 for an exchange relating to one-third of the tax credit (the maximum percentage permitted under section 12-217ee). In 2004, the taxpayer claimed an additional

rolling R&D tax credit and, because it again did not have any Connecticut tax liability, applied for an exchange with respect to one-third of the R&D credit for 2004, and the remaining two-thirds of the R&D credit for 2003. The Commissioner granted the former request, and denied the latter on the basis that a credit exchange is available only in the year the taxpayer qualifies for the credit. The Court disagreed with both parties holding that, in order to obtain a cash refund of the rolling R&D tax credit: (i) the taxpayer must be entitled to a rolling R&D tax credit pursuant to section 12-217n; (ii) the taxpayer must use the “full amount of all allowable credits carried forward to such year from any prior income year”; (iii) the taxpayer is limited to one-third of the rolling R&D tax credit in any one year; and (iv) the taxpayer must have no tax liability in the year it seeks a cash refund.

PERSONAL INCOME TAX

I. Legislative Developments

Health Insurance Benefits. Effective October 1, 2007, any employer that provides health insurance benefits to its employees for which any portion of the premiums are deducted from the employees’ pay shall offer such employees the opportunity to have such portion excluded from their gross income for state or federal income tax purposes (i.e., pay with pre-tax dollars), except as required under Internal Revenue Code §125. Conn. Pub. Act No. 07-185, §23 (*effective October 1, 2007*).

Earned Income Tax Credit. The Office of Legislative Research has been commissioned to conduct a study concerning the earned income tax credit. The study is to be submitted to the Governor and the Finance, Revenue and Bonding Committee no later than February 1, 2008. Conn. Pub. Act No. 07-1 (June Spec. Sess.), §133 (*effective July 1, 2007*).

Connecticut Homecare Option Program for the Elderly. The General Assembly has established a Connecticut Home Care Option Program (the “Program”) to help people plan and save for the cost of elderly services that are not covered by a long-term health insurance policy and that will allow them to remain in their homes. The Act allows participants to establish individual savings accounts within the Connecticut Home Care Trust Fund, which is administered by the State Comptroller and the State Treasurer. With a physician certification, a designated beneficiary can withdraw funds from an account to pay for qualified home care expenses. Pursuant to new legislation, the definition of “Connecticut adjusted gross income” is amended to subtract interest earned on contributions to accounts established for a designated beneficiary

pursuant to the Program to the extent the interest is properly includible in the gross income for federal income tax purposes of such designated beneficiary. Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 07-130, §§7-8 (*effective October 1, 2007, and applicable to taxable years commencing on or after January 1, 2007*).

Student Loans/Withholding Tax Refunds. The statute authorizing the Commissioner of Revenue Services to withhold the payment of an income tax refund payable to a taxpayer who is in default of a student loan made or guaranteed by the Connecticut Student Loan Foundation (“CSLF”) is extended to permit the withholding of a refund due to a taxpayer who has defaulted on a student loan made or guaranteed by the Connecticut Higher Education Supplemental Loan Authority (“CHESLA”). The taxpayer has a right to a hearing if requested within 60 days of the notice of the withholding. Conn. Gen. Stat. §12-742(b), as amended by Conn. Pub. Act No. 07-108, §4 (*effective July 1, 2007*).

Connecticut Student Loan Foundation Obligations. CSLF, or its nonprofit subsidiary, is authorized to issue federal tax-exempt bonds, notes or other obligations subject to the private activity bond cap, if so designated in a resolution adopted by the corporation. The bonds, notes or other obligations of CSLF or its subsidiary, and any transfer of or income generated by the bonds, are exempted from any state or local taxes, except estate or succession taxes. Conn. Gen. Stat. §§10a-201, 10a-203, 10a-204, 10a-204b and 32-141(a)(2), as amended by Conn. Pub. Act No. 07-109, §§1-6 (*effective July 1, 2007*).

II. Administrative Pronouncements

Announcement 2007(1). Information for Married Individuals or Civil Union Partners Who Are Both Employed and File a Joint Connecticut Income Tax Return.

This Announcement alerts married individuals who are both employed and file a joint Connecticut income tax return that it may be necessary to increase or decrease the amount of Connecticut income tax withheld from one spouse’s wage income to avoid underwithholding or overwithholding that may result when both incomes are combined. Any reference in this Announcement to a spouse or married individual also refers to a party to a civil union recognized under Connecticut law.

III. Case Law Developments

Fadner v. Commissioner, 281 Conn. 719 (2007). The Connecticut Supreme Court affirmed the decision of the Tax Session of the Superior Court denying a claim by the taxpayers for a refund of personal income taxes. The taxpayer incurred substantial net operating losses in 1991 and 1993, and had elected to carry back the net operating losses to 1989 and 1990 to reduce their federal adjusted gross income to zero for both years. The taxpayers subsequently modified their adjusted gross income in 1995 and 1996 by subtracting the same net operating losses so that they could avail themselves of such losses for purposes of the Connecticut personal income tax (which did not exist in 1989 and 1990). The Commissioner disallowed the modifications on the basis that the governing statute does not permit them, and asserted that any attempt to amend prior years' returns was barred by the statute of limitations. The Supreme Court affirmed the disallowance holding that: (i) the doctrine of equitable estoppel was inapplicable because the taxpayers had failed to establish that they had justifiably relied upon advice from the Department that such modifications were proper; and (ii) the doctrine of equitable recoupment, even if it were to be adopted in Connecticut, is not applicable to the use of a net operating loss because it is not a taxable event.

Gavignan v. Commissioner, 99 Conn. App. 903 (2007). The Connecticut Appellate Court affirmed per curiam the dismissal of an appeal filed by tax protestors. In Stone v. Commissioner (see below), the Tax Session of the Superior Court cited this affirmance in support of its imposing a clear and convincing evidence standard on a taxpayer challenging an assessment.

Stone v. Commissioner, 2007 Conn. Super. LEXIS 288 (February 7, 2007). The Tax Session of the Superior Court upheld an assessment against the taxpayer on the basis that the taxpayer was not a professional gambler and, therefore, was not entitled to deduct his gambling losses against his gambling winnings (to the extent of those winnings) for purposes of calculating his Connecticut taxable income. The Court applied the "professional gambler" analysis set forth in Commissioner v. Groetinger, 480 U.S. 23 (1987), and concluded that, despite maintaining significant records of his gambling activities, the taxpayer had not sustained his burden of establishing that he was a professional gambler. Among the reasons cited by the Court were the fact that he gambled only 43 days in 1998 and 22 days in 1999, and that he had no real expectation that the assets that he used for gambling would appreciate in value because he played only slot machines. Expert testimony established that no skill was required in the playing of slot machines and that a

player will eventually lose money playing slot machines, and the taxpayer's gambling record had been consistent with the expert testimony. Although for federal income tax purposes, a non-professional gambler can file a Schedule A to his or her Form 1040 in order to itemize deductions attributable to gambling losses (to the extent of winnings), Connecticut law does not provide for a similar deduction.

