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2010 Mid-Year Legislative, Case Law and Administrative Review

The recent downgrade of the bond rating of the State of Connecticut by a Wall Street rating agency is reflective, in part, of a legislative session which addressed the projected deficit for the 2011 fiscal year largely through borrowing, and which did little to address the significant projected deficit for the following two budget years or the long-term obligations or expense structure of the state. Once again, the Connecticut General Assembly considered a number of radical changes to the structure of the Connecticut tax system, from the elimination of credits and exemptions to the implementation of a unitary reporting system for the Connecticut corporation business tax, but ultimately did not enact meaningful reform legislation. While this result came as a relief to most Connecticut taxpayers, the unsettling nature of the seemingly annual tax policy review process continues to have a chilling effect on investment in the state. Further, the need early next year for the then newly-elected Governor to address a projected budget deficit of more than three billion dollars for the 2012 fiscal year means that any relief from significant tax law changes will be temporary. Connecticut taxpayers can only hope that the financial focus of state government will be as much, if not more, on expense reductions than on tax increases.

In this Alert, we highlight the Connecticut tax legislative, case law and administrative developments that occurred in the first half of 2010. In the legislative area, the most significant development was the effort to spur investment and job growth in the state through the enactment of new tax credit provisions and the amendment of existing tax credit statutes. We outline the new tax credit for angel investors, the new small business job creation tax credit, the new vocational rehabilitation tax credit and the new insurance reinvestment fund tax credit.

Our State and Local Tax Practice Group has been working with the Connecticut Department of Revenue Services on administrative guidance on such matters as last year's economic nexus legislation, the taxation of nonresident employees who work in Connecticut, nonresident contractor issues, and the taxation of owners of pass-through entities. We will, of course, continue to keep you advised of developments in these matters as they occur.

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 our State and Local Tax Practice Group if you have any questions.

CORPORATION BUSINESS TAX

Amended Returns and Refund Claims. The deadline for filing an amended Connecticut corporation business tax return after filing an amended federal return has been extended. Under prior law, the amended Connecticut return was required to be filed within 90 days after the filing of the amended federal return. Effective for income years commencing on or after January 1, 2010, the amended Connecticut return must be filed within 90 days after a final determination is made on the federal amended return. The new law also extends the date on which interest will start to accrue on a valid refund claim made as part of an amended return. Under prior law, the Commissioner of Revenue Services (the "Commissioner") had 90 days from the filing of an amended return to determine the validity of the refund claim made as part of an amended return. Effective for income years commencing on or after January 1, 2010, that 90-day period does not start until the taxpayer submits to the Commissioner proof of the final determination on the amended federal income tax return. Conn. Gen. Stat. §12-226(b)(1), as amended by Conn. Pub. Act No. 10-188, §5 (*effective June 7, 2010, for income years commencing on or after January 1, 2010*).

Captive REITs. A new Connecticut corporation business tax regime is enacted for "captive real estate investment trusts" (a "captive REIT"). A captive REIT is a real estate investment trust: (i) that is not regularly traded on an established securities market; (ii) that is not a "qualified real estate investment trust" as defined in Conn. Gen. Stat. §12-217(a)(3); and (iii) in which more than 50% of the real estate investment trust's voting power, beneficial interests or shares are owned or controlled directly or constructively by a Subchapter C corporation. Excluded from the definition of a captive REIT is any real estate investment trust that is owned or controlled, directly or constructively, by (i) another real estate investment trust, (ii) a tax-exempt organization; (iii) a listed property trust or other foreign real estate investment trust that is organized in a country that has a tax treaty with the United States governing the tax treatment of these trusts; or (iv) a real estate investment trust that is intended to become regularly traded on an established securities market and that satisfies Sections

856(a)(5) (not a financial institution or insurance company) and 856(a)(6) (beneficial ownership held by 100 or more persons) of the Internal Revenue Code (the "Code"). Under the new tax regime, a captive REIT will compute its net income for Connecticut corporation business tax purposes based upon its federal corporation net income without the benefit of the deduction for dividends paid provided under Code Section 857(b)(2). Recipients of dividends from a captive REIT subject to the new tax regime will no longer be required to take into income those dividends for purposes of the Connecticut corporation business tax. Conn. Gen. Stat. §§12-213(a), 12-217(a)(1) and 12-217(a)(3), as amended by Conn. Pub. Act No. 10-188, §§1-3, as further amended by Conn. Pub. Act No. 10-1 (June Spec. Sess.), §60 (*effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010*).

SALES TAX

I. Legislative Developments

Sales Tax Permits. The statute governing the issuance of sales tax permits is amended to provide that: (i) only a person actively engaging in or conducting business as a seller may hold a sales tax permit, and any person not so engaged must surrender the permit; and (ii) if a seller files returns for four successive monthly or quarterly periods, or for two successive annual periods, as the case may be, showing no sales, the Commissioner may cancel one or more permits held by the seller, if, after thirty days' written notice and a hearing, the seller cannot show cause why such permits should not be cancelled. The Commissioner is furthermore directed not to issue a new permit after the cancellation of a permit unless the Commissioner is satisfied that the permit holder will make sales subject to the Connecticut sales tax. Conn. Gen. Stat. §12-409, as amended by Conn. Pub. Act No. 10-188, §6 (*effective July 1, 2010*).

