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CONNECTICUT TAX DEVELOPMENTS

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in this issue

Governor Lamont Signs Connecticut Biennial Budget: New Deal or Déjà Vu?

On June 26, 2019, Governor Ned Lamont signed a $43.4 billion budget for the 2020 and 2021 fiscal years. The biennial budget addresses the projected $3.7 billion budget deficit for the period, but still increases spending by 1.7% in the 2020 fiscal year, and by 3.4% in the 2021 fiscal year. Although a letter dated June 25, 2019 published by the Office of Fiscal Analysis projected a roughly $700 million surplus for the 2018-2019 fiscal year, and an increase to $2.28 billion in the Budget Reserve Fund (i.e., "rainy day fund"), the new budget contains hundreds of millions of dollars in tax and revenue increases and, in the words of the Connecticut Business and Industry Association, "shifts billions of dollars in teacher pension debt and interest onto future taxpayers after 2032."

For Connecticut taxpayers, and particularly business taxpayers, it was a troublesome regular legislative session, but not as bad as it could have been. Governor Lamont was instrumental in preventing an increase in the marginal income tax rates and the adoption of a capital gains tax on high income taxpayers, but businesses will need to contend with a hike in the minimum wage, new paid family and medical leave legislation, an extension of the purported "temporary" 10% corporation business tax surcharge, a reduction in the cap on the use of corporation business tax credits and a reduction in the credit arising from the payment of the new Connecticut pass-through entity tax, resulting in a tax increase for many owners of limited liability companies, S corporations and partnerships. On a positive note, the Legislature agreed to phase out the corporation business capital base tax, extended for five years the angel investor tax program and repealed the biannual business entity tax (but simultaneously increased the fees payable to the Office of the Secretary of the State by the pass-through entities that were subject to that tax). Businesses should be aware, however, that the General Assembly formed a Payroll Commission to evaluate the possible implementation of a payroll tax on employers in Connecticut commencing on January 1, 2021, and charged the Department of Revenue Services (the "Department" or "DRS") to take those actions intended to facilitate the possible electronic deposit of sales tax receipts on a daily basis. On August 15, the DRS sent an email to employers seeking information for the new Payroll Commission regarding the number of their Connecticut employees and the total wages paid to those employees.

Individual taxpayers also will experience an increase in their Connecticut tax liability. The General Assembly extended the current limitations on the availability of the property tax credit, delayed the increase in the state teachers' retirement system payment deduction and repealed the STEM graduate tax credit. More significantly, although the Legislature thwarted the Governor's attempt to extend the sales and use tax to an even longer list of services, it did extend the tax to digital goods and downloads, motor vehicle parking, dry cleaning and laundry services and interior design services, and increased the tax rate on meals and beverages and non-business computer software downloads. There also is a new ten-cent tax on single use plastic check-out bags, and a higher conveyance tax rate on sales of real property of more than $2.5 million (subject to a possible increase of the property tax credit that may be taken by the seller of the residence if the seller remains in Connecticut). In addition, an attempt to repeal the gift tax was removed from the final budget legislation. The regular session also resulted in a myriad of other excise and other tax law changes with which businesses and individuals will need to cope.

This newsletter summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published by the Connecticut Department of Revenue Services during the first ten months of 2019. Please contact a member of our State and Local Tax Practice Group if you have questions regarding the new tax law changes or how they may affect you and your business. **On July 11, our tax attorneys hosted a CLE Webinar entitled "Annual Connecticut Tax Update 2019." Visit our CLE Knowledge Center (www.shipmangoodwin.com/cle-events) or register at https://event.on24.com/wcc/r/2029838/234B57DB630A765A2DD18E7D9B14C000 to view an on demand replay.**

State and Local Tax Practice Group

Alan E. Lieberman
alieberman@goodwin.com
(860) 251-5801

Louis B. Schatz
lschatz@goodwin.com
(860) 251-5838

Raymond J. Casella
rcasella@goodwin.com
(860) 251-5808

Robert L. Day III
rday@goodwin.com
(860) 251-5602

Elva M. Saltzman
esaltzman@goodwin.com
(860) 251-5525

www.shipmangoodwin.com

PERSONAL INCOME TAX

I. Legislation

Pass-Through Entity Tax. In 2018, the Connecticut General Assembly enacted a new entity-level income tax at the flat rate of 6.99% on most pass-through businesses, including partnerships, S corporations and limited liability companies that are treated as partnerships or S corporations for federal income tax purposes. The new tax was intended generally not to adversely impact the state personal income tax liability of most taxpayers because each individual owner of the pass-through entity is entitled to a refundable credit against the personal income tax equal to 93.01% of the owner's pro rata share of the tax liability of the pass-through entity. During the 2019 legislative session, the General Assembly amended the statutes governing the pass-through entity tax in two separate public acts. First, the legislature reduced the credit to 87.5% of the owner's pro rata share of the tax paid by the pass-through entity, effective for taxable years commencing on or after January 1, 2019. Conn. Gen. Stat. § 12-699(g), as amended by Conn. Pub. Act No. 19-117, § 333 *(effective June 26, 2019, and applicable to taxable and income years commencing on or after January 1, 2019)*. The same public act provides further that the statutory requirements governing the making of estimated tax payments are not to apply to the additional tax due as a result of the decrease in the credit for the taxable or income year commencing on or after January 1, 2019, but prior to the effective date of the legislative change. Conn. Pub. Act No. 19-117, § 334 *(effective June 26, 2019)*.

In a second public act, the General Assembly amended the pass-through entity tax provisions to (i) provide that the tax base is to include the separately and non-separately computed items as described in I.R.C. § 702(a) (in the case of a partnership) and I.R.C. § 1366 (in the case of a S corporation) of the entity (A) excluding any item treated as an itemized deduction for federal income tax purposes, and (B) including guaranteed payments as described in I.R.C. § 707(c); (ii) clarify that a taxpayer-owner of a pass-through entity is entitled to a credit equal to such person's direct and indirect share (not "pro rata" share) of the tax due and paid by the pass-through entity multiplied by 93.01%; (iii) exempt from the obligation to make quarterly estimated tax payments those pass-through entities with less than $1,000 in annual estimated tax obligations; and (iv) clarify that a nonresident individual owner of a pass-through entity is not required to file a Connecticut income tax return for any taxable year if the only source of Connecticut income of the individual (or the individual and his/her spouse if filing a joint return) is from one or more pass-through entities and the aggregate pass-through entity tax credit allowed to the individual for that taxable year would fully satisfy the Connecticut tax due for that year. Conn. Gen. Stat. §§ 12-699 and 12-699a, as amended by Conn. Pub. Act No. 19-186, §§ 1-2 *(effective July 1, 2019, and applicable to taxable years commencing on or after January 1, 2019)*. Finally, in response to the fact that the pass-through entity tax was enacted in May 2018, but made retroactive to January 1, 2018, the second public act directs the Commissioner of Revenue Services to waive any penalty, interest and addition to tax caused by the late payment of any pass-through entity tax or personal income tax for the 2018 taxable year that was increased or created as a result of the enactment of the pass-through entity tax, provided that the tax payment is made within one year of its due date (*i.e.*, March 15, 2020, for calendar year filers). Conn. Pub. Act No. 19-186, § 32 *(effective July 8, 2019)*. [Ed. note.Taxpayers are reminded that the United States Treasury has yet to publish guidance as to whether it will honor the deduction by a pass-through entity of its liability for the Connecticut pass-through entity tax when calculating its net income for federal tax reporting purposes. Treasury Decision 9864 (June 13, 2019) limited the availability of charitable contribution deductions under Internal Revenue Code Section 170 when a taxpayer receives or expects to receive a corresponding state or local tax credit in return for a "donation" to a public government or instrumentality, but the guidance did not address entity-level taxes such as the Connecticut pass-through entity tax.] *See* DRS Special Notice 2019(6), *2019 Legislative Changes Affecting the Pass-Through Entity Tax*, and DRS Office of the Commissioner Guidance (OCG)-7, *Regarding the Pass-Through Entity Tax Credit (Revised)*. In the Special Notice, the DRS expounded upon certain issues raised by the above-described legislative enactments. First, the DRS clarified

that the pass-through entity tax credit percentage has been reduced from 93.01% to 87.5%, and can still be used against a pass-through entity owner's liability for the income tax or the corporation business tax. Second, despite the reduced credit percentage, for taxable years beginning on or after January 1, 2019, the DRS will allow a pass-through entity to make an annual election to remit composite income tax on behalf of all, and not less than all, of its nonresident individual owners. The elective composite tax remittance will be in addition to any pass-through entity tax due, and will be equal to the non-resident's distributive share of the entity's Connecticut source income multiplied by 6.99%, less the nonresident owner's pass-through entity tax credit. The nonresident owner will be excused from filing his or her own Connecticut personal income tax return if they have no Connecticut source income other than from the electing pass-through entity. The DRS indicated that it will develop a schedule for an electing pass-through entity to calculate its composite tax remittance, and the pass-through entity will be required to make the election on a timely filed pass-through entity tax return and attach the schedule to the return.

Angel Investor Tax Credit Program Extended. The statute governing the angel investor tax credit program has been amended. In general, the program allows qualifying accredited investors who invest at least $25,000 in a business certified by Connecticut Innovations, Inc. ("CI") to be eligible for a personal income tax credit equal to 25% of their investment. The amendment (i) extends the tax credit program for five years through June 30, 2024, (ii) increases the cap on the amount of tax credits an investor is allowed to receive under the program from $250,000 to $500,000, (iii) increases from $3 million to $5 million the aggregate amount of angel investor credits CI may reserve each fiscal year, and (iv) permits CI to prioritize, when reserving remaining available credits at the end of a fiscal year, veteran-owned, women-owned or minority-owned businesses and businesses owned by individuals with disabilities. Conn. Gen. Stat. § 12-704d, as amended by Conn. Pub. Act No. 19-117, § 347 *(effective July 1, 2019, and applicable to income and taxable years commencing on or after January 1, 2019).*

Property Tax Credit. Eligibility for the credit against the personal income tax for up to $200 of property tax paid by an eligible taxpayer whose Connecticut adjusted gross income was below certain thresholds was further limited for the 2017 and 2018 taxable years to only those Connecticut residents who (i) attained age 65 before the close of the taxable year or (ii) filed a federal income tax return for the applicable year validly claiming one or more dependents. The limitation enacted for 2017 and 2018 has been extended to the 2019 and 2020 taxable years. Conn. Gen. Stat. §12-704c, as amended by Conn. Pub. Act No. 19-117, § 335 *(effective June 26, 2019)*. For taxable years commencing on or after January 1, 2021, however, the limitations described above, including the $200 cap, will not apply to any taxpayer who has paid the "mansion surcharge" real estate conveyance fee of 2.25% on the portion of the consideration received on the sale in excess of $2.5 million. (See the discussion under "Real Estate Conveyance Tax -- Mansion Surcharge" in the Miscellaneous Taxes section.) Instead, the taxpayer can receive a credit equal to one-third of the amount of the conveyance tax paid at the "mansion surcharge" rate in each of the three taxable years next succeeding the second taxable year after the taxable year in which such conveyance tax was paid. If any credit so allowed is not used because the amount of the credit exceeds the tax due, the unused credit amount may be carried forward for up to six taxable years. Conn. Gen. Stat. § 12-704c, as amended by Conn. Pub. Act No. 19-117, § 335 *(effective June 26, 2019).*

State Teachers' Retirement System Payment Deduction. The deduction for income (*i.e.*, pension payments) received from the state teachers' retirement system was scheduled to increase from the current 25% of such income to 50% of such income for each taxable year commencing January 1, 2019 and thereafter. New legislation delays for two years the increase in the deduction to 50% of such income until the taxable year commencing January 1, 2021. Conn. Gen. Stat. § 12-701(a)(20)(B), as amended by Conn. Pub. Act No. 19-117, § 332 *(effective June 26, 2019, and applicable to taxable years commencing on or after January 1, 2019)*. The 2019 legislation provides further that the estimated tax payment requirements are not to apply to the additional tax due as a result of the delay in the deduction

increase for the taxable year commencing on or after January 1, 2019, but prior to the effective date of the delay. Conn. Pub. Act No. 19-117, § 334 *(effective June 26, 2019)*.

