

2020 CONNECTICUT TAX DEVELOPMENTS

A Shipman & Goodwin® Newsletter

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COVID-19 Response

The focus of the nation in 2020, including the State of Connecticut, was first and foremost on addressing the worldwide pandemic and the resulting social and economic turmoil. From the state and local tax perspective, Connecticut, like the vast majority of states, extended deadlines for the filing of tax returns and the making of tax payments, and provided guidance on the impact on Connecticut taxpayers of the federal Coronavirus Aid, Relief and Economic Security Act (“CARES Act”). This newsletter summarizes this guidance and other 2020 Connecticut tax legislation, administrative guidance and case law. 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.

I. Extension of Deadlines

By Executive Order and administrative pronouncements, the State eventually granted an extension of many filing and payment deadlines to July 15, 2020 (to align with the federal filing and payment extensions) including the following:

- Individual income tax returns and payments, including first and second quarter estimated income tax payments
- Trust and estate tax returns and payments, including any estimated payments due between April 1, 2020 and July 15, 2020
- Pass-through entity tax returns and payments, including estimated payments due between March 15, 2020 and July 15, 2020
- Corporation business tax returns and payments, including estimated payments due between March 15, 2020 and July 15, 2020
- Estate tax returns and payments for returns due between April 1, 2020 and July 15, 2020
- Gift tax returns and payments for returns due between April 1, 2020 and July 15, 2020
- Unrelated business income tax returns and payments, including estimated payments, due between March 15, 2020 and July 15, 2020

In addition, Connecticut took other actions to afford relief to taxpayers:

- The single-use plastic bag fee was suspended by Executive Order on March 26, 2020, but was resumed on July 1, 2020.

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- Sales and use tax and room occupancy tax returns and payments due on each of March 31, 2020 and April 30, 2020 were extended to May 31, 2020 for “qualified small business” taxpayers (*i.e.*, a taxpayer that had \$150,000 or less in annual sales tax liability or annual room occupancy tax liability, respectively, during the 2019 calendar year).
- The sixty-day filing requirement for taxpayers seeking to protest a notice of assessment or proposed disallowance of a claim for refund was extended by an additional ninety (90) days. The extension was applicable to any notice of assessment or proposed disallowance of a claim for refund dated on or after January 10, 2020 through May 31, 2020. The thirty-day requirement for serving a tax appeal was suspended for any appeal required to be serviced on or after March 19, 2020.
- The application deadline for municipalities to submit proposals under the Neighborhood Assistance Act (which awards up to \$5 million in credits to businesses that sponsor approved projects) was extended to July 31, 2020.

II. CARES Act

In July 2020, the Department of Revenue Services (the “Department”) published guidance on certain state tax issues associated with provisions in, or relief granted under, the CARES Act: Office of the Commissioner Guidance 10 (OCG-10), Regarding Connecticut Tax Implications of the CARES Act, and Office of the Commissioner Guidance 11 (OCG-11), Regarding Depreciation of Qualified Improvement Property for Connecticut Tax Purposes. The guidance generally provides as follows:

- **Federal Stimulus Checks.** The Department confirmed that federal economic impact payments (*i.e.*, federal stimulus checks) would not be subject to Connecticut income tax.
- **Distributions from Qualified Retirement Accounts.** The Connecticut income taxation of a distribution from a qualified retirement account permitted by the CARES Act will be dictated by whether the distribution is included or excluded from federal adjusted gross income in a particular year. If includible, the distribution will be subject to tax and the payer is required to withhold 6.99% from the distribution unless the recipient submits a proper Form CT-W4P, Withholding Certificate for Pension and Annuity Payments, to the payer requesting that no or a lesser amount of Connecticut income tax be withheld.
- **PPP Loan Forgiveness.** Loans forgiven under the Paycheck Protection Program (established by the CARES Act) generally will not be subject to the Connecticut income tax or the Connecticut corporation business tax.
- **Net Operating Loss Carryback.** With respect to the federal five-year net operating loss (“NOL”) carryback provision enacted as part of the CARES Act, the Department announced that:
 - For corporation business tax purposes, Connecticut has its own specific NOL rules that will not be impacted by the federal carryforward and carryback rules.
 - For individual income tax purposes, the carryback of federal NOLs is dictated by the Connecticut Tax Court’s decision in *Adams v. Sullivan*, 2014 WL 4413427 (July 24, 2014) and Conn. Gen. Stat. §12-727(b); an individual with a Connecticut source loss, but with no corresponding federal loss, must comply with Conn. Agencies Reg. §12-711(b)-6.

