

2021 CONNECTICUT TAX DEVELOPMENTS

A Shipman & Goodwin® Newsletter

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Opportunity Lost? The New State Biennial Budget

Connecticut adopted a \$46.4 billion budget for the two-year period that commenced July 1, 2021, reflecting a 2.6% spending increase for the first year and a 3.9% spending increase for the second year. There is much to love and hate about the budget regardless of your political persuasion, leaving many to wonder whether the state missed the opportunity to make more significant structural changes at a time when its economy is rebounding and its rainy day fund is at capacity.

On the positive side, the latest projections from the Office of Policy and Management indicate that the state finished the 2021 fiscal year with a projected surplus in excess of \$271 million, and the balance in the state's budget reserve fund (the "rainy day fund") has grown to its statutory cap of 15% of General Fund expenditures or just over \$3 billion. This freed up over \$1 billion to be applied to Connecticut's massive long-term pension debt. The new biennial budget fortunately does not touch the rainy day fund, projects a \$2.3 billion surplus and should allow for additional, future payments to be made to the two state pension plans. Money was deposited into Connecticut's unemployment trust, but not in an amount that would fully address the significant state borrowing that has occurred since the start of the coronavirus pandemic.

Although progressives in the General Assembly worked hard to increase taxes on businesses and higher-income individuals, Governor Lamont held the line on most tax increases. While the opportunity to make more meaningful tax law changes to boost the economy was missed, the General Assembly did enact tax legislation for the benefit of individuals, such as remote worker relief for 2020 and the future exclusion for many retirees of income from individual retirement accounts, and for the benefit of businesses, including the expanded use of the research and development tax credits, the film production tax credit and the angel investor tax credit, and the adoption of tax incentives for the development of data centers. Unfortunately, on the negative side, Connecticut yet again extended the 10% surcharge on the corporation business tax, and delayed and extended the phase-out of the capital base tax on corporations.

Despite suggestions made in the press that it enacted no new taxes, the General Assembly adopted a new state cannabis tax and a municipal sales tax on cannabis, a new highway use tax and new taxes on online casino gaming, sports wagering and fantasy contests. The admissions tax was largely repealed with the exception of certain movie tickets, but the dues tax remains in place. The laws governing the state unemployment compensation system were significantly changed, particularly as they relate to the setting of an employer's unemployment insurance tax experience rate.

Please note that Connecticut will be running another tax amnesty program during the period from November 1, 2021 to January 31, 2022. The program will apply to all Connecticut state taxes (other than motor carrier road taxes) for all tax periods ending on or before December 30, 2020. If accepted into the program, a taxpayer can qualify for a 75% reduction in interest, as well as relief from civil penalties and criminal prosecution.

This newsletter summarizes Connecticut tax legislation enacted, court decisions rendered, and administrative guidance published by the Connecticut Department of Revenue Services (DRS) during the first six months of 2021. Please contact a member of our State and Local Tax Practice Group if you have any questions regarding the new tax law changes and how they may affect you and your business.

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Personal Income Tax

I. Legislation

2020 Remote Worker Relief. The income sourcing rules of different states can give rise to the potential for certain income of an individual to be taxed in multiple jurisdictions. This issue became particularly acute during the pandemic in 2020 when, for example, a Connecticut resident who typically worked out of an office in New York or Massachusetts instead worked from his or her Connecticut residence. In that case, New York (based on its statute) and Massachusetts (based on an emergency regulation adopted last year) applied a “convenience of the employer” rule that generally taxed in its jurisdiction any income earned, respectively, from the New York employer or the Massachusetts employer by the Connecticut worker; whereas Connecticut’s sourcing rule generally would tax in this state any income earned while working in Connecticut--in each case without either jurisdiction giving credit for the tax paid to the other jurisdiction (*i.e.*, double taxation). To avoid this unfortunate situation, the General Assembly adopted special legislation that provides, for the taxable year commencing January 1, 2020, that any Connecticut resident who paid income tax to any other state that uses a “convenience of the employer” or similar rule is entitled to a credit against the resident’s Connecticut income tax for the tax paid to such other state earned by the resident while working remotely from this state. The legislation further provides that the DRS shall not consider, in determining whether an entity has nexus with Connecticut for the purposes of the imposition of any Connecticut tax, the activities of an employee (or a partner or member of a pass-through entity) who worked remotely from Connecticut during 2020 solely due to COVID-19. Conn. Pub. Act No. 21-3, §1 (*effective March 4, 2021*). See *Taxpayer Services Special Bulletin TSSB 2021-1* for additional guidance on Public Act No. 21-3. [Ed. note. Please note that the relief granted is only for the 2020 tax year. The threat of double taxation for such remote workers remains an issue for 2021. Unfortunately, the United States Supreme Court rejected an attempt by the State of New Hampshire, supported by the State of Connecticut, to challenge the Massachusetts emergency regulation directly at the high court, leaving taxpayers to bring their own tax refund claims. The Massachusetts regulation expired on June 15, 2021.]

Individual Retirement Account Income. New legislation phases out the Connecticut personal income tax on an eligible taxpayer’s distributions from an individual retirement account (IRA), other than a Roth IRA. This phase out will occur over four years commencing in 2023, such that an eligible taxpayer may exclude (i) 25% of any IRA distribution for the 2023 tax year, (ii) 50% of any IRA distribution for the 2024 tax year, (iii) 75% of any IRA distribution for the 2025 tax year, and (iv) 100% of any IRA distribution for the 2026 and subsequent tax years. Taxpayers are eligible for the exemption if their federal adjusted gross income is less than (i) \$75,000 for single filers, married people filing separately or heads of household, or (ii) \$100,000 for married people filing jointly. Conn. Gen. Stat. §12-701(a)(B)(20), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §433 (*effective June 23, 2021*).

Teachers’ Retirement System Payments. Under current law, commencing in 2021, taxpayers with teacher pension income may take the 50% teacher pension exemption or, if applicable, the general pension and annuity exemption from the Connecticut personal income tax. Legislation enacted this year clarifies that taxpayers, when determining their eligibility for the general pension and annuity exemption, are subject to the same federal adjusted gross income thresholds applicable to other taxpayers (*i.e.*, the \$75,000 or \$100,000 federal adjusted gross income thresholds described in the preceding paragraph regarding IRA distributions.) Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §433 (*effective June 23, 2021*).

Property Tax Credit. By law, a taxpayer can earn a credit against the personal income tax for property tax paid on their primary residence or motor vehicles. The maximum credit is \$200 per return and is phased out over certain levels of federal adjusted gross income. For the 2017 through 2020 tax years, the governing statute limited eligibility for the property tax credit against the personal income tax to people who (i) are age 65 or older before the end of

the tax year or (ii) validly claim at least one dependent on their federal income tax return for that year. New legislation extends this limitation to the 2021 and 2022 tax years. Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §432 (*effective June 23, 2021*).

Earned Income Tax Credit. Effective for the 2021 tax year, the Connecticut refundable earned income tax credit is increased from 23% to 30.5% of the federal earned income tax credit. Conn. Gen. Stat. §12-704e, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §430 (*effective June 23, 2021, and applicable to tax years commencing on or after January 1, 2021*).

Child Tax Credit Plan. As part of the American Rescue Plan Act of 2021, P.L. 117-2, the United States Congress established a new federal child tax credit. In response, the General Assembly charged the Secretary of the Office of Policy and Management (OPM) with responsibility to create a plan to establish a state child tax credit if, after June 23, 2021, there either is (i) a decrease in the amount of federal child care tax credit or (ii) a change in the eligibility requirements for the federal credit, if the change is less favorable to a taxpayer. Conn. Gen. Pub. Act No. 21-2 (June Spec. Sess.), §431 (*effective June 23, 2021*).

