

# Connecticut Tax Developments

December 2008

## 2008 LEGISLATIVE, REGULATORY AND CASE LAW REVIEW

We are pleased to publish our review of Connecticut tax developments in 2008, including summaries of tax legislation enacted by the Connecticut General Assembly during the 2008 regular and special June, August and November sessions, regulatory pronouncements published by the Connecticut Department of Revenue Services (“DRS”) and decisions rendered by Connecticut courts.

Although numerous versions of tax reform legislation were considered by the General Assembly, the deteriorating state budget situation led to a stalemate preventing the passage of all but a small group of tax-related bills. The recent turmoil in the world’s stock markets, and its impact on tax revenues in Connecticut, caused the Governor to call a special session of the General Assembly to enact extraordinary revenue measures such as a state tax amnesty program to be conducted during May and June in 2009, and an authorization for municipalities to conduct local property tax amnesty programs on or before December 31, 2009. Connecticut taxpayers are well-advised to monitor closely Connecticut’s budget situation, as economic pressures have resulted in the passage of business-unfriendly tax legislation in neighboring states, such as forced combined reporting. Suffice it to say, the 2009 budget-setting legislative session is likely to be very interesting.

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 that are nevertheless applicable to 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:

### IN SUMMARY:

**CORPORATION  
BUSINESS TAX**

**SALES AND USE TAX**

**PERSONAL INCOME TAX**

**PROPERTY TAX**

**AMNESTY AND  
MISCELLANEOUS TAXES  
AND ISSUES**

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## CORPORATION BUSINESS TAX

### I. Administrative Pronouncements

DRS Information Publication 2007(31), *Guide to Connecticut Business Tax Credits*. Published in July, 2008, the Guide provides an updated overview of each of the business tax credits available in Connecticut.

DRS Announcement 2008(7), *Stimulus Depreciation and Special Instructions for Stimulus Depreciation Claimed by Non-Calendar Year Filers of the 2007 Connecticut Corporation Business Tax Return*. The Announcement provides guidance with respect to the special 50% stimulus depreciation permitted under the Economic Stimulus Act of 2008 for certain qualified property acquired and placed in service during 2008 (and 2009 for certain transportation property and certain property with a long production period). Taxpayers will not be able to claim this stimulus depreciation for purposes of the Connecticut corporation business tax, and the Announcement provides guidance as to the modifications that a taxpayer must make when calculating its Connecticut tax liability and reporting the same on its corporation business tax return.

### II. Case Law Developments

Achillion Pharmaceuticals, Inc. v. Law, 2008 Conn. Super. LEXIS 939 (Feb. 7, 2008). The Tax Session of the Superior Court upheld the denial by the DRS of the taxpayer's application in 2004 for a tax credit exchange payment. The application related to the remaining two-thirds of the taxpayer's rolling research and development ("R&D") tax credit that was earned in, and carried forward from, the 2003 tax year. Conn. Gen. Stat. §12-217n generally provides for a rolling R&D tax credit against the corporation business tax for qualified taxpayers. Conn. Gen. Stat. §12-217ee permits certain small businesses to exchange their unused R&D credits for a discounted amount if the taxpayer has no tax liability in a given year to offset such credits. In each of 2001, 2002 and 2003, the taxpayer qualified for a rolling R&D tax credit. Because it had no tax liability in each of those years, the taxpayer

applied for and received each year an exchange payment relating to one-third of the tax credit for that year (the maximum percentage permitted under section 12-217ee). The unused two-thirds of the credit for each year was carried forward such that by 2004, the taxpayer had a remaining total rolling tax credit of \$750,301. Because it had no tax liability in 2004, the taxpayer applied for an exchange payment with respect to the remaining two-thirds of the R&D credit earned in 2003. In denying the taxpayer's appeal, the Court held that the taxpayer's request for an exchange payment in 2004 relating to the rolling R&D credit for the 2003 tax year was premature until the taxpayer uses up, via credit or exchange, the rolling R&D credits earned in the 2001 and 2002 tax years.

## SALES AND USE TAX

### I. Administrative Pronouncements

DRS Information Publication 2008(14), *Sales and Use Tax Exemptions for Purchases or Leases of Fuel-Efficient Passenger Motor Vehicles*. Guidance is provided on the sales and use tax exemptions for hybrid passenger cars and other passenger cars with highway mileage ratings of at least 40 miles per gallon, including a list of currently-eligible models.

DRS Announcement 2008(6), *Sales and Use Tax on Purchases Made Using Digital Converter Box Coupons*. This publication provides that the use by a taxpayer of a TV Converter Box Coupon from the federal TV Converter Box Coupon Program to purchase a digital converter box will reduce the gross receipts subject to Connecticut sales and use tax.

DRS Ruling 2008-1. The DRS ruled that the sale of electricity to provide wireless telecommunications services is not exempt from the sales and use tax under Conn. Gen. Stat. §12-412(3)(A) as such services do not involve the fabrication of a finished product or an industrial manufacturing plant.

## II. Case Law Developments

HVT, Inc. v. Law, 2008 Conn. Super. LEXIS 1378, 45 Conn. L. Rptr. No. 19 at 705 (May 27, 2008). The Tax Session of the Superior Court held that motor vehicle registration renewal fees paid by a lessee of a vehicle on behalf of the lessor directly to the Department of Motor Vehicles constitute gross receipts subject to the Connecticut sales tax. In reaching its decision, the Court relied upon the language of the lease agreement which included registration fees in the gross capitalized cost of the lease. The Court did, however, abate the penalty assessed against the taxpayer on the grounds that the failure to pay the sales tax was not based upon negligence or intentional disregard for the tax laws, “but rather an interpretation of the law.”

