



Connecticut Tax Developments – 2005 Legislative Session and Regulatory Review

December 1, 2005

Although the 2005 legislative session resulted in the enactment of very few meaningful changes in tax policy other than the new estate and gift tax provisions, the session nevertheless proved to be a very stressful and difficult period for taxpayers. A number of bills received serious consideration that would have significantly changed the way Connecticut taxes businesses and individuals, including: the elimination of virtually all exemptions from the Connecticut sales and use tax; the sunseting of virtually all credits and certain exclusions and deductions from the Connecticut corporation business tax; the disclosure of otherwise confidential taxpayer and tax return information of any corporate taxpayer which claims one or more statutory tax credits from the corporation business tax; the adoption of alternate combined reporting for the corporation business tax (an expansive derivative of unitary reporting that would have made the Connecticut franchise tax one of, if not the, most onerous in the country); and the “millionaire’s tax” which, in certain iterations, would have affected taxpayers with incomes that may be better characterized as middle class. Although none of these bills was enacted, we will have to wait and see whether they are harbingers of future legislative enactments, as well as what impact the mere consideration of these bills will have on the decisions of businesses and individuals to relocate or to remain in Connecticut. Future legislative proposals may turn on the recommendations of the Legislative Program

legislative proposals may turn on the recommendations of the Legislative Program Review & Investigations Committee, which is conducting a comprehensive review of Connecticut’s tax system, and the re-named and newly-reconstituted Business Tax Credit and Tax Policy Review Committee, which is studying and evaluating the Connecticut corporation business tax.

In the interim, we have summarized below the more substantive changes to Connecticut tax law made this legislative session, including the new estate and gift tax provisions, as well as 2005 regulatory developments. Please note, however, that the descriptions contained herein are only summaries; the application of the change in tax law to your business or to you, individually, may be impacted by tax law provisions not included in our summary or your particular facts and circumstances. We encourage you to contact any of the members of the State and Local Taxation Practice Group if you have any questions:

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CORPORATION BUSINESS TAX

I. Legislative Developments

Corporation Business Tax Surtax. With respect to income years commencing on or after January 1, 2006 and prior to January 1, 2007, an additional tax (or “surtax”) is imposed equal to twenty per cent (20%) of the corporation business tax otherwise payable for such year. A similar surtax of fifteen per cent (15%) is imposed with respect to income years commencing on or after January 1, 2007 and prior to January 1, 2008. A corporation must calculate its surtax based upon its liability before any tax credits. Each of the 2006 surtax and the 2007 surtax is applicable regardless of whether a taxpayer’s corporation business tax liability is calculated under Conn. Gen. Stat. §12-214 (regular tax) or §12-219 (capital-based tax); however, neither surtax is applicable if a taxpayer’s tax liability otherwise is equal to \$250 (i.e., the minimum tax). Conn. Gen. Stat. §§12-214(b)(5) and (6), and Conn. Gen. Stat. §§12-219(b)(5) and (6), as added by Conn. Pub. Act No. 05-251, §§62-63 (*effective June 30, 2005, and applicable to income years commencing on or after January 1, 2006*). [Ed. note. Although a surtax was in effect for an income year commencing during the year prior to January 1, 2005, no surtax was imposed for income years commencing on or after January 1, 2005, and prior to January 1, 2006.]

Business Tax Credit and Tax Policy Review Committee. The General Assembly renamed the Corporation Business Tax Credit Committee as the new “Business Tax Credit and Tax Policy Review Committee” (the “Committee”), expanded its membership, and broadened the scope of its assignment to include (i) the study and evaluation of all of the existing credits against the corporation business tax, (ii) the evaluation of potential changes or modifications that may be made to such tax, and (iii) the consideration of “further changes in policy regarding the taxation of businesses.” Upon request by the Committee, the Commissioner of Revenue Services (the “Commissioner”) is authorized to provide information to the Committee regarding corporation business tax exemptions and credits, as well as general tax policy. Although the Commissioner is not permitted to disclose the names or addresses of taxpayers, or to produce a copy of a tax return filed with the state, the Commissioner may disclose to the Committee returns and return information of a taxpayer. For a taxpayer that claims a tax exemption or credit, or “implement[s] a change in tax policy,” such information may include a description of the taxpayer’s business activities, the amount of income apportioned to Connecticut and the taxes paid on such income, and the exemption or credit taken and the amount of such exemption or credit. The Committee is to report its findings to the Finance Revenue and Bonding Committee no later than January 1, 2006, and annually thereafter. Conn. Gen. Stat. §12-217z, as amended by Conn. Pub. Act No. 05-251, §64 (*effective July 1, 2005*); Conn. Gen. Stat. §12-15(b), as amended by Conn. Act No. 05-251, §65 and Conn. Pub. Act No. 05-03 (June Sp. Sess.), §§ 5, 36 (*effective July 5, 2005*). [Ed. note. Interestingly, even though the General Assembly did not expressly authorize the disclosure of tax documents and information to the Legislative Program Review & Investigations Committee, the Connecticut Attorney General recently issued an opinion (No. 2005-027) concluding that the DRS must supply such information if the Committee “determines it needs” tax return information “to fulfill its duties” and the information requested is “required in the course of the [Committee’s] duty.”]