Renewable and Clean Energy Technology Industry Exemption. A new sales and use tax exemption is enacted for machinery, equipment, tools, materials, supplies and fuel used directly in the renewable energy and clean energy

technology industries. “Renewable energy and clean energy technology industries” is defined as industries that apply technologies to produce, improve or develop solar energy electricity generating systems, passive or active solar water or space heating systems, geothermal resource systems and wind power electric generation systems, including equipment related to such systems. Conn. Gen. Stat. §12-412(117)(B), as added by Conn. Pub. Act No. 10-75, §11 (*effective July 1, 2010, and applicable to sales occurring on or after July 1, 2010*).

School Bus Partial Refund. The Department of Motor Vehicles (“DMV”) is authorized to administer a program to provide funding to offset fifty percent of the sales tax paid on the purchase of school buses on or after July 1, 2011 equipped with 3-point lap/shoulder seat safety belts installed during the manufacture of such buses. From July 1, 2011 to December 31, 2017, a local or regional school district may submit an application to the DMV which will include a proposed agreement between the district and a private carrier for the provision of transportation of school children and from one to 50 school buses. Conn. Pub. Act No. 10-83, §1 (*effective July 1, 2010*).

II. Administrative Developments

Photo Booths. The DRS has ruled that an operator that provides a photo booth for entertainment at events such as weddings and birthday parties, and that imposes a single, non-separately stated charge for the booth and an attendant who oversees use of the booth, must collect sales tax on the entire charge as the true object of the transaction is for the taxable rental of tangible personal property. DRS Ruling 2010-1.

PERSONAL INCOME TAX

I. Legislative Developments

Amended Return and Refund Claims. The deadline for filing an amended Connecticut income tax return after amending a federal or another state’s income tax return has been extended. Under prior law, the amended Connecticut return was required to be filed within 90 days after the filing of the federal or other state’s amended tax return. Effective for income years commencing on or after January

1, 2010, the amended Connecticut income tax return must be filed within 90 days after a final determination is made on such other amended return by the relevant tax authority. The new law also extends the date on which interest will start to accrue on a valid refund claim made as part of an amended return. The new law provides that the 90-day period the Commissioner has to determine the validity of a refund claim made as part of an amended return (before interest begins to accrue on the claim) does not start until the taxpayer submits to the Commissioner proof of the final determination on the amended income tax return by the other tax authority. Conn. Gen. Stat. §§12-704(b)(2) and 12-727(b)(2), as amended by Conn. Pub. Act No. 10-188, §§12-13 (*effective June 7, 2010, and applicable to taxable years commencing on or after January 1, 2010*).

II. Case Law Developments

Untimely Administrative Appeal. In *Stapleton v. Commissioner*, Docket No. CV 09-4020332S (New Britain Sup. Ct. May 13, 2010), the Tax Session of the Superior Court granted the Commissioner’s motion to dismiss the taxpayers’ appeal from a denial of their refund claim. The taxpayers filed an administrative appeal to the Appellate Division of the Department of Revenue Services more than four months after the initial denial of the refund claim by the Commissioner. Since an appeal must be filed within 60 days of such a denial, the court lacked subject matter jurisdiction to hear the taxpayers’ appeal from the Appellate Division’s rejection of the untimely administrative appeal.

III. Administrative Developments

Nonresident Employees. The DRS published revised guidance on the requirements imposed upon employers which have nonresident employees who work in Connecticut, including the obligation to withhold Connecticut taxes from the wages paid to a nonresident employee if he or she works more than 14 days in Connecticut. Representatives of the business community continue to work with the DRS to expand, and potentially further revise, the published guidance to address such issues as how “working” days are to be counted and the need to report wages paid to employees who work 14 or fewer days in Connecticut. DRS Announcement 2010(3), “14-Day” Withholding Rule for Nonresident Employees.

TAX CREDITS

New Angel Investor Tax Credit. A new tax credit against the Connecticut personal income tax is created equal to 25% of a cash investment made by an angel investor in the qualified securities of a “qualified Connecticut business”, provided that the investment is at least \$100,000. The total tax credits allowed to any angel investor cannot exceed \$250,000. An “angel investor” is defined as an accredited investor, as defined by the Securities and Exchange Commission, or network of accredited investors, but does not include (i) a person who controls 50% or more of the Connecticut business invested in by the angel investor, (ii) a venture capital company or (iii) any bank, bank and trust company, insurance company, trust company, national bank, savings association or building and loan association for activities that are a part of its normal course of business. A “qualified Connecticut business” is a business that: (i) has been approved as such by Connecticut Innovations, Inc. (“CII”); (ii) had annual gross revenues of less than \$1 million in its most recent income year; (iii) has fewer than 25 employees, at least 75% of whom reside in Connecticut; (iv) has been operating in Connecticut for less than 7 consecutive years; (v) is primarily owned by the management of the business and their families; (vi) received less than \$2 million in cash investments eligible for the angel investor tax credits; and (vii) is engaged in bioscience, advanced materials, photonics, information technology, clean technology or any other emerging technology as determined by the Commissioner of Economic and Community Development. A Connecticut business may apply to CII for approval as a qualified Connecticut business (indicating the cash investment sought and description of qualified securities to be issued), and CII is to publish monthly a list of approved applications starting on or before August 1, 2010. An angel investor that intends to make a cash investment in a qualified Connecticut business must apply to CII to reserve a tax credit. The aggregate amount of all credits that may be reserved by CII shall not exceed \$6 million annually for the 2011 and 2012 fiscal years, and shall not exceed \$3 million in each subsequent fiscal year until fiscal year 2019, when authorization for the tax credit expires. No credits may be reserved on or after July 1, 2014. If the

angel investor is an S corporation or an entity treated as a partnership for federal income tax purposes, the tax credits may be claimed by its owners. The amount of the tax credit allowed cannot exceed the tax due from the angel investor, but the credit may be carried forward for the five immediately succeeding taxable years. The credits cannot be transferred to other taxpayers. Conn. Pub. Act No. 10-75 §15 (*effective July 1, 2010, and applicable to taxable years commencing on or after January 1, 2010*).