- **Excess Business Loss Limitation.** To the extent that the excess business loss limitation applicable to non-corporate taxpayers under section 461(l) of the Internal Revenue Code (“I.R.C.”) increases or decreases federal adjusted gross income in a particular year will dictate the Connecticut tax treatment of such limitation in such year.
- **Depreciation of QIP.** In OCG-11, the Department provides guidance specifically on the Connecticut tax impact of: (i) the CARES Act provisions that changed the depreciable life of “qualified improvement property” (“QIP”) from 39 years to 15 years under the general depreciation system and to 20 years under the alternative depreciation system, in each case for QIP placed in service after December 31, 2017; and (ii) IRS Revenue Procedure 2020-25 that allows and establishes the procedure whereby a taxpayer can change its depreciation and claim additional bonus depreciation under I.R.C. §168.
 - For purposes of the corporation business tax, Connecticut conforms to the calculation of depreciation under the IRC, except for the bonus depreciation provision set forth in I.R.C. §168(k). Accordingly, if a taxpayer were to file an amended federal return to reflect the QIP depreciation change, or files a federal Form 3115 to claim additional QIP depreciation as an I.R.C. §481(a) adjustment, it must report such claims to Connecticut, but any adjustment must be calculated for Connecticut purposes without regard to the provisions of I.R.C. §168(k).
 - For purposes of the calculation of Connecticut adjusted gross income under the personal income tax and Connecticut taxable income under the pass-through entity tax, any amount of bonus depreciation allowed under I.R.C. §168(k) for property placed in service after September 27, 2017 must be added back to the extent deductible in determining federal adjusted gross income; however, the taxpayer is allowed to deduct 25% of the amount added back for each of the succeeding four taxable years.

Income Tax

II. Administrative Announcements

Connecticut Non-File Program. Early this year, the Department issued letters to certain taxpayers who filed a Connecticut personal income tax return for 2017, but has not yet filed such a return for 2018. Recipients of the letter who were subject to Connecticut income tax for 2018 were advised to provide a copy of their 2018 return, or, if no return was filed, to promptly file such return. If a recipient was not subject to Connecticut income tax, the recipient was advised to provide supporting documentation or potentially be subject to an assessment. See Non Filer Frequently Asked Questions on the DRS website.

Pass-Through Entity Tax

II. Administrative Announcements

IRS Concedes Challenge. On November 9, 2020, the IRS issued Notice 2020-75, announcing that the IRS intends to issue proposed regulations to clarify that state and local income taxes imposed on and paid by a partnership or a S corporation, such as the Connecticut Pass-Through Entity Tax, are deductible by the partnership or S corporation in computing non-separately stated taxable income for the year of the payment, and, therefore, are not subject to the limitation of the deduction for state and local taxes for individual partners and shareholders who itemize deductions. [Ed. note. The IRS Notice hopefully closes the door on a potential federal challenge to the Connecticut

Pass-Through Entity Tax as a partial “work around” the federal limitation on the deduction of state and local taxes by pass-through entity owners.]

Property Tax

I. *Legislation*

Property Tax Exemption Certification. Annually, on or before May 1st, the assessor or board of assessors of each municipality is now required to certify to the Secretary of the Office of Policy and Management the amount of exemptions approved for the most recently completed assessment year under the following statutory provisions: (i) Conn. Gen. Stat. §12-81(60) (five-year 80% exemption for qualifying machinery and equipment in a distressed municipality, targeted investment community, enterprise zone or airport development zone); (ii) Conn. Gen. Stat. §12-81(70) (five-year 50% exemption for qualifying machinery and equipment in a distressed municipality, targeted investment community or enterprise zone acquired as part of a technological upgrading of a manufacturing process); (iii) Conn. Gen. Stat. §12-81(72) (five-year, 100% exemption for qualifying new and newly-acquired machinery and equipment used in manufacturing, biotechnology or recycling); and (iv) Conn. Gen. Stat. §12-81(76) (100% exemption for qualifying machinery and equipment used in manufacturing or biotechnology). The certification must include the number of taxpayers with approved claims under each exemption, copies of the applications filed by the taxpayers and any other supporting information required by the Secretary. Conn. Pub. Act No. 20-1, §85 (*effective March 12, 2020*).