II. Administrative Pronouncements

Federal Unemployment Compensation Exclusion. Individuals who are eligible to exclude unemployment compensation pursuant to the American Rescue Plan Act of 2021 are entitled to exclude that same income when calculating their Connecticut income tax. If an individual already had filed their 2020 federal and Connecticut tax returns without claiming the exclusion, the individual will need to file an amended Connecticut return to claim the exclusion even if an amended federal return may not be required. Taxpayer Services Special Bulletin (TSSB) 2021-2, *Impact of Federal Unemployment Compensation on Connecticut Taxpayers*.

Corporation Business Tax

I. Legislation

Corporation Business Tax Surcharge. Although due to sunset, the Connecticut General Assembly again has extended for two years the surcharge on the corporation business tax, this time for all income years commencing prior to January 1, 2023. 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. §§12-241(b)(8) and 12-219(b)(8), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §§422-423 (*effective June 23, 2021*). 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 June 23, 2021. Conn. Pub. Act No. 21-2 (June Spec. Sess.), §425 (*effective June 23, 2021*).

Capital Base Tax Phase Out. Under current law, the capital base tax on corporations was to be phased out over a four-year period (2021-2024). New legislation delays for three years the commencement of the phase out from income years commencing on or after January 1, 2021 and prior to January 1, 2022, to income years commencing

on or after January 1, 2024 and prior to January 1, 2025. In addition, the period of phase out is extended one year. For a corporation with a calendar tax year, the capital tax shall be: (i) 3.1 mills per dollar for income years prior to 2024, (ii) 2.6 mills per dollar for the 2024 income year, (iii) 2.1 mills per dollar for the 2025 income year, (iv) 1.6 mills per dollar for the 2026 income year, (v) 1.1 mills per dollar for the 2026 income year, and (vi) 0 mills for the 2028 and subsequent income years. Conn. Gen. Stat. §12-219(a)(1), as amended by Conn. Pub. Act No. 12-2 (June Spec. Sess.), §424 (*effective June 21, 2021*). Please note that the additional tax due as a result of the delay of the phase out is not to be considered when determining a taxpayer's compliance with the estimated tax obligations for any income year commencing prior to June 23, 2021. Conn. Pub. Act No. 21-2 (June Spec. Sess.), §425 (*effective June 23, 2021*).

Tax Credits

I. Legislation

Stranded Tax Credit Program Expansion. In 2017, the General Assembly authorized the Department of Economic and Community Development (DECD) to establish and administer a program (the “Stranded Tax Credit Program”) to allow a corporate business in Connecticut to utilize accumulated state tax credits for rolling research and development expenses (authorized by Conn. Gen. Stat. §12-217n) against the corporation business tax and the sales and use tax in exchange for capital projects, planned or underway, in Connecticut that propose to (i) expand the scale or scope of such business, (ii) increase employment at such business, or (iii) generate a “substantial return to the state economy.” In order to take advantage of the program, a business must file a detailed application with the DECD and the DECD must perform an economic analysis of the application to confirm that the project will generate revenue for the state that exceeds the amount of the credits proposed to be utilized. New legislation expands the Stranded Tax Credit Program to permit the use of the accumulated tax credits for either an above-described capital project or for “human capital investment.” “Human capital investment” is defined as the amount paid or incurred by a corporation on: (a) job training that occurs in Connecticut for persons employed in Connecticut; (b) work education programs in Connecticut; (c) worker training and education for persons employed in Connecticut provided by Connecticut institutions of higher learning; (d) donations or capital contributions made to Connecticut institutions of higher learning for improvements or advancements of technology; (e) planning, site preparation, construction, renovation or acquisition of Connecticut facilities for the purpose of establishing a child care center in Connecticut to be used primarily by the children of employees who are employed in this state; (f) subsidies to employees who are employed in Connecticut for child care provided in Connecticut; and (g) contributions made to the Individual Development Account Reserve Fund. Conn. Gen. Stat. §12-217aaa, as amended by Conn. Pub. Act No. 21-188, §1 (*effective July 1, 2021, and applicable to income years beginning January 1, 2021*).

Research and Development Tax Credits. Under current law, the total value of credits corporations may claim generally is capped at 50.01% of their annual corporation business tax liability. New legislation allows a corporation to use any remaining tax credits available under Conn. Gen. Stat. §12-217j (research and experimental tax credits) or §12-217n (rolling research and development tax credits) up to (i) 60% of the amount of the corporation business tax due for any income year commencing on or after January 1, 2022, and prior to January 1, 2023, and (ii) 70% of the amount of the corporation business tax due for any income year commencing on or after January 1, 2023. Conn. Gen. Stat. §12-217zz(a), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §426 (*effective June 23, 2021*). Please note, however, that unused research and development tax credits allowed under Conn. Gen. Stat. §12-217n, which formerly could be carried forward forever until fully utilized, will now be subject to a carry forward limitation of 15 years commencing with credits allowed on or after January 1, 2021. Conn. Gen. Stat. §12-217n(d), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §427 (*effective June 23, 2021, and applicable to income years commencing on or after January 1, 2021*).

Invest CT Fund Tax Credits. The Invest CT Fund tax credit program allows taxpayers to earn tax credits against the insurance premium and health care center subscriber charge taxes, surplus lines broker tax, the corporation business tax and the personal income tax based upon investments made through a state-registered fund manager in certain insurance businesses. New legislation increases the aggregate cap on Invest CT Fund tax credits from \$350 million to \$500 million. Conn. Gen. Stat. §38a-88a, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §428 (*effective July 1, 2021*).

Film Production Tax Credit. Under current law, an eligible production company can earn tax credits based upon a percentage of certain production expenses and costs incurred in producing a state-certified qualified production in Connecticut. Under prior law, subject to certain limitations, the tax credits could be applied against the corporation business tax, insurance premium and health care center subscriber charge taxes and the gross receipts tax on community antennae television system, one-way satellite transmission and certified competitive video service businesses. For income years commencing on or after January 1, 2022, the credits also can be applied against the Connecticut sales and use tax subject to the following limitations: (i) the eligible production company or taxpayer may only claim 78% of the amount of such credit approved on the production tax credit voucher; and (ii) any credit that is sold, assigned or otherwise transferred, in whole or in part, may be claimed against the sales and use tax only if there is common ownership of at least 50% between such assignee-taxpayer and the assignor eligible production company. Conn. Gen. Stat. §12-217jj, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §429 (*effective January 1, 2022*).

Angel Investor Tax Credit. The Angel Investor Tax Credit Program is administered by Connecticut Innovations (CI) and allows qualified investors to apply for a 25% credit against Connecticut's personal income tax when they invest at least \$25,000 in qualifying businesses. In general, a "qualifying business" must have: (i) gross revenues of less than \$1 million in the most recent income year; (ii) fewer than 25 employees, at least 75% of whom are Connecticut residents; (iii) operated in Connecticut for fewer than seven consecutive years; and (iv) received less than \$2 million in eligible investments from angel investors. Under prior law, CI could only reserve up to \$5 million in credits each fiscal year and no angel investor tax credits were to be reserved after June 30, 2024. The Program's governing statute has been amended to: (i) extend the sunset date for the reservation of credits to June 30, 2028; (ii) provide for the reservation by CI of up to \$15 million in angel investor tax credits for each fiscal year for investments in approved "cannabis businesses" (in addition to the \$5 million cap for credits for investments in other business); and (iii) permit the grant of angel investor tax credits for investments in approved "cannabis businesses". A "cannabis business" is defined for purposes of the Program as a cannabis establishment: (i) for which a "social equity applicant" has been granted a provisional license or a license; (ii) in which a social equity applicant or social equity applicants have an ownership interest of at least 65%; and (iii) such social equity applicant or applicants have control of such establishment. A "social equity applicant" means a person that has applied for a license for a cannabis establishment, where such applicant is at least 65% owned and controlled by an individual or individuals, or such applicant is an individual, who: (i) had an average household income of less than 300% of the state median household income over the three tax years immediately preceding the individuals application; and (ii) (A) was a resident of a disproportionately impacted area for not less than five of the 10 years immediately preceding the date of such application, or (B) was a resident of a disproportionately impacted area for not less than nine years prior to attaining age 18. Unlike investments in other businesses, an angel investor who invests at least \$25,000 in an approved cannabis business is eligible for a personal income tax credit equal to 40% of their investment, up to \$500,000. Conn. Gen. Stat. §12-704d, as amended by Conn. Pub. Act No. 21-1 (June Spec. Sess.), §133 (*effective July 1, 2021*).