New Small Business Job Creation Tax Credit. A new credit is created against the corporation business, personal income and insurance premium taxes for a qualified business with fewer than 50 employees in Connecticut that creates new full-time jobs after May 6, 2010, and during its income years commencing on or after January 1, 2010 and prior to January 1, 2013. The credit is equal to \$200 per month for each new employee hired, and may be claimed for the income year in which the new employee is hired and, if eligible, the two immediately succeeding income years. Credits in excess of a taxpayer’s personal income tax liability may not be used and credits not used in an income year will expire and not be refunded. In addition, no other Connecticut tax credit may be claimed for the same employee. To be eligible, the new employee: (i) must be a resident of Connecticut; (ii) cannot have been employed in Connecticut during the prior 12 months by a related person with respect to the qualified business; (iii) must be required to work at least 35 or more hours per week for not less than 48 weeks in a calendar year; (iv) cannot be an owner, member or partner in the business; and (v) must be employed at the close of the income year of the qualified business for which the credit is claimed. To qualify for the new tax credit, the qualified business must file an application with the Commissioner of the Department of Economic and Community Development on a form provided by the Commissioner, and the Commissioner must render a decision within 30 days of receipt of the application. If the small business is an S corporation or treated as a partnership for federal income tax purposes, the tax credit may be claimed by the owners of the small business. Please note that a cap of \$11 million per year is placed on the aggregate credits authorized under this program, the new vocational rehabilitation job creation

tax credit program and the existing job incentive tax credit program under Conn. Gen. Stat. §12-217ii. Conn. Pub. Act No. 10-75, §§8, 10 (*effective May 6, 2010, and applicable to income years commencing on or after January 1, 2010*).

New Vocational Rehabilitation Job Creation Tax Credit. A new credit is created against the corporation business, personal income and insurance premium taxes for an employer who hires a new “qualifying employee” who is a Connecticut resident and who is required to work at least 20 hours per week for not less than 48 weeks in a calendar year. A new “qualifying employee” is a person who (i) is receiving vocational rehabilitation services from the Bureau of Rehabilitation Services or from the Board of Education and Services for the Blind; (ii) is hired by the employer to fill a new job after May 6, 2010, and during the employer’s income years commencing on or after January 1, 2010; (iii) is not an owner, member or partner in the business of the employer; and (iv) is employed at the close of the income year of the employer for which the credit is claimed. The tax credit is equal to \$200 per month for each new qualifying employee hired, and may be claimed in the income year in which the new qualifying employee is hired and, if eligible, the two immediately succeeding income years. Any tax credit not used in an income year will expire and is not refundable. Further, an employer subject to the personal income tax cannot claim the credit in excess of the tax imposed, and the employer claiming the tax credit cannot claim any other state tax credit with respect to the same new qualifying employee. If the employer is an S corporation or an entity treated as a partnership for federal income tax purposes, the credit can be claimed by the owners of the employer. To qualify for the new tax credit, the employer must file an application with the Commissioner of Economic Development on a form supplied by the Commissioner, and the Commissioner must render a decision within 30 days of receipt of the application. A cap of \$11 million per year is placed on the aggregate credits authorized under this program, the new small business job creation tax credit and the existing job creation tax credit program under Conn. Gen. Stat. §12-217ii. Conn. Pub. Act No. 10-75, §§9-10 (*effective May 6, 2010, and applicable to income years commencing on or after January 1, 2010*), as amended by Conn. Pub. Act No. 10-1 (June Spec. Sess.) §18 (*effective June 22, 2010*

and applicable to income years commencing on or after January 1, 2010).

Old Insurance Reinvestment Fund Tax Credit. The current insurance reinvestment fund tax credit program is amended and phased out as follows: (i) Connecticut residents must hold the new jobs insurance companies create under the program; (ii) no eligibility certificate for an insurance business investment will be provided on or after June 30, 2010; and (iii) on or after July 1, 2011, no credit will be allowed for an investment in an insurance business which has been issued an eligibility certificate, if the investment is less than one million dollars. A fund manager must provide documentation to the Commissioner of Economic and Community Development not later than June 30, 2011 that the one-million-dollar investment requirement has been satisfied or the Commissioner is to revoke the certificate of eligibility for the insurance business. Any credit previously allowed but not claimed prior to January 1, 2010, may be carried forward under the existing rules governing the carry forward of the credit. Conn. Gen. Stat. §38a-88a, as amended by Conn. Pub. Act No. 10-75, §14 (*effective July 1, 2010*).

New Insurance Reinvestment Fund Tax Credit Program. A new insurance reinvestment fund tax credit program is created, with tax credits available only against the insurance premiums tax under Chapter 207 or Conn. Gen. Stat. §38a-743. A taxpayer qualifies for the credit only if it makes a cash investment in a state-approved insurance reinvestment fund that fully funds the purchase price of: (i) an equity interest in the fund or (ii) an eligible debt instrument issued by the fund, at par value or a premium, that has an original maturity date of at least five years after the date of issuance, a repayment schedule that is not faster than a level principal amortization over five years, and has no interest, distribution or payment features tied to the profitability of the fund or the success of its investments. In addition, investors may only claim the credit if the insurance reinvestment fund invests in a business that: (i) employs fewer than 250 people when the investment is made and the fund netted no more than \$10 million in net income in the previous year; and (ii) conducts its principal business operations in Connecticut (*i.e.* at least 80% of the business organization’s employees