STEM Graduate Tax Credit. In 2017, the Connecticut General Assembly established a new tax credit for an individual who receives, on or after January 1, 2019, a bachelor's, master's or doctoral degree in science, technology, engineering or a math-related field. The $500 refundable credit could be claimed for each of the first five years after graduation, but the taxpayer must be employed in Connecticut and either reside in this state, or move to this state within two years of graduation. The credit, which was to go into effect this year, has been repealed. Conn. Gen. Stat. § 12-704f, as repealed by Conn. Pub. Act No. 19-117, § 397 *(effective June 26, 2019, and applicable to taxable years commencing on or after January 1, 2019)*.

Payroll Tax Study. The Connecticut Department of Revenue Services (the "Department" or "DRS") has been charged with gathering the data necessary to evaluate the implementation of a payroll tax on employers in Connecticut commencing on January 1, 2021. The DRS is to develop, produce and mail to all employers an information return form by August 15, 2019. Each employer (other than federal, state or local governments, local or regional boards of education, tribal nations or self-employed individuals) will then be required to complete and return the information return form by October 1, 2019. The legislation further establishes a Payroll Commission, which shall consist of the Commissioner of Revenue Services, the Secretary of the Office of Policy and Management and the co-chairs and ranking members of the Joint Committee on Finance, Revenue and Bonding. The Payroll Commission is charged with conducting informational forums to educate itself and the public about the payroll tax proposal and to solicit and review public comments and written testimony on the proposal. Based upon this input, the Commission is to: (i) establish the wage base on which to impose a payroll tax; (ii) provide an opinion on whether a payroll tax may be imposed on the federal government or on tribal nations for wages paid to employees in Connecticut; (iii) provide a recommendation on whether a payroll tax should be levied on the state, municipalities, local or regional boards of education or tax-exempt organizations; (iv) recommend an option for the treatment of minimum wage employers and employees under a payroll tax; (v) assuming the implementation of a payroll tax, recommend a tax credit for low-income taxpayers such that the net income of all taxpayers is not less than their current net income under the current tax system; (vi) assuming the implementation of a payroll tax, provide estimates of the total revenue generated from the tax; (vii) provide an estimate of the total decrease in revenue as a result of reducing the personal income tax rates on wage income from 3.0%, 5.0%, 5.5%, 6.0%, 6.5%, 6.9% and 6.99% to, respectively, 0%, 0%, 0.5%, 1.0%, 2.5%, 2.9% and 2.99%; (viii) assuming that a payroll tax cannot be levied on each of the federal government and tribal nations, calculate the decrease in the state personal income tax liability of each of their respective employees; (ix) provide an estimate of the total revenue received from nonresident taxpayers under the current tax rate schedule and the proposed reduced tax rate schedule; (x) assuming the implementation of the payroll tax and that, in response, some employers will reduce wages or, reduce or forego wage increases, provide estimates of the decrease in federal income, Social Security and Medicare taxes; (xi) provide estimates of the annual total of state income tax and payroll tax that would be paid by or on behalf of an employee for each income decile; (xii) provide an estimate of the total amount of property tax deductions that taxpayers may take under an itemized federal tax return if the payroll tax is implemented; and (xiii) provide separate estimates based upon the imposition of the payroll tax immediately at five percent on wage income or phased in over three years. The Payroll Commission is to submit its report to the Finance, Revenue and Bonding Committee no later than January 15, 2020, which report should include withholding schedules and describe ways to publicize and educate taxpayers about the payroll tax proposal. Conn. Pub. Act No. 19-117, § 385 *(effective June 26, 2019)*. [Ed. note. On August 15, 2019, the DRS emailed a four-question survey to each employer seeking information from the employer as to the total number of its Connecticut employees, the total wages paid to Connecticut employees, whether the employer is a for-profit, governmental or not-for-profit entity and whether any of the employer's employees are covered by a collective bargaining agreement. The survey response was due by October 1, 2019.]

Paid Family and Medical Leave. The General Assembly has established the Paid Family and Medical Leave Insurance Authority (the "Authority") to establish and administer a new Paid Family and Medical Leave Insurance Program (the "Program"). The Program is to provide up to 12 weeks of family and medical leave compensation to covered employees during any 12-month period, as well as two additional weeks of compensation to a covered employee for a serious health condition resulting in incapacitation. The Program will be funded by employee contributions that are to begin on January 1, 2021, and no later than February 1, 2021. The Authority must determine annually the employee contribution rate which cannot exceed 0.5%. The amount of an employee's earnings subject to contributions is not to exceed the Social Security contribution and benefit base (currently $132,900). Alternatively, employers can provide benefits through a private plan as long as the plan provides for at least the same level of benefits under the same conditions and employee costs. Conn. Pub. Act No. 19-25, §§ 1-9 *(effective June 25, 2019).* [Ed. note. The Paid Family Medical Leave Insurance Authority had the initial meeting of its 15-member board and Commissioner of Administrative Services Josh Gabelle is its Chair.]

II. Cases

SALT Deduction Limitation Upheld. In *New York v. Mnuchin*, 2019 WL 4805709 (S.D.N.Y. Sept. 30, 2019), the United States District Court for the Southern District of New York dismissed a challenge to Section 164(a) of the Internal Revenue Code filed by the States of New York, Connecticut, Maryland and New Jersey. As part of the federal Tax Cuts and Jobs Act of 2017, section 164(a) was amended to limit the ability of taxpayers to claim a federal income tax deduction for certain state and local taxes (e.g., to no more than $10,000 for a jointly-filing married couple) (the "SALT Cap"). The states argued that the cap effectively increased the federal tax burden of its residents, and constituted a deliberate and impermissible attempt to compel states to reduce their public spending in violation of Article I, Section 8 and the Tenth and Sixteenth Amendments of the United States Constitution. Although the District Court held that it had jurisdiction to hear the challenge, including a finding that the states had standing to bring the action, it concluded that the United States Congress holds plenary authority under the federal Constitution to tax income and grant exemptions from that tax. While the exercise of that taxing authority could have considerable influence on how a state might approach its tax policy, no constitutional issue arises if the states are still free to set their own tax policies. [Ed. note. The four states have appealed the district court decision to the United States Court of Appeals for the Second Circuit.]

CORPORATION BUSINESS TAX

I. Legislation

Corporation Business Tax Surcharge. The Connecticut General Assembly again has extended for two years the 10% surcharge on the corporation business tax, this time for income years beginning on or after January 1, 2018 and prior to January 1, 2021. Except when a taxpayer's corporation business tax is equal to the minimum tax of $250, the taxpayer shall pay an additional tax in an amount equal to 10% of the tax otherwise due whether calculated based on the net income or capital base of the taxpayer (without reduction of the tax so calculated by the amount of any credit against such tax). The surcharge continues not to be applicable to any taxpayer whose gross income for the income year was less than $100 million (unless the taxpayer was a taxable member of a combined group that files a combined unitary tax return). Conn. Gen. Stat. §§ 12-214(b)(8) and 12-219(b)(8), as amended by Conn. Pub. Act No. 19-117, §§ 341-342 *(effective June 26, 2019, and applicable to income years commencing on or after January 1, 2019)*. Please note that the additional tax due as a result of the extension of the corporation business tax surcharge is not to be considered when determining a taxpayer's compliance with the estimated tax obligations for any income year commencing prior to the effective date of the amendment to the corporation business tax surcharge. Conn. Pub. Act No. 19-117, § 343 *(effective June 26, 2019)*.

Corporation Business Tax Credit Cap Reduced. The general cap on the aggregate amount of tax credits and excess credits allowable to a taxpayer subject to the corporation business tax is set at 50.01% of the amount of tax due from the taxpayer for the year prior to the application of such credit or credits, effective for income years commencing on or after January 1, 2019. The legislation repeals a scheduled increase in the general cap to 70% of the amount of corporation business tax due from the taxpayer (prior to the application of such credit or credits) for income years commencing on or after January 1, 2019. Conn. Gen. Stat. § 12-217zz(a), as amended by Conn. Pub. Act No. 19-117, § 349 *(effective June 26, 2019, and applicable to income years commencing on or after January 1, 2019).*

Capital Base Tax Phase Out. Under current law, a taxpayer subject to the Connecticut corporation business tax, other than a financial service company, generally is required to pay the greater of the tax calculated based on its net income from business transacted in Connecticut or on its capital base (but, in any event, not less than the minimum tax of $250 plus, if applicable, any surcharge). The capital base tax is being phased out such that the tax rate per dollar is (i) 3.1 mills (0.31%) for income years commencing prior to January 1, 2021, (ii) 2.6 mills for the income year commencing on or after January 1, 2021, and prior to January 1, 2022, (iii) 2.1 mills for the income year commencing on or after January 1, 2022, and prior to January 1, 2023, (iv) 1.1 mills for the income year commencing on or after January 1, 2023, and prior to January 1, 2024, and (v) 0 mills for income years commencing on or after January 1, 2024. Conn. Gen. Stat. § 12-219(a)(1), as amended by Conn. Pub. Act No. 19-117, § 340 *(effective June 26, 2019)*.