Sales and Use Tax

I. Legislation

Breastfeeding Supplies. Effective for sales occurring on or after July 1, 2021, the following are now exempt from the Connecticut sales and use tax if sold to an individual for home use: (i) breast pumps and breast pump collection and storage supplies, and repair or replacement parts for and repair services rendered to such breast pumps; and (ii) certain breast pump kits prepackaged by the breast pump manufacturer. Conn. Gen. Stat. §12-412(25), as added by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §435 (*effective July 1, 2021, and applicable to sales occurring on or after July 1, 2021*).

Sales Tax Revenue Benefit. An establishment included in Sector 72 of the North American Industrial Classification System (NAICS) (i.e., the accommodation and food services industry) may be allowed to retain all sales tax they collect on sales of meals during one of the following three weeks: (i) August 1-7, 2021; (ii) December 12-18, 2021; or (iii) May 15-21, 2022. Each such establishment must provide the Commissioner of Revenue Services such information as the Commissioner requires to administer this one-time benefit program. Conn. Pub. Act No. 21-2 (June Spec. Sess.), §436 (*effective July 1, 2021*). In Taxpayer Services Special Bulletin (TSSB) 2021-6, (issued July 29, 2021), *Sales Tax Relief for Sellers of Meals*, the DRS indicated that the requested information should be provided at the time the seller files Form OS-114, *Connecticut Sales and Use Tax Return*, for the period that includes the applicable week.

Beer Manufacturers. Effective for sales occurring on or after July 1, 2023, new legislation extends certain manufacturer sales tax exemptions to a purchaser that manufactures or will manufacture beer and would otherwise have qualified for these exemptions but for the fact that the beer is or will be manufactured at a facility that also makes substantial retail sales. The relevant sales tax exemptions are Conn. Gen. Stat. §12-412(3(A) (gas and electricity sold for an industrial manufacturing plant), §12-412(18) (materials, tools and fuel sold to become part of items sold or used directly in an industrial plant to make finished product for sale), §12-412(i) (50% exemption for materials, tools, fuels, machinery and equipment used in manufacturing that are not otherwise exempt), and §12-412(34) (machinery used directly in a manufacturing production process). Conn. Pub. Act No. 21-2 (June Spec. Sess.), §459 (*effective June 23, 2021, and applicable to sales occurring on or after July 1, 2023*).

State Sales Tax on Cannabis. New legislation governs the application of the state sales tax to the sale of cannabis. In general, no person may purchase cannabis on a resale basis, and none of the general exemptions under Conn. Gen. Stat. §12-412 from the state sales tax shall apply to the sale of cannabis except: (i) sales of cannabis for palliative use; and (ii) the transfer of cannabis to a transporter by a cultivator, micro-cultivator, food and beverage manufacturer, product manufacturer, product packager, dispensary facility, cannabis retailer, hybrid retailer or producer for transport to any other cultivator, micro-cultivator, food and beverage manufacturer, product manufacturer, product packager, dispensing facility, cannabis retailer, hybrid retailer or producer. No refunds may be issued for any state sales tax paid on the sale of cannabis. Conn. Pub. Act No. 21-1 (June Spec. Sess.), §127 (*effective July 1, 2021*); Conn. Gen. Stat. §12-412(120), as amended by Conn. Pub. Act No. 21-1 (June Spec. Sess.), §129 (*effective July 1, 2021*).

Municipal Sales Tax on Cannabis. A new 3% municipal sales tax is imposed on the gross receipts from the sale of cannabis by a cannabis or hybrid retailer or micro-cultivator, and the municipal sales tax is to be administered in accordance with the state sales and use tax law. Exempt from the municipal sales tax are: (i) cannabis for palliative use; (ii) sales of cannabis by a delivery service to a consumer; and (iii) transfers of cannabis to a transporter for transport to any cultivator, micro-cultivator, food and beverage manufacturer, product manufacturer, product packager, dispensary facility, cannabis retailer, hybrid retailer or producer. Each cannabis or hybrid retailer and micro-cultivator is required to file a monthly return with the DRS indicating the amount of municipal sales tax owed. Each municipality in which

a retailer or micro-cultivator is located is to submit to the DRS at least annually the name and contact information of the individual designated by the municipality to receive notifications from the DRS. The DRS, in turn, will notify such contact person of the amount of tax reported to be due from each retailer and micro-cultivator. Within 60 days of receipt of the DRS notice, the municipality must then invoice each such retailer and micro-cultivator, and the retailer or micro-cultivator must remit the tax due to the municipality not later than 30 days after the date such invoice was sent. The new law restricts the use of the sales tax proceeds by the municipality to the making of certain improvements or the funding of certain specified services. No refunds of the municipal sales tax are permitted, and no overpayment of the tax may be applied to any other liability due to the municipality. Conn. Gen. Pub. Act No. 21-1 (June Spec. Sess.), §§126-127 (*effective July 1, 2021*). [Ed. note. Both the state sales tax and the municipal sales tax are in addition to the cannabis tax summarized below in Miscellaneous Taxes.]

II. Administrative Pronouncements

DRS Special Notice 2021(3), *Legislative Changes Affecting Admissions Tax and Sales and Use Taxes as of July 1, 2021*

Property Tax

I. Legislation

2022 and 2023 Discretionary Tax Relief. New legislation authorizes a municipality or a taxing district, upon approval by its legislative body or board of directors, as applicable, for the fiscal years ending June 30, 2022, and June 30, 2023, to establish: (i) a program in which taxpayers, businesses, nonprofits and residents may defer payment for 90 days (presumably without interest, although that is not expressly stated) of any (A) tax on real or personal property or motor vehicle, or (B) municipal water, sewer or electric rate, charge or assessment; or (ii) a program in which the delinquent portion of the principal of any (A) tax on real or personal property or motor vehicle, or (B) municipal water, sewer or electric rate, charge or assessment, shall be subject to interest at a rate of 3% for 90 days from the date it was due (provided that any amounts due that are still delinquent after 90 days shall be subject to the standard interest and penalties applicable to those amounts). Conn. Pub. Act No. 21-73, §§1-2 (*effective July 1, 2021*). The same legislation increases the amount of property tax due that may be waived by a municipality from less than \$25 to less than \$100. Conn. Gen. Stat. §12-144c, as amended by Conn. Pub. Act No. 21-73, §3 (*effective July 1, 2021*).