reside in Connecticut or 80% of the business payroll is paid to individuals living in Connecticut). The fund may not invest more than 15% of its credit-eligible funds in one business without the Commissioner's approval. The credit against the premium tax is 0% of the investment for each of the first through third tax years, not more than 10% of the investment for each of the fourth through seventh tax years and not more than 20% of the investment for each of the eighth through tenth tax years. The maximum amount of eligible capital for which credits may be allowed shall not result in more than \$40 million of tax credits being used in any one year exclusive of carried forward credits and not more than \$200 million in the aggregate. On or before July 1, 2010, the Commissioner of Economic Development must begin to accept applications, on a first-come, first-served basis, for certification as an insurance reinvestment fund and for allocations of tax credits. The application will include a commitment to invest at least 25% of the fund's eligible capital in green technology business and a commitment to invest by the third anniversary of its allocation date at least 3% of its eligible capital in preseed investments pursuant to the preseed financing program to be established by Connecticut Innovations, Incorporated. If properly certified, an insurance reinvestment fund must file annual performance reports that show the fund is meeting its investment schedule (unless amended with the approval of the Commissioner) or risk decertification and the forfeiture of credits. The rules also prescribe when a fund can make distributions to investors and when a percentage of a distribution must be made to the State when the fund fails to satisfy the job creation goals set in its application for certification. Conn. Gen. Stat. §38a-88a, as amended by Conn. Pub. Act No. 10-75, §14 (*effective July 1, 2010*).

Historic Structure Rehabilitation Tax Credit. Property owners who rehabilitate certified historic structures for mixed commercial and residential use are eligible for tax credit vouchers that can be used against the corporation business tax, the insurance premium tax, the air carrier tax, the railroad company tax, the CATV and satellite transmission gross earnings tax and the utility companies tax. The provisions governing the tax credit are amended to: (i) require an owner, if the rehabilitation work is planned to be undertaken in phases, to provide in his rehabilitation plan submitted to the Commission on Culture and Tourism

(the "CCCT"), a complete description of each such phase, with anticipated schedules for completion; (ii) require the owner then to notify the CCCT when a phase of the rehabilitation has been completed when an identifiable portion of the certified historic structure has been placed in service (together with documentation of the work performed and a certification of costs incurred); (iii) permit the CCCT to issue tax credit vouchers for the substantially rehabilitated identifiable portion of the building placed in service (regardless of whether such portion contains residential uses so long as the complete rehabilitation plan provides for such uses; and (iv) require the owner to recapture 100% of the tax credit voucher amount if the owner fails to complete the residential portion of the project within the schedule specified in the rehabilitation plan (subject to the right of the CCCT to extend the completion deadline for the residential portion for a maximum of three years). Conn. Gen. Stat. §10-416b, as amended by Conn. Pub. Act No. 10-188, §15 (*effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010*).

Film Production Tax Credit. The provisions governing the film production tax credit are amended to: (i) require an eligible production company to (A) conduct not less than 25% of principal photography days in Connecticut (reduced from 50% under current law), (B) expend not less than 50% of postproduction costs in Connecticut or (C) expend not less than \$1 million of postproduction costs in Connecticut (new criterion); (ii) exclude development costs from the list of expenditures that are considered "production expenses or costs" incurred in Connecticut; and (iii) limit compensation that qualifies as "production expenses or costs" to base salary and wages, expressly excluding bonus pay, stock options, restricted stock limits or similar arrangements. Conn. Gen. Stat. §12-217jj, as amended by Conn. Pub. Act No. 10-107, §1, as further amended by Conn. Pub. Act No. 10-1 (June Spec. Sess.), §61 (*effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010*).

Entertainment Industry Infrastructure Project Tax Credit. The provisions governing the tax credit for an investment in a state-certified entertainment industry infrastructure project are amended to provide that eligible expenditures for a

capital project to provide buildings, facilities or installations, whether leased or purchased, are limited to capital leases and purchases, and not expenditures under other types of leases. Conn. Gen. Stat. §12-217kk(b), as amended by Conn. Pub. Act No. 10-107, §2 (*effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010*).

Neighborhood Assistance Act Tax Credits. The Neighborhood Assistance Act provides tax credits against the corporation business tax, the insurance premium tax, the air carriers tax, the railroad company tax, the CATV and satellite transmission gross earnings tax and the utility companies tax to businesses that invest in certain municipally-approved community activities and programs. The Act's provisions are amended to: (i) disallow application of the credit against any public service company tax imposed under Conn. Gen. Stat. §12-268a, (ii) eliminate the municipalities' role in approving tax credit proposals from individual businesses; (iii) require the Commissioner to decide whether to approve a tax credit application solely based on whether it was submitted on time (between September 15th and October 1st) and complies with the Act's requirements; and (iv) increase the credit for business investments in community-based alcoholism prevention or treatment programs from 40% to 60% of the investment. Conn. Gen. Stat. §12-631(a), as amended by Conn. Pub. Act No. 10-188, §8 (*effective from June 7, 2010, and applicable to income years commencing on or after January 1, 2010*); Conn. Gen. Stat. §12-632(c), as amended by Conn. Pub. Act No. 10-188, §9 (*effective July 1, 2010*); and Conn. Gen. Stat. §12-635a, as amended by Conn. Pub. Act No. 10-188, §10 (*effective June 7, 2010*).

