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## in this issue

Corporation Business Tax	<b>P. 2</b>
Sales Tax	<b>P. 3</b>
Personal Income Tax	<b>P. 6</b>
Estate and Gift Tax	<b>P. 8</b>
Property Tax	<b>P. 9</b>
Miscellaneous	<b>P.15</b>
Administrative Pronouncements	<b>P.18</b>

## 2009 Legislative, Regulatory and Case Law Review

This year was marked by a contentious political and ideological battle regarding the appropriate response to record projected state budget deficits and a local economy suffering as a result of a global recession. Nine months of legislative wrangling resulted in a hodgepodge of legislation that includes a variety of tax increases and spending cuts, and a host of special, one-time budget balance “fixes,” including a transfer from the state’s rainy day fund, federal economic stimulus monies, state asset sales and special bond financing.

This newsletter summarizes the year’s most significant Connecticut tax law developments, including legislation, administrative pronouncements and case law. Most taxpayers will need to review promptly their current tax and estimated tax payment obligations, as recently-enacted legislation, **effective retroactively for income years commencing on or after January 1, 2009**, establishes a new 6.5% marginal tax rate for the personal income tax, imposes a 10% surcharge on the corporation business tax, increases the preference tax for combined returns, and eliminates the ability of Connecticut taxpayers to take advantage of certain federal income tax deductions and deferrals when calculating their Connecticut adjusted gross income. Further legislative or DRS guidance will be required to understand the full impact of certain tax legislation, such as the new economic nexus provisions for the corporate and personal income tax, which purport to extend Connecticut taxation to nonresident businesses and individuals who direct substantial economic activity towards Connecticut. Finally, as summarized in the section entitled “Miscellaneous Taxes,” the Connecticut Department of Revenue Services (“DRS”) is conducting two programs of significant interest to taxpayers: a tax settlement incentive program for any taxpayer with an outstanding, billed tax obligation; and an offshore voluntary disclosure program for any taxpayer who may have utilized a foreign account or entity to avoid Connecticut 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 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.

## CORPORATION BUSINESS TAX

### I. Legislative Developments

Corporation Business Tax Surcharge. A 10% surcharge is imposed for tax years commencing in 2009, 2010 and 2011 on the corporation business tax liability of a corporation, regardless of whether the tax is based upon the corporation's net income or capital base, unless either (i) the tax is equal to \$250 (i.e. the minimum tax) or (ii) the gross income of the corporation is less than \$100 million. The \$100 million gross income exemption from the surcharge is not available to a corporation that files a combined or unitary return. The surcharge is calculated based upon the tax liability of the corporation excluding any credits. Conn. Gen. Stat. §§12-214(b)(6) and 12-219(b)(6), as added by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §§94 and 102 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2009*).

Decoupling of Federal Qualified Domestic Production Activities Deduction. Effective for tax years commencing on or after January 1, 2009, corporations will be required, when determining their Connecticut taxable income, to disregard or otherwise add back any federal income tax deduction taken under Section 199 of the Internal Revenue Code for income from qualified domestic production activities (e.g., manufacturing, construction, engineering, energy production, computer software, films and videotape, etc.). Conn. Gen. Stat. §12-217(a)(1), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §95 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2009*).

Decoupling of Cancellation of Indebtedness Income Deferral. As part of the federal American Recovery and Reinvestment Act of 2009, Section 108 of the Internal Revenue Code was amended to afford a taxpayer the option of delaying recognition of cancellation of indebtedness income ("CODI") realized from qualifying re-acquisitions of its own debt instruments in 2009 and 2010. The deferral under federal tax law is until 2014, at which point the taxpayer must recognize the income for federal tax purposes in equal annual installments over the

succeeding five years. Corporate taxpayers will not be entitled to utilize the federal CODI deferral provision when calculating their Connecticut taxable income (but they will be permitted to deduct the deferred income when it is recognized for federal income tax purposes in later years). Conn. Gen. Stat. §12-217b, as amended by Conn. Pub. Act No. 09-2 (June 19 Spec. Sess.), §4 (*effective June 26, 2009, and applicable to taxable years ending after December 31, 2008*).

Corporation Combined Reporting Preference Tax. The maximum preference tax for groups of corporations filing combined corporation business tax returns is doubled from \$250,000 to \$500,000. Conn. Gen. Stat. §12-223f, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §103, and Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §39 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2009*).

2009 Estimated Tax Payments. Corporate taxpayers will be entitled to relief from penalties and interest due to the underpayment of estimated taxes, provided that sufficient estimated tax payments are made prior to January 1, 2010 to reflect their tax liability inclusive of the new surcharge and other tax law changes, and those payments satisfy the statutory minimum aggregate payment requirement (i.e. the lesser of (i) 90% of their liability for the current income year, after credits, or (ii) 100% of their liability for the previous year, without credits). Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §6 (*effective October 5, 2009*). [Ed. note. The DRS has published on its website guidance for calculating the next installment of estimated tax due on or after October 5, 2009.]

Economic Nexus. Effective for taxable years commencing on or after January 1, 2010, an out-of-state Subchapter C corporation shall be subject to income taxation in Connecticut if the out-of-state corporation directly, or indirectly as an owner of a limited liability company or a partnership, derives income from sources within Connecticut, or has a "substantial economic presence" within Connecticut, as evidenced by a "purposeful direction of business toward this state." The "purposeful

direction of business” is to be determined based upon the frequency, quantity and systematic nature of the contacts with Connecticut, without regard to physical presence.

Conn. Pub. Act No. 09-3 (June Spec. Sess.), §90 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2010*).

**Tax Credit for Donating Open Space.** The credit against the corporation business tax for donations or discounted sales of open space land or interests in land is amended to extend the period during which a credit earned on or after January 1, 2000 may be carried forward from 15 to 25 years. Conn. Gen. Stat. §12-217dd, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §96 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2009*).

**Green Buildings Tax Credit.** Commencing with income years beginning on or after January 1, 2012, the Office of Policy and Management (“OPM”) may establish a corporation business tax credit for taxpayers who construct or renovate buildings that meet certain energy and environmental standards, provided that the aggregate amount of all tax credits in initial credit vouchers issued by OPM must not exceed \$25 million. Eligible projects would be entitled to receive a base credit that increases with the project’s rating under the LEED Green Building Rating System or other system selected by the DEP, and other credits for mixed-use projects and those located in certain areas (e.g., brownfields, enterprise zones). To be eligible, the project would be required to: (i) have energy use of no more than (A) 70% of the energy use permitted by the State Building Code for new construction or (B) 80% of the energy use permitted by the State Energy Code for renovation or rehabilitation of a building; and (ii) use equipment and appliances that meet Energy Star standards, if applicable. In the case of a newly-constructed building, a certificate of occupancy cannot have been issued earlier than January 1, 2010. The legislation caps allowable costs (e.g., construction, commissioning, professional fees and site costs, but not purchase or remediation costs) at \$250 per square foot for new construction and \$150 per square foot for renovation or rehabilitation. OPM, in consultation with the DRS, is to promulgate regulations not later than January 1, 2011.

Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §7 (*effective October 5, 2009*).

## II. Administrative Developments

IP 2009(34), Q&A on *Estimated Corporation Business Tax and Worksheet CT-1120AE*

## III. Case Law Developments

**Achillion Pharmaceuticals, Inc. v. Law**, 291 Conn. 525 (2009). The Connecticut Supreme Court affirmed the Superior Court’s denial of the plaintiff’s request to exchange its corporate research and development tax credit carryforward from income year 2003 for a credit refund in income year 2004 pursuant to Conn. Gen. Stat. §§12-217ee and 12-217n, but on different grounds. The Court analyzed the history of the relevant statutory sections and concluded that a taxpayer with an unused research and development tax credit for any year can either (i) exchange that credit for a refund from the State (within the limitations of the refund provisions), or (ii) carry the unused credit forward to subsequent years. In this case, the taxpayer sought to carry the credit forward to subsequent years and also to use the carried forward amount in calculating the amount of the credit refund that the taxpayer was entitled to in such subsequent years. The Court disagreed with this approach and held that the statute mandated that carried forward credits could not be exchanged for a refund.