Municipal Stormwater Authorities. New legislation extends to all municipalities the authorization to establish, by ordinance, a municipal stormwater authority (or a joint board with one or more other municipalities) to develop and administer a stormwater management program, provide public education and outreach and recommend a fee upon the interests in real property the revenues from which shall be used in carrying out the powers of the stormwater district (including the planning, layout, acquisition, construction, reconstruction, repair, maintenance, supervision and management of stormwater control systems). The budget for the authority must be approved annually by the legislative body of the municipality. The legislation caps the amount of fees that can be generated from hospitals and allows fee relief to be provided to land classified as or consisting of farm land, forest land or open space, or is governmental property, by limiting the application of the fee to impervious surfaces from which stormwater discharges to a municipal separate storm sewer system. Delinquent fees will accrue interest at 1.5% per month and a lien can be recorded and released (in the same manner as property tax liens). A person aggrieved by an action of a stormwater authority shall have the same rights and remedies for appeal and relief that are afforded to taxpayers challenging the actions of an assessor or board of assessment appeals. Conn. Gen. Stat. §§22a-498, 22a-498a and 22a-498b, as amended by Conn. Pub. Act No. 21-115, §§1-3 (*effective July 1, 2021*).

Expanded Exception for Certain Renewable Energy Sources and Hydropower Facilities. Current law provides for an exemption from the municipal property tax for certain Class I renewable energy sources (e.g., wind and solar), solar thermal or geothermal renewable energy sources and hydropower facilities. The current exemption for a Class I renewable energy source or hydropower facility installed on or after October 1, 2007, intended for private residential use or for use on a farm is amended to provide that: (i) the estimated annual production of such source or facility may not exceed the estimated annual load for the location where such source or facility is located; and (ii) a source or facility shall not be disqualified from the exemption if either (A) the applicant utilizes or participates in any net metering or tariff policy or program implemented by the state, or (B) the source or facility is owned by a party other than the owner of the real property upon which the source of facility is installed. The governing statute is further amended to provide that the person claiming the exemption shall file an application on a form to be developed by the Secretary of OPM, in consultation with the Connecticut Association of Assessing Officers and the Connecticut Green Bank (and shall include a statement regarding the estimated load and production of the source or facility). An owner of multiple sources and facilities in a municipality shall be entitled to file a single application identifying each source or facility. Conn. Gen. Stat. §12-81(57), as amended by Conn. Pub. Act. No. 21-180, §1 (*effective October 1, 2021, and applicable to assessment years commencing on or after October 1, 2021.*)

Exemption for Certain Municipal Volunteers. Under current law, a municipality, by ordinance, may establish a program to provide property tax relief for certain municipal volunteers, including a non-salaried emergency management director and individuals who volunteer their services as a firefighter, fire police officer, emergency medical technician, paramedic, civil preparedness staff, ambulance driver, etc. The authorizing statute has been amended to: (i) increase the maximum property tax abatement amount to up to \$2,000 due for any fiscal year; and (ii) increase the maximum exemption amount from \$1 million to \$2 million, divided by the municipality's mill rate at the time of the exemption. Conn. Gen. Stat. §12-81w, as amended by Conn. Pub. Act No. 21-83, §1 (*effective July 1, 2021, and applicable to assessment years commencing on or after October 1, 2021.*)

Elderly Tax Freeze Program. Under current law, a municipality, by vote of its legislative body, may allow an owner of real property, or any tenant for life or a term of years liable for property taxes, who is a "qualified taxpayer" to file a claim generally to freeze the tax levied on such property at the level it was at the time the claim was filed. Prior to amendment, the governing statute provided that the taxpayer had to be 70 years of age or older, the spouse of such person (if domiciled with such person) or the surviving spouse 62 years of age or older of a person who qualified for such relief at the time of his or her death. The qualified taxpayer also has to: (i) occupy the real property for which tax relief is sought as his or her home; (ii) have been, or his or her spouse have been, a resident of Connecticut for at least one year before the claim for tax relief is filed; and (iii) had taxable and nontaxable income in the tax year preceding the date of application that is not in excess of the state's Circuit Breaker Program limits (currently \$45,800 for a married couple and \$37,600 for an individual). (A municipality may also impose asset limits for eligibility.) Effective October 1, 2021, the age of a "qualified taxpayer" is reduced from 70 to 65 years of age, but a municipality may, by vote of its legislative body, set an age that is older than 65. Conn. Gen. Stat. §12-170v, as amended by Conn. Pub. Act No. 21-84, §1 (*effective October 1, 2021, and applicable to assessment years commencing on or after October 1, 2021.*)

Non-registration Fine. New legislation authorizes a municipality, by ordinance adopted by its legislative body, to establish a fine to be imposed against any owner of a motor vehicle that is subject to property tax in the municipality but who fails to register the motor vehicle with the Department of Motor Vehicles. The fine cannot exceed \$250 and (i) the fine must be suspended for a first time violator who presents proof of registration for the vehicle subsequent to the violation but prior to the imposition of the fine, and (ii) the penalty for failure to timely pay the fine cannot exceed 25% of the fine. Conn. Pub. Act No. 21-106, §32 (*effective July 1, 2021.*)

Underwater Farmlands and Maritime Heritage Land. In order to encourage the preservation of farm land, forest land, open space and maritime heritage land, the state has a program that allows for each such type of land to be assessed for property tax purposes based upon its current use value rather than its fair market value. In general, if the use of the subject land changes within ten years of ownership or classification, a conveyance tax can be charged to the owner of the property. The program has been expanded by: (i) defining “farm land” to include any underwater farmlands used for agriculture; and (ii) defining “maritime heritage land” to also include waterfront real property owned by a licensed shellstock shipper and used for shellfishing, or by an aquaculture operator and used for aquaculture, provided that, in the tax year of the owner ending immediately prior to any assessment date with respect to which an application is submitted, not less than 50% of the federal adjusted gross income of the shellstock shipper or aquaculture operator is derived from commercial shellfishing or aquaculture, as the case may be. Conn. Gen. Stat. §12-107b, as amended by Conn. Pub. Act No. 21-24, §4 (*effective October 1, 2021, and applicable to tax assessments on and after said date*).

Assignment of Certain Property, Tax, Water and Sewer Liens. Legislation adopted this session imposes new restrictions and requirements on the assignment of real property liens securing certain delinquent tax, sewer and water charges and on the assignees of those liens. The new rules apply to: (i) real property taxes and any other liens that by law may be enforced using the same procedure as applies to such taxes (e.g., statutory special taxing district assessments); (ii) sewer benefit assessments or sewer use and connection charges imposed by municipal water pollution control authorities or sewer authorities; and (iii) water charges imposed by municipal water companies or regional water authorities. No lien assignment executed on or after July 1, 2022, shall be valid or enforceable unless memorialized in a written contract with the relevant governmental entity that includes the follow disclosures and other provisions: (i) the manner in which the assignee will provide the real property owner one or more addresses and telephone numbers that may be used for correspondence with the assignee about the debt and the payment thereof (with notice of the assignment being sent no later than 60 days after the date of the assignment); (ii) the earliest and latest dates by when the assignee will commence any foreclosure or suit on the debt or the manner for determining such dates, except as may be impacted by any payment arrangement, bankruptcy petition or other circumstance (provided that a foreclosure suit cannot be commenced before one year has elapsed since the assignee’s purchase of the lien); (iii) the structure and rates of attorney’s fees that the assignee may claim against the property owners (and a prohibition against using as a foreclosure counsel any attorney or law office that is owned by, employs or contracts with any person having an interest in such assignee); (iv) confirmation that the owner of the real property for which the lien is filed shall be a third-party beneficiary entitled to enforce the covenants and responsibilities of the assignee as contained in the contract; (v) a prohibition on the assignee further assigning the lien without the governmental entity’s prior written consent; (vi) the detail and frequency or reports provided to the governmental entity’s collector regarding the status of the assigned liens; (vii) confirmation that the assignee is not ineligible, pursuant to Conn. Gen. Stat. §31-57b, to be assigned the lien because of occupational safety and health law violations; and (viii) disclosure of (A) all resolved and pending arbitrations and litigation matters in which the assignee or any of its principals have been involved within the last 10 years, except foreclosure actions involving liens purchased from or assigned by governmental entities, (B) all criminal proceedings that the assignee or any of its principals has ever been subject, (C) any interest in the subject property held by the assignee or any of its principals, officers or agents, and (D) each instance in which the assignee or any of its principals was found to have violated any state or local ethics law, regulations, ordinance, code, policy or standard, or to have committed any other offense arising out of the submission of proposals or bids or the performance of work on a public contract. The legislation also requires an assignee, not less than 60 days prior to commencing a lien foreclosure action, to provide a written notice to the holders of all first or second security interests on the property providing certain information about the amount of unpaid debt and attorney’s fees and costs incurred, a statement of the assignee’s intention to foreclose the lien, the contact information for the assignee and payment instructions if a security interest holder