Examinations and Assessments. In general, under current law, the statute of limitations for the making of a deficiency assessment with respect to a Connecticut corporation business tax return on which no operating loss is reported is three years from the later of the due date for the filing of the return or the date such return is received by the Commissioner. In the case of returns on which an operating loss is reported, the assessment period expires not later than three years after the later of the due date, or the date of receipt by the Commissioner, of the return on which a carryover of such loss is fully utilized or deemed fully utilized (because such loss is not available for deduction in any subsequent year). New legislation eliminates the current 30-day window between the time the Department of Revenue Services ("DRS") discovers an error in a return and the time it must notify the taxpayer. In addition, the legislation extends the time limit for deficiency assessments to six years after the date the return is filed in the case of any return (i) on which the taxpayer understates its gross income by more than 25% of the amount of gross income stated on the return (not including any portion of an understatement to the extent it is disclosed adequately in the return or a statement attached to the return); and (ii) on which a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code of 1986, as amended (the "Code"). The legislation also extends indefinitely the limitations period for a notice of deficiency assessment in the case of either (i) a failure to file a return (or an amended return if required after an adjustment or correction attributable to a federal audit as required under Conn. Gen. Stat. §12-226); or (ii) a deficiency due to fraud or intent to evade taxes. Finally, if, within 60 days of the end of a limitations period for an income year, the Commissioner receives a written document signed by the taxpayer showing that such taxpayer owes an additional amount of tax for such income year, the Commissioner shall have up to 60 days after the day such written document is received in which to mail a notice of deficiency. Conn. Gen. Stat. §12-233, as amended by Conn. Pub. Act No. 05-116, §2 (*effective June 24, 2005, and applicable to income years commencing on or after January 1, 2005*).

Listed Transaction Penalty. For audits of returns commencing on or after January 1, 2006, if any part of the deficiency for which a deficiency assessment is made is due to the taxpayer's failure to disclose on such taxpayer's federal tax return a listed transaction, as defined in Code §6707A, the Commissioner is to impose a penalty equal to 75% of the amount of such deficiency statement. Conn. Gen. Stat. §12-233(b)(1), as amended by Conn. Pub. Act No. 05-116, §2 (*effective from passage and applicable to income years commencing on or after January 1, 2005*), as further amended by Conn. Pub. Act No. 05-260, §7 (*effective July 13, 2005*). [Ed. note. The latter amendment, making the new penalty effective for audits of returns commencing on or after January 1, 2006, means that the penalty can be imposed retroactively to returns filed for tax years ending in 2003 and 2004, and any other open tax years unless the taxpayer participated in the Connecticut Abusive Tax Shelter Compliance Initiative or otherwise disclosed a listed transaction on an original or amended federal tax return.]

On September 19th, the Department of Revenue Services (DRS) announced a program to encourage disclosure of abusive tax shelters used to avoid income from state taxes. The Connecticut Abusive Tax Shelter Compliance Initiative will be open to both users and promoters of abusive tax shelters designated by the Internal Revenue Service (IRS) as "listed transactions." Connecticut taxpayers and promoters of abusive tax shelters have until December 31, 2005, to participate in the initiative by filing **Form CT-ATS, Election to Participate in the 2005 Connecticut Abusive Tax Shelter Compliance Initiative**. By filing the form and voluntarily paying

the tax owed on income previously sheltered, plus interest and a 10 percent negligence penalty, taxpayers can avoid a 75 percent penalty. Promoters of abusive tax shelters must provide DRS with a complete investor list and fee schedule in order to avoid a penalty equaling 50 percent of the gross income from marketing or selling abusive tax shelter products. Program participants also avoid the possibility of criminal prosecution. After December 31, 2005, DRS has announced that it will target and aggressively pursue both promoters and participants of abusive tax shelters that did not participate in the program. Please see DRS Announcement (AN) 2005(15), *2005 Abusive Tax Shelter Compliance Initiative*, for further details. [Ed. note The DRS has published Form CT-8886, *Connecticut Listed Transaction Disclosure Statement*, calling for a separate filing with the DRS disclosing a taxpayer's participation in a listed transaction.]