## SALES TAX

### I. Legislative Developments

**Sales and Use Tax Rate.** Commencing January 1, 2010, the sales and use tax rate applicable to most taxable goods and services will be reduced from 6.0% to 5.5%, **but**: (i) the reduction will not go into effect if, prior to January 1, 2010, the Comptroller’s cumulative monthly financial statement indicates that the estimated gross tax revenues for the 2010 fiscal year is at least 1% less than the 2010 fiscal year revenue estimate adopted by the Finance Revenue and Bonding Committee; **and**, if the reduction does go into effect, (ii) the reduction will not remain in effect, and the 6% rate must be reinstated as of July 1, 2010, if any of the Comptroller’s cumulative monthly financial statements issued between January 1, 2010 and June 30, 2010, show

a similar 1% or greater shortfall in state tax revenues. Conn. Gen. Stat. §§12-408(1), 12-408(3), 12-411(1), 12-411b(c) and 12-414(3), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §§108-113 (*effective January 1, 2010*). [Ed. note. In late November, the Office of the State Comptroller certified that tax collections were not sufficient to permit the rate reduction to go into effect.]

Use Tax Table. The DRS is now required to include a use tax table on state personal income tax forms. Conn. Pub. Act No. 09-3 (June Spec. Sess.), §115 (*effective September 8, 2009*).

Sales Tax Permit. The fee for the issuance or reissuance of a retailer's sales tax permit is increased from \$50 to \$100. A retailer's permit continues to be effective for five years from the date of issuance. Conn. Gen. Stat. §12-409, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §157 (*effective October 1, 2009*).

Asphalt Manufacturers. It has been the position of the DRS that a taxpayer that produces an item of tangible personal property and installs it into a customer's real property is generally considered a contractor, and not a manufacturer eligible for the manufacturer sales tax exemptions or partial exemptions for: (i) gas and electricity directly used to make a finished product to be sold (Conn. Gen. Stat. §12-412(3)(4)); (ii) materials, tools and fuel used directly in an industrial plant in making a finished product to be sold (Conn. Gen. Stat. §12-412(18)); (iii) machinery used in a manufacturing production process (Conn. Gen. Stat. §12-412(34)); and (iv) materials that are not otherwise exempt and are used in manufacturing tangible personal property to be sold (Conn. Gen. Stat. §12-412i). New legislation overrules this position as applied to taxpayers (i.e. asphalt manufacturers) who use a finished product to fulfill a paving contract, enabling them to claim such manufacturer sales tax exemptions. Conn. Pub. Act No. 09-200, §1 (*effective July 8, 2009*).

Supplemental Nutrition Assistance Program Benefits. Due to the change in the name of the federal Food Stamp Program to the Supplemental Nutrition Assistance Program, the sales tax exemption for sales of any items purchased with "federal food stamp coupons" is revised to cover items purchased with

"supplemental nutrition assistance program benefits." Conn. Gen. Stat. §12-412(57), as amended by Conn. Pub. Act No. 09-9, §4, and Conn. Gen. Stat. §12-412e, as repealed by Conn. Pub. Act No. 09-9, §40 (*effective May 4, 2009*).

## II. Administrative Developments

Connecticut/New York Sales and Use Tax Reporting Program. The 1988 Reciprocal Agreement Between the State of Connecticut and the State of New York providing for the Exchange of Tax Information and Cooperative Tax Administration ("Reciprocal Agreement") has been terminated. For Connecticut-based monthly and quarterly filers, the last sales tax return filed under the Reciprocal Agreement will be for the period that ended September 30, 2009; for annual filers, the last return was for the period that ended December 31, 2008. To report New York State and local sales and use taxes, all filers must report taxable activity for 2009 on New York State Form ST-100, *New York State and Local Quarterly Sales and Use Tax Return*. New York State Dept. of Taxation and Finance Notice N-09-16.

SN 2009(6), *2009 Legislative Changes Affecting Sales and Use Taxes*

IP 2009(13), *Sales and Use Taxes Guide for Manufacturers, Fabricators, and Processors*

IP 2009(15), *Notice to Retailers on Sales and Use Tax Resale Certificates*

## III. Case Law Developments

Rainforest Cafe, Inc. v. Dep't of Revenue Servs., 293 Conn. 363 (Conn. 2009). The Connecticut Supreme Court overturned a lower court decision that held a taxpayer liable for sales and use tax on a construction project that had been paid by the taxpayer to a nonresident contractor, but not remitted by the nonresident contractor to the State. The Tax Session of the Superior Court had granted summary judgment to the DRS, holding that, notwithstanding the taxpayer's payment of sales tax to the non-resident contractor (i) the taxpayer was obligated to withhold 5% of the contract price paid to the contractor in accordance with Conn. Gen. Stat. §12-430(7); and (ii) the taxpayer's failure to withhold on payments to the nonresident contractor evidenced an "intent to evade" tax, thereby tolling the



statute of limitations on the assessment. The Supreme Court disagreed, ruling that, where a nonresident contractor is also qualified as a retailer conducting business in the state, a resident consumer has the obligation either to pay sales tax per sections 12-411(1) and (2) or to withhold 5% of the contract price in accordance with section 12-430(7), but need not comply with both provisions. In the instant case, the Supreme Court ruled that, because the taxpayer complied with sections 12-411(1) and (2) (i.e. it was invoiced, paid and received a receipt for the Connecticut sales tax), it was exempt from the withholding requirements of section 12-430(7). In a footnote, the Court also found that there was no statutory or regulatory support for the Superior Court's ruling that the taxpayer's failure to comply with section 12-430(7) constituted an intent to evade tax.

Key Air, Inc. v. Commissioner, 294 Conn. 225 (2009).

The taxpayer in this case is a certificated air carrier that obtained out-of-state training services for its pilots so as to enable those pilots to fly the aircraft of the taxpayer's customers, all of which aircraft had a maximum certificated take-off weight of 6,000 pounds or more. The taxpayer's customers reimbursed the taxpayer for the cost of these training services. The Connecticut Supreme Court affirmed the lower court's finding that the training services were not subject to the Connecticut sales and use tax on business management services because of the exclusion in Conn. Gen. Stat. § 12-407(a)(37)(J)(iii) for business management services rendered "in connection with" an aircraft that has a maximum certificated take-off weight of 6,000 pounds or more. The Court found the phrase "in connection with" to be unambiguous and to require only a factual, contextual or causal relationship with the statutorily-described aircraft. Such a relationship was found to exist because, without the training, the taxpayer's pilots would not be able to operate its customers' aircraft and, thereby, operate its business.

Scholastic Book Clubs, Inc. v. Commissioner, 2009 Conn. Super. LEXIS 955 (April 9, 2009), reh. denied, 2009 Conn. Super. LEXIS 1420 (May 27, 2009). The Tax Session of the Superior Court ruled that a Missouri bookseller does not have nexus with Connecticut for purposes of imposing the Connecticut sales and use tax. Specifically, the Court rejected the Commissioner's claim that the bookseller is engaged in business in the state (and therefore obligated to

collect sales tax) through the activities of teachers, who the Commissioner asserted act as in-state "representatives" of the bookseller within the meaning of Conn. Gen. Stat. §12-407(a)(15)(A)(iv). The Court found that the teachers were not "representatives" of the bookseller, because they were not under the control of the bookseller. Rather, the teachers fulfilled a mere administrative role as a local contact for the bookseller, through which minors were assisted in making purchases. In this regard, the teachers acted in *loco parentis* as substitutes for the minor children's parents. Contrary to the Commissioner's claims, the Court ruled that nexus under the Commerce Clause did not turn on whether, for all intents and purposes, the teachers were a "money-maker" under the bookseller's marketing plans. Nor did the fact that teachers could, based upon total sales, earn "bonus points" redeemable for merchandise to be used by the school mean that the teachers were compensated for their work, in the manner of commission salespersons.

Alexandre v. Law, 2009 Conn. Super. LEXIS 706 (Mar. 17, 2009). The taxpayer operated a night club/banquet facility in Hartford. A daily sales reconciliation report was prepared from cash register tapes, and that information was entered into a general ledger pursuant to a software program. The cash register tapes were generally discarded after preparation of the sales reports. During a sales and use tax audit of the taxpayer, the Commissioner found multiple discrepancies in the sales reports, and claimed that the taxpayer did not comply with statutory record retention guidelines. Specifically, the auditor could not verify the sales as required by under Conn. Gen. Stat. §12-426(3) and Conn. Agencies Regs. §12-2-12(b), which regulation specifically mandates that taxpayers retain, among other things, "cash register tapes." When the taxpayer refused to extend the statute of limitations for assessments, the Commissioner issued a jeopardy assessment against the taxpayer that included a 25% penalty and a Marshall's fee that amounted to approximately 10% of the assessment. Upon an administrative appeal, the tax and penalty amounts were reduced. The Court upheld the Commissioner's use of the markup test period method as an alternative way to calculate gross receipts in the absence of sufficient records, and records marred with discrepancies. The Court ruled, however, that the issuance

of a jeopardy assessment under Conn. Gen. Stat. §12-417(1) was improper and removed the Marshall's fee, as there was no reasonable belief that the collection process would be impeded or that the owner contemplated removing assets from Connecticut. In addition, the Court held that because the auditor did not advise the taxpayer at the beginning of the audit process that he was required to retain its cash register tapes, the Commissioner should not be entitled to impose a penalty for the period of the audit that occurred after the initial audit interview.