Sikorsky Aircraft Corp. v. Law, 2008 Conn. Super. LEXIS 2081 (August 14, 2008). The Tax Session of the Superior Court held that purchases of materials, tools, fuel, machinery and equipment in connection with a research and development process integrated into the manufacture of helicopters, parts and components are exempt from the Connecticut sales and use tax pursuant to Conn. Gen. Stat. §12-412(78). The Court rejected the Commissioner’s contention that those purchases, if allocated to a research and development account, are per se not “manufacturing”. Rather, the law requires the Court to look to the substance of the integrated manufacturing production process and acknowledge that the research and development work performed is part of the manufacturing process and not an independent activity.

## PERSONAL INCOME TAX

### I. Legislative Developments

Joint Enforcement Commission on Employee Misclassification. A joint enforcement commission on employee misclassification is established, consisting of the Labor Commissioner, the Commissioner of Revenue

Services, the chairperson of the Workers’ Compensation Commission, the Attorney General and the Chief State’s Attorney (or the designees of any of the foregoing). The commission is to meet not less than four times each year to review the problem of employee misclassification by employers, and is to submit to the Governor and the General Assembly an annual report on their actions and any recommendations for administrative or legislative action. Conn. Pub. Act No. 08-105, §9 (*effective July 1, 2008*).

Automatic Enrollment Plan Contributions. Effective October 1, 2008, the requirement that an employer obtain an employee’s written authorization prior to withholding or diverting any portion of the employee’s wages is waived for deductions from wage payments that are for contributions attributable to automatic enrollment in a retirement plan established by an employer and described in section 401(k), 403(b), 408, 408A or 457 of the Internal Revenue Code. Conn. Gen. Stat. §31-71e, as amended and supplemented by Conn. Pub. Act No. 08-118, §§1-2 (*effective October 1, 2008*).

HOPE Savings Accounts. The Homecare Option Program for the Elderly (“HOPE”) allows participants to establish individual savings accounts within a state-administered trust fund to be used for qualified home care expenses. The statute providing for an exclusion from Connecticut adjusted gross income for interest income earned on a HOPE account is amended to also include dividends and capital gains earned on contributions to these accounts. Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 08-140 (*effective July 1, 2008, and applicable to taxable years commencing on or after January 1, 2008*).

Economic Stimulus Tax Refunds. To the extent permitted by federal law, no tax refund issued pursuant to the Economic Stimulus Act of 2008 to an individual who is an applicant for, or recipient of, benefits or services under any program based on need that is operated by the Department of Social Services shall be counted as income or resources for the month of receipt or the following

two months for purposes of determining the individual's eligibility for, or the amount of, such benefits or services. Conn. Pub. Act No. 08-68, §2 (*effective May 27, 2008*).

Furnace Rebate Program. Under a current program, the Office of Policy and Management pays a rebate of up to \$500 to an individual who meets certain income qualifications and who replaces his or her residential furnace or boiler with an energy efficient model. The governing statute is amended to provide that a rebate received pursuant to the program (i) is not to be considered taxable income for purposes of the Connecticut personal income tax and (ii) is to be excluded from any calculation of income for purposes of determining the eligibility for, or the benefit level of, any individual under any state or local program financed in whole or in part with state funds. Conn. Gen. Stat. §16a-46e(d), as added by Conn. Pub. Act No. 08-1 (Aug. Spec. Sess.), §4 (*effective August 26, 2008*).

## II. Administrative Pronouncements

DRS Announcement 2008(1), *Information for Married Individuals or Civil Union Partners Who Are Both Employed and File a Joint Connecticut Income Tax Return.*

Same Sex Marriages. In light of the Connecticut Supreme Court's holding in Kerrigan v. Commissioner of Public Health, 289 Conn. 135 (2008), that same sex couples have the right to marry under the Connecticut Constitution, the Connecticut Attorney General has opined that same sex couples who marry have the identical Connecticut tax legal rights as do civil union couples. Civil union couples are afforded the same legal rights as married couples under state tax statutes pursuant to Conn. Gen. Stat. §46b-38pp. Attorney General Opinion 2008-018 (October 28, 2008).

DRS Policy Statement 2008(1), *Income Tax Withholding for Athletes or Entertainers.*

Treasury Offset Program. The DRS published on its website a series of frequently asked questions about the Treasury Offset Program, a federal debt collection program

administered by the United States Department of Treasury. Under the Program, after sending to a taxpayer a Notice of Intent to Offset, the State can apply for an offset against the taxpayer's federal tax refund to pay all or a portion of a state income tax debt.