State Tax Credit. In 2017, the Superior Court upheld an appeal by a Connecticut resident taxpayer from an assessment made by the Department of Revenue Services based upon a disallowance of a credit taken by the taxpayer for taxes paid by the taxpayer to the State of New York. The taxpayer and his brother operated an investment management business in New York City that had established two hedge fund partnerships. The brothers owned the membership interests of the general partner of each partnership, and each general partner received a percentage of the capital gain or profit earned by its relevant partnership. The Department contended that the income earned by the taxpayer was from an intangible investment that should be sourced to Connecticut as he was trading on or for his own account. The Superior Court disagreed finding, on alternative grounds, that the income was from the conduct of a trade or business in New York either as an investment manager or as a "day trader." The lower court's decision to invalidate the assessment was sustained on appeal by the Connecticut Supreme Court in *Sobel v. Commissioner,* 333 Conn. 712 (2019). The Court's decision was made on technical grounds as the Department failed to appeal both of the alternative grounds on which the lower court had based its decision.

SALES AND USE TAX

I. Legislation

Sales Tax Nexus. Connecticut again has amended the statutes governing when it can impose on a remote seller (*i.e.*, a retailer which has no physical presence in Connecticut) the obligation to collect, remit and report Connecticut sales tax on sales to Connecticut. Under current law, a remote retailer is deemed to be "engaged in business" in Connecticut if the retailer: (i) sells tangible personal property or services and (A) has gross receipts of at least $250,000 and (B) makes 200 or more retail sales from outside Connecticut to destinations within Connecticut during the 12-month period ended on the immediately preceding September 30th; or (ii) makes sales of tangible personal property or services through an agreement with another person located in Connecticut under which the Connecticut person receives a commission or other compensation based upon sales, or such Connecticut person, directly or indirectly, refers potential customers, provided that such actions result in gross receipts from such sales in excess of $250,000. Effective July 1, 2019, this standard is revised to impose the obligation to collect, remit and report Connecticut sales tax if the remote retailer: (i) has $100,000 of gross receipts and made 200 or more retail sales from outside of Connecticut to

destinations within Connecticut during the 12-month period ended on the immediately preceding September 30th; or (ii) makes sales of tangible personal property or services in excess of $100,000 through such an agreement with a Connecticut person. Conn. Gen. Stat. §§ 12-407(a)(12) (definition of "retailer"), and 12-407(a)(15)(A) (definition of "engaged in business in the state"), as amended by Conn. Gen. Pub. Act No. 19-117, §§ 327-328 *(effective July 1, 2019, and applicable to sales occurring on or after July 1, 2019)*.

Digital Goods and Downloads. For purposes of the application of the Connecticut sales and use tax to tangible personal property, "tangible personal property" is redefined to now also include "digital goods" and canned or prewritten software "that is electronically accessed or transferred, other than when purchased by a business for use by such business, and any additional content related to such software . . . . " "Digital goods" are defined to mean "audio works, visual works, audio-visual works, reading materials or ring tones, that are electronically accessed or transferred." The governing statutes are further amended to provide that the sale of digital goods or computer and data processing services shall be considered a sale for resale if such digital goods or services are subsequently resold as an integral, inseparable component part of a digital good or service by the purchaser to the ultimate consumer. Similarly, the sale of canned or prewritten computer software shall be considered a sale for resale "if such software is subsequently sold, licensed or leased unaltered by the purchaser to an ultimate consumer." In the case of a sale for resale of a digital good, computer and data processing service or canned or prewritten software, the purchaser must maintain records that substantiate: (i) from whom the digital good, service or software was purchased and to whom the digital good, service or software was sold, licensed, or leased; (ii) the purchase price of the digital good, service or software; and (iii) the "nature of the transaction with the ultimate consumer" that, in the case of canned or prewritten software, demonstrates that "the same software was provided unaltered to the ultimate consumer." Conn. Gen. Stat. § 12-407(a)(13), as amended by Conn. Pub. Act No. 19-117, § 319 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019)*; Conn. Gen. Stat. § 12-407(a)(43), as added by Conn. Pub. Act No. 19-117, § 320 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019)*; and Conn. Gen. Stat. §§ 12-410(5) and 12-407(a)(37), as amended by Conn. Pub. Act No. 19-117, §§ 321-322 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019)*. [Ed. note. The intent of this legislative change is to increase the effective sales and use tax rate from 1% to 6.35% on sales of digital goods and on the non-business, electronic transfer of canned or prewritten software. Under current law, digital goods and the electronic transfer of canned and prewritten software are taxed as computer and data processing services at the 1% sales and use tax rate.] *See* DRS Special Notice 2019(8), *Sales and Use Taxes on Digital Goods and Canned or Prewritten Software.*

Meals and Beverages. Effective October 1, 2019, the sales and use tax rate is increased from 6.35% to 7.35% on (i) meals sold by an eating establishment, caterer or grocery store, and (ii) spirituous, malt or vinous liquors, soft drinks, sodas or beverages "such as are ordinarily dispensed at bars and soda fountains, or in connection therewith . . . ." Conn. Gen. Stat. §§ 12-408(1) and 12-411(1), as amended by Conn. Pub. Act No. 19-117, §§ 323-324 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019).*

Motor Vehicle Parking. Effective January 1, 2020, the sales and use tax on motor vehicle parking will be expanded to include all such parking, excluding space in a parking lot owned or leased under the terms of a lease of not less than ten years' duration and operated by an employer for the exclusive use of its employees. The current exemptions for metered space, state seasonal parking lots and municipally-owned parking lots are all repealed. Conn. Gen. Stat. § 12-407(a)(37)(N), as amended by Conn. Pub. Act No. 19-117, § 325 *(effective January 1, 2020, and applicable to sales occurring on or after January 1, 2020).*

Dry Cleaning and Laundry Services. Effective January 1, 2020, dry cleaning services and laundry services, excluding coin-operated services, are subject to the Connecticut sales and use tax. Conn. Gen. Stat. § 12-407(a)(37)

(PP), as added by Conn. Pub. Act No. 19-117, § 325 *(effective January 1, 2020, and applicable to sales occurring on or after January 1, 2020). See* DRS Policy Statement 2019(4), *Sales and Use Tax on Dry Cleaning Services and Laundry Services, Dry Cleaning Establishment Surcharge, and Business Use Tax Obligations.*

Interior Design Services. Effective January 1, 2020, interior design services described in NAICS Industry Group 54141, other than those services purchased by a business for use by such business, are subject to the Connecticut sales and use tax. To qualify for the business-to-business exemption, the purchaser must provide to the retailer a proper certificate certifying that the purchaser is a business and is purchasing the interior design services for its business. Conn. Gen. Stat. §§ 12-407(a)(37)(QQ) and 12-412(124), as added by Conn. Pub. Act No. 19-117, §§ 325-326 *(effective January 1, 2020, and applicable to sales occurring on or after January 1, 2020)*.

Electronic Sales Tax Payments. The Commissioner of Revenue Services is directed to consult with the Streamlined Sales Tax Governing Board to develop a list of certified service providers that can facilitate sales tax collection and remittance. The Commissioner is then to develop a plan to implement the use of such providers for the collection, reporting and remittance of sales and use taxes, which plan may include the requirement that retailers use such providers and identify the cost that may be incurred by retailers of such services. The plan is to be submitted by the Commissioner to the Joint Committee on Finance, Revenue and Bonding not later than February 5, 2020. Conn. Pub. Act No. 19-117, § 331 *(effective June 26, 2019)*. [Ed. note. The intent of this effort is ultimately to require retailers to electronically deposit sales tax collected through these service providers.]

Short-Term Rental Facilitator. The definition of a "retailer" subject to the obligation to collect, remit and report Connecticut sales and use tax is amended to include "short-term rental facilitator" (e.g., VRBO, Airbnb). A "short-term rental facilitator" is defined to mean any person that (i) facilitates retail sales of at least $250,000 during the prior 12-month period by short-term rental operators by providing a short-term rental platform, (ii) directly or indirectly through agreements or arrangements with third parties, collects rent for occupancy and remits payment to the short-term rental operators, and (iii) receives compensation or other consideration for these services. A "short-term rental operator" is any person that has an agreement with the short-term rental facilitator regarding the listing or advertising of a short-term rental in Connecticut (*i.e.*, the owner of the furnished residence or similar accommodation), and a "short-term rental platform" means a physical or electronic place (including a website or dedicated software application) that allows short-term rental operators to display available accommodations to prospective guests. A "short-term rental" is the transfer for consideration of the occupancy in a furnished residence or other accommodation for a period of 30 consecutive days or less. The short-term rental facilitator is required to register for a sales and use tax permit, and collect and remit tax on any sale as though the short-term rental facilitator was the operator of the accommodation. The short-term rental operator is not liable for the collection of the sales tax to the extent the short-term rental facilitator collected the tax due on the rent. Conn. Pub. Act 19-117, § 329 *(effective October 1, 2019)*; Conn. Gen. Stat. § 12-407(a)(12), as amended by Conn. Pub. Act No. 19-117, § 330 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019). See* DRS Special Notice 2019(9), *Room Occupancy Tax on Short-Term Rentals*.

Referrer Liability. Last year, the General Assembly enacted legislation imposing certain notice and filing requirements on any "referrer" business. In general, a "referrer" is any person who (i) contracts or otherwise agrees with a seller to list or advertise for sale one or more items of tangible personal property by any means, including an Internet website and a catalog, provided such listing or advertisement includes the seller's shipping terms or a statement of whether the seller collects sales tax, (ii) offers a comparison of similar products offered by multiple sellers, (iii) receives commissions, fees or other consideration in excess of $125,000 during the prior twelve-month period from a seller or sellers for such listings or advertisements, (iv) refers, via telephone, Internet website link or other means, a potential customer to a seller or an affiliate of the seller, and (v) does not collect payments from the customer for the

seller. New legislation delays (i) by six months, from July 1, 2019, to January 1, 2020, the date by when referrers must begin providing a quarterly notice to sellers to whom they transferred sales during the previous year (which notice must, among other things, inform the sellers of the requirement to collect and remit sales and use tax on sales to Connecticut); and (ii) by one year, from January 31, 2020 to January 31, 2021, the date by when referrers must begin submitting an annual report to the DRS providing the name and address of each seller to which the referrer sent a quarterly notice. Conn. Gen. Stat. § 12-408f, as amended by Conn. Pub. Act No. 19-186, § 33 *(effective July 8, 2019). See* DRS Office of the Commissioner Guidance (OCG)-8, *Regarding Marketplace Facilitators and Marketplace Sellers*.