Alexias Pizza, LLC v. Law, 2009 Conn. Super. LEXIS 1649 (June 26, 2009). The Tax Session of the Superior Court denied a taxpayer's motion to reopen a judgment of dismissal entered because of the taxpayer's failure to comply with the court's status conference order. The Court ruled that it lacked jurisdiction because the taxpayer had failed to file the appeal of a jeopardy sales and use tax assessment within the statutory ten-day period. After conceding that he had received notice of the jeopardy assessment, the taxpayer argued that the DRS notice was deficient due to the size of the typeface of the jeopardy assessment. The Court noted that the taxpayer had provided the notice to his counsel and that there was no claim that the attorney was misled by the notice.

Blass v. Rite Aid of Connecticut, Inc., 2009 Conn. Super. LEXIS 2263 (August 7, 2009). The plaintiff filed a class action lawsuit alleging that Rite Aid's practice of charging sales tax on the gross sales price of customer's purchases before subtracting the full face value of coupons constituted the miscollection of sales tax and an unfair trade practice. The plaintiff asserted that Rite Aid collected \$0.24 in sales tax on the total \$3.96 gross sales price for four items, before subtracting the full face value of two \$1.00 coupons that the plaintiff submitted as partial payment. Under Connecticut law, the full face value of a coupon used by the purchaser to reduce the price paid to the retailer for an item of tangible personal property is excluded from the term "gross receipts" and the term "sales price" for purposes of the sales tax. Conn. Gen. Stat. §§12-407(b)(9)(A) and (b)(8)(A). Rite Aid moved to dismiss the lawsuit based on the fact that plaintiff had failed to exhaust her administrative remedies under Connecticut's tax procedures for obtaining a sales tax refund. The Superior Court agreed, holding

that plaintiff's claim should first be against the State of Connecticut, not Rite Aid (by the filing of a refund claim with the Commissioner of Revenue Services). The Court also concluded that the Connecticut Unfair Trade Practices Act (CUTPA) does not give a taxpayer the right to avoid exhausting her administrative remedies, as the miscollection of taxes "whether negligent or intentional, does not constitute an unfair or deceptive act or practice in the conduct of any trade or commerce under CUTPA." [Ed. note. A similar holding was reached in Lessard v. Lane Bryant, Inc., Docket No. HHD X04 CV-09-5029131 S (Htfd Sup. Ct. Oct. 15, 2009).]

## PERSONAL INCOME TAX

### I. Legislative Developments

Personal Income Tax Increases. Effective January 1, 2009, the Connecticut personal income tax is increased for joint filers with taxable income of over \$1 million, heads of households with taxable income over \$800,000, and single filers and married people filing separately with taxable income over \$500,000. A third tax bracket is added increasing the marginal tax rate for income over these thresholds from 5.0% to 6.5%. In addition, the flat income tax rate for trusts and estates is also increased from 5.0% to 6.5%. Conn. Gen. Stat. §12-700(a), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §119 (effective September 8, 2009, and applicable to taxable years commencing on or after January 1, 2009).

Single Filer Exemption and Credit. The scheduled income tax reductions for single filers are delayed for three years, by postponing until 2012 the scheduled increases in (i) their adjusted gross income exempt from tax and (ii) the income threshold for phasing out their personal exemptions and credits. Conn. Gen. Stat. §§12-702(a), 12-703(a) and 12-704(c), as amended by Conn. Pub. Act No. 09-3, (June Spec. Sess.), §§122-124 (effective September 8, 2009, and applicable to taxable years commencing on or after January 1, 2009).

Decoupling of Federal Qualified Domestic Production Activities Deduction. Effective for tax years commencing on or after January 1, 2009, trusts, estates and individuals

will be required, when determining their Connecticut taxable income, to add back any federal income tax deduction taken under Section 199 of the Internal Revenue Code for income from qualified domestic production activities (e.g., manufacturing, construction, engineering, energy production, computer software, films and videotape, etc.). Conn. Gen. Stat. §§12-701(a)(10) and 12-701(a)(20)(A), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §§120 and 121 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2009*).

#### Decoupling of Cancellation of Indebtedness Income

Deferral. As part of the federal American Recovery and Reinvestment Act of 2009, Section 108 of the Internal Revenue Code was amended to afford a taxpayer the option of delaying recognition of cancellation of indebtedness income ("CODI") realized from qualifying re-acquisitions of its own debt instruments in 2009 and 2010. The deferral under federal tax law is until 2014, at which point the taxpayer must recognize the income for federal tax purposes in equal annual installments over the succeeding five years. Individual taxpayers will not be entitled to utilize the federal CODI deferral provision when calculating their Connecticut adjusted gross income as they will now be required to "add back" the amount of CODI that has been deferred for federal income tax purposes. When, in later years, the CODI income is recognized for federal income tax purposes, individuals will be entitled to a modification to disregard such income when calculating their Connecticut adjusted gross income. Conn. Gen. Stat. §12-701(a)(20), as amended by Conn. Pub. Act No. 09-2 (June 19 Spec. Sess.), §5 (*effective June 26, 2009, and applicable to taxable years ending after December 31, 2008*).

Estimated Tax Payments. Taxpayers who will be impacted by the new personal income tax rate and other tax law changes discussed above, and who are required to make estimated tax payments, must adjust the estimated income tax payment due on January 15, 2010, to reflect the tax that now will be due for 2009. Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §14 (*effective October 5, 2009*). [Ed. note. The DRS has published on its website a notice with a method for calculating the January estimated tax payment.]

Withholding Tax Adjustment. The DRS is required to adjust the withholding calculation rules to reflect the new income tax rates and publish the rules on its website. Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §15 (*effective October 5, 2009*). [Ed. note. The new withholding rules are on the DRS website for employers to calculate their withholding obligations. Please note that employers must impose catch-up withholding on the remaining wage payments due to be made in 2009, so that the aggregate tax withheld for the year reflects the 6.5% rate. In addition, the new 6.5% rate is the applicable withholding rate on payments to nonresident owners of pass-through entities and to athletes and entertainers.]

Economic Nexus. Effective for taxable years commencing on or after January 1, 2010, the nonresident owners of an out-of-state Subchapter S corporation, limited liability company or partnership shall be subject to income taxation in Connecticut on their allocable share of Connecticut source income if the out-of-state S corporation, limited liability company or partnership has a "substantial economic presence" within Connecticut, as evidenced by a "purposeful direction of business toward this state." The "purposeful direction of business" is to be determined based upon the frequency, quantity and systematic nature of the contacts with Connecticut, without regard to physical presence. Conn. Gen. Stat. §12-726, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §91 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2010*).

## **II. Administrative Developments**

Nonresident Employees. The DRS implemented a new rule whereby employers are not required to withhold Connecticut income tax from wages/compensation paid to nonresident employees for services performed in Connecticut provided said employees are assigned to a primary work location outside of Connecticut and work in Connecticut 14 or fewer days during a calendar year. Such employees remain subject to the Connecticut personal income tax for wages/compensation earned for work performed in Connecticut.

AN 2009(9), *New "14-Day" Withholding Rule for Nonresident Employers*



SN 2009(3), 2009 *Legislative Changes Affecting the Income Tax*

IP 2009(37.1), *Connecticut Income Tax Changes Affecting Withholding Requirements and the 2009 Fourth Quarter Estimated Payment*

### III. Case Law Developments

Kraiza v. Commissioner, 2009 Conn. Super. LEXIS 136 (Feb. 2, 2009). Generally, a state income tax liability can be discharged in a Chapter 7 bankruptcy proceeding if, among other things, the tax liability is assessed prior to the taxpayer's filing of a voluntary petition for bankruptcy. An income tax liability is considered "assessed" for discharge purposes when the assessment becomes final. In the present case, a Connecticut taxpayer filed a voluntary petition for bankruptcy after commencing an appeal of a Connecticut income tax deficiency assessment with the Connecticut Superior Court. Despite the fact that the Bankruptcy Court issued an order of discharge, discharging the plaintiff from the tax liability, the Connecticut Superior Court determined that the discharge in bankruptcy did not discharge the tax deficiency assessment because the assessment is not a final assessment for bankruptcy discharge purposes until the appellate process instituted by the taxpayer is resolved. The Court noted that, had the taxpayer not appealed the matter, the bankruptcy proceeding would have discharged her deficiency assessment.