desires to pay off the lien. The legislation provides that each “aspect of a foreclosure, sale or other disposition” must be “commercially reasonable” but does not elaborate on what is “commercially reasonable.” Finally, the assignee is compelled to provide a payoff statement in the same manner as a mortgagee in accordance with the requirements of Conn. Gen. Stat. §49-10a. Conn. Gen. Stat. §§12-195h, 7-254, 7-258, 7-239, 49-92p and 49-92o, as amended by Conn. Pub. Act No. 21-143, §§1-6 (*effective October 1, 2021*).

Electronic Communications. The General Assembly has granted broad authority to municipal entities and other public agencies to conduct business electronically. This authority includes the right of a taxpayer to file electronically: (i) an appeal with the board of assessment appeals; and (ii) an application under the renter’s rebate program, the senior property tax freeze program or the property tax circuit breaker for seniors and homeowners with disabilities. Conn. Gen. Stat. §§12-111, 12-117, 12-170f(a), 12-170g, 12-170w, 12-170aa and 12-170cc, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §§166-172 (*effective October 1, 2021*).

II. Case Law

Attorney’s Fees Award. Under Conn. Gen. Stat. §12-161a, a municipality may seek to collect from a property owner the “reasonable attorney’s fees” incurred by the municipality “as a result of and directly related to” the collection of any delinquent personal property tax. In *Ledyard v. WMS Gaming, Inc.*, ___ Conn. ___, 2021 WL 1567671 (2021), the Connecticut Supreme Court considered whether the right to collect attorney’s fees extended to those fees incurred in a related federal court action regarding the municipality’s authority to impose such personal property taxes. The subject appeal involved the municipality’s right to impose property taxes on slot machines owned by a private party and leased to the Mashantucket Pequot Tribal Nation for use in its gaming operations. While the tax appeal was pending in state court, the Tribal Nation brought an action in federal court asserting that the federal regulation of Indian gaming preempted the municipality’s right to impose a personal property assessment. The Tribal Nation’s assertion was rejected by the United States Court of Appeals for the Second Circuit, and the parties eventually entered into a stipulation regarding the assessment due. The Supreme Court concluded that the municipality was entitled to collect the attorney’s fees it incurred, not only in the state tax appeal, but also in the collateral federal action instituted by the Tribal Nation since it was “a result of and directly related to” the state tax collection proceeding.

Penalty Imposition Timing. In *Wilton Campus 1691, LLC v. Wilton*, ___ Conn. ___, 2021 WL 2153275 (2021), the Connecticut Supreme Court considered the timing of the imposition of a penalty under Conn. Gen. Stat. §12-63c(d) against owners of commercial properties which had failed to timely submit annual income and expense reports with the assessor pursuant to Conn. Gen. Stat. §12-63c(a). Pursuant to his regular practice, the assessor did not impose the penalty until after the assessor had signed the grand list for the subject assessment year. The Supreme Court held that the penalty constituted an “assessment” and, therefore, had to have been imposed prior to the assessor’s “subscribing to the oath upon the grand list” for the subject assessment year as required by Conn. Gen. Stat. §12-55(b). The Court found further that, since it had been the assessor’s “practice” to impose such penalties after the signing of the grand list, the error was intentional and could not be corrected as a “clerical mistake” pursuant to Conn. Gen. Stat. §12-60, and affirmed the Appellate Court’s grant of judgment for the property owners.

Tax Appeal Standing. In *Black v. West Hartford*, 205 Conn. App. 749 (2021), a taxpayer appealed an assessment of his motor vehicle. The taxpayer named as defendants both the municipality and the Office of Policy and Management (OPM), asserting that OPM had violated Conn. Gen. Stat. §12-71d by recommending that municipalities use the National Automobile Dealers Association schedule of motor vehicle “clean retail” values for purposes of setting the values of motor vehicles when determining property tax assessments. The trial court

dismissed the action against OPM holding that the action was barred by the doctrine of sovereign immunity. The Connecticut Appellate Court upheld the dismissal, but based its holding on a finding that the plaintiff had no standing to bring an action against OPM. As OPM's recommendation regarding the valuation of motor vehicles was intended for the consideration of all municipalities and applied to all taxpayers, and OPM had no direct role in the assessing of plaintiff's vehicle, the plaintiff had failed to establish classical aggrievement.

Penalty Imposition. In *Seramonte Associates, LLC v. Hamden*, Conn. App. , 2021 WL 330114 (2021), the taxpayer challenged the imposition of a ten percent penalty pursuant to Conn. Gen. Stat. §12-63c when the taxpayer's annual submission of rental income and expenses arrived one day after the due date of June 1st. The Appellate Court upheld the grant of summary judgment in favor of the municipality holding that the statutory requirement that the information be submitted by June 1st meant that it had to be received by that date. The Court further affirmed the dismissal of the plaintiff's claims that the penalty violated the excessive fines clauses of the federal and Connecticut constitutions, as the penalty is not an improper punitive or penal fine but, rather, a method to deter the delinquent payment of taxes.

Defective Concrete Foundation. In response to a widespread problem with defective concrete foundations in residential homes, the General Assembly enacted Conn. Gen. Stat. §29-265d to provide limited property tax relief. In short, section 29-265d permits a property owner with a defective concrete foundation, upon obtaining a written evaluation from a professional engineer, to apply for a reassessment of the property based on its current (diminished) value for five assessment years. In *Falkenstein v. Manchester*, 2021 WL 2910533 (New Brit. Super. Ct. June 15, 2021), a property owner obtained such relief for the 2020 through 2024 assessment years, but sought a reduced assessment for the October 1, 2019 assessment year on the basis of the defective foundation pursuant to Conn. Gen. Stat. §12-117a (the general appeal provision covering valuation disputes). The Superior Court granted summary judgment to the municipality concluding that section 29-265d provided the sole remedy relating to claims of a defective concrete foundation and that remedy is limited to the five-year assessment period (2021-2024) for which the taxpayer already received relief.

Scheduling Order/Sanctions. In *Redding Life Care, LLC v. Redding*, 2021 WL 1827160 (New Britain Super. Ct. Apr. 7, 2021), the Superior Court considered a motion to preclude the testimony of an expert witness in a property tax appeal on the grounds that the defendant municipality had disclosed its expert appraiser nearly two months after the deadline set in a court scheduling order. Since the case could not be tried for a number of months due to the court's trial schedule, the Superior Court concluded that it could not issue the order to preclude the testimony as the plaintiff would not suffer undue prejudice as a result of the delay. The Court did, however, impose sanctions against the municipality, to be calculated based on the attorneys' fees and costs incurred by the plaintiff in the preparation and argument of the motion to preclude the expert testimony.