Safety Apparel. The exemption from the Connecticut sales and use tax for sales of and the storage, use or other consumption of safety apparel is repealed as of January 1, 2020. Conn. Gen. Stat. § 12-412(91), as repealed by Conn. Pub. Act No. 19-117, § 400 *(effective January 1, 2020).*

Exempt Bicycle Helmets. Under current law, there is an exemption from the Connecticut sales and use tax for sales of, and the storage use or other consumption, of bicycle helmets which conform to the minimum specifications established by the American National Standards Institute or the Snell Memorial Foundation's Standard for Protective Headgear for Use in Bicycling. Effective July 1, 2019, the exemption also shall apply to helmets which conform to the minimum specifications established by the United States Consumer Product Safety Commission or the American Society for Testing and Materials. Conn. Gen. Stat. § 12-412(102), as amended by Conn. Pub. Act No. 19-162, § 20 *(effective October 1, 2019).*

Single-Use Checkout Bag Fee. For the period commencing August 1, 2019 and ending June 30, 2021, every retailer that maintains a retail store in Connecticut and sells tangible personal property directly to the public will be required to charge a fee of ten cents for each single-use checkout bag provided to the customer at the point of sale, and indicate the number of single-use checkout bags provided and the total amount of the fee charged on any transaction receipt provided to a customer. A "single-use checkout bag" is defined as a plastic bag with a thickness of less than four mils, but does not include (i) a bag provided to contain meat, seafood, loose produce or other unwrapped food items, (ii) a newspaper bag, or (iii) a laundry or dry cleaning bag. The retailer is to report and remit such fees to the Commissioner of Revenue Services on new line 11a of the Form OS-114, *Sales and Use Tax Return* (*i.e.*, the tax is paid as part of the retailer's regular sales tax return). On or after July 1, 2021, no owner or operator of a store may provide or sell a single-use checkout bag to a customer. Conn. Pub. Act No. 19-117, § 355 *(effective August 1, 2019). See* DRS Office of the Commissioner Guidance (OCG)-9, *Regarding the Single-Use Plastic Bag Fee.*

Uncollectible Sales Tax Credits. Current law allows a retailer to take a credit against its sales and use tax liability for sales tax paid on a charge account or credit sale transaction that is later deemed uncollectible. In general, if a retailer, after taking such credit, is able to collect all or a portion of the delinquent account, the retailer is required to include the collected payment in its next sales and use tax return. New legislation now requires the retailer to apply any such late payment first toward the sales tax due (but only up to the amount of the sales tax for which the credit was claimed). Conn. Gen. Stat. § 12-408(2)(B), as amended by Conn. Pub. Act No. 19-186, § 5 *(effective July 8, 2019, and applicable to claims for credit received on or after such date).*

Special Transportation Fund Diversion. The schedule for the current and next fiscal year for the diversion to the Special Transportation Fund of amounts received from the sales and use tax on the sale of a motor vehicle is revised as follows: (i) 17% of such amounts (rather than 33%) for calendar months commencing on or after July 1, 2019, but prior to July 1, 2020; and (ii) 25% of such amounts (rather than 56%) for calendar months commencing on or after July 1, 2020, but prior to July 1, 2021. Conn. Gen. Stat. §§ 12-408(1) and 12-411(1), as amended by Conn. Pub. Act No. 19-117, §§ 317-318 *(effective July 1, 2019, and applicable to sales occurring on or after July 1, 2019)*.

II. Administrative Pronouncement

Fuel Cell Facility. In DRS Ruling 2019-1, the Department considered the application of the sales and use tax laws to the installation by a contractor ("Contractor") of a fuel cell facility on land leased by an electricity supplier ("Supplier") on the premises of a municipal school to which the Supplier was going to sell heat and electricity produced by the facility. The Department concluded that the construction of the Facility by the Contractor for the Supplier: (i) was the installation of a system and a service to real property and not the taxable installation of tangible personal property; and (ii) was a site improvement and so the labor to install the Facility was not taxable as a service to existing real property.

ESTATE AND GIFT TAX

I. Legislation

Nonresident Decedent Estates. When determining the Connecticut estate tax liability of a nonresident decedent, a "pass-through entity" will be disregarded, and the real property and tangible personal property of the entity will be treated as personally owned by the decedent in proportion to the decedent's constructive ownership in the entity if (i) the entity does not carry on a business for the purpose of profit and gain, (ii) the ownership of the property by the entity was not for a valid business purpose, or (iii) the property was acquired by other than a bona fide sale for full and adequate consideration and the decedent retained a power with respect to or interest in the property that would bring the real property located in Connecticut within the decedent's federal gross estate. For purposes of this provision, a "pass-through entity" is an S corporation, an entity taxed as a partnership for federal income tax purposes or a single member limited liability company that is disregarded for federal income tax purposes. Conn. Gen. Stat. § 12-391(e)(2), as amended by Conn. Pub. Act No. 19-186, § 31 *(effective July 8, 2019)*.

II. Administrative Pronouncements

Connecticut Estate Tax Deduction. On August 9, 2018, the IRS Office of Chief Counsel issued a memorandum clarifying an issue that had arisen in a number of estates of Connecticut decedents as to what portion of Connecticut estate tax can be deducted under Internal Revenue Code Sec. 2058 in determining an estate's federal estate tax liability. IRC Sec. 2058 allows a deduction for the "amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate." The Memorandum first addressed the question of whether the IRC Sec. 2058 deduction should be reduced to the extent the Connecticut estate tax paid is attributable to gifts made by the decedent during his or her lifetime because the lifetime gifts are not "property included in the [federal] gross estate." After reviewing how the Connecticut estate tax base and the federal gross estate are defined and comparing that to how the Connecticut estate tax and the federal estate tax are respectively calculated, the Office of Chief Counsel concluded that lifetime gifts are not included in the federal gross estate or the Connecticut estate tax base. However, lifetime gifts are included in the computation of the Connecticut estate tax in the same manner in which they are included in the computation of the federal estate tax. Therefore, the IRC Sec. 2058 deduction properly includes Connecticut estate tax paid that is attributable to lifetime gifts. Accordingly, there is no reduction in the IRC Sec. 2058 deduction for Connecticut estate tax effectively resulting from lifetime Connecticut taxable gifts with one exception. Specifically, the Memorandum explains that the one exception to this rule concerns Connecticut gift taxes paid on gifts made within three years of death. The Connecticut estate tax base consists of the value of the federal gross estate plus the value of Connecticut gift taxes paid on gifts made within three years of death. The federal gross estate, on the other hand, does not include the value of Connecticut gift taxes paid on gifts made within three years of death. The Office of Chief Counsel concluded, therefore, that to the extent a portion of the Connecticut estate tax levied is attributable to Connecticut gift taxes paid on gifts made within three years of death, that amount may not be deducted under IRC Sec. 2058 because it does not constitute tax paid to a state "in respect of property included in the [federal] gross estate."

PROPERTY TAX

I. Legislation

First Responders Tax Abatement. Under current law, a municipality may establish, by ordinance, a program to provide property tax relief for a (i) non-salaried local emergency management director, (ii) any individual who volunteers his or her services as a firefighter, fire police officer, emergency medical technician, paramedic, civil preparedness staff, active member of a volunteer canine search and rescue team, active member of a volunteer underwater search and rescue team, or ambulance driver in the municipality, or any individual who is a retired volunteer firefighter, fire police officer or emergency medical technician who has completed at least 25 years of service. The amount of the tax relief may be equal to either (i) up to a specified amount (the "Abatement Cap") in property taxes due for any fiscal year, or (ii) an exemption applicable to the assessed value of real or personal property up to an amount equal to the quotient of $1 million divided by the mill rate in effect at the time of the assessment. Effective July 1, 2019, the Abatement Cap is increased from up to $1,000 to (i) up to $1,500 for the period commencing July 1, 2019, and ending June 30, 2021, and (ii) up to $2,000 on and after July 1, 2021. Conn. Gen. Stat. § 12-81w, as amended by Conn. Pub. Act No. 19-36, § 1 *(effective July 1, 2019).*

Circuit Breaker Program. The state's Circuit Breaker Program (a/k/a the Elderly and Disabled Homeowners' Tax Relief Program) generally provides for property tax reductions for homeowners (and, under certain circumstances, tenants for life or for a term of years or a resident of a multiple-dwelling complex) who are elderly or permanently and totally disabled and who meet certain income qualifying guidelines. The ability to obtain such tax relief has now been extended to property held in trust for a qualifying owner, provided that the owner, or the owner and the owner's spouse, are the grantor and beneficiary of that trust. Conn. Gen. Stat. § 12-170aa(b), as amended by Conn. Pub. Act No. 19-66, § 1 *(effective October 1, 2019, and applicable to assessment years commencing on or after October 1, 2019)*.

Climate Change Reserve Funds. New legislation authorizes the legislative body of a municipality, upon the recommendation of its chief executive officer and approval of its budget-making authority, to create a Climate Change and Coastal Resiliency Reserve Fund to pay for municipal property losses, capital projects and studies related to mitigating hazards and vulnerabilities of climate change, including land acquisition. Such a fund can be funded by (i) transfers from the municipality's budget reserve fund, (ii) certain municipal bonds, and (iii) the annual levy of a tax for the benefit of the fund (in the same manner and at the same time as the regular annual taxes of the municipality). Conn. Pub. Act No. 19-77, § 1 *(effective July 1, 2019)*.

Tax Increment Districts. The statute setting forth the process that must be followed by a municipality to establish a tax increment financing (TIF) district has been amended to provide greater flexibility for a municipality when obtaining an advisory opinion on the consistency of a proposed TIF master plan with the local plan of conservation and development ("POCD"). Generally, a TIF district is only effective when the legislative body of the municipality both approves the district and adopts a district master plan. The amendment eliminates the requirement that the municipal legislative body adopt the TIF master plan at the same time that the body votes to establish the district. Rather, the legislative body may adopt the master plan (i) after receiving a written advisory opinion on the master plan's compliance with the POCD, or (ii) ninety days after requesting such opinion, whichever is earlier. Conn. Gen. Stat. §§ 7-339ee and 7-339ff, as amended by Conn. Pub. Act No. 19-185, §§ 1-2 *(effective October 1, 2019).*

Electric Generating Facility. By law, a municipality may treat an electric generating facility that completes construction after July 1, 1998, as though it were located in an enterprise zone and used for commercial or retail purposes and, therefore, with the approval of its legislative body, may fix the full amount of either the applicable

property taxes or assessment on the facility's real and personal property. Under new legislation, a municipality, with approval of its legislative body, may extend these same tax benefits to an existing electric generating facility that completed construction before July 1, 1998, if a new facility is built on the same site and construction is completed after July 1, 2019. The existing and new facility may be treated as a single combined plant for purposes of fixing its tax and assessment, and may fix the full amount of either the property tax or assessment on the combined plant before, during and after construction of the new plant. The property tax or assessment so fixed must approximate the projected tax liability of the combined facility based on a reasonable estimation of its fair market value as determined by the municipality upon the exercise of its best efforts. Conn. Gen. Stat. § 32-71a, as amended by Conn. Pub. Act No. 19-81, § 1 *(effective July 8, 2019, and applicable to assessment years commencing on or after October 1, 2018).*

Extension to File Declaration. The property tax statutes are amended to clarify that a taxpayer which is required to file an annual declaration of personal property by November 1st may request a filing extension with the assessor of the municipality. The request must be made on or before the November 1st filing deadline (or the next business day if November 1st falls on a weekend), and may be made by electronic filing if the municipality agrees to accept electronic filing under Conn. Gen. Stat. § 12-41(d). The assessor may grant the extension for not more than 45 days upon determination that there is good cause. Conn. Gen. Stat. § 12-42, as amended by Conn. Pub. Act No. 19-200, § 3 *(effective July 1, 2019).*

Land Bank Authority. New legislation authorizes one or more municipalities to establish a charitable nonstock corporation to act as a land bank authority to purchase, hold and convey real property (other than a brownfield) or an interest thereof in the municipality or municipalities that established the authority. Any real property or interest thereof held by the authority, and any income therefrom, shall be exempt from state and local taxation. In addition, commencing on the October 1st immediately following a conveyance of property or property interest by an authority, and annually thereafter for five years, 50% of the taxes collected by a municipality on the conveyed property or property interest is to be remitted to the authority. Conn. Pub. Act No. 19-175, § 1 *(effective from passage).*

Disabled Service Members and Veterans. The state-mandated property tax exemption has been increased generally by $500 for an individual who has (i) served, or is serving, in the United States Army, Navy, Marine Corps, Coast Guard or Air Force, and (ii) a disability rating from the United States Department of Veteran Affairs of at least 10%. The amount of the exemption ranges now from $2,000 to $3,500 depending upon the disability rating or if the individual is age 65 or older. Conn. Gen. Stat. § 12-81(20), as amended by Conn. Pub. Act No. 19-171, § 1 *(effective October 1, 2019, and applicable to assessment years commencing on or after October 1, 2019).* [Ed. note. Please note that the amendment to section 12-81(20) has the effect of also increasing by $250 or $1,000 the additional income-based property tax exemption available to these individuals under Conn. Gen. Stat. §§ 12-81g(a) and (d).]