Rizzuto v. Law, 2007 Conn. Super. LEXIS 577 (February 28, 2007). In a ruling on a taxpayer's *motion in limine*, the Tax Session of the Superior Court held that, in a case involving a change of domicile, the taxpayer has the burden of proof of establishing by "clear and convincing evidence" that the deficiency assessment imposed by the Commissioner is erroneous, relying upon Leonard v. Commissioner, 264 Conn. 286 (2003).

PROPERTY TAX

I. Legislative Developments

Property Tax Cap Commission. A Property Tax Cap Commission is established to study and evaluate the impact to taxpayers and municipalities of the various methods available to limit the rate of growth of local property taxes. The Commission is to submit its final report to the Governor and the General Assembly not later than January 15, 2008. Conn. Pub. Act No. 07-4 (June Spec. Sess.), §101 (*effective June 29, 2007*).

Alias Tax Warrants and Executions. New rules for the serving of alias tax warrants on financial institutions are adopted, including: (i) a collector of taxes or serving officer (the "server") shall not serve alias tax warrants relating to one taxpayer on more than one financial institution at a time; (ii) after making service on one financial institution, service upon another financial institution cannot be made by the server until the server's receipt of confirmation that no funds are available for collection or 20 days have passed with no response from the financial institution (in which case the server can assume that no funds are available); (iii) whenever a server expects to serve more than 15 tax warrants upon a particular financial institution on a given day, the server must first serve upon the financial institution a request for information with regard to indebtedness owed to the taxpayer containing the information, and in the manner, described in new Conn. Gen. Stat. §§12-162(f) and (g); (iv) a financial institution is to designate an office, facsimile number and recipient or department for such information requests and is to make such designation available upon request and by written notice to the State Marshal Commission and to the tax collector in each municipality in which the financial institution has an office; (v) a financial

institution is to respond to an information request within 5 business days in the case of a request listing fewer than 100 taxpayers, and 10 business days in the case of a request for 100 to 250 taxpayers (subject to the financial institution's right to request additional information in order to respond); (vi) a request for information cannot relate to more than 250 taxpayers, and once a request has been made on behalf of a town, a second request cannot be served on the same financial institution until it has had the opportunity to respond to the first request; (vii) the financial institution is not to disclose to the taxpayer the receipt of an information request; (viii) the financial institution may select a particular day within the statutory time frame for determining whether it is indebted to a taxpayer and shall not be responsible for reporting for any other day; and (ix) a financial institution and its officers, directors and employees shall not be liable for any act done or omitted in good faith or through the commission of a bona fide error that occurs despite reasonable procedures maintained by the financial institution. Conn. Gen. Stat. §§12-162 and 36a-42, as amended by Conn. Pub. Act No. 07-111, §§1-2 (*effective October 1, 2007*). [Ed. note. The same Act establishes similar rules for judgment liens, but affords the recipient financial institution 25 days to respond, and a second institution may be served if there is evidence the judgment debtor has insufficient funds at the preceding financial institution. Conn. Gen. Stat. §§52-367a(b) and 52-367b(b), as amended by Conn. Pub. Act No. 07-111, §§3-4 (*effective October 1, 2007*).]

Alias Tax Warrants and Municipal Water and Sanitation Charges. The statutes governing the use by a municipality of an alias tax warrant to collect delinquent municipal property taxes are amended to permit the use of such warrants to collect delinquent municipal water or sanitation charges. Conn. Gen. Stat. §§7-239, 12-135, 12-155 and 12-162, as amended by Conn. Pub. Act No. 07-95, §§1-4 (*effective July 1, 2007*).

Property Tax Liens. Under existing Connecticut law, a municipality has a "silent" (i.e., unrecorded) lien on real property after property tax becomes due on such property. The period during which such silent lien is effective is increased from one year to two years, thus making it consistent with the statutory provision (Conn. Gen. Stat. §12-275) that gives a tax collector two years from the tax due date to file a certificate on the land records to continue the lien. Conn. Gen. Stat. §12-172, as amended by Conn. Pub. Act No. 07-99, §1 (*effective October 1, 2007, and applicable to liens filed on or after October 1, 2007*).

Reimbursement for Errors by Tax Assessors and Tax Collectors. The statute providing for the award of costs in a property tax foreclosure action is amended to

require a municipality to reimburse a taxpayer for the costs of state marshal fees or any property seized if the court finds that such costs were incurred as a result of an error by the tax assessor or tax collector (and not as the result of any action or failure on the part of the taxpayer). Conn. Gen. Stat. §12-193, as amended by Conn. Pub. Act No. 07-50, §1 (*effective October 1, 2007*).

Energy-Related Systems. The existing property tax exemption for any Class I renewable energy source or hydropower facility installed for the generation of electricity for private residential use is amended to make such exemption mandatory, rather than at the option of a municipality. The exemption is also broadened to include any passive or active solar water or space heating system or geothermal energy resource installed on or after October 1, 2007. The optional property tax exemption for a "solar energy electricity generating system" and for any cogeneration system is also amended to no longer refer to a solar energy electricity generating system. Conn. Gen. Stat. §§12-81(57) and (63), as amended by Conn. Pub. Act No. 07-242, §§46, 47 (*effective October 1, 2007, and applicable to assessment years commencing on or after October 1, 2007*).

Solar Energy Heating or Cooling Systems. The partial exemptions that a municipality can adopt by ordinance relating to a building which is equipped with either an active solar energy heating or cooling system or a passive or hybrid solar energy heating or cooling system, respectively, are amended to eliminate the requirement that the system be installed before October 1, 2006. Conn. Gen. Stat. §§12-81(56) and (62), as amended by Conn. Pub. Act No. 07-255, §§1, 2 (*effective July 1, 2007*).

High Mileage/Hybrid Motor Vehicles. Effective January 1, 2008, a municipality may adopt a property tax exemption for high mileage motor vehicles and hybrid passenger cars that are exempt from the sales and use tax pursuant to Conn. Gen. Stat. §§12-412 (110) and (115). Conn. Pub. Act No. 07-242, §19 (*effective January 1, 2008*).

Farm Energy Systems. A municipality's ability to adopt a property tax exemption for any Class I renewable energy source or any hydropower facility installed for the generation of electricity for private residential use, provided such installation is for a single family or multifamily dwelling consisting of two to four units, is broadened to apply to such a source or facility installed for the generation of electricity on a farm and where such installation is for a farm. Conn. Gen. Stat. §12-81(57), as amended by Conn. Pub. Act No. 07-240, §2 (*effective October 1, 2007, and applicable to assessment years commencing on or after said date*).