Tax Credit for Housing Programs. New legislation amends the tax credit for business firms making cash contributions to low and moderate income housing programs developed, sponsored or managed by a nonprofit corporation approved by the Connecticut Housing Finance Authority ("CHFA"). Under current law, the total annual amount of credits allowed to all business firms cannot exceed \$10 million. Of that total, up to and until November 1st of each year, CHFA must set aside \$2 million for the Supportive Housing Pilots Initiative or the Next Steps Initiative and \$1 million for workforce housing. The governing statute is amended to:

(i) change the deadline for the set asides from November 1st to 60 days after CHFA publishes its list of housing programs that will receive the tax credit; (ii) extend the \$2 million set aside also to other supportive housing initiatives; and (iii) clarify that any tax credits remaining unused after the deadline become available for any other eligible housing program. Conn. Gen. Stat. §8-395, as amended by Conn. Pub. Act No. 10-1 (June Spec. Sess.), §19 (*effective July 1, 2010*).

Sunset of Existing Tax Credit Programs. The following tax credit programs will be eliminated for income years beginning on or after January 1, 2014: (i) the tax credit program for donations to a local or regional board of education or a public or nonpublic school of new or used computers; (ii) the tax credit programs for financial institutions that develop facilities and create jobs; and (iii) the tax credit program for Small Business Administration guaranty fee payments. Conn. Gen. Stat. §§10-228b(a), 12-217u(b), 12-217u(f) and 12-217cc, as amended by Conn. Pub. Act No. 10-75, §§25-28 (*effective July 1, 2010*).

ESTATE AND GIFT TAX

Connecticut Uniform Principal and Income Act Amendments. The provisions of the Connecticut Uniform Principal and Income Act ("CUPIA") governing the payment to certain trusts of deferred compensation, annuity and similar payments to ensure that such trusts qualify for the federal estate tax marital deduction. The amendment to the CUPIA requires the trustee to demand certain distributions of income, if the surviving spouse so requests, to ensure that the annuity or other similar asset payable to the trust meets the safe harbor requirements of the IRS. In addition, the amendment provides the trustee with a means of valuing the fund's income in the absence of adequate information from the administrator of the annuity or other payment governed by this section. The CUPIA also is amended to require trustees to pay taxes on a trust's share of an entity's taxable income from principal or income in accordance with the character of the payments. Conn. Gen. Stat. §§45a-542q and 45a-542bb, as amended by Conn. Pub. Act No. 10-31, §§1-2 (*effective October 1, 2010*).

Probate Court Fees. For estates in which probate proceedings are commenced on or after January 1, 2011, the method of determining costs is amended to: (i) exclude out-of-state property from the definition of gross estate; and (ii) eliminate the 0.1% fee for jointly-owned real estate for estates that are not required to file a succession tax return. In addition, for estates of a decedent who dies on or after January 1, 2011, interest is imposed for unpaid costs for matters regarding the settlement of the decedent's estate (unless the probate court, upon a showing of reasonable cause, extended the time for the payment of costs and those costs were paid timely given the extension). Conn. Gen. Stat. §45a-107, as amended by Conn. Pub. Act No. 10-184, §1 (*effective January 1, 2011*). New legislation also: (i) establishes a refund procedure if probate court fees or costs are overpaid, Conn. Pub. Act No. 10-184, §3 (*effective January 1, 2011*); (ii) repeals the \$50 probate court fee for appeals, Conn. Gen. Stat. §§45a-106 and 45a-108, as amended by Conn. Pub. Act No. 10-184, §§5-6 (*effective June 8, 2010*); (iii) authorizes probate court fees to be paid by credit card, Conn. Pub. Act No. 10-184, §4 (*effective January 1, 2011*); (iv) specifies that a transferee who files an estate tax return must pay probate court fees and costs if there is no executor or administrator in connection with an estate settlement, Conn. Gen. Stat. §45a-110, as amended by Conn. Pub. Act No. 10-184, §2 (*effective June 8, 2010*); and (v) provides, upon the written request of a party or his or her attorney, for the recording of probate proceedings not required by law to be recorded. Conn. Pub. Act No. 10-184, §7 (*effective October 1, 2010*).

PROPERTY TAX

I. Legislative Developments

Property Tax Incentive for Remediated Properties. The statute that permits a municipality to abate or forgive the property taxes on contaminated property being remediated and redeveloped is amended to: (i) allow the forgiveness of all or a portion of delinquent property taxes and interest for the benefit of a prospective purchaser of a property deemed to be a brownfield as defined in Conn. Gen. Stat. §32-9kk(a)(1); and (ii) permit a municipality to enter into an agreement with an owner of real property to fix the assessment of the property as of the last assessment date

prior to the commencement for a period not to exceed seven years, provided that the property has been the subject of a remediation approved by the Commissioner of Environmental Protection or verified by a licensed environmental professional pursuant to Conn. Gen. Stat. §§22a-133w, 22a-133x, 22a-133y or 22a-134. Conn. Gen. Stat. §12-81r, as amended by Conn. Pub. Act No. 10-135, §3 (*effective July 1, 2010, and applicable to assessment years commencing on or after October 1, 2010*).

Mobile Telecommunication Service Providers. Effective for assessment years commencing on or after October 1, 2010, a mobile telecommunication service provider can no longer elect to pay property tax on personal property pursuant to the special state personal property tax regime for telecommunication service providers. Rather, a mobile telecommunication service provider will now be required to pay property tax to the municipality in which the property is located. For personal property that was not fully depreciated on or before the grand list for October 1, 2009, the provider will pay tax based upon the applicable municipal tax schedule as of the October 1, 2010 assessment year. For personal property that was fully depreciated on or before the grand list for October 1, 2009, the property will be phased in equally over the next four grand lists, commencing with the grand list for October 1, 2010, until it becomes fully subject to the applicable municipal tax schedule. Conn. Gen. Stat. §12-80a, as amended by Conn. Pub. Act No. 10-171, §3 (*effective October 1, 2010, and applicable to assessment years commencing on or after that date*).