DRS Information Publication 2008(20), *Estimated Connecticut Income Taxes.*

DRS Information Publication 2008(27), *A Guide to Calculating Your Annualized Estimated Income Tax Installments and Worksheet CT-1040 AES.*

DRS Information Publication 2008(21), *Q&A: Income Tax Credit for Property Taxes Paid to a Connecticut Political Subdivision.*

DRS Information Publication 2008(22), *Connecticut Income Tax Information for Armed Forces Personnel and Veterans.*

## PROPERTY TAX

### I. Legislative Developments

Municipal Amnesty Authorization. The General Assembly has authorized each municipality to conduct a one-time amnesty program for a period of no more than 90 days on or before December 31, 2009. An amnesty program, which must be by ordinance adopted by the municipality's legislative body, may (i) apply to any unpaid or partially paid taxes, fees, assessments, fines and other payments, including those for special districts or violations of an ordinance, and (ii) provide for full or partial forgiveness of interest, penalties, fines, costs, or other fees due on such paid or partially paid amounts. Conn. Pub. Act No. 08-2 (Nov. 24 Spec. Sess.), §5 (*effective November 25, 2008*).

Annual Adjustment Authority. In a potentially dramatic change to the way Connecticut's property tax historically has been administered, the General Assembly has authorized each municipality, upon approval of its

legislative body, to require the assessor to adjust annually the market value of real estate in years other than those in which a municipal-wide revaluation occurs. The annual adjustment is to reflect the average annual adjustment in the value of each category of property within the municipality, but the adjustment may be made by specific geographic areas of the municipality. The adjustment is to be derived from a compilation of all fair market sales within the municipality during the twelve-month period for the assessment date (or other data if the sales information is insufficient to derive an accurate average annual adjustment). An annual adjustment cannot exceed five percent for any assessment year, and the municipality must continue the annual adjustment procedure until the next succeeding revaluation. Conn. Pub. Act No. 08-185, §12 (*effective October 1, 2008*).

Preserving Open Space Land. Prior law provided for an exemption from the property tax for real and personal property owned by or held in trust for a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes when such property is used exclusively for carrying out one or more of such purposes. New legislation amends the law also to exempt real property owned by such a corporation if it is held for the purpose of preserving open space land (i.e., maintaining or enhancing a conservation of natural and scenic resources; protecting natural streams or water supplies; promoting soil, wetlands, beach or tidal marsh conservation; enhancing the public value of neighboring open space; enhancing public recreation opportunities; preserving historic sites; or promoting orderly urban or suburban development). The corporation must file a quadrennial statement with the assessor or the board of assessors to claim the exemption. Conn. Gen. Stat. §12-81(7), as amended by Conn. Pub. Act No. 08-174, §§8, 9 (*effective June 13, 2008, and applicable to assessment years commencing on or after October 1, 2007*). [Ed. note. Although the legislation states that it is not to affect the terms of any stipulated judgment, it effectively overrules the holding of the Court in Aspetuck Land Trust, Inc. v. Bridgeport, reviewed below, for similarly-situated taxpayers commencing with the October 1, 2007 assessment year.]

Property Declaration Filing Date. A taxpayer generally must file a declaration of personal property on or before the first day of November. The governing statute is amended to provide that any declaration received by the municipality that is in an envelope bearing a postmark showing a date within the allowed filing period shall not be deemed delinquent. Conn. Gen. Stat. §12-41, as amended by Conn. Pub. Act No. 08-130, §2 (*effective June 5, 2008, and applicable to annual declarations due on or after November 1, 2008*). [Ed. note. This legislation effectively overrules the holding in SBC Internet Services, Inc. v. Bridgeport, reviewed below.]

Telecommunications Property. The special state regime for the assessment and collection of property tax on tangible personal property used to render a telecommunications service is amended to: (i) mandate that the taxpayer file with the Office of Policy and Management (“OPM”) and the DRS a list of its tangible personal property on a town-by-town basis; (ii) require the taxpayer to submit to each municipality in which it owns tangible personal property a list of property located in, or allocated to, that municipality; and (iii) permit a municipality to examine an audit of a taxpayer’s list of tangible personal property conducted by OPM or the DRS. Conn. Gen. Stat. §12-80a, as amended by Conn. Pub. Act No. 08-130, §1 (*effective July 1, 2008*).

Adriaen’s Landing Private Development District. The Capital City Economic Development Authority (“CCEDA”) and OPM can jointly designate land on the Adriaen’s Landing site in Hartford as a “private development district”, and can negotiate an agreement with a private developer or an owner or lessee of any building or improvement in the district for payments in lieu of real property taxes (“PILOT payments”). The State, in turn, must make PILOT grants to the City of Hartford relating to the private development district. Conn. Gen. Stat. §§32-600, 32-602, 32-664(b) and 32-666, as amended by Conn. Pub. Act No. 08-185, §§5-9 (*effective June 12, 2008*).

Public Housing and Low and Moderate Income Tax Abatement Program. The statutes governing the public



housing PILOT program and the low and moderate income housing tax abatement are revised: (i) to eliminate the forty-year limit on the ability of the Commissioner of Economic and Community Development (the “Commissioner”) to reimburse towns for property tax exemptions granted to low- and moderate-income rental housing projects; and (ii) to permit the Commissioner to continue to reimburse a town for property tax exemptions granted to a housing authority of the municipality, the Connecticut Housing Authority or any subsidiary thereof and, now, a successor owner of such land (i.e., a private entity which acquires a redeveloped project with the Commissioner’s approval). Conn. Gen. Stat. §§8-216(a) and (b), as amended by Conn. Pub. Act No. 08-10, §1 (*effective July 1, 2008*).