## ESTATE AND GIFT TAX

### I. Legislative Developments

Estate and Gift Tax Rate. Effective for deaths occurring and gifts made on or after January 1, 2010: (i) the threshold for the value of an estate or gift subject to the estate and gift tax is increased from \$2 million to \$3.5 million; (ii) the marginal tax rates on estates and gifts are reduced by 25%; and (iii) the tax "cliff" is eliminated, by applying the tax only to the marginal value of the estate or gift over the new threshold. Conn. Gen. Stat. §12-391(g), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §116 (*effective January 1, 2010, and applicable to estates of decedents who die on or after said date*); Conn.

Gen. Stat. §12-642(a), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §118 (*effective January 1, 2010*). The Connecticut taxable estate includes the aggregate value of all Connecticut taxable gifts made by the decedent on or after January 1, 2005. Although the combined lifetime total exclusion is increased and the tax rates have decreased, an estate will not be entitled to a refund for gift taxes paid under the higher rates; instead, the estate is given a credit for any gift taxes paid on gifts made on or after January 1, 2005, but not more than the estate tax due. Conn. Gen. Stat. §§12-391(c)-(e), as amended by Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §8 (*effective October 5, 2009, and applicable to estates of decedents dying on or after January 1, 2010*). [Ed. note. The General Assembly passed a bill, H.B. 7101, which would have delayed the implementation of the \$3.5 million threshold and the lower marginal tax rates until January, 2012, but which would have eliminated the "cliff" in the interim at the cost of higher marginal tax rates. Governor Rell vetoed the measure on December 28, 2009.]

Estate Tax Return Date. The time an executor has to file an estate tax return is reduced from nine months after the date of death to six months after the date of death, starting with deaths on or after July 1, 2009. Conn. Gen. Stat. §12-392(a), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §117 (*effective July 1, 2009, and applicable to taxes payable on or after said date*), as further amended by Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §9 (*effective October 5, 2009, and applicable to estates of decedents dying on or after July 1, 2009*).

Estate Tax Returns. Under current law, regardless of the value of an estate, all estates must file an estate tax return in Connecticut if, at the time of death, the decedent was a resident in Connecticut or had real property or tangible personal property with a legal situs in Connecticut. If the value of the estate exceeds the taxable threshold, the return must be filed with the DRS with a copy to the probate court for the district where the decedent lived or, if a nonresident, where his or her Connecticut property is located. If the estate's value is below the taxable threshold, the return must be filed only with the appropriate probate court. The governing statute is amended to reflect the new taxable threshold. Conn. Gen. Stat. §12-392(b)(3), as



amended by Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §10 (*effective October 5, 2009, and applicable to estates of decedents dying on or after January 1, 2010*).

**Estate Tax Liens.** The statute that requires a probate court to issue a certificate of release of lien with respect to the interest of a decedent in real property if the value of the decedent's estate is below the taxable threshold is amended to reflect the new taxable threshold. Conn. Gen. Stat. §12-398(e), as amended by Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §11 (*effective October 5, 2009, and applicable to estates of decedents dying on or after January 1, 2010*).

**Gift Tax Credits.** A taxpayer will be allowed a credit against the gift tax for taxes paid on gifts made between January 1, 2005 and December 31, 2009, but the legislation limits the total credits to no more than the gift tax imposed (i.e. no refund will be granted for gift taxes paid at the higher rates in effect prior to January 1, 2005). Conn. Gen. Stat. §12-642(a)(4), as amended by Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §12 (*effective October 5, 2009, and applicable to gifts made during calendar years commencing on or after January 1, 2010*).

## PROPERTY TAX

### I. Legislative Developments

**Revaluation Delay Option.** Any municipality required to effect a revaluation of real property for the 2008, 2009 or 2010 assessment year may delay the revaluation until the 2011 assessment year if approved by the legislative body of the municipality. In addition, if a municipality is currently in the process of phasing in a real property assessment increase, or a portion of such increase, it may suspend such phase-in for a period of time, not later than the 2011 assessment year, if approved by the municipality's legislative body. (Note, however, that the municipality must still remain on the regular statutory five-year revaluation schedule even if that revaluation would occur prior to the end of the resumed phase-in.) If a municipality delays a revaluation or suspends a phase-in for the 2008 assessment year, the municipality must prepare a revised grand list for 2008 that reflects assessments for the 2007 assessment year, subject only to changes in new ownership, new construction and demolitions, and

must send notices to owners in the event of any increases or new real estate. Conn. Pub. Act No. 09-60, §1, as amended by Conn. Pub. Act No. 09-196, §5 (*effective July 8, 2009, and applicable to assessment years commencing on or after October 1, 2008*).

**Valuation Methods.** Under former law, when valuing rental property (exclusive of property containing less than seven units and in which the owner resides), an assessor or board of assessors was required first to consider data from *bona fide* sales of comparable property within the municipality. If there was insufficient data, the municipality could then consider three statutory methods of appraisal. Effective October 1, 2009, the requirement to first use a local comparable sales method valuation is eliminated. An assessor or board of assessors may now use any one of the following three valuation methods: the replacement cost method; the capitalization of net income method; and the comparable sales method. The comparable sales method, which is no longer restricted to properties in the same municipality, replaces the gross income multiplier method (which is already a part of the capitalization of net income method). In addition, the governing statute is clarified to authorize an assessor to require, in connection with a valuation employing the capitalization of net income method, that a property owner submit annually the best available information disclosing the actual rental and rental-related income and operating expenses applicable to the property (regardless of whether the municipality is conducting a town-wide revaluation). The form, which must be made available by the assessor 45 days before June 1st, must be submitted no later than June 1st, subject to an assessor's right to grant a 30-day extension if an application is filed no later than May 1st. Any information supplied by the owner is subject to audit. A penalty increasing the assessment by 10% may be imposed based upon a failure to provide the requested information on a complete, correct and timely basis. The penalty must be waived if the owner required to submit the information was not the owner on the assessment date and such waiver is pursuant to an ordinance adopted by the legislative body of the municipality. Conn. Gen. Stat. §§12-63b and 12-63c, as amended by Conn. Pub. Act No. 09-196, §§2-3 (*effective October 1, 2009, and applicable to assessment years commencing on or after October 1, 2009*).

Assessor Valuation Changes. If an assessor changes any property valuation as determined by a revaluation company, the assessor must now document in writing the reason for the change and append the written explanation to the property card for the subject parcel. Conn. Gen. Stat. §12-62(c), as amended by Conn. Pub. Act No. 09-196, §4 (*effective July 8, 2009*).

Annual Adjustments in Valuation. The General Assembly repealed the 2008 legislation that granted to a municipality, upon approval of its legislative body, the option to adjust annually the market value of real estate to reflect the average annual adjustment in the value of each category of property within the municipality. Conn. Gen. Stat. §12-62o, as repealed by Conn. Pub. Act No. 09-60, §3 (*effective July 1, 2009*).

Board of Assessment Appeals. The statutes governing the assessment of municipal property tax and the appeal of such an assessment are amended to provide that (i) a board of assessment appeals may elect not to conduct a hearing on a property tax appeal for any commercial, industrial, utility or apartment property with an assessed value greater than \$1 million (the former minimum was \$500,000); (ii) a taxpayer whose appeal will not be heard can appeal directly to the Superior Court pursuant to Conn. Gen. Stat. §12-117a; and (iii) when a board of assessment appeals increases or decreases an assessment, such assessment shall be fixed until the next municipal-wide revaluation unless the assessment is amended to (A) comply with a court order, (B) reflect an addition for new construction, (C) reflect a reduction for damage or demolition, or (D) correct a factual error by means of a certificate; and, if an assessment is adjusted for any of the foregoing reasons, the assessor shall submit to the board a written explanation for the adjustment and append the explanation to the property card for the subject parcel. Conn. Gen. Stat. §12-111(a), as amended by Conn. Pub. Act No. 09-196, §1 (*effective October 1, 2009*).

Regional Revaluation. Existing law authorizes municipalities to enter into interlocal agreements to perform functions that they can perform separately, including revaluing property. Municipalities are now further authorized to postpone a scheduled revaluation to accommodate a regional

revaluation schedule, which may be based on a revaluation every five years of all parcels or a revaluation every year of approximately one-fifth of the parcels in the participating municipalities. An agreement to establish a regional revaluation program must: (i) establish or designate an entity as the coordinating agency for the program; (ii) indicate how a certified revaluation company will be hired and overseen; (iii) include a revaluation schedule that lists any adjustments to the revaluation schedules for participating municipalities; (iv) identify administrative and procedural processes to implement the program; and (v) estimate the projected savings resulting from the program. Prior to entering into the agreement, the participating municipalities must submit it to the Office of Policy and Management ("OPM"), which is to approve or disapprove of any adjustments to the revaluation schedules of municipalities within 45 days. If a municipality decides to withdraw from a regional revaluation program, it must notify OPM and resume its statutory revaluation schedule. Conn. Pub. Act No. 09-60, §2 (*effective May 15, 2009, and applicable to assessment years commencing on or after October 1, 2009*).