Manufacturing Machinery and Equipment. Last year, the General Assembly adopted a five-year phase-in of a property exemption for all manufacturing machinery and equipment that did not qualify or no longer qualified, for the five-year exemption for new and newly-acquired manufacturing machinery and equipment, including that used for biotechnology. Under the law, all manufacturing machinery and equipment will be exempt from the municipal property tax beginning with the October 1, 2011 assessment year, under a single statutory exemption. During the 2007 legislative session, the legislature rewrote and made several minor, conforming and technical changes to the 2006 law, including: (i) OPM may now modify a municipality's PILOT grant for revenue lost due to the exemption only to correct a clerical error (instead of for any reason); (ii) machinery and equipment acquired between October 2, 2006, to October 1, 2010, inclusive, and approved under the old five-year exemption, shall continue to be exempt under the new permanent exemption and the 100% PILOT grant will replace the five-year 80% PILOT grant as of the fiscal year commencing July 1, 2013; (iii) a taxpayer may now appeal a determination by the board of assessment appeals relating to an assessment of machinery and equipment eligible for the exemption; (iv) recycling machinery and equipment will continue to qualify for an exemption for the October 1, 2011 assessment year and thereafter; and (v) commencing with the 2014 fiscal year, the State's annual PILOT payment to each town with exempt machinery and equipment shall be the sum of (A) the town's tax loss in the 2013 fiscal year from eligible older exemptions approved for the October 1, 2011 assessment year, and (B) the tax loss the town would have had in the 2013 fiscal year if the five-year exemption program for new and newly-acquired machinery and equipment were in effect for that year (reduced to reflect the depreciation on eligible manufacturing and equipment acquired between October 2, 2006 and October 1, 2010, and approved under the five-year exemption program for the October 1, 2010 assessment year). Conn. Gen. Stat. §§12-94b, 12-94f and 12-94g, as amended by Conn. Pub. Act No. 07-140, §§1-3 (*effective June 19, 2007, and applicable to assessment years commencing on or after October 1, 2007*).

Tax-Exempt Organizations. The various property tax exemptions related to tax-exempt organizations are amended as follows:

- Non-Exclusive Use. The exemption for property of, or held in trust for, a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes (a "qualifying corporation") and "used exclusively for carrying out one or more of such purposes" is

broadened by permitting real property to remain eligible regardless of whether it is used by another qualifying corporation. Conn. Gen. Stat. §§12-81(7) and (58), as amended by Conn. Pub. Act No. 07-254, §§5, 7 (*effective October 1, 2007, and applicable to assessment years commencing on or after October 1, 2007*).

- Religious Organization Daycare Facilities. The exemption for real property and equipment owned by, or held in trust for, a religious organization and exclusively used for certain purposes is expanded to include use as a daycare facility. Conn. Gen. Stat. §12-81(14), as amended by Conn. Pub. Act No. 07-254, §6 (*effective October 1, 2007, and applicable to assessment years commencing on or after October 1, 2007*).

Nonprofit Land Conservation Organizations. Any municipality may, upon approval by its legislative body, abate the real or personal property taxes due for any portion of a tax year or the interest on delinquent taxes with respect to any tax paid by a nonprofit land conservation organization that were due for a period before the date of acquisition but which were paid subsequent to the date of acquisition. Conn. Pub. Act No. 07-170, §1 (*effective from June 29, 2007, and applicable to assessment years commencing on or after October 1, 2007*).

Certified Competitive Video Service Property. New exemptions from the municipal property tax are enacted for: (i) tangible personal property used solely and exclusively in a certified competitive video service; and (ii) for assessment years commencing on October 1, 2007, October 1, 2008, and October 1, 2009, all tangible personal property acquired between October 1, 2007 and September 30, 2010, to upgrade an existing telecommunications network, even if such property is used solely or partially in the provision of a competitive video programming service. Where tangible personal property is employed both to render a telecommunications service and a certified competitive video service, the tax is to be allocated based upon the owner's gross receipts from such services. Conn. Gen. Stat. §§12-80b and 12-268j, as amended by Conn. Pub. Act No. 07-253, §§28-29 (*effective October 1, 2007*).

Telecommunications Property. The statute governing the alternative taxation of telecommunications property is amended to provide that the person responsible for the collection of taxes for a city, town or borough can impose an interest penalty on delinquent telecommunications property tax. Conn. Gen. Stat. §12-80a(b), as amended by Conn. Pub. Act No. 07-254, §1 (*effective July 11, 2007, and applicable to*

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

Maritime Heritage Land. A property tax break is enacted for waterfront real property owned by a licensed commercial lobster fisherman when the property is used exclusively for commercial lobstering purposes. Real property so classified as “maritime heritage land” is to be valued based upon its current use without regard to neighborhood land use of a more intensive nature (but such value cannot be less than its value if it were classified as farm land). In order to have real property classified as “maritime heritage land”, the taxpayer must file a written application on an OPM-prescribed form with the assessor not earlier than 30 days before, or later than 30 days after, the assessment date (90 days after the assessment date in the case of a revaluation of all real property). The taxpayer must establish that not less than 50% of the taxpayer’s adjusted gross income for the tax year ending immediately before the assessment date is derived from commercial lobster fishing. Please note, however, that land classified as “maritime heritage property” may be subject to an additional conveyance or controlling interest transfer tax if there is a change in control or use within the first ten years after its initial classification. In addition to the foregoing, a municipality is authorized to abate up to 50% of the property taxes attributable to the property of a commercial lobstering business. Conn. Gen. Stat. §§12-63, 12-107a, 12-107b, 12-120a, 12-504a, 12-504c, 12-504e, 12-504f, 12-504h, 12-638l, 12-638n and 12-81m, as amended by Conn. Pub. Act No. 07-127, §§1-13 (*effective July 1, 2007*).

Optional Relief for Elderly or Disabled Owners. An optional municipal property tax relief program that a municipality can adopt for certain elderly or permanently and totally disabled homeowners under Section 12-129n is amended to limit the amount of the lien the municipality can put on the property if the tax relief afforded under 12-129n, when combined with any tax relief for which the homeowner may be eligible in accordance with sections 12-129b to 12-129d, inclusive, or 12-170aa, exceeds in the aggregate 75% of the property tax for which the homeowner otherwise would be liable. In such a circumstance, the municipality is now required to establish a lien in the amount that such tax relief exceeds 75% of such property tax liability plus interest. Conn. Gen. Stat. §12-129n(f), as amended by Conn. Pub. Act No. 07-251, §2 (*effective October 1, 2007*).

Brownfields. Section 12-63e provides generally that, when determining the value of any property other than residential property, an assessor is not to reduce the value of any property due to any polluted or

environmentally hazardous condition existing on the property if the condition was caused by the owner of the property or a successor in title acquired the property after any notice of the existence of the condition was filed on the town land records. The statute is amended to permit an assessor to reduce the value of any property due to any polluted or environmentally hazardous condition if the owner: (i) enters into an agreement with the State to voluntarily remediate the property; (ii) files such agreement on the town land records; and (iii) has developed an approved remedial action plan for the property. The assessor also may raise the value of the property after the remediation is completed to take into account the removal of the pollution or hazardous condition. Conn. Gen. Stat. §12-63e, as amended by Conn. Pub. Act No. 07-233, §11 (*effective July 1, 2007*).