Connecticut Convention Center. The definition of “carrying on or doing business” in Connecticut, for purposes of the imposition of the Connecticut corporation business tax, is amended to provide for an exclusion for a company participating in a trade show or shows at the Connecticut Convention Center in Hartford, regardless of whether the company has employees or other staff present at such trade shows, provided that: (i) the company's activity at such trade shows is limited to the displaying of goods or the promoting of services; (ii) no sales are made; (iii) any orders received are sent outside of Connecticut for acceptance or rejection and are filled from outside of Connecticut; and (iv) such participation is not more than 14 days, or part thereof, in the aggregate during the company's income year for federal income tax purposes. Conn. Gen. Stat. §12-213(a)(20), as amended by Conn. Pub. Act No. 05-260, §2 (*effective July 13, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

Urban and Industrial Site Reinvestment Program Tax Credit. The provisions governing the urban and industrial site reinvestment program tax credit are amended as follows: (i) the minimum investment required to obtain the credit is reduced from \$20 million to \$5 million (or \$2 million in the case of an investment in an eligible project for the preservation of an historic facility and redevelopment of the facility for mixed uses that includes at least four housing units); (ii) the minimum investment requirement can now be satisfied in conjunction with other taxpayer investments in an eligible project; and (iii) the credit may now be assigned to multiple taxpayers (but cannot be further assigned). Conn. Gen. Stat. §32-9t, as amended by Conn. Pub. Act No. 05-276, §§2-3 (*effective July 13, 2005*).

II. **Case Law Developments**

Bell Atlantic NYNEX Mobile, Inc. v. Commissioner, 273 Conn. 240 (2005). The Connecticut Supreme Court held that the corporate partners of a partnership could not claim as a credit on their Connecticut corporation business tax returns, pursuant to Conn. Gen. Stat. §12-217t, their allocable share of personal property taxes paid by the partnership on electronic data processing equipment owned by the partnership. The Court concluded that the applicable tax credit is available only to a “taxpayer” who pays such personal property taxes, and the definition of “taxpayer” under the corporation business tax statutes does not include a partnership. Furthermore, as the partnership was not entitled to the tax credit, it could not pass that tax credit through to its partners, because all items of gain, loss, deduction and credit must be determined, first, at the partnership level. The Court noted that, while the statute does not speak in terms of a

“taxpayer’s” eligibility, the plaintiff corporations had not “clearly and unambiguously” shown their entitlement to the tax credit.

SALES AND USE TAX

I. Legislative Developments

Nonresident Contractors. Nonresident contractors (i.e., contractors who do not continuously maintain a “regular place of business” in Connecticut) performing work in Connecticut currently are, and will continue to be, subject to certain tax security procedures designed to ensure that they properly pay their Connecticut tax liabilities. In accordance with these tax security procedures, a Connecticut customer hiring a nonresident contractor generally must withhold and pay over to the DRS five percent (5%) of the “contract price” if the nonresident contractor does not post a guarantee bond with the State to cover the potential Connecticut taxes attributable to the contract. Effective October 1, 2005, these nonresident contractor tax security procedures have been amended in a number of important ways:

- Ø **Regular Place of Business and Contract Price.** A "regular place of business" has been defined as any bona fide office, factory, warehouse or other space at which the contractor conducts business in its own name in a regular and systematic manner, provided such space is continually maintained, occupied and used by the contractor in carrying on its business through its employees regularly in attendance. This definition has been amended to require further that the contractor’s employees at such space "carry on the contractor’s business in the contractor’s own name." Additionally, the law has been clarified to provide that a "regular place of business" does not include a temporary office or location used by the contractor for the duration of a contract, whether or not at the site of construction, or any office maintained, occupied and used by a person affiliated with the contractor. Finally, the law has been amended to define the term "contract price" as the total contract price, including deposits, amounts held as retainage, costs for any change orders, and charges for add-ons.
- Ø **Homeowner and Tenant Exception.** As amended, the tax security provisions do not apply to an owner or tenant of real property used exclusively for residential purposes and consisting of three or fewer dwelling units, in one of which the owner or tenant resides. [Ed. note. The language of the exception is poorly drafted, as the suggestion is made that it is applicable only if the nonresident contractor complies with the bond requirements described below. In DRS Special Notice 2005(12), the DRS confirmed the application of this exception for exclusively residential real estate.]
- Ø **Withholding and Liability.** Under prior law, unless a guarantee bond was properly posted by the nonresident contractor, a customer was required to withhold 5% of the contract price and deposit it with the DRS within 30 days after the completion of the contract. The DRS then would issue a receipt for the deposited funds to the customer. The law now requires the customer to withhold 5% from each payment made to the nonresident contractor, unless a Certificate of Compliance is furnished to the customer