Regional Economic Development Agreement. New legislation authorizes two or more municipalities that belong to the same federal economic development district to enter into an agreement to promote regional economic development and to share the real and personal property tax revenue from new economic development. A proposed regional economic development agreement must be submitted to OPM for its approval. If approved, the municipality in which real property with new economic development is located must maintain a separate list describing such properties; the applicable mill rate is the rate of the municipality where the economic development property is located. Conn. Pub. Act No. 09-231, §§1-2 (*effective October 1, 2009*).

Regional Planning Organization Exemption. A new exemption from the municipal property tax is enacted for real property belonging to, or held in trust for, a regional planning organization (i.e. a regional council of elected officials, a regional council of governments or a regional planning agency) if (i) the property is used to advance the official duties of the organization and (ii) the exemption is approved by the municipality in which such property is

located. Conn. Gen. Stat. §12-81(77), as added by Conn. Pub. Act No. 09-226, §1 (*effective October 1, 2009, and applicable to assessment years commencing on or after October 1, 2009*).

Land Value Taxation Pilot Program. OPM is authorized to establish a pilot program in a single, small, state-designated distressed municipality to tax land at a higher rate than buildings. If chosen, the municipality is to design a plan to implement land value taxation with differentiated tax rates for (i) land or land exclusive of buildings and (ii) buildings on land. Upon approval of the plan by the municipality's legislative body, the plan is to be submitted for the review of the General Assembly on or before December 31, 2009. The legislation provides for the planning of a land value tax program, but does not authorize its implementation. Conn. Pub. Act No. 09-236, §1 (*effective July 1, 2009*).

Municipal Tax Liens. The tax collector of a municipality may continue a tax lien on real estate; however, if a tax lien remains on the land records for more than 15 years from the due date of the tax or the continuation of the lien, the lien is invalid unless an action of foreclosure is commenced within the 15-year period and a notice of *lis pendens* is filed for the record. Under prior law, the owner of property upon which an invalid lien remains may request that the town clerk note on the margin of the lien, "Discharged by operation of law." New legislation requires a tax collector, if requested by the property owner, to file a discharge of lien in the office of the town clerk and the discharge of lien is to be filed by the clerk on the land records. Conn. Gen. Stat. §§12-174 and 12-175, as amended by Conn. Pub. Act No. 09-213, §§1-2 (*effective October 1, 2009*).

Municipal Amnesty Programs. Under 2008 legislation, a Connecticut municipality may conduct a one-time amnesty program for unpaid or partially paid municipal taxes, fees, assessments and fines for a period of no more than 90 days on or before December 31, 2009. Under the initial authorizing legislation, the municipality had to apply delinquent payments against the oldest outstanding tax owed on a property. The legislation has been amended to permit the municipality to apply amnesty payments against any outstanding tax owed on the property. Conn. Pub. Act

No. 08-2 (Nov. 24 Spec. Sess.), §5, as amended by Conn. Pub. Act No. 09-234, §9 (*effective July 9, 2009*).

Enterprise Zones. Connecticut's 17 enterprise zones are relatively small economically distressed areas where taxpayers may qualify for property tax exemptions and corporation business tax incentives if they improve property and create jobs. Prior law, which required all businesses in an enterprise zone to report specified information to their host municipality every five years, beginning July 1, 2011, has been amended to: (i) limit the reporting requirement to only those businesses certified to receive enterprise zone tax incentives; and (ii) push the reporting deadline back to November 1, 2011. Conn. Gen. Stat. §32-70a, as amended by Conn. Pub. Act No. 09-234, §1 (*effective July 9, 2009*). In addition, new legislation modifies the income criterion people living in improved condominiums and multi-family housing units in an enterprise zone must satisfy for housing to qualify for a property tax exemption. Conn. Gen. Stat. §32-71(b), as amended by Conn. Pub. Act No. 09-234, §3 (*effective July 9, 2009*).

Disabled Veterans' Exemption. The property tax exemption for property which belongs to, or is held in trust for, a disabled veteran is amended to eliminate the requirement that the veteran provide annual proof of disability unless he or she is age 65 or older or rated permanently disabled by the U.S. Veterans' Administration ("VA"). Now a veteran, regardless of age or disability rating, who submits initial proof of his or her VA disability rating to the town assessor, must submit proof and reestablish eligibility in subsequent years only if the VA modifies the rating. Conn. Gen. Stat. §12-81(20), as amended by Conn. Pub. Act No. 09-176, §1 (*effective June 30, 2009*).

PILOT Payments. The annual state payments in lieu of taxes ("PILOT") to municipalities for manufacturing machinery and equipment that are eligible for exemptions from local property taxes are capped and proportionately reduced in any year in which the total amount payable exceeds the state's budgeted appropriation for such payments. Conn. Gen. Stat. §§12-94b, 12-94f and 12-94g, as amended by Conn. Pub. Act No. 09-7 (Sept. Spec. Sess.), §§15-17 (*effective October 5, 2009*).



## II. Case Law Developments

St. Joseph's Living Center, Inc. v. Windham, 290 Conn. 695 (2009). The Connecticut Supreme Court determined that the provision of long-term health care and spiritual support to the elderly in a nonprofit, nondiscriminatory manner and without regard to individual financial circumstances is a charitable purpose and, thus, overruled a trial court's finding that the delivery of health care to the elderly is not a charitable purpose. Despite this determination, the Supreme Court upheld the trial court ruling that the taxpayer, a skilled nursing home, was not exempt from municipal property taxation under Conn. Gen. Stat. §12-81(7). Section 12-81(7) provides a municipal property tax exemption for real property owned by a charitable corporation if, among other things, the property is used *exclusively* for carrying out the charitable purposes of the corporation. Although the taxpayer was organized to provide long-term health care and spiritual support to the elderly, its facility also was utilized to provide short-term rehabilitative care to the general public. Thus, the Court determined that the facility was not used exclusively in furtherance of the organization's stated charitable purposes. The Supreme Court concluded that the exclusive use requirement of section 12-81(7) must be strictly construed as to require a charitable organization seeking the benefit of a property tax exemption to use its property in such a manner that its activities are entirely dedicated to serving its stated charitable purposes. The Court opined that this does not mean that any noncharitable use necessarily will defeat the tax exemption, but the proponent of the exemption must show that such uses are necessary for the accomplishment of the organization's charitable purposes.

J.C. Penney Corp. v. Manchester, 291 Conn. 838 (2009). As required by Conn. Gen. Stat. §§12-40 and 12-41(d), the plaintiff taxpayer filed a timely declaration of the taxable personal property it owned within the town. After the statutory deadline, the taxpayer filed an amended declaration in which it stated its belief that the amended declaration included items not then located in the town. In the amended declaration the taxpayer purported to reserve its right to appeal the town's assessment should it later learn that the declaration included assets not actually

located in the town. Subsequently, the taxpayer completed a physical inventory, which confirmed that assets included in the declaration and amended declaration were not located in the town. Relying on the conclusions of the physical inventory, the taxpayer asserted that the town's assessment was too high. The Supreme Court affirmed the Superior Court's ruling that the taxpayer could not establish that it was aggrieved due to an excessive valuation because it had failed to provide the town assessor with a proper and timely declaration accurately listing its personal property located in the town. Its notification to the assessor that the information in the declaration may not have been reliable did not shift the burden of supplying a complete declaration from the taxpayer to the town.

PJM and Associates, LC v. Bridgeport, 292 Conn. 125 (2009). The trial court held that a municipal assessor cannot impose penalties pursuant to Conn. Gen. Stat. §12-63c based upon a taxpayer's failure to comply with the assessor's written request for information regarding expenses associated with rental property if the request is made outside the context of a municipal-wide revaluation or an interim revaluation of properties in the same class as the owner's property. The Connecticut Supreme Court reversed the lower court decision, holding that section 12-63c permits an assessor annually to request such information, and that imposition of the penalty does not require proof of an intent to defraud. The case was remanded to the trial court, however, because section 12-63c authorizes an assessor to request such information only if property is appraised under the capitalization of net income method and, pursuant to section 12-63b(a), that valuation method can only be employed when there is insufficient data on comparable sales. Accordingly, a determination of whether comparable sale information is available must be made before the propriety of the penalties can be determined. [Ed. note. See the recent amendments to sections 12-63b and 12-63c discussed above in Legislative Developments, "Valuation Methods."]