CRRA Leased Property. Notwithstanding the broad tax exemption granted to the Connecticut Resources Recovery Authority (“CRRA”) and its projects, the real and personal property owned by the CRRA may be assessed and taxed against a lessee of the property by a municipality if the property is leased as of July 1, 2007, to a lessee or operator pursuant to an initial site lease entered into between the CRRA and a lessee on or before December 31, 1985; provided, however, that such authority to tax shall not apply to property which is: (i) security for any bonds issued by the CRRA and outstanding as of July 1, 2007, until they are paid in full; (ii) leased by the CRRA pursuant to a lease in effect on January 1, 2007, until after the expiration of the lease term in effect on January 1, 2007; or (iii) the subject of an agreement for payments in lieu of taxes between the municipality and the CRRA or its lessee during any municipal fiscal year covered by the agreement. The lessee is afforded appeal rights similar to that of a property owner with regard to an assessment. Conn. Gen. Stat. §22a-270(b), as added by Conn. Pub. Act No. 07-255, §3 (*effective July 1, 2007*).

II. Case Law Developments

Trumbull v. Palmer, 104 Conn. App. 498 (2007). In this municipal tax lien foreclosure action, the Appellate Court affirmed the judgment of the trial court foreclosing the defendant’s interest in a parcel of real estate. The defendant, the executrix of the estate of her husband, and the heir to the subject property, asserted various technical defenses to the foreclosure action largely based upon the fact that a certificate of devise from the Probate Court had not been filed on the land records transferring title to the property to the defendant. The Appellate Court held that the action

was still valid because the defendant had proper notice of the action, and there was sufficient evidence that he held title to the property notwithstanding her failure to fill the certificate of devise on the land records.

Albemarle Weston Street, LLC v. Hartford, 104 Conn. App. 701 (2007). The plaintiff brought the subject appeal from a proposed reassessment of its commercial property in 2003. The City argued that the reassessment was appropriate because the 1999 assessment of the property was mistaken due to an underestimate of the amount of the property used as office space. The Court of Appeals affirmed the grant of the taxpayer's appeal by the Superior Court holding that: (i) there was sufficient evidence to establish that the increase in the amount of office space was attributable to a change in use since, and not a mistake made in, 1999; and (ii) the City could not, on appeal, assert that the 2003 reassessment was pursuant to its statutory right under Conn. Gen. Stat. §12-155(b) to make an interim valuation in order to equalize the assessments of property in Hartford.

Abington, LLC v. Avon, 101 Conn. App. 709 (2007). The Connecticut Appellate Court affirmed the trial court's reduction by \$1 million of a property tax valuation holding that: (i) the use of a piecemeal approach to value component parts of a single property was acceptable in the absence of comparable property; (ii) the use of values of comparable properties with less acreage was a fair method to arrive at the value of the taxpayer's primary residence on the subject property; and (iii) the court's valuation of the property was supported by the record even though the property had been purchased 20 years previously for a higher price, the primary residence was insured for more than the valuation adopted by the trial court and the owner had testified that he would not sell the property for the amount of the valuation adopted by the trial court.

NSA Properties v. Stamford, 100 Conn. App. 262 (2007). The Connecticut Appellate Court reversed a lower court's finding in a property tax case initially involving six parcels of land owned by the substitute plaintiff, the National Spiritual Assembly of the Baha'i of the United States. The City and the taxpayer eventually agreed that the parcel containing the main house was exempt, but denied an exemption to a parcel containing the caretaker house and the four remaining unimproved parcels. The lower court agreed with the City as to the four unimproved parcels, but concluded that the parcel with the caretaker's house was exempt because it had a library and was used for gatherings, study and education. The Appellate Court disagreed, holding that the parcel was not exempt under section 12-81(7) because it was not used exclusively for exempt purposes and the taxpayer's

requirement that the caretakers live in the house was only "advantageous", and not essential to the carrying out of the charitable purpose of the taxpayer. The Court similarly found inapplicable the exemption under section 12-81(13) for "houses of religious worship" and the land on which they stand, because there was insufficient evidence that the caretaker's cottage was a house of worship. In the Baha'i faith, there are only two houses of worship; followers gather together every 19 days in followers' homes.

Krevis v. Bridgeport, 2007 Conn. Super. LEXIS 1942 (July 17, 2007). The taxpayer brought an action seeking declaratory relief that his motor vehicles were routinely parked on a right-of-way near the taxpayer's house that is owned by the Town of Trumbull and, therefore, could not be taxed by the City of Bridgeport, where his residence is located. The Superior Court held that the taxpayer could not bring a declaratory action to avoid the one-year statute of limitations for the appeal of an illegal assessment (Conn. Gen. Stat. §12-119), and could not use his storage of the motor vehicles on public land to rebut the statutory presumption that the situs of motor vehicles owned by an individual is the town in which the individual resides, Conn. Gen. Stat. §12-71(f)(2).

Walmart Eastern Co. v. Southbury, 2007 Conn. Super. LEXIS 983 (April 13, 2007). The taxpayer filed an appeal under sections 12-117a and 12-119 seeking to reduce an assessment with regard to land that it leased and had filed a memorandum of lease on the land records. The Town of Southbury sought to dismiss the appeal on the basis that the memorandum of lease did not satisfy all of the requirements of Conn. Gen. Stat. §47-19. The Superior Court denied the motion to dismiss holding that the taxpayer had "complied with the purpose" of section 47-19, because the town had been put on notice that the taxpayer leased the land and was responsible for all property taxes (since the tax bills were mailed to and paid by the taxpayer).

Sullivan v. Tax Assessor, City of Bridgeport, 2007 Conn. Super. LEXIS 2146 (August 2, 2007). The Superior Court dismissed an appeal of a personal property tax assessment on the grounds that the appeal was not timely filed within the one-year statute of limitations provided in section 12-119, and that the claim of exemption of the property as personal use property was unavailing because the subject property was located in rental property and, therefore, was business property.

PJM & Associates, LLC v. Bridgeport, 2007 Conn. Super. LEXIS 2142 (July 27, 2007). The taxpayers challenged the imposition of a penalty imposed on them by the City of Bridgeport under Conn. Gen. Stat.

§12-63c(d) for failure to timely provide to the City information concerning rental income and operating expenses for their Bridgeport rental properties. The Superior Court upheld the appeals concluding that an assessor can only request rental information in the context of a city-wide revaluation or an interim revaluation pursuant to Conn. Gen. Stat. §12-55; there is no statutory obligation for a property owner to file annually such information, and the City was not conducting a revaluation during the assessment year in dispute.

St. Joseph Living Center, Inc. v. Windham, 2007 Conn. Super. LEXIS 585 (February 23, 2007). The Superior Court held that the taxpayer's skilled nursing home facility did not qualify for an exemption from property tax under Conn. Gen. Stat. §12-81(7) because the facility was not used exclusively for charitable purposes. Although the taxpayer treated Medicare and Medicaid patients, the charges imposed on private patients allowed the taxpayer to generate an aggregate net profit, and the taxpayer did not receive, nor have need of, outside financial support. The Court also ruled that services provided to private pay patients and to patients requiring rehabilitative services are not charitable services. (The exemption provided under Conn. Gen. Stat. §12-81(75) was unavailable because the taxpayer's property was taxable on the Grand List of October 1, 1999.)