Federal Shutdown. In response to the federal shutdown earlier this year, the General Assembly authorized any municipality to defer the due date of taxes on real property, personal property or motor vehicles, or water or sewer rates, charges or assessments, owed by an "affected employee", who was any federal employee who was (i) a resident of Connecticut, and (ii) required to work as a federal employee without pay or furloughed as a federal employee without pay. Each deferred tax, rate, charge or assessment automatically became due and payable not later than 60 days after the date on which they no longer qualified as an "affected employee." Such deferral was without interest or penalty if the amount due was paid within the 60-day period. The deferral had no effect on interest or penalties on, or lien rights or the collection of, any tax rate, charge or assessment due before December 22, 2018, or after the date the individual was no longer an affected employee. Conn. Special Act No. 19-1, §§ 1-7 *(effective January 22, 2019).*

II. Cases

Ratio Testing/Uniform Adjustment Factor. In *Tuohy v. Groton*, 331 Conn. 745 (2019), the Connecticut Supreme Court affirmed a lower court opinion upholding the Town's application of a uniform adjustment factor to a neighborhood's appraised values during a town-wide revaluation to ensure that the neighborhood is not undertaxed relative to others in the municipality. The certified class of property owners from the Groton Long Point neighborhood of Groton had challenged the Town's use of a uniform adjustment factor of 1.35 (*i.e.*, an increase of 35% in valuation) for their neighborhood while using a factor of 1.0 for each of the other 12 neighborhoods in Groton. The Town showed that it had conducted sainterwovenSite://SGDMS/SG/7740755/4les ratio studies with respect to each of the thirteen neighborhoods, and only Groton Long Point had a median assessment to sales ratio (ASR) of less than 90%, based upon sales during the two years prior to the valuation date. Accordingly, the Town applied an adjustment factor of 1.35 to the valuation of the Groton Long Point properties to yield a median ASR of 92.03%. The Supreme Court held that: (i) an appeal of a property tax assessment filed pursuant to Conn. Gen. Stat. § 12-119 requires the property owner(s) to establish that the assessment was the result of illegal conduct and relief is available only in an "extraordinary situation"; and (ii) the use of ratio testing and a uniform adjustment factor, if conducted, as it was by the Town, in accordance with Regulations of Connecticut State Agencies §§ 12-62i-2 through 12-62i-4, is consistent with and allowed under Connecticut law and regulations and the Uniform Standards of Professional Appraisal Practice.
Alias Tax Warrants. In O'Brien-Kelley, Ltd. v. Goshen, 190 Conn. App. 420 (2019), the Connecticut Appellate Court affirmed a lower court ruling that a state marshal was entitled to collect his fee pursuant to Conn. Gen. Stat. § 52-261 despite the fact that the taxpayer had paid the principal amount of the delinquent tax due under an alias tax warrant after receiving a demand letter from the state marshal but before there had been an actual levy on any assets of the taxpayer. The Court concluded that the demand letter constituted a constructive execution of the alias tax warrant pursuant to Conn. Gen. Stat. § 12-162(c).

Untimely Penalty Assessment. In *Wilton Campus 1691, LLC v. Wilton*, 191 Conn. App. 712, appeal granted, 333 Conn. 934 (2019), the Connecticut Appellate Court considered the authority of a town assessor to impose a penalty, pursuant to Conn. Gen. Stat. §12-63c(d), based upon a delinquent filing of an annual income and expense report by a taxpayer after the assessor had taken the oath on the grand list for that taxable year. The assessor was aware of the failure at the time he took the oath on the grand list, but intentionally did not impose the penalty until months later asserting that he had the authority to do so pursuant to Conn. Gen. Stat. §12-60, which permits an assessor to correct any "clerical omission or mistake in the assessment of taxes . . . ." The Connecticut Appellate Court disagreed, holding that Conn. Gen. Stat. §12-55(b) requires an assessor to make any assessment prior to taking and subscribing to the oath upon the grand list, and the imposition of a late filing penalty constitutes an assessment. Accordingly, the late penalty assessments challenged here were found to be invalid and the Town could not recover them. The assessor could not rely upon his authority under section 12-60, because the failure to timely impose the penalty was intentional and not a clerical omission or mistake.

Attorneys' Fees. In *Ledyard v. WMS Gaming, Inc.*, 192 Conn. App. 836 (2019), the Connecticut Appellate Court considered the scope of Conn. Gen. Stat. § 12-161a, which allows a municipality to collect its attorneys' fees in a successful action to collect delinquent property tax. The town had sought to collect unpaid personal property tax from a company that had leased slot machines to the Mashantucket Pequot Tribal Nation. Two years prior to the filing of that action, the Tribal Nation had instituted a federal court action challenging the town's ability to impose the property tax. The Tribal Nation ultimately lost its challenge, and the company agreed to pay the property tax, interest, penalties and fees associated with the state court action; however, it challenged the town's request to collect the fees the town incurred in defending the Tribal Nation's federal court action. The Appellate Court agreed, concluding that the town was not entitled to the additional attorneys' fees as the federal action was not "as a result of" the later state court property tax collection action.

Supplemental Sewer Assessment. In 777 *Residential, LLC v. The Metropolitan District Commission*, 2019 WL 2374339 (Hartford Super. Ct. Apr. 25, 2019), the property owner appealed a supplemental sewer assessment levied by The Metropolitan District Commission ("MDC"). The sewer serving the subject property had been constructed and been the subject of an initial sewer assessment in 1849, calculated based upon the amount of the property's street footage. In 2015, the MDC sought to impose a supplemental sewer assessment, pursuant to Conn. Gen. Stat. § 7-249, using a different methodology based on a schedule of flat residential rates at $1,655 per residential unit. Although there was evidence that the MDC had made improvements to the Hartford sewer system generally over the years, there was no evidence of any improvements to the sewer line serving the subject property. The Superior Court sustained the appeal holding that section 7-249 requires a water pollution control authority (here, the MDC) to use the same methodology for the calculation of the supplemental sewer assessment that it used for the initial sewer assessment. Accordingly, if there has been no change to the amount of the street frontage of the subject property, there was no basis to impose a supplemental sewer assessment. The Court wrote that, if the MDC seeks to offset more recent or ongoing costs of constructing and maintaining the Hartford sewer system, those costs may be recovered under Conn. Gen. Stat. § 7-255 through connection and use fees.

FOIA Requests. In *Larobina v. Tax Assessor, City of Stamford*, Docket No. FIC 2018-0103 (FOIC Feb. 13, 2019), the Freedom of Information Commission ("FOIC") considered a complaint filed by an individual seeking records related to a revaluation conducted by the City, including a list of all informal hearings requested by landowners and the dispositions thereof, and all communications between the City's Assessors' Office and Municipal Valuation Group LLC. The FOIC found the records requested to be public records required to be disclosed under the Freedom of Information Act. Although there was evidence that the Assessor and the City had provided records responsive to the request, the FOIC held that the Assessor and the City had violated the Act by not providing testimony that all responsive records had been provided. The FOIC ordered that the Assessor and the City either provide all remaining responsive documents, or in the alternative, if applicable, provide to the requesting party an affidavit that all responsive documents have been provided.

Auction Sale. In *Papale v. Somers*, 2019 WL 2085958 (New Britain Super. Ct. Apr. 12, 2019), the Superior Court considered an appeal from a property tax assessment based upon a revaluation date of October 1, 2015. The Town's assessor had valued the subject property at $3,097,900. On appeal, the property owner's appraiser valued the property at $1,675,000 and the Town's appraiser valued the property at $2,700,000. The Court found, however, that the subject property had been sold on August 15, 2016, approximately 10 months after the revaluation date, for $2,125,000 at a competitive private auction sale, advertised over the Internet, after prior attempts to market the property at a higher price had failed. The Court found the private auction sales price to be the fair market value of the property, as there was evidence that it was not a forced sale.

Building Shell. In *Pearl Enterprises, LLC v. Hartford*, 2019 WL 1766246 (New Britain Super. Ct. Mar. 20, 2019), the Superior Court considered the proper property tax valuation of an unusable shell of a building on a small, nonconforming building lot that had been marketed for four years with no success. The property owner's appraiser argued that the property should be valued based upon the demolition of the existing structure and use of the property as a parking lot. The City's appraiser argued for a higher valuation based upon the potential development of the property as an apartment building using governmental financial support and tax credits. The Court sided with the property owner finding that the City's valuation would require speculative and complex financing.

Tax Lien Foreclosure and Extinguishment. In *American Tax Funding, LLC v. First Eagle Corp.*, 2019 WL 1283761 (Hartford Super. Ct. Feb. 5, 2019), the plaintiff sought to recover unpaid municipal taxes assessed on a property for the tax years 2006, 2007, and 2008, after having already foreclosed on the property based upon taxes assessed for the 2005 tax year. Pursuant to Conn. Gen. Stat. § 12-195h, the plaintiff had purchased the four municipal tax liens

arising from the failure of the property owner to pay taxes during the 2005 through 2008 tax years, and any rights the municipality had to collect on those liens. The plaintiff secured a judgment of strict foreclosure on the property based upon the lien for the 2005 tax year and assigned the judgment to a third party that took title to and sold the property. The plaintiff separately sued the property owner for unpaid taxes based upon the liens for the 2006, 2007 and 2008 tax years. The Superior Court entered judgment for the defendant property owner finding that Conn. Gen. Stat. § 12-195 expressly provides that the judgment in the foreclosure action and subsequent title transfer extinguished all four of the tax liens, prohibiting the plaintiff from seeking any further recovery.