Exemption Timing. In *Brunswick School, Inc. v. Greenwich*, 2021 WL 778323 (Stamford Super. Ct. Feb. 9, 2021), the Superior Court considered when a property becomes exempt from municipal property tax after it is purchased by a tax-exempt entity, or the tax-exempt entity takes full possession of the property, from a taxable entity or individual. The Superior Court ruled that generally the tax exemption would not take effect until the first day (October 1st) of the next succeeding assessment year. A municipality may, pursuant to Conn. Gen. Stat. §12-81b, enact an ordinance to set an earlier property tax exemption date, but not a date prior to the date when the property is owned and used exclusively for exempt purposes.

Miscellaneous Taxes

I. Legislation

Tax Amnesty Program. The Commissioner of Revenue Services is required to establish a new tax amnesty program, to run from November 1, 2021 to January 31, 2022, for all Connecticut state taxes (other than motor carrier road taxes) owed for any taxable period ending on or before December 30, 2020. Upon compliance with all requirements of the amnesty program, a taxpayer-applicant will be entitled to a 75% reduction in interest, and the Commissioner is not to collect any applicable civil penalties or seek criminal prosecution for any taxable period for which the amnesty is granted. Please note, however, that if the Commissioner grants amnesty, the affected taxpayer must pay all amounts due, relinquish all unexpired administrative and judicial appeal rights as of the payment date, and forfeit receipt of any refund or credit of amnesty tax payments. The Commissioner is charged with developing an application for the amnesty program, and the following expressly are barred from inclusion in the amnesty program: (i) a taxpayer that is party to any criminal investigation or criminal litigation pending on July 1, 2021; (ii) a taxpayer that is party to a managed audit agreement; and (iii) matters covered by (A) a closing agreement with the Commissioner, or (B) a compromise offer that has been accepted by the Commissioner. Conn. Pub. Act No. 21-2 (June Spec. Sess.), §450 (*effective June 23, 2021*).

Qualified Data Center Tax Incentives. The General Assembly has authorized the grant of certain state sales and use tax, local property tax, and financial transaction tax incentives to a taxpayer that will own, operate or be a colocation tenant in a “qualified data center” in Connecticut if it can be established that such center will make, on or before the fifth anniversary of the effective date of an agreement with DECD, a qualified investment of at least: (i) \$50 million if the center is located in a state enterprise zone or a federal qualified opportunity zone; or (ii) \$200 million if the center will not be located in an enterprise zone or opportunity zone. A “qualified data center” is defined as a facility intended to house a group of networked computer servers in one, or multiple, contiguous locations “to centralize the storage, management and dissemination of data and information pertaining to a particular business or classification or body of knowledge”; a “colocation tenant” is defined as a taxpayer that contracts with the owner or operator of a qualified data center to use or occupy all or part of the center for a period of at least two years. The tax incentives potentially available are: (i) an exemption from the state sales use tax for the taxpayer, and any contractor or subcontractor of the taxpayer, related to the sale or use in connection with a qualified data center of (A) certain specified “qualified data center equipment”, (B) any service described in Conn. Gen. Stat. §12-407(a) (37), and (C) electricity; (ii) an exemption from the municipal property tax for (A) real property, buildings or structures located within or at a qualified data center, and (B) enterprise information technology used by a qualified data center; and (iii) an exemption for “any financial transactions tax or fee that may be imposed by the state on trades of stocks, bonds, derivatives and other financial products.” These tax exemptions are available during the term of the DECD agreement (or 30 years in the case of a “financial transaction tax or fee”). The legislation specifies certain provisions that must be contained in the agreement with the DECD, including: (i) the assessment and payment of taxes, penalties and interest if the requirements of the agreement are not met by the taxpayer (e.g., the taxpayer does not make a qualified investment in the full amount required by the governing statute); and (ii) the payment of an annual fee of not more than \$50,000 to the DECD for the administrative and operational costs of the Office of Data Infrastructure Administration and Security (to be established as part of the DECD). The term of the DECD agreement is to be 20 years, but can be extended to 30 years if the qualified investment made by the data center is to be at least (i) \$200 million if located in an enterprise or opportunity zone, or (ii) \$400 million if located elsewhere. In addition, the taxpayer must enter into a negotiated host municipality agreement with the municipality or municipalities in which the facility is located. That agreement also must provide for the assessment and payment of taxes should it be determined that the data center did not satisfy the applicable requirements set forth in the statute. Conn. Pub. Act No. 21-1, §1 (*effective July 1, 2021*).

New Highway Use Tax. Effective for each calendar month commencing on or after January 1, 2023, Connecticut shall impose a new highway use tax (HUT) on carriers operating one or more “eligible motor vehicles”, which are those (i) with a gross weight of 26,000 pounds or more, and (ii) in classes 8 through 13 of the Federal Highway Administration’s (FHWA) vehicle classification system (i.e., single and multi-trailer trucks with three or more axles). The legislation exempts from the HUT: (a) the United States, the federal government, the state and any of its political subdivisions; and (b) motor vehicles carrying or transporting milk or dairy products to or from a dairy farm that holds a license to ship milk. A carrier will be required to apply for and obtain a HUT permit from the DRS and calculate their tax due on a monthly basis by multiplying (i) the number of miles traveled within the state by each eligible motor vehicle operated or caused to be operated in Connecticut, by (ii) the tax rate corresponding to the vehicle’s gross weight. The HUT rates range from 2.5 cents per mile for vehicles weighting 26,000-28,000 pounds, to 17.5 cents per mile for vehicles weighing 80,001 pounds or more. Each carrier will be required electronically to file a monthly return by the end of the following month, and to pay the applicable tax. HUT payments are to be deposited by the DRS into the Special Transportation Fund. The carrier will be required to maintain, on a monthly basis, a list of all eligible motor vehicles that the carrier operates or causes to be operated on a highway in Connecticut, and a copy of the carrier’s HUT permit in each such vehicle. Conn. Pub. Act No. 21-177 §1 (*effective July 12, 2021, and applicable to calendar months commencing on or after January 1, 2023*).

State Cannabis Tax. A new tax is generally imposed on the retail sale of cannabis, cannabis plant material and cannabis edible products by a cannabis or hybrid retailer or micro-cultivator. The tax rate is based upon the product’s type and total THC reflected on its label as follows: (i) 0.625 cents per milligram of total THC for cannabis plant material; (ii) 2.75 cents per milligram of total THC for cannabis edible products; and (iii) 0.9 cents per milligram of total THC for cannabis, other than cannabis plant material or cannabis edible products. The tax does not apply to: (i) sales of cannabis for palliative use; (ii) sales of cannabis by a delivery service to a consumer; or (iii) the transfer of cannabis to a transporter for transport to any other cultivator, micro-cultivator, food and beverage manufacturer, product manufacturer, product packager, dispensary facility, cannabis retailer, hybrid retailer or producer. The tax is to be collected from the consumer at the time of sale, the retailer or cultivator must file monthly returns and remit the tax to the DRS, and no tax can be refunded. Conn. Pub. Act No. 21-1 (June Spec. Sess.), §§125 and 127 (*effective June 1, 2021*). [Ed. note. The state cannabis tax is in addition to the state sales tax and the municipal sales tax on cannabis (see Sales and Use Taxes).]

Marijuana and Controlled Substance Tax. The tax on marijuana and controlled substances that are illegally purchased, acquired, transported, or imported into the state is repealed. Any outstanding liabilities or assessments for the tax are cancelled, but the cancellation does not entitle anyone to a refund or credit for any amount previously paid or collected in connection with the liability or assessment. Conn. Gen. Stat. §§12-650 - 12-660, as repealed by Conn. Pub. Act No. 21-1 (June Spec. Sess.), §§130 and 173 (*effective July 1, 2021*); Conn. Gen. Stat. §§12-30a(a)(1) and 12-35b(a), as amended by Conn. Pub. Act No. 21-1 (June Spec. Sess.), §§131-132 (*effective July 1, 2021*).