Fairchild Heights, Inc. v. Amaro, 293 Conn. 1 (2009). Plaintiff, a mobile manufactured home park, appealed from trial court judgments denying its motions for orders conveying good title to, and the release of all liens upon, two abandoned mobile homes following court-ordered sales



of the homes. At issue was the interplay between three statutes: Conn. Gen. Stat. §21-80(e)(4), which provides that all existing liens on a mobile home are extinguished upon a court-ordered sale of a mobile home; Conn. Gen. Stat. §21-67a, which requires a mobile home owner to pay any tax liens before moving a mobile home; and Conn. Gen. Stat. §21-172, which provides that tax liens on real property have absolute priority. The Supreme Court concluded that the legislature intended section 21-80(e)(4) to create an exception to section 21-172 in circumstances where a manufactured mobile home is abandoned, and that section 21-67a does not apply to owners of manufactured mobile home parks who purchase abandoned mobile homes located in their parks. The Court reversed the lower court's holding and remanded for an order extinguishing the town's tax liens on the two mobile homes.

Aspetuck Valley Country Club, Inc. v. Weston, 292 Conn. 817 (2009). The Supreme Court upheld the denial of the plaintiff's application to classify certain of its real property as open space land. 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 Connecticut Supreme Court affirmed the denial of the open space classification, ruling that the legislative history of the 1979 amendments to Conn. Gen. Stat. §12-107e(a) makes clear that a legislative body of a municipality must approve the designation of all land as open space in order to receive the property tax benefit of the designation. The Court also affirmed the lower court's finding that a municipal plan of development is merely advisory, and not binding upon the municipality, and that the taxpayer did not have a vested right to an open space designation and, even if it had such a vested right, it did not file an application for the classification within the statutory sixty-day time limit imposed by section 12-107e(b).

Goodspeed Airport, LLC v. East Haddam, 115 Conn. App. 438 (2009). The Connecticut Appellate Court upheld the lower court's finding that the taxpayer had not satisfied its burden of establishing that the portion of its land that had been designated as open space had been overvalued, or that most of the remaining portion of its land should have been designated open space. Since neither the taxpayer nor the assessor had provided a credible valuation of the open space portion of the property, the assessment must be sustained because the burden is on the taxpayer to establish an overassessment. The taxpayer's application for an open space designation for all but one of the remaining acres of its property could not be sustained because the special exemption for the land to be operated as a commercial airport did not satisfy the environmental goal of preserving open space.

Oxford v. JJT&M, Inc., 2009 Conn. Super. LEXIS 1659 (June 22, 2009), reh. denied, 2009 Conn. Super. LEXIS 1992 (July 15, 2009). In an action by a municipality to foreclose tax liens and liens from delinquent sewer benefit assessments, the defendant taxpayer sought to invalidate certain tax liens on the basis that the certificate of continuing lien filed on the municipal land records did not list the proper principal amount of the tax owed, and to invalidate certain sewer assessment liens on the basis that a certificate of continuing lien had not been filed. The Court held that the tax liens could not be invalidated because Conn. Gen. Stat. §12-173(b) provides that a certificate of continuing lien listing a mistaken principal amount remains valid notice to a subsequent purchaser or encumbrancer to the extent of the lesser of the amount listed on the certificate or the actual amount due. With regard to the sewer assessment liens, the Court ruled that the municipality is required to file a certificate of continuing lien within the first two years after the first assessment installment is due, but concluded that the "Certificate of Notice of Installment Payment of Assessment of Benefits" filed by the municipality pursuant to Conn. Gen. Stat. §7-253 met the statutory requirements of a certificate of continuing lien set forth in Conn. Gen. Stat. §§12-173 and 12-175.

Hellenic Orthodox Community, Inc. v. Waterbury, 2009 Conn. Super. LEXIS 1044 (Apr. 16, 2009). The Court

affirmed the City of Waterbury's Board of Assessment Appeals' decision denying a property tax exemption for four undeveloped parcels of real estate owned by the plaintiff religious organization. A large cross that was occasionally visited by parishioners constituted the only improvement to the property and no additional improvements were planned. The Court ruled that this use of the property did not constitute any of the exempt uses identified in Conn. Gen. Stat. §12-81(14), including a recreational facility for religious purposes, and that the property did not qualify for an exemption pursuant to Conn. Gen. Stat. §12-88, because no additional construction was planned.

Vaccaro v. Bridgeport, 2008 Conn. Super. LEXIS 3165 (Dec. 10, 2008). The municipal assessor determined that the plaintiff, an attorney who maintained an office in the municipality, had improperly failed to file a personal property declaration with regard to personal property located in the office. The plaintiff argued that he had merely entered into an office-sharing arrangement with two other attorneys, had made only intermittent use of the office equipment and was not required to file a personal property declaration. In ruling for the plaintiff, the Court noted that Conn. Gen. Stat. §12-57a requires lessees to file declarations listing leased equipment, but ruled that no declaration was required from the plaintiff because he had not signed a lease for the equipment and had only used it intermittently, and because the two other attorneys had filed a declaration that included the subject equipment and the furniture in the office.

Valley Container, Inc. v. Bridgeport, 2009 Conn. Super. LEXIS 1696 (June 22, 2009). The taxpayers appealed the assessment in August 2006 of taxes for the 2002 and 2003 grand lists for vehicles assigned by the taxpayers for the exclusive use of employees who did not reside in the city and who took the vehicles home nightly. The plaintiffs previously had paid taxes for the vehicles to the towns where the various employees lived. The Court ruled in favor of the taxpayers on two grounds. First, the Court concluded both that a 2004 amendment to Conn. Gen. Stat. §12-71 requires that a vehicle assigned for the exclusive use of an employee is to be taxed in the town where the employee resides, and that the amendment applied retroactively to the 2002 and 2003 assessments

because the legislature intended that the 2004 legislation "clarify" existing law. Second, the Court ruled that, even if the 2004 amendment to Conn. Gen. Stat. §12-71 had only prospective effect, it applied to the relevant assessments because they were not actually levied until the city sent bills to the taxpayers in August 2006.

Stonington v. State, 2009 Conn. Super. LEXIS 2291 (July 2, 2009). The Town of Stonington appealed the denial of its application for a grant in lieu of taxes pursuant to Conn. Gen. Stat. §12-20a with respect to land owned by Mystic Seaport Museum, Incorporated, a section 501(c)(3) organization. The land had been leased indefinitely to Williams College for its Mystic Seaport Maritime Studies program. The court upheld OPM's decision to deny the application on the ground that section 12-20a provides for a grant only for real property owned by a private college, and Stonington had not established that the indefinite lease to Williams College conveyed to it an ownership interest in the property.

Valenti v. Stonington, 2009 Conn. Super. LEXIS 1925 (July 10, 2009). The Superior Court denied a motion to dismiss the first count of the taxpayer's property tax appeal, which was brought pursuant to Conn. Gen. Stat. §12-117a. Relying on the Connecticut Supreme Court's opinion in Morris v. New Haven, 77 Conn. 108 (1904), the Court held that a taxpayer can appeal a decision of a board of assessment appeals pursuant to Section 12-117a even though the taxpayer had failed to appear before the board at the time his appeal was to be heard.

One Stamford Plaza Owner, LLC v. Stamford, 2009 Conn. Super. LEXIS 1885 (July 16, 2009). The Superior Court granted summary judgment dismissing the property tax appeal of the taxpayer, holding that Conn. Gen. Stat. §12-63d prohibits a municipality from a revaluation of a parcel of property based solely on a sale of that property, but that a municipality may base a revaluation of a parcel of property based upon a recent sale if the revaluation is part of a municipal-wide revaluation.

257 Blake, LLC v. Seymour, 2009 Conn. Super LEXIS 2176 (Aug. 4, 2009). The taxpayer obtained subdivision approval for property owned by it in Seymour which,

after an appeal, became effective on July 26, 2007. The Town of Seymour did not return the subdivision map for recording until February 27, 2008, because the taxpayer needed to comply with a bond requirement. In the interim, the Seymour assessor reassessed the land as individual subdivision lots for the grand list of October 1, 2007. The taxpayer appealed and the Superior Court upheld the reassessment, ruling that the final subdivision approval, even if conditioned, provided a basis for the reassessment.