Foreclosure of Separate Tax Lots. In *Danbury v. Aberdeen Development, LLC*, 2019 WL 2880367 (Danbury Super. Ct. May 24, 2019), the plaintiff City sought the strict foreclosure of a property based upon unpaid real property taxes and water and sewer usage charges. The defendant contested the claim asserting that, decades previously, the City's Assessor Office had divided the subject property into two separate tax lots and that the defendant had paid in full the taxes due on one of the two tax lots. The Court entered the judgement of strict foreclosure, finding that: (i) the aggregate amount of taxes and charges due from the defendant was uncontested; (ii) the value of the entire subject property was uncontested and considerably less than the aggregate amount of taxes and charges due; and (iii) the sub-division of the subject property made by the City Tax Assessor, which was not reflected on the land records, was insufficiently clear to support a strict foreclosure on only one of the two tax lots.

Apartment Building. In *873 WB LLC v. Hartford*, 2019 WL 3406864, (New Britain Super. Ct. June 27, 2019), the owner of an apartment building purchased on December 3, 2015 for $11,550,000 challenged the assessment of the property on the grand list of October 1, 2016 based upon a valuation of $11,205,500. The Court reduced the assessed fair market value of the property to $10,250,000 with the following findings: (i) the owner's argument that it had overpaid for the property by $3 million based upon overly optimistic financial numbers provided by the broker was not persuasive since the property manager had 30 years of real estate experience and his company owned and/or managed many apartment buildings; (ii) the comparable sales analysis prepared by the owner's appraiser was not credible because it did not include the purchase of the subject apartment building; (iii) the income capitalization analysis prepared by the City's assessor was wrongly based on a conversion of the subject property to a condominium complex when that conversion was not contemplated; (iv) a property owner's appeal should cite to the statute authorizing the appeal; and (v) the owner's appraiser submitted a more credible income capitalization analysis, meriting an adjustment to the assessment.

Proper Parties to Appeal. In *79 Elm Street LLC v. New Canaan*, Docket No. CV-19-6041375S (Stamford Super. Ct. Sept. 17, 2019), the plaintiff landowner brought an appeal challenging the valuation of the plaintiff's property, and named as defendants the town, the town's assessor and the Board of Assessment Appeals. The Superior Court granted a motion to strike the assessor and the Board of Assessment Appeals as parties, as Conn. Gen. Stat. § 12-117a provides expressly that the town is the proper party to an appeal of a property tax assessment.

Lien Foreclosure Parties. In *Neff Companies, LLC v. J.P. Alexandre, LLC*, Docket No. HHD-CV-16-6068814-S (Hartford Super. Ct. Oct. 4, 2019), the plaintiff sought to foreclose on municipal tax liens assigned to it by the City of Hartford. In response to a motion for summary judgment filed by the plaintiff against the City, the landowner objected asserting that its defense rests, in part, on payments the landowner made to the City and an alleged deficiency in the certificate of tax lien filed by the City. The Court granted the motion against the City holding that the landowner's defenses would survive the grant of summary judgment against the City.

Administrative Appeals/Return of Process. In *Tomas v. Wilton*, Docket No. FST CV-19-6042500-S (Stamford Super. Ct. Oct. 21, 2019), the defendant town moved to dismiss the plaintiff landowner's appeal of a property tax assessment

on the grounds that (i) the landowner had not attended the Board of Assessment Appeals hearing on his appeal, and (ii) the landowner had failed to return process to the court at least six days prior to the return date as required by Conn. Gen. Stat. § 52-46a. The landowner contended that he had not received notice of the Board of Assessment Appeals hearing. The Superior Court refused to dismiss the appeal, (i) relying on the Connecticut Supreme Court's decision in Morris v. New Haven, 77 Conn. 108 (1904) to hold that the failure to appear at the Board's hearing did not deprive the Court of jurisdiction, and (ii) granting, on its own motion, the right for the plaintiff to amend the return date so as to conform with section 52-46a.

Foreclosure and Subsequent Taxes. In the case of *Benchmark Municipal Tax Services, Ltd. v. Martin*, Docket No. FBT-CV-17-6066114-S (Bridgeport Super. Ct. Oct. 31, 2019), the successful bidders on a property they had purchased at a tax lien foreclosure sale sought to have the court apply the excess sales proceeds against taxes due for periods after the periods covered by the foreclosed tax liens. The Court refused to grant the relief, finding that the successful bidders had agreed to pay any taxes on the property; the excess proceeds were the property of the heirs and beneficiaries of the deceased former owner of the property.

Equitable Estoppel and Appeal Deadline. In *McDonalds Real Estate Company v. Norwalk*, Docket No. HHB-CV-19-6053772-S (New Britain Super. Ct. Nov. 6, 2019), the defendant municipality sought to have a property tax appeal dismissed on the basis that the appeal had been filed more than two months after the date notice of an adverse decision by the Board of Assessment Appeals had been mailed to the plaintiff landowner. According to the record, the municipality had sent to the landowner an initial notice of the Board's decision on March 6, 2019, and a second notice on March 21, 2019, and the landowner asserted that it had relied on the second notice when filing its appeal on May 20, 2019. The Superior Court concluded that, although well intentioned, the second notice could lead the taxpayer to conclude that the appeal period ran from March 21, 2019, and that the doctrine of equitable estoppel prevented the municipality from prevailing on its motion to dismiss.

Leased Charitable Property. In *CIL Community Resources, Inc. v. Hartford*, Docket No. HHB-CV-17-6040041-S (New Britain Super. Ct. Nov. 7, 2019), the plaintiff landowner appealed the denial of its application to renew a property tax exemption for its commercial office building pursuant to Conn. Gen. Stat. § 12-81(7). The parties stipulated that the plaintiff had been organized for charitable purposes to develop, own and manage non-residential real estate in support of and for the benefit of any nonprofit section 501(c)(3) organization. Despite this stipulation, the plaintiff had leased out 35% of the subject property to for-profit tenants, and did not conduct any activities beyond the management of property. The Superior Court held that the lease of commercial office space to charitable and non-charitable organizations did not serve an exclusively charitable purpose as required by section 12-81(7) and granted judgment in favor of the City.

MISCELLANEOUS TAXES

I. Legislation

Business Entity Tax Repeal. The biannual business entity tax of $250 imposed on each limited liability company, limited liability partnership, limited partnership and S corporation is repealed for taxable years commencing on or after January 1, 2020. Conn. Gen. Stat. § 12-284b, as amended by Conn. Pub. Act No. 19-117, § 338 *(effective June 26, 2019)*. See also Conn. Gen. Stat. § 12-217jj(e)(2), as amended by Conn. Pub. Act No. 19-117, § 339 *(effective January 1, 2020)*. Please note, however, that the annual report fee due to the Secretary of the State from limited partnerships, limited liability companies and limited liability partnerships is increased from $20 to $80 effective July 1, 2020. Conn. Gen. Stat. §§ 34-38n, 34-243u and 34-413, as amended by Conn. Pub. Act No. 19-117, §§ 344-346

(effective July 1, 2019). [Ed. note. Since the repeal of the business entity tax is effective as of January 1, 2020, it is unclear whether an entity subject to the business entity tax for a period inclusive of 2019 and 2020 remains liable for all or a portion of the tax.]

Real Estate Conveyance Tax/"Mansion Surcharge". Under current law, the state tax on the sale of residential real estate is generally at (i) the rate of 0.75% on that portion of the consideration for the residential real estate up to an including $800,000, and (ii) the rate of 1.25% of the consideration in excess of $800,000. (The municipal real estate conveyance tax is at the rate of 0.25% of the consideration and is in addition to the state real estate conveyance tax.) On or after July 1, 2020, the rate of the state conveyance tax on residential real estate generally will be (i) 0.75% on the portion of the consideration for the residential real estate up to and including the amount of $800,000, (ii) 1.25% on the portion of the consideration in excess of $800,000 and up to and including the amount of $2.5 million, and (iii) 2.25% on the portion of the consideration in excess of $2.5 million. Conn. Gen. Stat. § 12-494, as amended by Conn. Pub. Act No. 19-117, § 337 *(effective July 1, 2019)*. [Ed. note. See the discussion regarding the revisions to the Property Tax Credit in the Income Tax Section of this newsletter. A taxpayer who pays the "mansion surcharge" rate may be eligible for a property tax credit based upon the amount of the mansion surcharge paid by the taxpayer.]

Real Estate Conveyance Tax/Crumbling Foundations. Effective July 1, 2019, the real estate conveyance tax will no longer apply to deeds that transfer a transferor's principal residence if the residence has a concrete foundation that has deteriorated due to the presence of pyrrhotite and the transferor obtained a written evaluation from a licensed professional engineer indicating that the foundation was made with defective concrete. The exemption shall (i) only apply to the first transfer of the residence after the written evaluation has been obtained, and (ii) not be available to a transferor who has received financial assistance to repair or replace the foundation from the Crumbling Foundations Assistance Fund. Conn. Gen. Stat. § 12-498, as amended by Conn. Pub. Act No. 19-117, § 336 *(effective July 1, 2019).*

Hospital Provider Tax. The current method for the calculation of the hospital provider tax, which was to sunset after June 30, 2019, has been extended indefinitely with certain modifications. In general, for each calendar quarter, a hospital is required to pay a tax on the total net revenue received by the hospital for the provision of inpatient hospital services and outpatient hospital services. The rate of the tax for the provision of inpatient hospital services is 6% of the hospital's audited net revenue for a particular designated fiscal year. The designated fiscal year for each biennium is the fiscal year occurring three years prior to the first state fiscal year of the biennium (e.g., the fiscal year 2016 for the biennium July 1, 2019 through June 30, 2021). The rate of the tax for the provision of outpatient hospital services is (i) $900 million less the total tax imposed on all hospitals for the provision of inpatient hospital services, divided by (ii) the total audited net revenue for the designated fiscal year attributable to outpatient hospital services of all of the hospitals that are required to pay the tax. The amending legislation imposes successor liability in the case of hospital mergers or reorganizations, and does not allow for a recalculation of the tax due if a hospital were to cease to operate. If the effective rate of tax on the hospitals would exceed the federal law limitation set forth in 42 CFR 433.68(f), the excess tax collected is to be refunded to the hospitals. Hospitals are to submit reports on their tax payments to the Commissioner of Social Services to facilitate this determination, and are to submit biennially to the Commissioner of Revenue Services such information as the Commissioner will need to calculate for the designated fiscal year the audited net inpatient and outpatient revenues of the hospitals. Conn. Gen. Stat. § 12-263q, as amended by Conn. Pub. Act No. 19-117, § 356 *(effective June 26, 2019).* [Ed. note. As reported in the press, a settlement has been reached in the litigation between the State and the hospitals and we anticipate that an attempt will be made to enact significant changes to the hospital provider tax during a special session of the General Assembly convened this year.]