PILOT Payments for Public Housing/Low-and Moderate-Income Housing Tax Abatement Program. A special act transfers nearly four million dollars from the Department of Social Services to the Department of Economic and Community Development (the “DECD”) to: (i) allow the DECD to enter into a contract with a municipality and its housing authority to make PILOT payments to the municipality on land and improvements owned or leased by the housing authority or the Connecticut Housing Finance Authority; and (ii) provide annual reimbursement for local tax abatement of up to \$450 per low- and moderate-income housing unit in certain private or non-profit developments. Conn. Special Act No. 08-1, §§1 4 (*effective April 4, 2008*).

Effective Date for Exemptions. The statutory provision which authorizes a municipality, by ordinance, to permit certain exemptions from property tax to take effect as of the date of the property’s acquisition (and to provide for the reimbursement of taxes attributable to periods after the acquisition) is expanded to include the property tax exemptions for (i) the property of veterans’ organizations and of the Grand Army of the Republic, (ii) property owned by, or held in trust for, a Connecticut Grand Army post, and (iii) property of the American National Red Cross. Conn. Gen. Stat. §12-81b, as amended by Conn. Pub. Act No. 08-185, §11 (*effective June 12, 2008, and applicable to*

*assessment years commencing on or after October 1, 2007*).

Motor Vehicle of Member of the Armed Forces. The exemption from the property tax for one motor vehicle belonging to, leased to or held in trust for any member of the United States armed forces if such motor vehicle is garaged outside the state is expanded to cover the motor vehicle whether it is garaged inside or outside the state. Conn. Gen. Stat. §12-81(53)(a), as amended by Conn. Pub. Act No. 08-121, §3 (*effective July 1, 2008*).

Antique, Rare or Special Interest Motor Vehicles. Under existing law, a motor vehicle has to be registered by the Department of Motor Vehicles (“DMV”) as an antique, rare or special interest motor vehicle to qualify for the \$500 cap on a property tax assessment. Effective October 1, 2008, the DMV registration requirement is eliminated. Section 14-1(a)(3) defines an “antique, rare or special interest motor vehicle” as any motor vehicle that is 20 years old or older which has been preserved because of historic interest and which is not altered or modified from the original manufacturer’s specifications. Conn. Gen. Stat. §12-71(b), as amended by Conn. Pub. Act No. 08-150, §56 (*effective October 1, 2008*).

## II. Case Law Developments

Griswold Airport, Inc. v. Madison, 289 Conn. 723 (2008). The Madison tax assessor removed the open space classification on 32 acres of the taxpayer’s land when a third party contracted to purchase the property and obtained the approval of the planning and zoning commission for a change in zoning regulations and a special exception and coastal site plan to build an active adult housing development on the property. The taxpayer appealed the assessment of the property as a condominium project asserting that the property was still used as an airport as of the Grand List date. The Supreme Court affirmed the Superior Court’s grant of the appeal, holding that: (i) Conn. Gen. Stat. §12-504(h) does not provide for the termination of an open space classification until there has been a change in use to a use other than

that described in the application for the classification or the land is sold; and (ii) the misclassification of the property resulted in an excessive valuation that may be appealed pursuant to Conn. Gen. Stat. §12-119.

Breezy Knoll Association, Inc. v. Morris, 286 Conn. 766 (2008). The Connecticut Supreme Court held that the Town of Morris improperly failed to lower the assessed value of three common areas owned by a neighborhood homeowners' association based upon the extensive encumbrances placed upon those common areas. Although the restrictions are solely to benefit the association's neighborhood resident members, there is no reasonable likelihood that the restrictions will be lifted to permit the sale of the common areas. The value of the common areas inures to the association's members and should be reflected in the assessments of their properties, rather than in the assessment of the encumbered, servient property.

Hotshoe Enterprises, LLC v. Hartford, 284 Conn. 833 (2008). The defendant, City of Hartford, appealed the judgment of the trial court sustaining the tax appeal brought by fourteen owners of condominium hangar units at Brainard Airport. The Court ruled that the hangers were exempt from property taxation as state-owned property. The hangar units in question were ownership units within a leasehold common interest community on land owned by the State of Connecticut. The City contended that the trial court improperly held that the units are exempt from local property tax under Conn. Gen. Stat. §12-64(c) (land belonging to or held in trust for the State at any state-owned airport) because each taxpayer owns a taxable property right by virtue of having received warranty deeds to their individual hangars. In this per curiam decision, the Supreme Court adopted the "trial court's well reasoned decision" and affirmed the grant of summary judgment for plaintiffs without further analysis.

Wysocki v. Ellington, 109 Conn. App. 287 (2008). The plaintiff had sought and obtained from the state forester a designation of forest land for four contiguous parcels