II. Case Law Developments

Marinas. In *Pilots' Point Marina, Inc. v. Westbrook*, 119 Conn. App. 600 (2010), the Appellate Court affirmed, in part, and reversed, in part, the trial court's reduction of a property tax assessment levied against the plaintiff marina holding: (i) the trial court erred in not including the marina's income from summer boat storage in its effective gross income valuation calculation even though such income is not representative of the market; and (ii) the trial court did not err in failing to consider certain rentable building space as the defendant did not submit any evidence to prove that the omitted square footage had any effect on the overall value of the property. The matter was remanded for a

redetermination of the fair market value of the property that will consider the summer storage income. See also *River Properties Inc. v. Essex*, 2010 Conn. Super. LEXIS 408 (Feb. 22, 2010), and 2010 Conn. Super. LEXIS 927 (Apr. 19, 2010), and *Gulia v. Bridgeport*, 2010 Conn. Super. LEXIS 60 (Jan. 11, 2010). These tax appeals address the proper valuation of a marina and related properties, including floating docks.

Second Challenge to Same Valuation. In *Massey v. Branford*, 119 Conn. App. 453 (2010), the Appellate Court upheld the grant of summary judgment for the defendant municipality from an appeal from the valuation and assessment of the plaintiffs' property on the October 1, 2006 grand list. In a prior proceeding, the trial court had enforced a settlement agreement between the parties establishing the value of the property as of October 1, 2004, and no town-wide revaluation had occurred since that time. The Appellate Court held that the plaintiffs had standing to bring the appeal, but that their claims of excessive or wrongful assessment were barred by the doctrine of collateral estoppel, the claim of negligent supervision against the town was barred by *res judicata* and the various claims based upon technical violations of the property assessment statutes and the Freedom of Information Act failed to state a cause of action as a matter of law.

Equitable Tolling of Statute of Limitations. In *Wiele v. Board of Assessment Appeals of Bridgeport*, 119 Conn. App. 544 (2010), the City of Bridgeport imposed an assessment for personal property taxes against the plaintiff based upon the plaintiff's truck even though the plaintiff had provided evidence that she had moved to North Carolina with the truck. When the plaintiff returned to Connecticut 13 years later, unaware that the assessment had been imposed, the City levied against the plaintiff's bank account, and the plaintiff filed an appeal. The trial court held that the City had waived its statute of limitations defense and ordered repayment of the levied funds to the plaintiff. The Appellate Court reversed the court's decision, holding that there was no evidence that the City had waived the statute of limitations defense, but remanded the appeal to the trial court to determine whether the doctrine of equitable tolling is applicable to the one-year limitations period for tax

appeals brought pursuant to Conn. Gen. Stat. §12-119.

Federal Challenge to Property Tax Assessment. In *Marshall v. Middlefield*, 2010 U.S. App. LEXIS 665 (2d Cir. 2010), the plaintiff brought a federal court action to challenge a property tax assessment by the defendant municipality based upon an automobile owned by the plaintiff. The Second Circuit Court of Appeals affirmed the grant of summary judgment for the defendant municipality because the Tax Injunction Act and the principle of comity dictate that a federal court not enjoin, suspend or restrain a tax assessment under state law if there is an adequate state law procedure for contesting the tax assessment. Interestingly, the plaintiff argued that there was no state procedural remedy because she did not learn of the assessment until many years after an appeal could have been filed pursuant to Conn. Gen. Stat. §12-119. The Court held, however, that if true, "it does not appear likely that the Connecticut state courts would construe the statute of limitations in a way that would completely foreclose any claim."

Country Club Land as Open Space. In *The Woodway Country Club, Inc. v. Darien*, 2010 Conn. Super. LEXIS 376 (Feb. 11, 2010), the plaintiff country club appealed the reclassification of its property as no longer constituting recreational open space. In granting the Town's motion to strike, the Superior Court cited the Connecticut Supreme Court's holding in *Aspetuck Valley Country Club, Inc. v. Weston*, 292 Conn. 817 (2009), wherein a country club's application for open space designation was denied because the designation of its land as open space had not been approved by a majority vote of the municipality's legislative body. In the instant case, the plaintiff's property had long been classified as open space by the assessor, but the designation as open space also had not been approved by the Town's legislative body. The Superior Court, therefore, granted the motion to strike the claim based upon the assertion that the land was improperly reclassified, but refused to grant a motion to strike a separate claim by the plaintiff country club claim based upon equitable estoppel.

MISCELLANEOUS

I. Legislative Developments

Employee Misclassification Penalties. Implementing a recommendation of the Joint Enforcement Commission on Employee Misclassifications, the civil penalty for failure to pay workers' compensation assessments to the state, or to report properly the number of employees to an insurance company providing workers' compensation coverage, based upon the misclassification or misrepresentation of a worker as an independent contractor rather than employee is amended so that each day of a violation constitutes a separate offense subject to the \$300 penalty. Conn. Gen. Stat. §§31-69a and 31-288(g), as amended by Conn. Pub. Act No. 10-12, §§1-2 (*effective October 1, 2010*).

Real Estate Conveyance Tax Rate. The "temporary" increase in the municipal real estate conveyance tax rate from eleven one-hundredths of one percent (0.11%) of the consideration to one-fourth of one percent (0.25%) of the consideration is extended for yet another year through June 30, 2011. Conn. Gen. Stat. §12-494(a), as amended by Conn. Pub. Act No. 10-1 (June Spec. Sess.), §1 (*effective July 1, 2010*).