Ambulatory Surgical Centers. Effective July 1, 2023, the 6% gross receipts tax on ambulatory surgical centers is replaced with a 3% tax on the net revenue derived from the provision of ambulatory surgical center services. “Net revenue” is limited to gross receipts from the rendering of taxable ambulatory surgical center services (i.e., facility fee payments), less payer discounts, charity care and bad debts. The exemptions for Medicaid and Medicare payments remain under the new tax, but not the annual exemption for the first million dollars of receipts. Conn. Gen. Stat. §12-263i, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §462 (*effective July 1, 2021*); Conn. Pub. Act No. 21-2 (June Spec. Sess.), §§463-468 (*effective July 1, 2023 and applicable to calendar quarters commencing on or after July 1, 2023*).

Remote Worker Nexus Relief. The General Assembly enacted legislation providing that the DRS shall not consider, in determining whether an entity has nexus with Connecticut for the purposes of the imposition of any Connecticut

tax, the activities of an employee (or partner or member of a pass-through entity) who worked remotely from Connecticut during 2020 solely due to COVID-19. Conn. Pub. Act. No. 21-3, §1 (*effective March 4, 2020*). See *Taxpayer Services Special Bulletin (TSSB) 2021-1* for additional guidance. [Ed. Note: Similar relief is not available for years following 2020.]

Online Casino Gaming, Sports Wagering and Fantasy Contests. As part of a broad authorization and expansion of online casino gaming, sports wagering and fantasy contests, and in addition to the payment of license and other fees or amounts to the state, the General Assembly imposes the following taxes on a master wagering licensee: (i) a tax on the gross gaming revenue from online casino gaming at a rate of 18% for the first five years after licensure (and at a rate of 20% for each year thereafter); (ii) a tax on the gross gaming revenue from online or retail sports wagering at a rate of 13.75%; and (iii) a tax on the gross receipts from fantasy contests at a rate of 13.75%. Conn. Pub. Act. No. 21-23, §§17-19 (*effective July 1, 2021*).

Unemployment Compensation Tax. Under current law, an employer's Connecticut unemployment insurance tax experience rate generally is determined annually by calculating the ratio between the amount charged to the employee's experience account (i.e., generally the amount of unemployment benefits paid to its former employees) and the amount of the employer's taxable wages, in each case during the three-year period preceding June 30th. This ratio is converted to a percentage between 0.5% and 5.4% that becomes the employee's experience rate. Under new legislation intended to provide relief related to COVID-19 related layoffs, for tax years commencing on or after January 1, 2022, an employer's experience period shall disregard the employer's benefit charges and taxable wages from July 1, 2019 through June 30, 2021. For those new employers who have not been chargeable with unemployment benefits for a long enough time to have their own experience rate calculated, they must pay the higher of 1% or the state's five-year benefit cost; however, for tax years starting on or after January 1, 2022, the state's five-year benefit cost rate will be calculated without regard for the benefit payments and taxable wages for calendar years 2020 and 2021, when applicable. Conn. Gen. Stat. §§32-225a(a) and 31-225a(d), as amended by Conn. Pub. Act. No. 21-5, §§1-2 (*effective October 1, 2021*). Later during the 2021 regular legislative session, the General Assembly enacted more far-reaching changes to the unemployment compensation system. Important to employers, these changes include: (i) increasing the taxable wage base from the current \$15,000 to \$25,000 beginning January 1, 2024, and then annually adjusting the taxable wage base for inflation beginning January 1, 2025; (ii) providing that an employer's charged rate for the 2024 and 2025 calendar years must be divided by 1.471 and 1.269, respectively (i.e., a reduction of roughly 32% in 2024 and 21% in 2025); (iii) shortening the experience period to calculate the charge rate from three years to the previous year for 2026 and the previous two years for 2027; (iv) changing the experience tax rate range, effective for the 2024 calendar year, from the current range of 0.5% to 5.4% to a minimum rate of 0.1% for an employer with a benefit ratio of 0.1% or less to a maximum rate of 10% for an employer with a benefit ratio of 10% or more; (v) requiring a downward adjustment of 50% in the potential increase of the benefit ratio of an employer in a particular NAICS industry sector if the average benefit ratio of all employers in the sector increases over the prior calendar year's average benefit ratio by 0.01 or greater; (vi) allowing for a non-charge for employees who are paid benefits through the Shared Work program for claims filed in a week in which the state's average unemployment rate is 6.5% or more; (vii) permitting the Labor Commissioner to also allow a non-charge for such employees for claims filed in a week in which the state's average unemployment rate is 8% or more; (viii) reducing the flat fund balance rate charged to each employer from 1.4% to 1.0% beginning with the 2024 calendar year; and (ix) reducing the maximum fund rate to no greater than 0.5% during a recession unless to do so would jeopardize Connecticut's access to interest-free federal advances. Conn. Gen. Stat. §31-222(b), as amended by Conn. Pub. Act. No. 21-200, §1 (*effective January 1, 2022*); Conn. Gen. Stat. §31-225a, as amended by Conn. Pub. Act. No. 21-5, §1, and Conn. Pub. Act. No. 21-200, §2 (*effective January 1, 2022*); and Conn. Gen. Stat. §§31-236(a) and 31-231a, as amended by Conn. Pub. Act. No. 21-200, §§3-4 (*effective January 1, 2022*).

Veterans Tax Benefits. The definition of a “veteran” who is qualified for certain tax benefits has been expanded and made more consistent across various statutes. Under the revised definition, a “veteran” is anyone honorably discharged or released under honorable conditions from active duty in the armed forces or anyone with an other than honorable discharge (“OTH”) based on the following qualifying conditions: (i) a post-traumatic stress disorder or traumatic brain injury diagnosis by a licensed health-care professional at a United States Department of Veterans Affairs facility; (ii) a military sexual trauma experience disclosed to such a health care professional; and (iii) a determination by the Qualifying Review Board that sexual orientation, gender identity, or gender expression was more likely than not the primary reason for the OTH discharge. The definitional change will impact: (i) certain property tax exemptions, including the general exemption for veterans (Conn. Gen. Stat. §12-81(19)), the exemption for a veteran’s surviving spouse or minor child (Conn. Gen. Stat. §12-81(22)) and the exemption for the sole surviving parent, spouse or minor child of a veteran (Conn. Gen. Stat. §12-81(25)); (ii) eligibility for a corporation business tax credit under the job expansion tax credit program (Conn. Gen. Stat. §12-217pp); and (iii) eligibility for the sales tax incentive to encourage certain veterans to start a farming business (Conn. Gen. Stat. §12-412(63)). Conn. Gen. Stat. §§12-81(19), (22) and (25), 12-81jj(b)(2) and 12-93, as amended by Conn. Pub. Act. No. 21-79, §§14-18 (*effective October 1, 2021, and applicable to assessment years commencing on or after October 1, 2021*), and Conn. Gen. Stat. §12-217pp(a), as amended by Conn. Pub. Act No. 21-79, §19 (*effective October 1, 2021*), and Conn. Gen. Stat. §12-412(63)(A), as amended by Conn. Pub. Act No. 21-79, §20 (*effective October 1, 2021*).