which together constituted approximately 34 acres. In January 2000, the plaintiff transferred one of the parcels, consisting of 13.63 acres, to a wholly-owned, single-member limited liability company after confirming with the local assessor that the transfer would not adversely affect the forest land designation of the four parcels. When the plaintiff, his limited liability company and the local assessor filed an amended application with the state forester, however, the state forester denied the application and cancelled the forest land designation for all four of the parcels on the basis that neither the plaintiff nor his limited liability company owned the minimum of 25 acres of forest land as required by statute. The assessor then assessed the properties at their highest and best use. The plaintiff and the limited liability company appealed the assessments, and the Ellington board of assessment appeals further increased the assessment on the limited liability company's lot of 13.63 acres on the basis that it was taxable as a building lot. After an appeal of the assessments to the Superior Court was denied, the Connecticut Appellate Court held that: (i) the record on appeal was inadequate to review the plaintiff's claim of equitable estoppel against the Town (but questioned in a footnote whether the claim would have prevailed given that the agent with authority was the state forester and not the town assessor); (ii) the assessment of the four parcels according to their highest and best use was appropriate given the state forester's cancellation of the forest land designation; and (iii) the Ellington board of assessment appeals had improperly increased the assessment on the parcel of 13.63 acres because it had not given the plaintiff the mandatory one-week notice prior to such increase as required by Conn. Gen. Stat. §12-111(a). According to the Court, the hearing on the plaintiff's appeal was insufficient; if the board desired to increase the assessment as a result of the hearing, it still needed to give the plaintiff notice, at least one week before making such increase, and an opportunity to appear before the board to show cause why such an increase should not be made.

Sakon v. Glastonbury, 111 Conn. App. 242 (2008). The Connecticut Appellate Court affirmed the denial of the

taxpayer's appeal from assessments on three separate but contiguous parcels, holding that the trial court had properly relied on the doctrine of assemblage in its determination of what constituted the highest and best use for the three parcels and their integrated use.

Pilot's Point Marina, Inc. v. Westbrook, 2008 Conn. Super. LEXIS 2736 (November 6, 2008). The Superior Court upheld an appeal of an assessment of the largest marina in New England, applying the income approach to determine the property's fair market value as of October 1, 2006. The Court rejected the use of both competitive marina rates or the taxpayer's actual 2007 income, relying instead on the taxpayer's 2006 income to obtain an indication of present value.

Tryson v. Waterbury, 2008 Conn. Super LEXIS 2727 (October 28, 2008). The Superior Court denied a motion for contempt and sanctions filed against the City of Waterbury based upon a successful tax appeal brought by the taxpayer on the grounds that (i) the City had filed certificates of change reflecting the decision (and did not have to amend the property card) and (ii) the taxpayer is not entitled to a refund based upon his successful appeal until he files an application with the collector of taxes pursuant to Conn. Gen. Stat. §12-129.

Bridgeport v. List of 41 Parcels, 2008 Conn. Super LEXIS 2701 (October 24, 2008). The Superior Court granted the taxpayers' motion to open a tax lien foreclosure proceeding, after judgment had been entered for the City and the City had sold the subject property to a third party, when it was established that the City had not mailed notice of the proceeding to the correct address of the taxpayers. The Court opened the proceeding, found that it did not have personal jurisdiction of the taxpayers due to inadequate notice and dismissed the matter.

Aspetuck Land Trust, Inc. v. Bridgeport, 2008 Conn. Super LEXIS 460 (March 3, 2008). The Superior Court upheld the City of Bridgeport's contention that land held by a non-profit land trust for conservation purposes is not entitled

to the municipal property tax exemption for property held by a charitable corporation for charitable purposes. Conn. Gen. Stat. §12-81(7) exempts from municipal property taxation the real property of a charitable organization that is used exclusively for charitable purposes. The taxpayer is a non-profit corporation that purchased one-half of an island in 2005 in order to provide passive recreation and to protect natural habitats. Even though land preservation is a recognized charitable activity, the Court held that it must be coupled with some minimal educational or other charitable activity, which the taxpayer had not established. During the year in question, the taxpayer had not issued any publicity about the property, had not featured it on its web site and had not hosted any school groups. The taxpayer's only activity in nearly one year of ownership was a "bird walk," which the Court held was insufficient to meet the taxpayer's burden of proving that it was entitled to a charitable exemption for the premises in question. [Ed. note. The holding of this decision was effectively overruled by Connecticut Public Act No. 08-174, as summarized above.]

SBC Internet Services, Inc. v. Bridgeport, 2008 Conn. Super. LEXIS 367 (February 15, 2008). The taxpayers challenged the assessment against them of a 25% penalty, which may be imposed by a municipality under Conn. Gen. Stat. §12-41(d) if a person fails to "file" a declaration of personal property before November 1st. The parties stipulated that the declarations were mailed and postmarked on October 31st, but were not delivered until November 3rd. The Bridgeport tax assessor asserted that the declarations were not timely "filed" because they were not physically present in his office on November 1st. The Court entered summary judgment in favor of the City concluding that the ordinary meaning of "file" is to be delivered, and that the use of the phrase "filed or *postmarked*" in another statute within the same statutory scheme suggested that the omission of the term "postmarked" was intentional. The Court ruled that the Bridgeport assessor could require strict compliance with the language of section 12-41(d) even though other local assessors chose not to do the same. [Ed. note.



The holding in this case was effectively overruled by Connecticut Public Act No. 08-130, reviewed above, which validates declarations mailed with a postmark within the filing period. Note, however, as discussed in the next case summary below, the postmark rule does not apply to an appeal to a Board of Assessment Appeals.]

Connecticut Post Limited Partnership v. Milford, 2008 Conn. Super. LEXIS 579 (February 27, 2008). In connection with a motion to dismiss, the Superior Court was asked to consider whether a taxpayer timely filed a property tax appeal to the City's Board of Assessment Appeals by mailing the appeal on March 20th (i.e., the due date for a timely filing) when the appeal was not received by the Board until March 22nd. The Court ruled that the requirement that the appeal be filed by a certain date requires that the appeal to be *in the office* of the Board of Assessment Appeals (and not simply put in the mail) by the due date. The Court noted that, where the right of appeal is established by statute, the statute is deemed mandatory and the appealing party must strictly comply with the terms thereof. In view of the above, the Court found that the taxpayer had not exhausted its administrative remedies, and its appeal was dismissed.