II. *Case Law*

Tax Lien Priority. In *Redding v. Georgetown Land Development Company, LLC*, ___ Conn. ___, 2020 WL 5637649 (2020), the Connecticut Supreme Court considered the priority of tax liens held by the Town of Redding, a fire district in Redding and a special taxing district created to finance a development project located in Redding. The legislation authorizing the creation of the special taxing district provided that any lien obtained by the special taxing district “shall take precedence over all other liens or encumbrances except a lien for taxes of the town” The Supreme Court held that the lien of the special taxing district was subordinate to the tax lien held by the Town, but not to the fire district.

Collection Action Against Estate. In *American Tax Funding, LLC v. Design Land Developers of Newtown, Inc.*, 200 Conn. App. 837 (2020), the assignee of municipal tax liens filed a complaint to foreclose on the subject property and collect the delinquent taxes. The property was owned by an estate and the summons listed the estate as a defendant. The lower court granted a default judgment against the estate. On appeal, the Connecticut Appellate Court vacated the lower court judgment, ruling that, because the action was brought against the estate itself and not a representative of the estate, and an estate is not a legal entity, the trial court lacked jurisdiction to render judgment against the estate.

Depreciation Schedule. Conn. Gen. Stat. §12-63(b)(2) permits a municipality, by ordinance, to adopt the depreciation schedules set forth in section 12-63(b) to determine the present true and actual value of tangible personal property (other than motor vehicles). In *Kohl’s Department Stores, Inc. v. Rocky Hill*, 195 Conn. App. 831 (2020), the Connecticut Appellate Court held that the assessor of a municipality could employ the section 12-63(b) depreciation schedules even when the municipality had not adopted such an ordinance.

Split Property. In Rush v. West Hartford, 2020 WL 5531521 (New Britain Super. Ct. June 3, 2020), the Superior Court considered the assessment of a property that was located partially in two adjoining municipalities. The Court ruled that the Town of West Hartford had to base its assessment solely on the portion of the property located in West Hartford without regard for the fact that the other portion of the parcel was on a lakefront in Farmington. The Court made a valuation determination, but only after rejecting the landowner's appraisal report because the valuation of each of the identified "comparable" properties had to be adjusted by more than 50%.

Tax Collection Suit. In Bristol v. Sutula, 2020 WL 5969537 (New Britain Super. Ct. Sept. 1, 2020), the plaintiff City of Bristol sought to recover taxes, lien fees and accrued interest purportedly owed for prior assessment years from the landowner pursuant to Conn. Gen. Stat. §12-161. The property owner sought to challenge the underlying assessment. The Court granted summary judgment for the City as a property owner cannot challenge an assessment as a defense to a collection action brought pursuant to section 12-161; rather such a challenge must be brought pursuant to Conn. Gen. Stat. §§12-117a or 12-119, and the time period for bringing such an action had expired.

Charitable Limited Liability Company. In GHJCC Swim & Racquet Club LLC v. Bloomfield, 2020 WL 6156884 (New Britain Super. Ct. Sept. 16, 2020), the Superior Court considered whether a single member limited liability company ("LLC") of a tax exempt charitable organization could qualify for a property tax exemption pursuant to Conn. Gen. Stat. §12-81(7). Although the sole member of the LLC is a section 501(c)(3) organization and, therefore, a disregarded entity for both federal and state income tax purposes, and the LLC could not apply for its own federal tax exemption as a matter of federal law, the Superior Court ruled that it could not be exempt from property tax under section 12-81(7) unless itself had a federal tax exemption or was, itself, exclusively organized and operated as a charitable organization. The Court granted summary judgment for the Town as its formation documents did not provide for a separate charitable purpose, and such charitable purpose could not be derived from its parent exempt organization. [Ed. note. We have long warned about the perils of an exempt organization forming a limited liability company to hold property. This unfortunate decision hopefully will be overturned or cause the General Assembly to address this situation by legislative act.]