Sakon v. Glastonbury, 2007 Conn. Super. LEXIS 1005 (April 27, 2007). The Superior Court denied a taxpayer's appeal from assessments on three separate but contiguous parcels of undeveloped land. The taxpayer asserted that the land should be valued as park land because his applications to develop the land had been denied by the municipality. The Court disagreed, finding that the highest and best use of the property is for commercial development (even if in a manner different than had been proposed by the taxpayer and denied by the town).

Treece v. Monroe, 2007 Conn. Super. LEXIS 630 (March 2, 2007). The Superior Court denied the taxpayer's motion for reimbursement of costs, including the fees of his attorney, surveyor and real estate investigative research firm, on the basis that such costs are not reimbursable under Conn. Gen. Stat. §12-117a. The taxpayer was granted interest on the overpayment of his tax.

Griswold Airport v. Madison, 2007 Conn. Super. LEXIS 819 (March 30, 2007). The Town of Madison terminated the open space classification of property held by the taxpayer on the basis that a third party which had contracted to purchase the property had obtained a zone change, special exception permit and coastal site

plan approval to build 127 condominium units. The Court overruled the Town's decision on the basis that the use of the land as an airport had continued unchanged and that the declaration of a common interest community had not yet been filed and recorded on the municipal land records.

Aspetuck Valley Country Club, Inc. v. Weston, 2007 Conn. Super. LEXIS 837 (March 30, 2007). The town tax assessor declined to classify 100 acres of the taxpayer's 109.93-acre property as open space because the open space land designation for the property had not been approved by a majority vote of the legislative body of the municipality as required by Conn. Gen. Stat. §12-107e(a). The taxpayer appealed this denial, asserting that its property is entitled to open space classification because the subject property had been identified on the 1969, 1987 and 2000 town plans as a "major existing conservation and recreation area," an area of "private recreation" and an area of "conservation and recreation", respectively. The Court rejected the appeal, holding that town plans are merely advisory and, therefore, the taxpayer did not have a vested right in an open space designation.

George Harte Nissan, Inc. v. West Haven, 2007 Conn. Super. LEXIS 1786 (July 11, 2007). The plaintiff appealed the City of West Haven's assessment of dealer plate use by the plaintiff's new and used motor vehicle business. The Court agreed that "dealer plate use" and the "right" to use dealer plates is each an intangible right that cannot be assessed. However, the Court denied the plaintiff's motion for summary judgment on the basis that the Court did not have sufficient evidence to conclude that each of the 40 cars utilizing dealer plates was, in fact, being held in inventory for sale and eligible for the exemption under Conn. Gen. Stat. §12-81(54) for "wholesale and retail business inventory."

Unit Owners Assn. at Guilford Yacht Club, Inc. v. Guilford Board of Assessment, 2007 Conn. Super. LEXIS 1893 and 2007 Conn. Super. LEXIS 1919 (July 19, 2007). In these companion property tax appeals, a condominium association challenged an assessment made against it relating to a pool, clubhouse and bathhouse owned by the association. The assessor asserted that the independent assessment was valid because members of the public could buy memberships in or rent the aforementioned common facilities. The Superior Court sustained the appeal, finding that the public use of the condominium association's common property did not affect the undivided title interest which the unit owners have in the common property, and such owners, and only those owners, should be taxed on their undivided interest in such property.

Lomanto v. Westport, 2007 Conn. Super. LEXIS 2283 (August 23, 2007). The Superior Court denied the Town's motion to dismiss the property tax appeal on the grounds that service of the appeal had been made by mail directed to the tax assessor's office and not by a proper officer on the town clerk as required by Connecticut law. Citing Kindl v. Dept. of Social Services, 69 Conn. App. 563 (2002), the Court noted that the Town had timely received the papers and could cite no prejudice, and that the legislative intent is to simplify administrative appeals.

60 North Main Holding, LLC v. Waterbury, 2007 Conn. Super. LEXIS 2750 (October 19, 2007). The taxpayer filed a motion to compel requiring the City of Waterbury to refund a portion of a property tax payment in compliance with a stipulated judgment agreed to by the parties. The Court denied the motion agreeing with the City that Conn. Gen. Stat. §12-129 requires the taxpayer to file a written refund application prior to the issuance of a refund.

Esse v. Gorzelaney, 2007 Conn. Super. LEXIS 2775 (October 22, 2007). Pursuant to Conn. Gen. Stat. §12-155, the defendant Fairfield tax collector mailed a notice to the plaintiffs' last known place of residence (the address of the subject property) that certain property taxes were delinquent and, if not timely paid, that an alias tax warrant would be issued and a marshal's fee and expenses would be added to the amount due. The taxes were not timely paid and a warrant was issued. The taxpayers paid the taxes due but challenged the imposition of the marshal's fee asserting that a tax collector must have actual, and not constructive, knowledge of a taxpayer's last known place of residence. The Court disagreed holding that actual knowledge is not required by law..

Dominion Nuclear v. Waterford, 2007 Conn. Super. 2925 (November 8, 2007). The Superior Court determined the value of the Millstone Nuclear Power Station relying principally upon the purchase price paid by the taxpayers for the facility less the value of the intangible assets purchased as part of the transaction. The Court also valued the air pollution control equipment because the minority owners of the facility, but not Dominion, had properly claimed a property tax exemption for such property.

J.C. Penney Corp. v. Manchester, 2007 Conn. Super. LEXIS 3052 (November 13, 2007). The taxpayer appealed an assessment of tax on the personal property stored in its distribution center. After 14 Shipman & Goodwin LLP November 2007 its request for an extension of time to file its annual personal property declaration was denied (but with permission to file an amended declaration without

penalty), the taxpayer filed a declaration listing all of its personal property assets with a grand total of \$17,095,039 at market value. It then filed in December an amended declaration stating that it needed to conduct a physical inventory to determine what assets were actually on site and the value of such assets. On June 30th of the following year, the taxpayer received its inventory report and reported the value of the assets at the distribution center at \$1,219,000. The Court dismissed the appeal concluding that: (i) the taxpayer had failed to comply with the property tax statutes and was in no position to contest the valuation; (ii) the taxpayer's expert had improperly based his valuation in part on a forced or auction sale; and (iii) the town's assessor was justified in using the mass appraisal (modified cost) approach in valuing the large amount of personal property, as this approach used the best information available to the assessor.

C.C.C. Real Estate, Inc. v. Waterbury, 2007 Conn. Super. LEXIS 3072 (November 15, 2007). A title holding company, exempt from federal income taxation as an organization described in section 501(c)(2) of the Internal Revenue Code, appealed the imposition of property tax attributable to real estate that the company owned and leased to an affiliated section 501(c)(3) charitable corporation. The Superior Court held that the property was exempt under section 12-81(7) of the Connecticut General Statutes, but only for those years that a quadrennial renewal form (Form M-3) had been timely filed with the City. The title holding company could not prevail on a claim based upon the fact that the City assessor had reminded other exempt taxpayers to file a renewal form.