Real Estate Conveyance Tax Exemptions. Two new exemptions from the real estate conveyance tax are adopted for: (i) deeds in lieu of foreclosure that transfer the transferor's principal residence; and (ii) any instrument that transfers a transferor's principal residence where the gross purchase price is insufficient to pay the sum of (A) all mortgages encumbering the residential property, and (B) any real property taxes and municipal utility or other charges for which the municipality may place a lien on the residential property and which would have priority over the mortgages encumbering the residential property. Conn. Gen. Stat. §§12-498(a)(19) and (20), as added by Conn. Pub. Act No. 10-1 (June Spec. Sess.), §2 (*effective October 1, 2010*).

Triennial Tax Credit and Business Tax Review. On or before January 1, 2011, and every three years thereafter, the Commissioner of Economic and Community Development, in consultation with the Commissioner

of Revenue Services, is now required to prepare a report regarding any tax credit or abatement program enacted for the purpose of the recruitment or retention of businesses. The report must include, at a minimum: (i) a baseline assessment of the tax credit and abatement programs enacted to encourage business growth in the state, including the aggregate number of jobs and annual revenue associated with taxpayers eligible for such tax credits or abatements; (ii) a listing, by program, of the amount of tax credits and abatements approved by the state during the preceding calendar year; (iii) a summary and evaluation of each tax credit program administered by the DECD (including (A) an assessment of the intended statutory and programmatic goals of the tax credit program; (B) the number of taxpayers granted tax credits under the program during the previous twelve-month period; (C) the value of the tax credits granted under the program, listed by the North American Industrial Classification System ("NAICS") code associated with the taxpayers receiving such credit; (D) the value of the tax credits actually claimed and carried forward by taxpayers under the credit program, listed by the NAICS code associated with such taxpayers; (E) an assessment and five-year projection of the potential impact on the state's revenue stream from tax credit carry forwards under the tax credit program; (F) an analysis of the economic impact of the tax credit program, and whether the statutory and programmatic goals of the program are being met, and any obstacles to the achievement of such goals; (G) the type and value of the tax credits assigned under the program, and a summary by NAICS codes of the assignees; (H) a cost-benefit analysis of the revenue foregone by allowing the tax credit; (I) the cost to the state to administer the tax credit program, as compared to the net revenue generated to the state by the program; (J) the average and aggregate administrative and compliance cost, to taxpayers, to comply with the requirements of the tax credit program; and (K) a recommendation as to whether the tax credit program should be continued, modified or repealed, the basis for the recommendation and the expected impact of such recommendation on the state's economy); and (iv) an assessment of the fairness, performance, burden, tax incidence and economic impact of the state's corporation business tax and taxes on domestic and foreign insurance companies (including the cost to the state to administer these taxes and a

comparison of such costs to the net revenue generated to the state by such taxes, and the average and aggregate administrative and compliance costs to taxpayers associated with such taxes). The report is to be submitted to the Governor, the Secretary of the Office of Policy and Management and the General Assembly committees having cognizance of matters relating to appropriations, finance and commerce. Conn. Pub. Act No. 10-1 (June Spec. Sess.), §27 (*effective July 1, 2010*).

Electronic Filing and Funds Transfer. The annual threshold at which the Commissioner may require the electronic payment of taxes or transfer of withholding taxes is reduced from \$10,000 to: (i) \$4,000 or more in annual tax liability for the electronic payment of taxes; and (ii) more than \$2,000 in annual withholding tax payments for the electronic transfer of withholding taxes. In addition, any person (other than a return preparer) required by regulation to file electronically with the Commissioner any return, statement or other document shall be required to pay by electronic funds transfer the tax to which such return, statement or other document pertains. Conn. Gen. Stat. §12-686, as amended by Conn. Pub. Act No. 10-188, §11 (*effective July 1, 2010*).

Bradley Airport Development Zone. A new Bradley Airport Development Zone ("BADZ") is created in an area located in Windsor Locks, Suffield, East Granby and Windsor. The authorizing legislation extends enterprise zone tax incentives to manufacturers and other specified businesses that develop or acquire property and create jobs in the BADZ: (i) commencing with the 2012 assessment year, the property tax exemption equal to 80% of the improvement's assessed value for up to five years (or ten years in certain limited circumstances) for a newly acquired, constructed, substantially renovated or expanded "manufacturing facility"; (ii) commencing with the 2012 assessment year, the property tax exemption for machinery and equipment installed in a newly constructed, substantially renovated or expanded "manufacturing facility", or existing in an acquired "manufacturing facility"; and (iii) for income years commencing on or after January 1, 2013, the ten-year corporation business tax credit for a percentage of the tax which is allocable to a "manufacturing facility" that qualifies for the property tax credit described above. The definition of "manufacturing facility" is broadened to include a facility

located in the BADZ which is used for the warehousing or motor freight distribution of goods transported by aircraft to or from an airport located in the BADZ, or which is determined by the Commissioner of Economic and Community Development to be dependent upon or directly related to Bradley Airport, and is to be used for certain other business services. Conn. Gen. Stat. §§12-81(59), 12-81(60), 12-217e and 32-9p, as amended by Conn. Pub. Act No. 10-98, §§1-5 (*generally effective October 1, 2011, and applicable to assessment years commencing on or after October 1, 2012 for the property tax exemptions, and applicable to income years commencing on or after January 1, 2013 for the corporation business tax credit*).