Miscellaneous Taxes

I. Legislation

Emergency Response Nexus. As part of omnibus legislation to address emergency or disaster public utilities outages and responses, the General Assembly adopted provisions exempting from certain state tax and registration requirements an out-of-state business or employee who is present in the state or conducts operations in the state to perform "disaster-related or emergency-related work during a "disaster response period". "Disaster-related or emergency-related work" means repairing, renovating, installing, constructing or rendering services to critical infrastructure in the state that has been damaged, impaired or destroyed by a state disaster or emergency. "Disaster recovery period" is defined as the period that (i) commences 10 calendar days prior to the issuance of the proclamation or declaration of a state disaster or emergency, and (ii) ends 60 calendar days after the Governor has proclaimed or the President has declared, as applicable, the end of such disaster or emergency. In general, the broad exemption provides that, notwithstanding certain laws to the contrary, no out-of-state business or employee that is present in or conducts operations in Connecticut to perform disaster-related or emergency-related work during a disaster response period, shall be deemed to have established sufficient presence in the state to require such business or employee to: (i) register with the state or any political subdivision thereof; (ii) be licensed by the state, provided that such business or employee is properly registered, licensed or authorized under the laws of

another state to perform disaster-related or emergency-related work; (iii) be subject to property tax, tax on the income derived from the performance of disaster-related or emergency-related work during a disaster response period or use tax on tangible personal property temporarily in the state to aid such employee in the performance of such work; or (iv) submit any tax filings to the state; except that the provisions relating to the property, income and use tax and tax filings will apply only to an out-of-state employee who is a resident of a state that has a similar law or does not impose a personal income tax. In addition, the activities associated with disaster-related or emergency-related work performed in the state by an out-of-state business present in the state solely to perform such work will be disregarded for purposes of any filing required for a tax imposed on income or gross receipts, including a combined unitary tax return. The Secretary of the State may request that (i) such out-of-state business provide a written statement that such business is in the state for purposes of responding to a state disaster or emergency, and (ii) a registered business that is an affiliate of such out-of-state business to provide a similar statement. Note, however, if an out-of-state business or employee remains in the state after the disaster period expires, the business or employee shall become subject to the typical standards for taxation, registration and licensure due to such presence. Conn. Pub. Act 20-5 (Sept. Spec. Sess.), §16 (*effective October 2, 2020*).

II. Administrative Pronouncement

Prepaid Wireless E 9-1-1 Fee. Effective July 1, 2020, the prepaid wireless E 9-1-1 fee is \$0.68. DRS Special Notice 2020(1), Change to the Prepaid Wireless E 9-1-1 Fee.

Motor Vehicle Fuels Tax. The Department annually published the conversion factors used in the computation of the motor vehicles fuels tax on fuels in gaseous form (e.g., compressed natural gas, liquefied petroleum gas and compressed propane) effective July 1, 2020. DRS Special Notice 2020(2), Conversion Factors for Motor Vehicles Fuels Occurring in Gaseous Forms Beginning July 1, 2020.

Administrative Pronouncements

Announcements

AN 2020(1), Taxability of Social Security Benefits for Connecticut Income Tax Purposes

AN 2020(2), Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2020

AN 2020(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2020(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2020(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2020(3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2020(5), Assessments Refunded by the Connecticut Insurance Guaranty Association

AN 2020(6), 2020 Revision of Forms TPM-1 and TPM-2

AN 2020(7), COVID-19 Extension of Deadlines for Filing Administrative Protests and Suspension of Deadlines for Filing Tax Appeals

Information Publications

IP 2020(1), Connecticut Circular CT Employer's Withholding Guide

IP 2020(2), Admissions Tax Exemptions and Reduced Rates of Tax

IP 2020(4), 2020 Q & A on Estimated Corporation Business Tax and Worksheet CT-1120AE

IP 2020(5), Disaggregated Sales Tax Report

IP 2020(6), Filing and Paying Connecticut Taxes Electronically
IP 2020(7), Is My Connecticut Withholding Correct?
IP 2020(9), Q & A on the Connecticut Use Tax for Businesses and Professions
IP 2020(10), Q & A on the Connecticut Individual Use Tax
IP 2020(14), 2020 Taxable Year Federal/State Electronic Filing Handbook
IP 2020(15), Attorney Occupational Tax and Client Security Fund Fee

Office of the Commissioner Guidance

OCG-10, Regarding the Connecticut Tax Implications of the CARES Act
OCG-11, Regarding Depreciation of Qualified Improvement Property for Connecticut Tax Purposes

Policy Statements

PS 2020(2), Requests for Waiver of Electronic Filing and Electronic Payment Requirements

Special Notices

SN 2020(1), Change to the Prepaid Wireless E 9-1-1 Fee
SN 2020(2), Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Forms Beginning July 1, 2020

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