Eyelet Crafters, Inc. v. Waterbury, 2006 Conn. Super. LEXIS 3251 (October 27, 2006). The City of Waterbury imposed the 25% penalty under Conn. Gen. Stat. §12-41(d) when the taxpayer filed its personal property declaration one day late. The Superior Court upheld the penalty assessment, concluding that the imposition of the penalty is mandatory and not directory. The request for an extension of time to file the declaration was untimely because it was filed after the declaration was due.

ESTATE AND GIFT TAXES

I. Legislative Developments

Governmental Study. The Commissioner of Revenue Services, in consultation with the Secretary of the Office of Policy and Management, has been commissioned to conduct a study of the estate tax, including the impact of the tax on the State's economic competitiveness and the State's ability to retain

residents. The study is to be submitted to the Governor and the Finance, Revenue and Bonding Committee no later than February 1, 2008. Conn. Pub. Act No. 07-1 (June Spec. Sess.), § 132 (*effective July 1, 2007*).

REAL ESTATE CONVEYANCE AND CONTROLLING INTEREST TRANSFER TAXES

I. Legislative Developments

Real Estate Conveyance Tax. The municipal real estate conveyance tax rate of 0.25% is extended for an additional year until June 30, 2008. As of July 1, 2008, the municipal tax rate is scheduled to return to 0.11%. Conn. Gen. Stat. §12-494(a), as amended by Conn. Pub. Act No. 07-1 (June Spec. Sess.), §128 (*effective July 1, 2007*).

Unimproved Land. For purposes of the real estate conveyance tax, the term “unimproved land” is defined to include any land designated as farm, forest or open space land (i.e., property classified as farm land, forest land or open space land under Sections 12-107c, 12-107d and 12-107e, respectively). Conn. Gen. Stat. §12-494(b), as amended by Conn. Pub. Act No. 07-154, §6 (*effective July 1, 2007*).

Maritime Heritage Land. As described in the section on Property Tax developments, a new property tax break for maritime heritage land is enacted, similar to that already in existence for open space land. As is the case for open space land, maritime heritage land generally will be subject to an additional real estate conveyance or controlling interest transfer tax if there is a change in control or a change in the use of the subject land during the ten-year period after the property is initially classified as maritime heritage land. The amount of the additional tax is 10% of the total sales price/fair market value if transferred or its use converted within the first year after the classification, with the tax rate declining by 1% for each year thereafter. Conn. Gen. Stat. §§12-504a, 12-504c, 12-504e, 12-504f, 12-504h, 12-638l and 12-638n, as amended by Conn. Pub. Act No. 07-127, §§6-12 (*effective July 1, 2007*).

II. Administrative Pronouncements

DRS Special Notice 2007(6), *2007 Legislative Change Affecting the Real Estate Conveyance Tax*.

MISCELLANEOUS TAXES AND ISSUES

I. Legislative Developments

Occupational Tax. The law governing the imposition of the annual attorney occupation tax is amended to clarify that it is applicable to any person who has been admitted as an attorney pro hoc vice by a Connecticut state court, but not by a federal court. Conn. Gen. Stat. §51-81b(a), as amended by Conn. Pub. Act No. 07-46, §1 (*effective October 1, 2007*). See DRS Information Publication 2007(17), *Attorney Occupational Tax and Client Security Fund Fee*.

Cigarette Taxes.

- Rate Increase and 2007 Floor Tax. The tax on cigarettes held for sale, and the tax on the use or storage of unstamped cigarettes, is each increased from 75.5 mills to 100 mills for each cigarette (or from \$1.51 to \$2.00 per pack of 20 cigarettes). Conn. Gen. Stat. §12-296, as amended by Conn. Pub. Act No. 07-1 (June Spec. Sess.), §124 (*effective July 1, 2007, and applicable to sales occurring on or after July 1, 2007*); Conn. Gen. Stat. §12-316, as amended by Conn. Pub. Act No. 07-1 (June Spec. Sess.), §125 (*effective July 1, 2007, and applicable to the storage or use of unstamped cigarettes occurring on or after July 1, 2007*). The budget act also imposes an excise (or floor) tax upon each licensed distributor and cigarette dealer in the amount of 24.5 mills per cigarette (or 49 cents per pack of 20 cigarettes) for each cigarette in inventory as of the close of business (but no later than at 11:59 p.m.) on June 30, 2007. By August 15, 2007, each licensed distributor and cigarette dealer must file a report disclosing the amount of cigarettes it held in inventory as of June 30, 2007, and pay the corresponding excise tax. Conn. Pub. Act No. 07-1 (June Spec. Sess.), §126 (*effective July 1, 2007*). See DRS Information Publication 2007(16), *Q & A on the Cigarette Tax Increase Effective July 1, 2007, for Licensed Cigarette Dealers*.
- Sales to Minors. The civil penalties that can be assessed in the case of the sale of cigarettes or tobacco products to a minor (other than a minor who is delivering or accepting delivery in his or her capacity as an employee) are increased as follows: (i) the civil penalty that can be imposed against a minor is increased from \$50 to \$100 for a first violation, and from \$100 to \$150 for any second or subsequent violation; (ii) the civil penalty that can be imposed against any person

employed by a dealer or distributor is increased from \$100 to \$200 for a first violation, and from \$100 to \$250 for a second or subsequent violation within 18 months; (iii) the civil penalty that can be imposed against a dealer or distributor is increased from \$250 to \$300 for a first violation, from \$500 to \$750 for a second violation within 18 months, and from \$500 to \$750 for a third violation within 18 months (plus a license suspension of not less than 30 days); and (iv) the civil penalty that can be imposed against an owner of an establishment in which a cigarette vending machine is located is increased from \$250 to \$500 for a first violation, \$500 to \$750 for a second violation within 18 months, and \$500 to \$750 for a third violation within 18 months (plus removal of the machine for a period of one year). If a licensed cigarette distributor or dealer fails to post a proper notice regarding the prohibition against the sale of cigarettes or tobacco products to minors, the Commissioner of Consumer Protection is authorized to investigate such violation, and may make a complaint to the applicable prosecuting authority or impose a fine of \$100 per violation. Conn. Gen. Stat. §§12-295a and 12-286a, as amended by Conn. Pub. Act No. 07-175, §§1, 2 (*effective October 1, 2007*).