Lawrence & Memorial Hospital v. New London, 2008 Conn. Super. LEXIS 72 (January 14, 2008). The taxpayer filed a complaint in which it challenged the use by the City of New London of increased property values during the 2004 through 2006 assessment years due to a reassessment that occurred in 2004. The taxpayer alleged that it did not receive proper notice of the 2004 reassessment until 2006. The City filed a motion to dismiss on the grounds that: (i) the Court lacked subject matter jurisdiction because the plaintiff failed to exhaust its administrative remedies; and (ii) the taxpayer's appeal was time barred. The Superior Court denied the motion to dismiss because due process requires that an aggrieved party who receives no notice of an action within the time period to bring an appeal be allowed to challenge the action after receiving notice. Furthermore, the one-year statute of limitations to challenge an assessment under Conn. Gen. Stat. §12-119 presupposes that valid notice

was given before the appeal period ended. If the taxpayer did not receive proper notice, it would be unlawful for the City to tax its property based on the higher assessment.

Hartford/Windsor Healthcare Properties, LLC v. Hartford, 2008 Conn. Super. LEXIS 783 (April 2, 2008). Two owners of nursing homes located in Hartford challenged the property classification and valuation of their respective properties. The City assessor classified the properties as commercial property, making them ineligible for the lower assessment rates available to "residential property" or "apartment property" pursuant to the City's residential relief program implemented pursuant to Conn. Gen. Stat. §12-62n. The Court upheld the assessor's classification, concluding that "nursing homes" are qualitatively different than "apartments" in their regulation and in the services provided to residents. Moreover, because provisions granting a tax exemption are to be strictly construed against the party claiming the exemption, the Court could not supply additional statutory language where the General Assembly could have included nursing homes within the meaning of residential or apartment property.

Healthsouth Corporation v. Waterbury, 2008 Conn. Super. LEXIS 625 (March 13, 2008). The taxpayer filed tax appeals seeking a writ of mandamus under Conn. Gen. Stat. § 52-485 against the defendants, five municipalities and their assessors, due to a refusal to issue certificates of correction removing personal property from the respective grand lists of the defendant municipalities pursuant to Conn. Gen. Stat. §12-57 because the property did not exist. Taxpayer sought to remove the non-existent property after it was revealed that it had perpetrated a massive accounting fraud involving the overstatement of assets. The Court held that the knowing inclusion of non-existent property in its declaration of assets was not an erroneous act under section 12-57. Furthermore, the issuance of a writ of mandamus was inappropriate where (i) the refusal to revisit the assessment was discretionary in nature, (ii) the plaintiff had not exhausted all rights of appeal, and (iii) the taxpayer did not come into court with "clean hands."

Snake Meadows Club, Inc. v. Killingly, 2008 Conn. Super. LEXIS 1849 (July 24, 2008). The plaintiff fish and game club appealed a property tax assessment on the grounds that it included a telephone cell tower on the site. The plaintiff argued that the lease between the plaintiff and AT&T Wireless provided that the cell tower and any attachments on the premises were to remain the personal property of AT&T Wireless and were not to be considered a fixture attached to the land. The Superior Court disagreed and dismissed the appeal, holding that an assessor's actions are dictated by Conn. Gen. Stat. §12-64, and not an agreement between private parties, and that the cell tower should not be treated as personal property.

Rand-Whitney Realty, LLC v. Montville, 2008 Conn. Super. LEXIS 1948 (August 1, 2008). This appeal of a property tax assessment involves land and facilities used in the manufacture of linerboard from recycled corrugated cardboard. Although principally a dispute regarding valuation, the Superior Court (i) rejected the plaintiff's contention that the property's highest and best use would be conversion to multitenant use with multiple tenants because there was a market for paper mills and, in order to be viable, a highest and best use determination must be based upon a reasonable probability that the subject property would be put to that use in the reasonably near future, and (ii) found that the paper mill building is a special purpose property that was best valued using a modified cost approach.

## AMNESTY AND MISCELLANEOUS

### I. Legislative Developments

State Tax Amnesty Program. The Commissioner of Revenue Services is authorized to establish a tax amnesty program to be conducted during the period from May 1, 2009 to June 25, 2009, for all taxpayers that owe Connecticut state taxes (other than motor carrier road taxes) for any taxable period that ends on or before November 30, 2008, for which the taxpayer (i) did not file a required tax return and the Commissioner did not file

one on the taxpayer's behalf, or (ii) filed a return that did not report the full amount of tax owed. (A taxpayer is not eligible for amnesty if the taxpayer received a notice from the DRS that the taxpayer is being audited for the period for which the taxpayer is seeking amnesty, or is a party to any criminal investigation or civil or criminal litigation pending on November 25, 2008, for failure to pay Connecticut taxes or for Connecticut state tax fraud.) If an application for amnesty is filed, and all taxes and interest due are paid, amnesty is to be granted, providing relief from civil penalties, criminal prosecution and, if the taxes are paid in full on or before June 25, 2009, a reduction in the interest rate from 1% per month to .75% per month. Conn. Gen. Stat. §12-35g (as amended by Conn. Pub. Act No. 08-1 (Nov. 24 Spec. Sess.)), §§8, 9 (*effective November 25, 2008*).