Major Aerospace or Defense Plant Closure. Under new legislation, the Commissioner of Economic and Community Development can determine that the economy of a municipality has been severely impacted by a major aerospace or defense plant closure with not less than 800 employees. In reaching that determination, the Commissioner must find that, due to such major aerospace or defense plant closure in the municipality, (i) there is or will be a loss of employment opportunities in the municipality, and (ii) there is or will be a severe adverse impact in the municipality. If such a determination is made, the owners of any business facility located in the municipality, if a qualified "manufacturing facility," will be eligible to seek the property tax exemptions and corporation business tax credits available to the owners of manufacturing facilities in distressed municipalities, as provided in Sections 32-9p to 32-9s, 12-217e, and 12-81(59) and (60) of the Connecticut General Statutes. The Commissioner's determination is effective for two years, but may be renewed by the Commissioner for an additional two years (or until the plant is reoccupied if the closure involved a military installation at which military vehicle engines were produced). Conn. Gen. Stat. §32-56, as amended by Conn. Pub. Act No. 10-162, §1 (*effective June 9, 2010*).

Bottle Deposits. Primary administration for the State's deposit program for beverage containers has been shifted from the Department of Environmental Protection to the Department of Revenue Services. The program requires a "deposit initiator," the first distributor to collect the deposit

on a beverage container sold to a person in the state, to: (i) hold bottle bill deposits in a special trust fund for the state; (ii) file a quarterly report on account balances, credits and withdrawals; and (iii) pay outstanding balances on a quarterly basis. A deposit initiator must use the IRS cash receipts and disbursements accounting method to account for refund values or petition the Commissioner for an alternative accounting method. Any payment required to be made pursuant to the program is now deemed a tax and the procedural rules applicable to the Admissions, Cabaret and Dues Tax are made applicable to the program. Conn. Gen. Stat. §§22a-245 and 22a-245a, as amended by Conn. Pub. Act No. 10-25, §§1-3 (*effective July 1, 2010*).

Health Care Reform Payments. Any payment made pursuant to the Patient Protection and Affordable Care Act, P.L. 111-148, shall not be counted as income for purposes of determining the eligibility for, or the benefit level of, an individual under any property tax exemption, property tax credit or property tax relief program. Conn. Pub. Act No. 10-179, §36 (*effective May 7, 2010*).

Dry Cleaning Establishment Remediation Account. The requirements that must be satisfied in order to be eligible to receive a grant from the Dry Cleaning Establishment Remediation Account are broadened to permit an applicant to include a new owner of property on which an eligible dry cleaning establishment had been previously operated for at least a year prior to approval of the application. Conn. Gen. Stat. §12-263m, as amended by Conn. Pub. Act No. 10-86, §1 (*effective June 2, 2010*).

Motor Carrier Road Tax. The motor carrier road tax provisions are amended to: (i) require all carriers filing quarterly operating reports to file them on the last days of January, April, July and October; and (ii) require the Commissioner to exempt from all reporting a carrier that operates only in Connecticut and buys its motor fuel solely in Connecticut. Conn. Gen. Stat. §12-484; as amended by Conn. Pub. Act No. 10-188, §7 (*effective July 1, 2010, and applicable to quarterly periods commencing on or after January 1, 2011*).

Admissions Tax and Rentschler Field. An exemption from the admissions tax has been enacted with respect to any

admission charge to any interscholastic athletic event held at Rentschler Field. Conn. Gen. Stat. §12-541, as amended by Conn. Pub. Act No. 10-146, §1 (*effective July 1, 2010, and applicable to admission charges imposed on or after that date*).

Repealed Provisions. The statutory authorizations for the Small and Medium-Sized Business Users Committee and the State Tax Review Commission are repealed. In addition, the statutory requirement that the Commissioner report annually on the Department's cigarette sales enforcement activities also is repealed. Conn. Gen. Stat. §§12-3f, 12-34d and 12-315a, repealed by Conn. Pub. Act No. 10-188, §17 (*effective June 7, 2010*).

II. Administrative Developments

Civil Penalty Waivers. The DRS issued guidance establishing a new procedure and publishing a new form for taxpayers seeking a waiver by the Commissioner of certain civil tax penalties. DRS Policy Statement 2010(1), *Requests for Waiver of Civil Penalties*.

ADMINISTRATIVE PRONOUNCEMENTS

Announcements

AN 2010(1), Information for Married Individuals or Civil Union Partners Who Are Both Employed and File a Joint Connecticut Income Tax Return

AN 2010(2), Assessments Refunded by Connecticut Insurance Guaranty Association

AN 2010(3), "14-Day" Withholding Rule for Nonresident Employees

AN 2010(4), Annual Revision of Forms TPM-1, TPM-2, and TPM-3

AN 2010(5), Annual List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2010(5.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2010(6), Motor Vehicles Fuels Tax Rate on Diesel Fuel Reduced Effective July 1, 2010



Informational Publications

IP 2010(1), Connecticut Circular CT - Employer's Tax Guide

IP 2010(2.1), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2010(3.1), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2010(4.1), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2010(5.1), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2010(6.1), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2010(7), Is My Connecticut Withholding Correct?

IP 2010(8), Connecticut Tax Guide for Payers of Nonpayroll Amounts

IP 2010(14), State of Connecticut International Fuel Tax Agreement (IFTA) Manual

Policy Statements

PS 2010(1), Requests for Waiver of Civil Penalties

Special Notices

SN 2010(2), Reminder that the Sales and Use Tax Exemption for Purchases or Leases of Fuel-Efficient Passenger Motor Vehicles Ends June 30, 2010

Rulings

Ruling 2010-1, Photo Booths

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