Opportunity Zone Study. The DECD has been charged with conducting a study relating to Connecticut’s opportunity zone financial incentives. The study is to include an analysis of these incentives, and a description of each of the specific economic development projects that these incentives have supported and the types of businesses that have used the incentives. The DECD also is to compile a list of opportunity zones in Connecticut with the highest unemployment and poverty rates and lowest median family income. The report is due no later than January 1, 2022, and is to be submitted to the Joint Committee on Commerce. Conn. Pub. Act. No. 21-188, §5 (*effective July 13, 2021*).

Dry Cleaning Establishment Remediation Fund. Under current law, a dry cleaning establishment is required to register and pay a surcharge of 1% of its gross receipts at retail for any dry cleaning service. The amounts collected by the state are to be deposited in the Dry Cleaning Establishment Remediation Fund, to be used by the DECD to award grants to “eligible applicants” for purposes of the containment and removal or mitigation of environmental pollution resulting from operations on the site of a dry cleaning establishment or for measures to prevent such pollution. New legislation expands the definition of “eligible applicant” to include additionally a “certifying party” (as defined in Conn. Gen. Stat. §22a-134) of property that is or that was occupied by an eligible dry cleaning establishment (and that was operated as such an establishment for at least one year prior to the submission of a grant application). Conn. Gen. Stat. §12-263m, as amended by Conn. Pub. Act No. 21-193, §3 (*effective July 13, 2021*).

Tax Returns and Return Information. The statute governing the confidentiality of tax returns and return information is amended to permit the Commissioner of Revenue Services, to the extent allowable under federal law, to disclose return information to another state agency or to support a data request submitted through CP20 WIN (the Connecticut Preschool through Twenty and Workforce Information Network established pursuant to Conn. Gen. Stat. §10a-567g), in accordance with the policies and procedures of CP20 WIN for the purpose of evaluation or research, provided the recipient of such data, if not a state agency, has entered into a qualifying data sharing agreement. Conn. Gen. Stat. §12-15(b), as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §272 (*effective October 1, 2021*).

Admissions Tax. Effective for sales occurring on or after July 1, 2021, the admissions tax is repealed with the exception of a continued 6% tax on movie tickets costing more than five dollars. Please note that the 10% dues

tax remains in effect. Conn. Gen. Stat. §12-541, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §434 (effective June 30, 2021).

Alcoholic Beverages Tax. For sales occurring on or after July 1, 2023, the alcoholic beverages excise tax on beer is decreased from: (i) \$7.20 to \$6.00 for each barrel; (ii) \$3.60 to \$3.00 for each half barrel; and (iii) \$1.80 to \$1.50 for each quarter barrel; the alcoholic beverages tax on beer sold on the premises covered by a manufacturer's permit for off-premises consumption remains unchanged. Also, effective for sales occurring on or after July 1, 2023, the alcoholic beverages tax on wine per gallon or fraction thereof (on quantities less than a quarter barrel) is decreased from 24 cents to 20 cents. Conn. Gen. Stat. §12-435, as amended by Conn. Pub. Act No. 21-2 (June Spec. Sess.), §437 (effective June 23, 2021).

“Nip” Surcharge. As part of a broader bill expanding the Connecticut beverage container redemption law and increasing the deposit amount and handling fees, effective October 1, 2021, the General Assembly has imposed a new five-cent surcharge that wholesalers of spirit or liquor beverage containers of 50 ml or less (“nips”) must assess on sales per container to a retailer. A retailer must then impose the same surcharge on a customer who purchases a “nip”. The surcharge must be distinct and clearly identified from the container's price, and is to be exempt from sales tax and not treated as income. On April 1, 2022, and every six months thereafter, payment of all surcharges collected must be remitted by the wholesaler to every municipality where a “nip” is sold. Concomitant with the payment, the wholesaler must file a report with the DRS and the Liquor Control Division of the Department of Consumer Protection detailing the number of nips sold in each municipality during the preceding six months. A municipality that receives a nip surcharge payment must expend those funds on environmental measures intended to reduce the generation of solid waste in that municipality or to reduce the impact of litter caused by such solid waste. Conn. Pub. Act No. 21-58, §10 (effective October 1, 2021).

II. Administrative Pronouncements

Diesel Fuels Tax. Effective July 1, 2021, the motor vehicle fuels tax rate per gallon on the sale or use of diesel fuel is reduced from 44.6 cents to 40.1 cents. DRS Announcement 2021(2), *Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2021*.

Prepaid Wireless E 9-1-1 Fee. Effective July 1, 2021, the prepaid wireless E 9-1-1 fee is decreased from 68 cents to 66 cents. DRS Special Notice 2021(1), *Change to the Prepaid Wireless E 9-1-1 Fee*.

Fuels Conversion Factors. Effective July 1, 2021, the conversion factors used for calculating the tax on motor vehicle fuels occurring in gaseous form are as follows: (i) compressed natural gas, one gallon is equal to 123.57 cubic feet or 5.66 pounds; (ii) for liquefied petroleum gas, one gallon is equal to 1.353 gallons or 5.75 pounds; and (iii) for compressed propane, one gallon propane equals 35.97 cubic feet propane. DRS Special Notice 2021(2), *Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Form Beginning July 1 2021*.

Single-Use Plastic Bag Fee. In 2019, the General Assembly imposed a fee of ten cents for each single-use checkout bag (i.e., a bag with a thickness of less than four mills) that are provided by a store to a customer at the point of sale. The plastic bag fee was sunset as of June 30, 2021, as single-use plastic bags are banned in Connecticut as of July 1, 2021. Taxpayer Services Special Bulletin (TSSB) 2021-5, *Single-Use Plastic Bag Fee to Sunset on June 30, 2021*.

Announcements

AN 2021(2), Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2021
AN 2021(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2021(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2021(5), Assessments Refunded by the Connecticut Insurance Guaranty Association
AN 2021(6), 2021 Revision of Forms TPM-1 and TPM-2

Information Publications

IP 2021(1), Connecticut Circular CT Employer's Withholding Guide
IP 2021(2), Farmer's Guide to Sales and Use Taxes, Motor Vehicle Fuels Tax, Estimated Income Tax, and Withholding Tax
IP 2021(4), Commercial Fisherman's Guide to Sales and Use Taxes and Estimated Income Tax
IP 2021(7), Is My Connecticut Withholding Correct?
IP 2021(8), Connecticut Tax Guide For Payers of Nonpayroll Amounts
IP 2021(12), Forms 1099-R, 1099-MISC, 1099-K, 1099-NEC, and W-2G Electronic Filing Requirements for Tax Year 2020
IP 2021(13), Form W-2 Electronic Filing Requirements for Tax Year 2020

Special Notices

SN 2021(1), Change to the Prepaid Wireless E 9-1-1 Fee
SN 2021(2), Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Form Beginning July 1, 2021
SN 2021(3), Legislative Changes Affecting Admissions Tax and Sales and Use Taxes as of July 1, 2021

Taxpayer Services Special Bulletins

Taxpayer Services Special Bulletin TSSB 2021-1, Taxpayer Services Division Update to Commissioner's Bulletin of March 4, 2021
Taxpayer Services Special Bulletin TSSB 2021-2, Impact of Federal Unemployment Compensation Exclusion on Connecticut Taxpayers (updated 05/04/2021)
Taxpayer Services Special Bulletin TSSB 2021-3, Federal PACT Act Requirements Expanded to Electronic Nicotine Delivery Systems (ENDS)
Taxpayer Services Special Bulletin TSSB 2021-4, Frequently Asked Questions Concerning the Back to Work CT Program
Taxpayer Services Special Bulletin TSSB 2021-5, Single-Use Plastic Bag Fee to Sunset on June 30, 2021
Taxpayer Services Special Bulletin TSSB 2021-6, Sales Tax Relief for Sellers of Meals

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

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