Real Estate Conveyance Tax. The "temporary" increase in the municipal real estate conveyance tax rate from eleven one-hundredths of one per cent (0.11%) of the consideration to one-fourth of one per cent (0.25%) of the consideration is extended for another two years through June 30, 2010. Conn. Gen. Stat. §12-494(a), as amended by Conn. Pub. Act No. 08-1 (June 11 Spec. Sess.), §1 (*effective June 16, 2008*).

Petroleum Products Gross Earnings Tax. The scheduled increase in the petroleum products gross earnings tax rate as of July 1, 2008, is eliminated, thereby delaying an increase in the tax rate until July 1, 2013, when it will be increased from the current seven per cent (7%) to eight and one-tenth per cent (8.1%). Conn. Gen. Stat. §§12-587(b)(i) and (c)(1), as amended by Conn. Pub. Act No. 08-2 (June 11 Spec. Sess.)), §§1-2 (*effective June 17, 2008*). In addition, the growth in the revenues from the tax over 2006 levels will fund a special fuel oil conservation account to be administered by the Fuel Oil Conservation Board. The account is to be used to support fuel oil conservation programs. Conn. Gen. Stat. §§16a-22l(e) as amended by Conn. Pub. Act No. 08-2 (June 11 Spec. Sess.)), §7 (*effective June 17, 2008*). *See* DRS Special Notice 2008(1.1), 2005 and 2007, and 2008 *Legislative Changes Affecting the Motor Vehicle Fuels*

*Tax and the Petroleum Products Gross Earnings Tax Effective July 1, 2008.*

Film Production Tax Credit. The provisions governing the film production tax credit are amended to grant to owners of credits received for qualifying expenditures incurred in 2006 similar rights already granted to those held by owners of credits attributable to 2007 and subsequent years, including the right to apply the credit against the insurance premium tax, and the right, on and after July 1, 2006, to transfer the credit up to three times. Conn. Gen. Stat. §12-217jj, as amended by Conn. Pub. Act No. 08-142, §1 (effective June 5, 2008).

Captive Insurance Companies. New legislation permits a captive insurance company to be licensed and domiciled in Connecticut to transact life insurance, annuity, health insurance and commercial risk insurance business. A special premium tax is due on a captive's direct-written premiums minus any premiums returned to policyholders (including dividends paid and deposits returned or credited). A premium tax also is due on a captive's assumed reinsurance premiums that are not subject to the direct-written premium tax. No tax is due on money received for an annuity. Conn. Pub. Act No. 08-127, §§14, 19 (effective January 1, 2009).

Professional Employer Organizations. New legislation defines and regulates professional employer organizations ("PEOs") transacting business in Connecticut. A PEO generally is an entity that enters into a co-employment relationship with a client under which all or a majority of the employees providing services to the client are covered employees. Among other matters, the legislation requires PEOs to register with the Connecticut Department of Labor, sets standards for an agreement with a PEO (including allocating responsibility for the reporting and payment of payroll-related and unemployment taxes), and provides that covered employees shall be considered employees of the client for purposes of the determination of tax credits and other incentives. The new legislation also limits the definition of a PEO to those persons whose principal business activity is entering into professional

employer arrangements. Conn. Pub. Act No. 08-105, §§1-8 (with various effective dates from June 2, 2008, through January 1, 2009).

Unauthorized Insurer Premium Tax. The withholding tax generally imposed on insureds who pay premiums for insurance with an insurer not authorized to transact insurance business in Connecticut is amended. The penalty for the failure to pay timely the tax is increased from the greater of ten per cent of the tax or \$50 to the greater of ten per cent of the tax or \$75. Conn. Gen. Stat. §38a-277(e), as amended by Conn. Pub. Act No. 08-178, §10 (effective October 1, 2008).

Insurance Reinvestment Act. The law currently provides a tax credit for an investment in a fund which, in turn, invests in an "insurance business." The definition of "insurance business" is narrowed to refer only to an insurance-related service business with a North American Industry Classification of 524113 through 524298 (e.g., insurance and reinsurance carriers, insurance agencies and brokerages, and other insurance-related activities, including claims adjusting, third-party administration, and advisory and rate-making services). Conn. Gen. Stat. §38a-88a(a), as amended by Conn. Pub. Act No. 08-82, §1 (effective October 1, 2008).

Unemployment Compensation Tax Payments.

Commencing with the first calendar quarter of 2009, each employer with 250 or more employees who makes unemployment compensation contributions, or payments in lieu of unemployment compensation contributions, will be required to make such payments electronically. Conn. Gen. Stat. §31-225a(j), as amended by Conn. Pub. Act No. 08 60, §1 (effective October 1, 2008).

## II. Administrative Pronouncements

Historic Preservation Tax Credit. The Connecticut Commission on Culture and Tourism published new regulations governing the tax credit available to a taxpayer which rehabilitates a listed historic commercial or industrial

structure for mixed residential and nonresidential use. Conn. Agencies Reg. §§10-416b-1 to 10-416b-12.