- **Fire Safe Cigarettes.** Beginning July 1, 2008, cigarettes sold or offered for sale to consumers in Connecticut must meet minimum fire-safe standards (i.e., be self-extinguishing), and: (i) the Commissioner of Revenue Services may suspend or revoke a cigarette manufacturer license if the holder fails to comply with the testing, certification and marking requirements set forth under the new standards; (ii) a licensed manufacturer must place on each individual package of cigarettes the letters "FSC" (Fire Standards Compliant); and (iii) a distributor or dealer cannot affix stamps to a package of cigarettes if it (A) is of a brand family or of a tobacco product manufacturer not included in the Commissioner of Revenue Service's Connecticut Tobacco Directory or (B) is of cigarettes not included in the State Fire Marshal's Connecticut Fire Safe Cigarette Directory. Conn. Gen. Stat. §§12-302(b) and 12-303(b), as amended and supplemented by Conn. Pub. Act No. 07-180, §§1-8 (*effective July 1, 2008*).
- **Sales Below Cost.** A cigarette dealer or distributor is prohibited from selling or buying cigarettes below cost with the intent to injure competitors or to destroy or substantially lessen

competition, and is subject to a license suspension or revocation and a fine for a violation of this prohibition (i.e., \$1,000 for the first offense, not more than \$5,000 for the second offense, and not more than \$10,000 for each subsequent offense). As of January 1, 2008, the sanctions that can be imposed upon a cigarette distributor for a violation are amended to: (i) impose an additional fine of \$1,000 for each carton of cigarettes sold or bought in violation of the statute; and (ii) make a violation "an unfair and deceptive act or practice" under the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§42-110a, et seq. Conn. Gen. Stat. §§12-326b, 12-326g and 12-295(c), as amended by Conn. Pub. Act No. 07-5 (June Spec. Sess.), §§22-24 (*effective January 1, 2008*).

Admissions Tax. A new exemption from the admissions tax is enacted covering any event at the Connecticut Convention Center. Conn. Gen. Stat. §12-541(a), as amended by Conn. Pub. Act No. 07-1 (June Spec. Sess.), §127 (*effective July 1, 2007*). (A separate special exemption was enacted for admission charges made at the Connecticut Convention Center on June 9 or June 10, 2007. Conn. Pub. Act No. 07-250, §10 (*effective June 14, 2007*).)

Motor Vehicle Fuels Tax.

- **Rate Increase.** The motor vehicle fuels tax on diesel fuel is increased from 26 cents per gallon to 37 cents per gallon for the twelve months commencing July 1, 2007. For each twelve-month period thereafter, the Commissioner is to establish the diesel fuel tax rate based upon a new formula equal to: (i) 26 cents; plus (ii)(A) the average wholesale diesel fuel price for the previous 12 months multiplied by (B) the petroleum products gross earnings tax rate in effect. No floor tax is being imposed on the inventory of diesel fuel as of the close of business on June 30, 2007. In addition, the amount of the motor vehicle tax refund for which a non-farmer is eligible if the fuel is used other than for a licensed motor vehicle is reduced from the full amount of the tax paid to 26 cents per gallon. Conn. Gen. Stat. §§12-458(a)(2) and 12-459(a)(1), as amended by Conn. Pub. Act No. 07-199, §1, and further amended and supplemented by Conn. Pub. Act No. 07-1 (June Spec. Sess.), §§135-136 (*effective July 1, 2007*).
- **Waste Hauling.** The refund statute is amended to provide for a refund to a company when fuel has been used and consumed exclusively for

hauling waste for the Mid-Connecticut Project of the Connecticut Resources Recovery Authority. Conn. Gen. Stat. §12-459(a), as amended by Conn. Pub. Act No. 07-250, §15 (effective July 1, 2007, and applicable to claims for refund filed on or after that date).

Petroleum Products Gross Earnings Tax. A new exemption from the tax is enacted for any first sale of diesel fuel occurring on or after July 1, 2007, except for diesel fuel used in an electric generating facility to generate electricity. Conn. Gen. Stat. §12-587(b)(2), as amended by Conn. Pub. Act No. 07-199, §2, as further amended by Conn. Pub. Act No. 07-1 (June Spec. Sess.), §137 (effective July 1, 2007).

See DRS Special Notice 2007(5), *2005 and 2007 Legislative Changes Affecting the Motor Vehicle Fuels Tax and the Petroleum Products Gross Earnings Tax Effective July 1, 2007*

Machinery Rental Surcharge. The provision governing the 1.5% surcharge on machinery rented within Connecticut by a rental company to a lessee for a period of less than 31 days is amended to provide that the 31-day period commences on the date any such machinery is rented to the lessee, and terminates on the date such machinery is returned to the rental company. Conn. Gen. Stat. §12-692(c), as amended by Conn. Pub. Act No. 07-254, §4 (effective July 1, 2007). See DRS Special Notice 2007(8), *2007 Legislative Changes Affecting Sales and Use Taxes, Machinery Rental Surcharge, and Admissions Tax*; DRS Policy Statement 2007(3), *Rental Surcharge Daily Rental of Machinery*.

CATV/Satellite TV Gross Earnings Tax.

- **Certified Competitive Video Service.** The 5% tax on the gross earnings of an operator of a CATV system or a direct broadcast satellite company is extended to the gross earnings of a provider of a certified competitive video service (e.g., Internet protocol TV). The tax is to be computed and reported on new Form 211 CCV, *Certified Competitive Video Service Companies Gross Earnings Tax Return*. Conn. Gen. Stat. §§12-256 and 12-258, as amended by Conn. Pub. Act No. 07-253, §§26-27 (effective July 1, 2007), and by Conn. Pub. Act No. 07-5 (June Spec. Sess.), §7 and 10 (effective October 6, 2007).
- **New PEG Account Tax.** A new “public, educational and governmental programming and education technology investment account” (“PEG Account”) is created, the funds of which will be used by the Department of Public Utility Control to give grants to: (i) CATV and video advisory councils and public, educational and

governmental programmers and operators; and (ii) boards of education and other education entities. The PEG Account is to be funded by a new tax on the gross earnings from the rendering of a CATV, satellite TV or certified competitive video service, effective for services rendered on or after October 1, 2007. The tax rate is 0.5% for the first two years, and 0.25% thereafter. The additional gross earnings tax is to be computed and reported on new Form 211 CSV, *Cable, Satellite, and Video Gross Earnings Tax Return*, and paid on a quarterly basis. The interest and penalty provisions of the CATV/Satellite TV gross earnings tax have been made applicable to the additional gross earnings tax. Conn. Pub. Act No. 07-253, §33 (effective July 1, 2007), as amended by Conn. Pub. Act No. 07-5 (June Spec. Sess.), §9 (effective October 6, 2007).

See DRS Special Notice 2007(9), *2007 Legislation Affecting the Gross Earnings Tax on Community Action Television System Companies*.

II. Administrative Pronouncements

Ruling 2007-1. Community Antenna Television Systems Companies Tax/Satellite Companies.

- **Facts.** The company arranges for the purchase of television programming on behalf of hotels throughout the United States. The satellite television (“SATV”) provider delivers the programming via its own satellites to the hotels. The company is paid a commission by the SATV provider based on the receipts it receives from hotels for the programming provided.
- **Issue.** Whether the company is subject to the gross earnings tax imposed by Conn. Gen. Stat. §12-256 on each person operating a business that provides one-way transmission to subscribers of video programming by satellite.
- **Ruling.** The SATV provider is subject to the gross earnings tax because it is the party which is transmitting both its own programming and programming from other providers. The company is not subject to the gross earnings tax because it is not transmitting the programming.