Genovese v. New Britain, 2009 Conn. Super. LEXIS 2932 (October 30, 2009). The taxpayers' appeal pursuant to Conn. Gen. Stat. §12-119 was denied on the basis that it was premised on an alleged overvaluation of the premises due to a fire. An overvaluation must be the subject of an appeal to the board of assessment appeals and then to the Superior Court pursuant to Conn. Gen. Stat. § 12-117a; section 12-119 is reserved for appeals involving an allegation that an assessment is illegal.

Bristol v. Harwinton, 2009 Conn. Super. LEXIS 2935 (Oct. 30, 2009). The Tax Session of the Superior Court denied motions to dismiss or transfer a property tax appeal filed by the City of Bristol in the Judicial District of New Britain arising from the assessment of property owned by the City of Bristol located in Harwinton. Although the Tax Session found that the judicial district where the property is situated is the proper judicial district to return a tax appeal, the filing of the tax appeal in a different judicial appeal is not determinative of the jurisdictional issue. Since the motion to dismiss was not timely filed, Harwinton waived its right to file such a motion.

Cadlerock Properties Joint Venture, L.P. v. Ashford, Docket No. CV084014088S (Stamford Jud. Dist. Dec. 1, 2009). In an appeal taken from an earlier decision in this matter, reported at 98 Conn. App. 556 (2006), the Appellate Court held that Conn. Gen. Stat. §12-63e prohibits an assessor from reducing the assessed value of non-residential property due to any polluted or environmentally hazardous condition if the condition was caused by the property owner or the property owner had actual knowledge of the condition at the time title was taken. On remand, the taxpayer, which had notice of the contamination on its land but did not know the cost of remediation when it purchased

the land, alleged that the application of section 12-63e to its property constituted a violation of its equal protection rights under the United States and Connecticut Constitutions. The Superior Court disagreed, holding that the taxpayer had not sustained its burden of proving that the distinctions drawn by section 12-63e were without any rational basis.

SG Stamford, LLC v. Stamford, 2009 Conn. Super. LEXIS 2569 (September 22, 2009). The taxpayer purchased the subject property after the Board of Assessment Appeals had declined to hear a tax appeal filed by the prior owner. The taxpayer filed in court an appeal under both Conn. Gen. Stat. §12-217a and §12-219. The City sought to dismiss the claim filed pursuant to section 12-217a on the basis that it was the prior owner, and not the taxpayer, who had filed the appeal to the Board of Assessment Appeals. The Superior Court denied the motion to dismiss concluding that section 12-117a should not be read in a restrictive manner that would deny a subsequent owner the right to file an appeal if the prior owner had timely filed the administrative appeal to the Board of Assessment Appeals.

## MISCELLANEOUS

### I. Legislative Developments

Tax Settlement Incentive Program. A new tax settlement incentive program is established for the period from October 1, 2009 through December 31, 2009, whereby the Commissioner of Revenue Services (the "Commissioner") may send to taxpayers who owe tax for a particular tax period a statement that they may settle their claim by paying the tax due and 50% of the interest due on that tax. If the taxpayer elects to participate in the program, the Commissioner will waive his right to seek the remaining interest or any penalties due for the period, and the taxpayer will waive its right to contest the tax liability for that period or to seek a refund of the payment made. Conn. Pub. Act No. 09-3 (June Spec. Sess.) §89 (*effective September 8, 2009*). [Ed. note. In Special Notice 2009(4), the DRS indicates that the program will run from October 15, 2009 to December 15, 2009, and that a taxpayer will only be eligible to participate if it was issued a bill by the DRS on or before August 31, 2009, that included interest and was still unsatisfied as of the date that the taxpayer



receives the settlement offer. The program applies to all state taxes except the motor carrier tax and International Fuel Tax Agreement taxes. No payment plans will be accepted and the settlement tax liability must be paid no later than December 15, 2009. If total payment is received by that date, the DRS also will waive interest that accrues on the settlement offer between the date the offer is made and the payment date.]

Film Production, Entertainment Infrastructure Projects and Digital Animation Production Credits. Effective for tax years commencing on or after January 1, 2010, numerous changes are made to the rules governing the film production tax credit, the tax credit for infrastructure projects in the entertainment industry and the tax credit for digital animation production companies. In the case of the film and digital animation production credits: (i) the minimum amount of eligible production expenses that must be incurred in the state is increased from \$50,000 to \$100,000; and (ii) the flat credit rate of 30% of eligible production costs is replaced with a “tiered” credit rate of 10% for companies incurring expenses between \$100,000 and \$500,000, 15% for companies incurring expenses over \$500,000 but not more than \$1 million, and 30% for companies incurring expenses over \$1 million. By way of contrast, the credit for infrastructure investments is amended so as to convert its current tiered rate structure (10% to 20%) to a flat rate of 20%, but the minimum qualifying expenditure is increased to \$3 million. In addition, the project must be 100% complete, rather than at least 60% complete, before it can be eligible to receive a credit voucher. Other changes to the credits include: (i) the transfer of the administration of the credits from the Connecticut Commission on Culture and Tourism to the Department of Economic and Community Development (“DECD”); (ii) the elimination of the ability to obtain an interim film production credit (although annual applications remain available); (iii) the requirement of an independent certification of production expenses and costs by a DECD-approved audit professional; (iv) the authorization of DECD to charge a reasonable administrative fee to cover its costs; (iv) the limitation on the ability of the DECD or DRS to have credits be recaptured, disallowed, recovered, reduced, repaid, forfeited or decertified after they have been certified is restricted to only transferred credits; (v) infomercials are made ineligible for the film production credit; (vi) the

categories of eligible and ineligible production expenses are amended to require that a production company conduct not less than 50% of principal photography days in Connecticut or expend not less than 50% of post-production costs in Connecticut; (vii) the phase-out date for the eligibility of out-of-state expenses is moved up from January 1, 2012 to January 1, 2010; and (viii) the star salary limitation is changed from \$15 million per star to \$20 million in the aggregate (inclusive of compensation paid to entities representing individuals). Conn. Gen. Stat. §§12-217jj, 12-217kk and 12-217ll, as amended by Conn. Pub. Act No. 09-3, §§97-99 (*effective September 8, 2009, and applicable to income years commencing on or after January 1, 2010*), as further amended by Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §§1-5 (*effective October 5, 2009*).

Real Estate Conveyance Tax on Foreclosures. The exemption from the real estate conveyance tax for deeds made pursuant to a foreclosure by sale is repealed effective for conveyances occurring on or after January 1, 2010. Conn. Gen. Stat. §12-498(a), as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §114 (*effective January 1, 2010, and applicable to conveyances occurring on or after said date*).

Cigarette Tax Increase and Floor Tax. The cigarette tax is increased from \$2 to \$3 per pack of 20 (from 10 cents to 15 cents per cigarette), starting October 1, 2009. A floor tax of \$1 is imposed on each pack of cigarettes that dealers and distributors have in their inventories at the later of the close of business or 11:59 p.m. on September 30, 2009. A floor tax report must be filed, and the tax paid, by November 15, 2009. Conn. Gen. Stat. §§12-296 and 12-316, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §§104-106 (*effective September 8, 2009, and applicable to sales occurring on or after October 1, 2009*).

Tobacco Products Tax. For sales occurring on or after October 1, 2009, the tax on the purchase, importation or manufacture of tobacco products is increased from 20% to 27.5% of the wholesale price, and the tax on the purchase, importation or manufacture of snuff tobacco is increased from 40 cents to 55 cents per ounce. No floor tax is imposed on these products. Conn. Gen. Stat. §12-330c, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.),



§107 (effective September 8, 2009, and applicable to sales occurring on or after October 1, 2009).

Cigarette/Tobacco License Fees. The following annual license fees are increased: (i) cigarette manufacturer's license from \$5,000 to \$5,250; (ii) cigarette dealer's license from \$25 to \$50; (iii) cigarette distributor's license (if cigarettes are sold to retail stores not owned by distributor) from \$1,000 to \$1,250; (iv) cigarette distributor's license (if cigarettes are sold exclusively to retail stores operated by the distributor) (A) from \$250 to \$315 if less than 15 stores, (B) from \$500 to \$625 if 15 to 24 stores, and (C) from \$1,000 to \$1,250 if 25 or more stores; and (v) untaxed tobacco distributor's license from \$100 to \$200. Conn. Gen. Stat. §§12-285b, 12-287, 12-288 and 12-330b, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §§153-156 (effective October 1, 2009), and Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §18 (effective October 5, 2009, and applicable to the renewal of a license that expires on or after September 30, 2009).