DRS Special Notice 2008(1.1), *2005 and 2007, and 2008 Legislative Changes Affecting the Motor Vehicle Fuels Tax and the Petroleum Products Gross Earnings Tax Effective July 1, 2008*. This publication discusses the 2008 amendment of the laws governing the petroleum products gross earnings tax, reviewed above, and the following additional changes attributable to prior year legislative enactments: (i) effective July 1, 2008, the motor vehicle fuels tax rate on the sale or use of diesel fuel increases from 37 cents to 43.4 cents per gallon (with no floor tax as of June 30, 2008); (ii) effective for sales made on or after July 1, 2008, sales of compressed natural gas, liquefied petroleum gas and liquefied natural gas are subject to the motor vehicle fuels tax (the exemption for such gases sunset on June 30, 2008; the tax rate on natural gas and propane is 26 cents per gallon); and (iii) effective for calendar quarters beginning on or after July 1, 2008, the petroleum products gross earnings tax is applicable to the gross earnings derived from the first sale within Connecticut of (A) propane gas to be used as a fuel for a motor vehicle and (B) petroleum products to be used as a fuel for a fuel cell.

Electronic Filing of Information Returns. Beginning in 2009, a taxpayer that files with the DRS twenty-five or more Forms W-2, Forms W-2G, Forms 1099-R or Forms 1099-MISC must transmit the information returns electronically using the DRS's Taxpayer Service Center. A taxpayer may seek a waiver if it can show hardship and it files timely a Form CT-8508, *Request for Waiver From Filing Informational Returns Electronically*. The DRS will no longer accept filings on magnetic media.

DRS Information Publication 2008(26), *Q&A on the Business Entity Tax*.

Business Entity Tax Delinquency Notices. The DRS has published on its website a set of frequently-asked questions ("FAQs") regarding delinquency notices sent

by the DRS to businesses which are registered for the Connecticut Business Entity Tax, but which failed to file a 2006 Form OP-424, *Business Entity Tax Return*. Any limited liability company, limited partnership, limited liability partnership and S corporation formed in Connecticut, or which is required to register with the Connecticut Secretary of State because it is transacting business in Connecticut, must annually file a Business Entity Tax Return and pay the \$250 Business Entity Tax. The FAQs provide that if a business files its 2006 Business Entity Tax Return and pays the total tax and interest charges due within sixty (60) days of the date on the delinquency notice, the DRS will grant a waiver of the penalty if requested by the business.

## ADMINISTRATIVE PRONOUNCEMENTS

### Announcements

AN 2008(1), Information for Married Individuals or Civil Union Partners Who Are Both Employed and File a Joint Connecticut Income Tax Return

AN 2008(2), Assessments Refunded by Connecticut Insurance Guaranty Association

AN 2008(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2008(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2008(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2008(3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2008(4), Annual Revision of Forms TPM-1, TPM-2, and TPM-3

AN 2008(6), Sales and Use Tax on Purchases Made Using Digital Converter Box Coupons

AN 2008(7), Stimulus Depreciation and Special Instructions for Stimulus Depreciation Claimed by Non-Calendar Year Filers of the 2007 Connecticut Corporation Business Tax Return

## Informational Publications

IP 2008(1), Connecticut Circular CT Employer's Tax Guide

IP 2008(2.3), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2008(3.3), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2008(4.3), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2008(5.3), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2008(6.3), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2008(7), Is My Connecticut Withholding Correct?

IP 2008(9), Connecticut Tax Guide for Payers of Nonpayroll Amounts

IP 2008(10), State of Connecticut IFTA Manual

IP 2008(11), Exemptions From Admissions Tax

IP 2008(12), The Connecticut Neighborhood Assistance Act Tax Credit Program

IP 2008(14.1), Sales and Use Tax Exemptions for Purchases or Leases of Fuel-Efficient Passenger Motor Vehicles

IP 2008 (15), Q&A on Estimated Corporation Business Tax and Worksheet CT-1120AE

IP 2008(16), Forms 1099-R, 1099-MISC and W-2G Electronic Filing Requirements for Tax Year 2008

IP 2008(17.1), Form W-2 Electronic Filing Requirements for Tax Year 2008

IP 2008(19), Farmer's Guide to Sales and Use Taxes, Motor Vehicle Fuels Tax, Estimated Income Tax and Withholding Tax

IP 2008(20), Estimated Connecticut Income Taxes

IP 2008(21), Q&A: Income Tax Credit for Property Taxes Paid to a Connecticut Political Subdivision

IP 2008(22), Connecticut Income Tax Information for Armed Forces Personnel and Veterans

IP 2008(23), Personal Taxes

IP 2008(24), Connecticut Tax Tips for Senior Citizens

IP 2008(25.1), Federal/State Electronic Filing Handbook

IP 2008(26), Q&A on the Business Entity Tax

IP 2008(27), A Guide to Calculating Your Annualized Estimated Income Tax Installments and Worksheet CT-1040 AES

IP 2008(29), Business Taxes



## Policy Statements

PS 2008(1), Income Tax Withholding for Athletes or Entertainers

PS 2008(2), Requests for the Issuance of a Ruling

PS 2008(3), Designated Private Delivery Services and Designated Types of Service

## Special Notices

SN 2008(1.1), 2005 and 2007, and 2008 Legislative Changes Affecting the Motor Vehicle Fuels Tax and the Petroleum Products Gross Earnings Tax Effective July 1, 2008

## Rulings

Ruling 2008 - 1, Sales and Use Taxes, Utility Exemption (Manufacturing)



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

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