Intermediate Care Facility Provider Fee. Effective for calendar quarters commencing on or after July 1, 2019, the quarterly provider tax imposed on each intermediate care facility in Connecticut is increased from $27.26 to $27.76 multiplied by the number of facility total resident days during the calendar quarter. The provider tax per resident day for nursing homes remains at $21.02. Conn. Gen. Stat. § 12-263r(a), as amended by Conn. Pub. Act No. 19-117, § 357 *(effective June 26, 2019)*.

Alcoholic Beverages Tax. Effective October 1, 2019, the alcoholic beverages tax imposed on distributors of alcoholic beverages is amended as follows: (i) the rate of the tax on beer sold on the premises covered by a manufacturer's permit for off-premises consumption is set at one-half of the general rate of the tax on beer; and (ii) the rate of the tax on alcoholic beverages, other than beer, is generally increased by 10%. Licensed distributors will be required to report and pay on or before November 15, 2019, an "inventory tax" on those alcoholic beverages (other than beer) in inventory held in Connecticut at the opening of business on October 1, 2019. The inventory tax is to cover the increase in the alcoholic beverages tax rate as of the inventory date. Conn. Gen. Stat. § 12-435, as amended by Conn. Pub. Act No. 19-117, § 352 (*effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019)*, and Conn. Pub. Act No. 19-117, § 353 *(effective October 1, 2019)*. In a second public act, the General Assembly repealed, effective January 1, 2020, the exemption from the alcoholic beverages tax for the first 15 barrels of malt beverages (*i.e.*, beer) produced annually and consumed on the premises covered by a manufacturer's permit. Conn. Gen. Stat. § 12-435, as amended by Conn. Pub. Act No. 19-24, § 1 *(effective January 1, 2020)*. Finally, in yet a third public act, the General Assembly made technical changes to the same statutory provision, effective July 1, 2019. Conn. Gen. Stat. §12-435, as amended by Conn. Pub. Act No. 19-186, § 6 *(effective July 1, 2019)(pending execution by the Governor)*. [Ed. note. The impacts of these public acts are rationalized and explained in DRS Special Notice 2019(3), *Legislative Charges Affecting the Alcoholic Beverages Tax and Requiring a Floor Tax on Alcoholic Beverages Inventory as of the Opening of Business on October 1, 2019*.]

Cigarettes, Tobacco Products and Electronic Cigarette Products. The laws governing cigarettes, tobacco products and e-cigarettes (electronic nicotine delivery systems and vapor products) have been amended to raise from 18 to 21 the legal age to purchase such products and to make corresponding other changes, including those relating to the taxation of those products. In addition, the public act: (i) expands the definition of "tobacco products" to mean any product, regardless of form, that is made from or otherwise contains tobacco, other than cigarettes, any electronic nicotine delivery system or any vapor product; (ii) increases from $50 to $200 the annual license fee for dealers of each of cigarettes and tobacco products; (iii) increases from $400 to $800 the annual registration fee for e-cigarette dealers and retains the $400 fee for dealers with multiple registrations; (iv) retains the annual fee of $200 for an e-cigarette manufacturer registration, but reduces from $400 to $200 the annual registration fee for e-cigarette manufacturers with multiple registrations; and (v) generally increases certain penalties for cigarette, tobacco product and e-cigarette sales and purchases involving under-age individuals. Conn. Gen. Stat. §§ 12-285, 12-286a(a), 12-287, 12-289a, 12-291a, 12-295, 12-295a, 12-314a, 21a-415, 21a-415a, 21a-416, 53-344, 53-344a, 53-344b, 19a-342(b)(1), 19a-342a(b)(1), 12-285a, 12-330a(2) and 19a-342a, as amended by Conn. Pub. Act No. 19-13, §§ 1-11, 14-18 and 20-22 *(effective October 1, 2019)*; Conn. Pub. Act No. 19-13, §§ 12-13 and 19 *(effective October 1, 2019)*.

Electronic Cigarette Excise Tax. For each calendar month commencing on or after October 1, 2019, a new tax is imposed on all sales of electronic cigarette products made in Connecticut by electronic cigarette wholesalers at the following rates: (i) for an electronic cigarette product that is prefilled, sealed by the manufacturer and not intended to be refillable, $0.40 per milliliter of the electronic cigarette liquid contained therein; and (ii) for any other electronic cigarette product, 10% of the wholesale sales price of the product, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler. Only the first sale or use of the same product by an electronic cigarette wholesaler shall be used in computing the amount of the tax due. No tax credit or credits are allowable

against the new tax. Conn. Pub. Act No. 19-117, § 351 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019). See* DRS Special Notice 2019(7), *Electronic Cigarette Products Tax*.

CHESLA Loan Payment Tax Credit. Effective for taxable years commencing on or after January 1, 2022, an employer can earn a tax credit of up to $2,625 per employee if the employer makes a payment on behalf of a qualified employee's behalf on an eligible loan issued by the Connecticut Higher Education Supplemental Loan Authority. The credit is equal to 50% of the payment that is applied against a qualified employee's outstanding principal loan balance. The credit can be applied only against the corporation business, insurance premium or health care center taxes. "Qualified employees" are Connecticut residents who (i) earned their first bachelor's degree within the last five years, (ii) are working full time (at least 35 hours per week) at a corporation, insurer or health care center that is licensed in Connecticut and subject to the applicable tax, and (iii) is not an owner, member or partner of the qualified employer, or a family member of an owner, member or partner of the qualified employer. Conn. Pub. Act No. 19-86, § 1 *(effective January 1, 2022, and applicable to taxable years commencing on or after January 1, 2022).*

Transportation Network Company Fee. Effective July 1, 2019, the tax on a "prearranged ride" that originates in Connecticut provided by a "transportation network company" (e.g., Uber or Lyft) is increased from $0.25 to $0.30 per each prearranged ride. Conn. Gen. Stat. §§ 13b-121(b) and (c), as amended by Conn. Pub. Act No. 19-117, § 360 *(effective July 1, 2019)*.

Admissions Tax. The statutes governing the admissions tax are amended to: (i) reduce the applicable tax rate (currently 10%) for any event at the Dunkin' Donuts Park in Hartford to (A) 5% for sales occurring on or after July 1, 2019, but prior to July 1, 2020, and B) zero percent on and after July 1, 2020; and (ii) reduce the applicable tax rate for sales occurring on or after July 1, 2019, but prior to July 1, 2020 from 10% to 7.5%, and for sales occurring on or after July 1, 2020 from 7.5% to 5.0%, for (A) any event at the XL Center in Hartford, Dillon Stadium in Hartford, Webster Bank Arena in Bridgeport, Harbor Yard Amphitheater in Bridgeport, Dodd Stadium in Norwich, Oakdale Theatre in Wallingford, (B) any athletic event presented by a member team of the Atlantic League of Professional Baseball at the New Britain Stadium, and (C) any event other than an interscholastic athletic event at the stadium facility defined in Conn. Gen. Stat. § 32-651. Conn. Gen. Stat. §12-541, as amended by Conn. Pub. Act No. 19-117, § 354 *(effective July 1, 2019, and applicable to sales made on or after July 1, 2019).*

Opportunity Zones. The General Assembly enacted legislation to promote the development of properties located in federally-designated opportunity zones in Connecticut pursuant to the Tax Cuts and Jobs Act of 2017. These promotional efforts include: (i) the marketing and selling of ten vacant state-owned properties located in opportunity zones; (ii) the extension of the 30% historic structure rehabilitation tax credit, and grant priority, to applications of owners rehabilitating certified historic structures located in opportunity zones; (iii) the requirement that the Commissioner of Economic and Community Development (the "Commissioner") in approving projects eligible for urban and industrial site reinvestment tax credits, to give priority to applications for projects located in opportunity zones; and (iv) the charge to the Commissioner, in consultation with other state agencies, to conduct a study to determine how the state can further incentivize the use of the opportunity zone program in Connecticut. Conn. Gen. Stat. §§ 32-1d, 32-726(b)(1), 10-416c, 32-9t(g)(1), 32-765(c) and 32-763(c) and (d), as amended by Conn. Pub. Act No. 19-54, §§ 1-2, 8-10 and 12-13 *(effective July 1, 2019)*; Conn. Pub. Act No. 19-54, §§ 3-7 and 11 *(effective June 21, 2019)*.

Dyed Diesel Fuel. Effective October 1, 2019, the sales and use tax rate applicable to dyed diesel fuel sold by a marine fuel dock exclusively for marine purposes is reduced to 2.99%. Conn. Gen. Stat. §§ 12-408(1) and 12-411(1), as amended by Conn. Pub. Act No. 19-117, §§ 323-324 *(effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019).*

Tax Incidence Report. The deadline of February 15, 2020, has been delayed two years to February 15, 2022, for the submission by the Commissioner of Revenue Services to the Joint Committee on Finance, Revenue and Bonding of a report on the overall incidence of the income tax, sales and excise taxes, corporation business tax and property tax. The report is to present information on the distribution of the tax burden on each of: individuals, by income class and other appropriate characteristics; and businesses, by gross receipts, legal organizations and industry by NAICS code. Conn. Gen. Stat. § 12-7c(a), as amended by Conn. Pub. Act No. 19-117, § 92 *(effective June 26, 2019)*.

7/7 Brownfield Revitalization Program. In 2017, the General Assembly established the "7/7 program" within the Department of Economic and Community Development to provide incentives to businesses for redeveloping and utilizing brownfields and real property that have been abandoned or underutilized for ten or more years. In 2019, the General Assembly repealed the 7/7 program, including the deduction allowed under the corporation business tax for the amount paid by a 7/7 program participant for the remediation of a brownfield. Conn. Gen. Stat. § 32-776, as repealed by Conn. Pub. Act No. 19-117, § 397 *(effective June 26, 2019, and applicable to taxable years commencing on or after January 1, 2019)*; Conn. Gen. Stat. § 12-217(a)(1), as amended by Conn. Pub. Act No. 19-117, § 376 *(effective June 26, 2019)*.

Urban and Industrial Sites Reinvestment Act Tax Credits. The General Assembly has repealed the ability of a taxpayer to apply urban and industrial sites reinvestment and tax credits against (i) the ambulatory surgical center gross receipts tax, (ii) the dry cleaning gross receipts tax, and (iii) the public service companies tax. Conn. Gen. Stat. § 32-9t, as amended by Conn. Pub. Act No. 19-186, § 9 *(effective July 8, 2019, and applicable to income years commencing on or after such date)*.