Attorney Occupational Tax. The annual attorney occupational tax is increased from \$450 to \$565. Conn. Gen. Stat. §51-81b, as amended by Conn. Pub. Act No. 09-3 (June Spec. Sess.), §390, and Conn. Pub. Act No. 09-8 (Sept. Spec. Sess.), §40 (effective October 1, 2009, and applicable to calendar years commencing on or after January 1, 2009).

Motor Vehicle Fuels Tax. Pursuant to Conn. Gen. Stat. §12-458h, which requires the DRS to recalculate annually the motor vehicle fuels tax rate for diesel fuel, the rate on the sale or use of diesel fuel increased from 43.4 cents to 45.1 cents per gallon effective July 1, 2009. No floor tax is imposed on the inventory of diesel fuel as of the close of business on June 30, 2009. Conn. Pub. Act No. 07-1 (June Spec. Sess.), §136.

Economic Stimulus Tax Refunds. New legislation provides that any payment (e.g., tax refund) received by an individual pursuant to the Economic Stimulus Act of 2008 (Public Law 110-185) shall be excluded from the calculation of that individual's available income or resources when determining that individual's eligibility for, or amount of, a state or wholly or partially state-funded local benefit,

property tax exemption, property tax credit or rental rebate program or for any optional municipal property tax relief program. The payment is excluded for the month the payment is received and the next succeeding two months. The legislation repeals a more limited exclusion adopted during the 2008 legislative session. Conn. Pub. Act No. 09-1, §§28, 35, repealing Conn. Pub. Act No. 08-68, §2 (effective January 15, 2009).

#### Insurance Company/Health Care Center Assessment.

Under current law, domestic insurance companies, health care centers and other entities subject to the premium/subscriber charge tax provided in Chapter 207 of the Connecticut General Statutes also must pay an annual assessment to the Commissioner of Insurance. The assessment is to cover the expenses incurred by the Insurance Department and the Office of the Healthcare Advocate. The provisions governing the assessment have been amended to now have the assessment cover the amount appropriated to the Department of Social Services for a new fall prevention program targeted at older adults. Conn. Gen. Stat. §§38a-47 and 38a-48, as amended by Conn. Pub. Act No. 09-5 (Sept. Spec. Sess.), §§53-54 (effective October 5, 2009).

SustiNet Plan. As part of its adoption of the Sustinet Plan, the General Assembly authorized the Sustinet Health Partnership board of directors to request that the Department of Revenue Services modify state personal income tax forms to request that a taxpayer identify existing health coverage for each member of the taxpayer's household. Conn. Pub. Act No. 09-148, §14 (effective July 1, 2011).

## **II. Administrative Developments**

Film Production and Entertainment Infrastructure Tax Credit Regulations. The Connecticut Commission on Culture and Tourism, in consultation with the DRS, promulgated three sets of regulations governing the application of each of: (i) the film production tax credit, Conn. Agencies Reg. §§12-217jj-1 through 12-217jj-13; (ii) the entertainment industry infrastructure tax credit, Conn. Agencies Reg. §§12-217kk-1 through 12-217kk-13; and (iii) the digital animation production company tax credit, Conn. Agencies Reg. §§12-217ll-1 through 12-217ll-12.

Offshore Voluntary Disclosure Program. The DRS is conducting the Connecticut Voluntary Disclosure Program through January 15, 2010, to permit taxpayers to voluntarily

disclose foreign bank accounts or entities that may have been employed to evade Connecticut taxes. To participate, a taxpayer must submit a letter with certain specified information, including an indication as to whether the taxpayer participated in the IRS Offshore Voluntary Disclosure Program. According to Special Notice 2009(5), if a proper disclosure is made, the DRS will waive civil penalties and generally waive criminal penalties. The DRS also will “look favorably” on requests for a limited look-back period if the taxpayer had paid taxes on the principal amounts invested in the foreign bank account or entity.

SN 2009(5), *Q & A Regarding the Connecticut Offshore Voluntary Disclosure Program*.

SN 2009(1), *2007 Legislative Changes Affecting the Motor Vehicle Fuels Tax Effective July 1, 2009*

SN 2009(2), *2009 Legislative Changes Affecting the Tobacco Products Tax Effective October 1, 2009*

### III. Case Law Developments

Housatonic Railroad Co. v. Law, 2009 Conn. Super. LEXIS 1646 (June 24, 2009). The Connecticut petroleum products gross earnings tax is imposed upon companies engaged in the refining or distribution of petroleum products (such as diesel fuel) in Connecticut; however, the refiner or distributor can seek reimbursement for the tax from its customers. A railroad company filed for a refund of taxes paid with respect to diesel fuel it used exclusively in locomotives as part of an interstate freight rail business. The company argued that it had standing to bring the appeal because it had reimbursed the diesel fuel distributor for the petroleum products gross earnings tax paid by the distributor with respect to the diesel fuel. The Superior Court granted the DRS’s motion to dismiss the railroad company’s appeal on the ground that the railroad company was not a taxpayer for purposes of the petroleum products gross earnings tax, because it was neither a refiner nor a distributor of petroleum products. Accordingly, it had no standing to bring a refund action under the governing statute.

## ADMINISTRATIVE PRONOUNCEMENTS

### Announcements

AN 2009(1), Information for Married Individuals or Civil Union Partners Who Are Both Employed and File a Joint Connecticut Income Tax Return

AN 2009(2), List of DRS-Registered Natural Gas Suppliers

AN 2009(3), Annual List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2009(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2009(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2009(3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2009(4), Annual Revision of Forms TPM-1, TPM-2, and TPM-3

AN 2009(5.2), Obtaining Connecticut Publications in Booklet Form

AN 2009(6), New Contractor’s Exempt Purchase Certificate, CERT-141

AN 2009(7), Connecticut Income Tax Treatment From Theft Losses of Ponzi-Type Schemes

AN 2009(9), New “14-Day” Withholding Rule for Nonresident Employees

### Informational Publications

IP 2009(1), Circular CT, Employer’s Tax Guide

IP 2009(2.3), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2009(3.3), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2009(4.3), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2009(5.3), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2009(6.3), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2009(7), Is My Connecticut Withholding Correct?

IP 2009(8), Connecticut Tax Guide for Payers of Nonpayroll Amounts

IP 2009(9), International Fuel Tax Agreement Manual

IP 2009(10.1), Status Letters for Income Tax

IP 2009(11), Unlawful Advertisements Referring to Sales Tax

IP 2009(12.1), Q & A on the 2009 Connecticut Tax Amnesty Program

IP 2009(13), Sales and Use Taxes Guide for Manufacturers, Fabricators, and Processors

IP 2009(14), Fisherman’s Guide to Sales and Use Taxes and Estimated Income Tax

IP 2009(15), Notice to Retailers on Sales and Use Tax Resale Certificates



IP 2009(15), Notice to Retailers on Sales and Use Tax Resale Certificates

IP 2009(17), Forms 1099-R, 1099-MISC and W-2G Electronic Filing Requirements for Tax Year 2009

IP 2009(18), Form W-2 Electronic Filing Requirements

IP 2009(19), Paying Connecticut Taxes by Electronic Funds Transfer

IP 2009 (20), Federal/State Electronic Filing Handbook

IP 2009 (22), Connecticut Tax Tips for Senior Citizens

IP 2009 (25), Personal Tax

IP 2009 (26), A Guide for Filers of Multiple Form CT-1041ES

IP 2009(27), Sales and Use Tax Exemptions for Purchases or Leases of Fuel-Efficient Passenger Motor Vehicles

IP 2009(28), Q & A on the Cigarette Tax Increase Effective October 1, 2009, for Licensed Cigarette Dealers

IP 2009(29), Q & A on the Cigarette Tax Increase Effective October 1, 2009, for Licensed Cigarette Distributors

IP2009(33), Q & A on the Connecticut Individual Tax

IP 2009(34), Q & A on Estimated Corporation Business Tax and Worksheet CT-1120AE

IP 2009(37.1), 2009 Connecticut Income Tax Changes Affecting Withholding Requirements and the 2009 Fourth Quarter Estimated Payment

## Policy Statements

PS 2009(2), Retailer's Acceptance of U.S. Government "GSA SmartPay2" Charge Cards for Exempt Purchases

## Special Notices

SN 2009(1), 2007 Legislative Changes Affecting the Motor Vehicle Fuels Tax Effective July 1, 2009

SN 2009(2), 2009 Legislative Changes Affecting the Tobacco Products Tax Effective October 1, 2009

SN 2009(3), 2009 Legislative Changes Affecting the Income Tax

SN 2009(4), Connecticut Tax Settlement Incentive Program

SN 2009(5), Q & A Regarding the Connecticut Offshore Voluntary Disclosure Program

SN 2009(6), 2009 Legislative Changes Affecting Sales and Use Taxes

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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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