Ruling 2007-2. Corporation Business Tax/Qualified Settlement Funds.

- **Facts.** The SEC brought an enforcement action in U.S. District Court against several individuals, claiming violations of federal security laws. As a

result of the enforcement action, the defendants were ordered to pay money in disgorgement, prejudgment interest and civil penalties. The money was deposited into a “qualified settlement fund” (“Fund”), that had a court-appointed tax administrator to provide the necessary tax services for the Fund. The federal regulations governing qualified settlement funds tax such funds at the rate for trusts and estates but rely on the corporate tax provisions for administrative and procedural matters.

- **Issue.** Whether a qualified settlement fund, such as the Fund, is subject to the Connecticut corporation business tax.
- **Ruling.** Although a qualified settlement fund is treated as a corporation for federal tax administration and procedure, it is not subject to the corporation business tax because it does not meet the definition of an “association” under Conn. Agencies Regs. §12-213-1(e) or under the check-the-box regulations.

Attorney General Opinion 2007-014. PEG Account Tax.

In an opinion dated August 31, 2007, the Connecticut Attorney General concluded that the new PEG Account tax, enacted as section 33 of Conn. Pub. Act No. 07-253, is not preempted by federal law (i.e., the Cable Communications Policy Act of 1984, 47 U.S.C. §542).

Policy Statement 2007(3). Rental Surcharge Daily Rental of Machinery.

This Policy Statement describes the imposition of the rental surcharge on the daily rental of pieces of machinery leased by rental companies and incorporates new legislation that defines the word “period” for purposes of the rental surcharge imposed on daily rentals of pieces of machinery. A 1.5% rental surcharge is imposed on the total amount a rental company charges a lessee for the rental of a piece of machinery in Connecticut for a period of 30 consecutive calendar days or less. The period for the term of a machinery rental begins on the date a piece of machinery is rented to a lessee and terminates on the date the piece of machinery is returned to the rental company. Therefore, if a rental of a piece of machinery is renewed before the machinery is returned to the rental company, the term of the renewal is added to the term of the initial rental to determine the rental period. The rental surcharge is part of the rental cost and subject to the 6% sales tax. On or before February 15 annually, each rental company must file Form OP-383, *Rental Surcharge Annual Report*, with the Department of Revenue Services to report the total rental surcharge the company actually collected during the preceding calendar year.

ADMINISTRATIVE PRONOUNCEMENTS

Announcements

AN 2007(1), Information for Married Individuals or Civil Union Partners Who Are Both Employed and File a Joint Connecticut Income Tax Return

AN 2007(2), Identification of Recent Amendments to the International Fuel Tax Agreement Approved by the Department of Revenue Services

AN 2007(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2007(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2007(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2007(3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2007(4), Annual Revision of Forms TPM-1, TPM-2 and TPM-3

AN 2007(5), Obtaining Connecticut Publications in Booklet Form

AN 2007(6), Taxability of Social Security Benefits for Connecticut Income Tax Purposes

Informational Publications

IP 2007(1), Connecticut Circular CT Employer's Tax Guide

IP 2007(2.3), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2007(3.3), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2007(4.3), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2007(5.3), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2007(6.3), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2007(7), Is My Connecticut Withholding Correct?

IP 2007(8), Paying Connecticut Taxes by Electronic Funds Transfer

IP 2007 (9), Federal/State Electronic Filing Handbook

IP 2007(10), Sales and Use Tax Exemptions for Prescription and Nonprescription Drugs and Medicines and Health-Related Products

IP 2007(12), State of Connecticut International Fuel Tax Agreement (IFTA) Manual

IP 2007(13), Fisherman's Guide to Sales and Use Taxes and Estimated Income Tax

IP 2007(14), International Fuel Tax Agreement Information

IP 2007(15), Q & A on the Cigarette Tax Increase Effective July 1, 2007, for Licensed Cigarette Distributors

IP 2007(16), Q & A on the Cigarette Tax Increase Effective July 1, 2007, for Licensed Cigarette Dealers

IP 2007(17), Attorney Occupational Tax and Client Security Fund Fee

IP 2007(18), Guide to Calculating Annualized Estimated Corporation Business Tax Installments and Worksheet CT-1120AE

IP 2007(19), Forms 1098, 1099-MISC, 1099-R, 1099-S, and W-2G - Electronic Filing Requirements for Tax Year 2007

IP 2007(20), Form W-2 Electronic Filing Requirements for Tax Year 2007

IP 2007(21), Q&A: Income Tax Credit for Property Taxes Paid to a Connecticut Political Subdivision

IP 2007(22), Connecticut Income Tax Information for Armed Forces Personnel and Veterans

IP 2007(23), Disaggregated Sales Tax Report

IP 2007(24), Connecticut Tax Tips for Senior Citizens

IP 2007(25), Personal Taxes

IP 2007(26), Business Taxes

IP 2007(27), Q & A on the Connecticut Individual Use Tax

IP 2007(30), Sales and Use Tax Exemptions for Purchases or Leases of Fuel-Efficient Passenger Motor Vehicles

PS 2007(2), Your Rights as a Connecticut Taxpayer

PS 2007(3), Rental Surcharge Daily Rental of Machinery

PS 2007(4), Connecticut Tax Treatment of Eligible Productions Companies, Payroll Services Companies, and Loan-Out Companies

PS 2007(5), Sales Tax Treatment of Coupons, Scan Cards, Cash Equivalents, Promotional Items, and Rebates

PS 2007(6), Sales and Use Tax Exemptions for Diplomatic Personnel

PS 2007(7), Taxation of Services by Employment Agencies and Agencies Providing Personnel Services

Special Notices

SN 2007(1), Sales and Use Taxes on Health and Athletic Club Services

SN 2007(2.1), 2007 Legislation Granting a Connecticut Sales and Use Tax Exemption for Sales of Energy Star Rated Household Appliances

SN 2007(3), 2007 Legislation Granting a Connecticut Sales and Use Tax Exemption for Sales of Compact Fluorescent Light Bulbs

SN 2007(4), 2007 Legislation Affecting the Sales Tax on Home Weatherization Products

SN 2007(5), 2005 and 2007 Legislative Changes Affecting the Motor Vehicle Fuels Tax and the Petroleum Products Gross Earnings Tax Effective July 1, 2007

SN 2007(6), 2007 Legislative Change Affecting the Real Estate Conveyance Tax

SN 2007(7), 2007 Legislation Granting a Connecticut Sales and Use Tax Exemption for Sales of Solar Heating Systems, Solar Electricity Generating Systems, and Ice Storage Cooling Systems

SN 2007(8), 2007 Legislative Changes Affecting Sales and Use Taxes, Machinery Rental Surcharge, and Admission Tax

SN 2007(9), 2007 Legislative Changes Affecting the Gross Earnings Tax on Community Antenna Television System Companies

Policy Statements

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Settlement Funds

Ruling 2007-3, Sales and Use Taxes / Leasing /
Telecommunications Services



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**STATE AND LOCAL
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