Healthy Homes Surcharge. Last year, the General Assembly enacted legislation that would impose, as of January 1, 2019, a surcharge of $12 on the named insured under each homeowners insurance policy, with the proceeds from this surcharge to be deposited in a "Healthy Homes Fund", and then largely re-deposited in the Crumbling Foundations Assistance Fund. The statute governing the surcharge has been amended to provide that: (i) the surcharge is imposed on the issuance or renewal of each insurance policy providing (A) personal risk coverage for an owned dwelling in Connecticut with four or fewer units (except a mobile home), (B) coverage for an individual condominium unit in Connecticut, or (C) coverage for an individual residential unit in Connecticut that is part of a common interest community; (ii) the surcharge is only on insurance policies issued or renewed during the period beginning on January 1, 2019 and ending on December 31, 2029; (iii) payment of the surcharge is the obligation of the person that is the first-listed insured under the policy (although collection and remittance of the surcharge may be determined by the insurer, insured and any mortgagee); (iv) the surcharge is payable in full upon the commencement or renewal of coverage and no portion of the surcharge can be reimbursed, even upon cancellation; and (v) the party that is to collect and remit the surcharge is the insurer or, if the policy is from a non-admitted insurer, one or more licensed surplus lines brokers who procured the insurance policy. Conn. Gen. Stat. § 38a-331, as amended by Conn. Pub. Act No. 19-192, § 3 *(effective July 8, 2019)*.

Trade-In Fee. The charge imposed by the Commissioner of Motor Vehicles on each new or used car dealer for each transaction in which the dealer processes a used motor vehicle traded in by the purchaser of a new or used motor vehicle from the dealer is increased from $35 to $100. Conn. Gen. Stat. § 14-62c, as amended by Conn. Pub. Act No. 19-117, § 361 *(effective October 1, 2019, and applicable to transactions occurring on or after October 1, 2019)*.

II. Administrative Pronouncement

Motor Vehicle Fuels Tax Rate. Effective July 1, 2019, the motor vehicle fuels tax rate for diesel fuel is increased by 2.6 cents to 46.5 cents per gallon. DRS Announcement 2019(9), *Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2019.*

TAX PROCEDURE

I. Legislation

State Tax Warrants. Current law authorizes the DRS and other state collection agencies to serve, by electronic mail or facsimile transmission, a tax warrant on any third party which is in possession of, or obligated with respect to, the intangible personal property (e.g., bank accounts, wages, receivables) of a taxpayer who fails to pay state taxes. Effective October 1, 2019, state tax warrants can be served by any electronic means. Conn. Gen. Stat. § 12-35(b)(2), as amended by Conn. Pub. Act No. 19-186, § 4 *(effective October 1, 2019)*.

Tax Preparers and Facilitators. In 2017, the Connecticut General Assembly enacted a new regulatory structure for tax preparers and facilitators (*i.e.*, persons who facilitate the making of a refund anticipation loan or refund anticipation check). As part of that regulatory scheme, a tax preparer (other than an exempt preparer, such as a licensed accountant, attorney or enrolled agent) or facilitator must obtain from the Commissioner of Revenue Services a tax preparer permit or facilitator permit which is renewable every two years. In the case of a tax preparer permit, the applicant is required to present satisfactory evidence that the applicant has experience, education or training in tax preparation services, which evidence is to include, on or after January 1, 2020, a certificate of completion of an annual filing season program administered by the Internal Revenue Service. The certificate of completion requirement has now been delayed by two years to January 1, 2022. The law also has been amended to provide that, if the holder of a tax preparer or facilitator permit is granted inactive status, the holder can only have that permit reactivated before the permit's expiration date. Conn. Gen. Stat. § 12-790a, as amended by Conn. Pub. Act No. 19-186, § 7 *(effective July 8, 2019). See* DRS Special Notice 2019(4), *Permit Requirements for Tax Preparers and Facilitators.*

Penalty Review Committee. In order to obtain the waiver of a penalty in an amount over a certain monetary threshold, approval of the waiver must be granted by the Penalty Review Committee (which consists of the State Comptroller, Secretary of OPM and the Commissioner of Revenue Services). The applicable monetary threshold has been increased from a penalty in excess of $1,000 to a penalty in excess of $5,000. In addition, the period by when an appeal of a decision of the Penalty Review Committee can be taken to the Superior Court has been changed from one month to 30 days after notice of the decision is delivered or mailed to the taxpayer. Conn. Gen. Stat. § 12-3a, as amended by Conn. Pub. Act No. 19-186, § 10 *(effective July 8, 2019).*

Tax Appeal Limitations Period. The statutory period for bringing an appeal from a state tax assessment for most tax types has been changed from one month to 30 days after notice of the adverse action is delivered or mailed to the taxpayer. Conn. Gen. Stat. §§ 12-30, 12-208, 12-237, 12-263v(b), 12-268l, 12-312, 12-330m, 12-422, 12-448, 12-463, 12-489, 12-554, 12-586f(d), 12-586g(d), 12-597, 12-638; and 12-730, as amended by Conn. Pub. Act No. 19-186, §§ 11-27 *(effective July 8, 2019).*

Applying Partial Payments. At the recommendation of the DRS, the General Assembly again has changed the priority order for the application of partial payments after first applying such payment to any penalty that has not been waived. For periods ending on or after July 1, 2018, and prior to December 31, 2019, any amount in excess of the

penalty is to be applied first to the tax due and then to interest. For periods ending on and after December 31, 2019, any amount in excess of the penalty is to be applied first to interest and then to the tax due. Conn. Gen. Stat. § 12-39h, as amended by Conn. Pub. Act No. 19-186, § 28 *(effective July 8, 2019).*

Electronic Payment Penalties. When any state tax payment is required to be made by electronic funds transfer, the failure to initiate such electronic funds transfer on or before the due date for the payment is treated as the failure to make a timely tax payment, and the overdue amount is subject to statutory interest. For periods ending prior to December 31, 2019, a schedule of graduated penalties are applicable (*i.e.,* the penalty is 2% if it is less than six days late, 5% if it is six to 15 days late, and 10% if it is more than 15 days late). For periods ending on or after December 31, 2019, the governing statute has been amended such that interest and a penalty should be assessed under the rules applicable to the type of tax involved. Conn. Gen. Stat. § 12-687(b), as amended by Conn. Pub. Act No. 19-186, § 29 *(effective July 8, 2019).*

State Tax Refunds. Effective July 1, 2019, no refund will be paid to a person of tax collected from a customer of such person (e.g., sales tax) until the person establishes that the amount of tax for which the refund is being claimed has been or will be repaid to the customer. Conn. Pub. Act No. 19-186, § 30 *(effective July 1, 2019, and applicable to refund claims received on or after July 1, 2019).*

II. Case

State Tax Withholding. In *Dept. of Transportation v. White Oak Corp.*, 332 Conn. 776 (2019), the Connecticut Supreme Court affirmed the obligation of the State Comptroller under Conn. Gen. Stat. §12-39g to withhold from the payment of any judgment against the state any taxes, and applicable interest and penalties, due from the party to which the judgment is to be paid. The situation had been complicated by the fact that the defendant Department of Transportation had asserted in an arbitration a set-off claim based upon the delinquent taxes owed by the plaintiff contractor, but had not introduced evidence supporting that claim as part of the arbitration. The Supreme Court held that the State Comptroller's obligation to withhold the delinquent taxes was mandatory, and refused to apply the doctrine of collateral estoppel based upon the arbitration proceeding.

ADMINISTRATIVE PRONOUNCEMENTS

Announcements

AN 2019(3), Annual List of Distributors For Motor Vehicle Fuels Tax Purposes
AN 2019(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2019(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2019(4), List of DRS-Registered Natural Gas Suppliers
AN 2019(5), Assessments Refunded by the Connecticut Insurance Guaranty Association
AN 2019(6), 2019 Revision of Forms TPM-1 and TPM-2
AN 2019(9), Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2019
AN 2019(10), Information about Sales and Use Tax Rate Increase on Meals and Revocation of Policy Statement 2019(5), Sales and Use Tax on Meals
AN 2019(11), Assessments Refunded by the Connecticut Life and Health Insurance Guarantee Association

Informational Publications

IP 2019(1), Connecticut Circular CT Employer's Withholding Guide
IP 2019(2), Q & A on the Connecticut Use Tax for Businesses and Professions
IP 2019(3), Q & A on the Connecticut Individual Use Tax
IP 2019(4), Q & A: The Dues Tax

IP 2019(5), Connecticut Income Tax Information for Armed Forces Personnel and Veterans
IP 2019(6), The "Buy Connecticut" Provision
IP 2019(7), Is My Connecticut Withholding Correct?
IP 2019(12), Forms 1099-R, 1099-MISC, 1099-K, and W-2G Electronic Filing Requirements for Tax Year 2019
IP 2019(13), Form W-2 Electronic Filing Requirements for Tax Year 2019

Policy Statements

PS 2019(1), Retailer's Acceptance of US Government "GSA SmartPay 3" Charge Cards for Exempt Purchases
PS 2019(2), The Tourism Account Surcharge
PS 2019(4), Sales and Use Tax on Dry Cleaning Services and Laundry Services, Dry Cleaning Establishment Surcharge, and Business Use Tax Obligations
PS 2019(5), Sales and Use Tax on Meals (Revoked)

Rulings

DRS Ruling 2019-1, Services to Real Property Installation

Special Notices

SN 2019(1), Change to the Prepaid Wireless E 9-1-1 Fee
SN 2019(2), Conversion Factors for Motor Vehicles Occurring in Gaseous Form Beginning July 1, 2019
SN 2019(3), Legislative Changes Affecting the Alcoholic Beverages Tax and Requiring a Floor Tax on Alcoholic Beverages Inventory as of the Opening of Business on October 1, 2019
SN 2019(4), Permit Requirements for Tax Preparers and Facilitators
SN 2019(5), 2019 Legislative Changes Affecting the Corporation Business Tax
SN 2019(6), 2019 Legislative Changes Affecting the Pass-Through Entity Tax
SN 2019(7), Electronic Cigarette Products Tax
SN 2019(8), Sales and Use Taxes on Digital Goods and Canned or Prewritten Software
SN 2019(9), Room Occupancy Tax on Short-Term Rentals

Our State and Local Tax Practice

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.

This newsletter is for informational purposes only. It is not intended as legal advice. How the laws and principles described here will apply in a particular matter depends on the facts of that situation.

Alan E. Lieberman
alieberman@goodwin.com
(860) 251-5801

Louis B. Schatz
lschatz@goodwin.com
(860) 251-5838

Raymond J. Casella
rcasella@goodwin.com
(860) 251-5808

Robert L. Day III
rday@goodwin.com
(860) 251-5602

Elva M. Saltzman
esaltzman@goodwin.com
(860) 251-5525

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

265 Church Street - Suite 1207
New Haven, CT 06510-7013
203-836-2801

400 Park Avenue - Fifth Floor
New York, NY 10022-4406
212-376-3010

5-1 Davis Road East - PO Box 187
Old Lyme, CT 06371-0187
860-434-5333

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1875 K St., NW - Suite 600
Washington, DC 20006-1251
202-469-7750

www.shipmangoodwin.com