by the contractor (see the subsection entitled “Bond” below). A customer is required to deposit with the DRS the amount withheld within one month after the calendar quarter after the calendar quarter in which the first payment is made and every calendar quarter thereafter (and the DRS no longer issues a receipt for such a deposit). So long as a customer withholds and deposits such amounts with the intent to comply with the statutory security procedures, the nonresident contractor is prohibited from maintaining a cause of action against the customer for any withholding made. However, a customer remains liable for use taxes due on the purchases of services from the nonresident contractor. A customer who fails properly to withhold and deposit the required 5% amount, or to obtain a Certificate of Compliance, is personally liable for the payment of any taxes of the nonresident contractor arising from the project.

Ø **Audit.** If amounts are withheld from a contract price, the nonresident contractor is required to request in writing a DRS audit to determine if any tax is due. The law now provides that, if the written audit request is not made within three years after the date the final withholding holding payment is deposited with the DRS, the contractor will be deemed to have waived its right to request an audit and to claim a refund. If an audit is conducted, the DRS must issue either a certificate of no tax due or a certificate of tax due. If a certificate of no tax due is issued, the DRS must refund to the nonresident contractor any withheld and deposited amounts within 90 days. If a certificate of tax due is issued, the DRS may refund the amount in excess of any taxes due (plus interest and penalties).

Ø **Bond.** Under prior law, a nonresident contractor could attempt to avoid the withholding requirement by petitioning the DRS to permit the posting of a guarantee bond, equal to 5% of the contract price, within 120 days after the commencement of the contract. The statute has been amended to: (i) delete the petition requirement; (ii) require the posting of the bond with a Form AU-72, *Cash Bond*, by the earlier of (A) 120 days after the commencement of the contract or (B) 30 days after the completion of the contract; and (iii) allow either the furnishing of a guarantee bond or the depositing of a cash bond. Upon acceptance of the bond, the DRS will now issue a Certificate of Compliance to the contractor, which can be provided to the customer to prevent the imposition of withholding. A customer who receives a Certificate of Compliance cannot be held liable for any claim by the DRS for any taxes of the nonresident contractor arising from the activities of the contractor on the project for which the bond was provided (but the customer is not relieved of the customer’s liability for use taxes due on the purchase of services from the nonresident contractor).

Conn. Gen. Stat. §12-430(7), as amended by Conn. Pub. Act No. 05-260, §6 (*effective October 1, 2005, and applicable to contracts entered into on or after October 1, 2005*). See DRS Special Notice 2005(12), *Nonresident Contractor Bonds and Deposits*.

Connecticut Convention Center. The statutory provision that defines “engaged in business in this state” for purposes of the imposition of the Connecticut sales and use tax is amended to provide for an exclusion for a retailer, not otherwise engaged in business in Connecticut, participating in a trade show or shows at the Connecticut Convention Center in Hartford,

regardless of whether the retailer has employees or other staff present at such trade shows, provided that: (i) the retailer's activity at such trade shows is limited to the displaying of goods or the promoting of services; (ii) no sales are made; (iii) any orders received are sent outside of Connecticut for acceptance or rejection and are filled from outside of Connecticut; and (iv) such participation is not more than 14 days, or part thereof, in the aggregate during the retailer's income year for federal income tax purposes. Conn. Gen. Stat. §12-213(a)(20), as amended by Conn. Pub. Act No. 05-260, §5 (*effective July 13, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

College Textbooks. The exemption from the sales and use tax for sales of college textbooks required or recommended for courses to full and part-time students enrolled at institutions of higher education has been extended for sales of such textbooks to students enrolled at authorized private occupational schools, to the extent the textbooks are required or recommended for the private occupational school courses. Conn. Gen. Stat. §12-412(109), as amended by Conn. Pub. Act No. 05-251, §86 (*effective July 1, 2005*).

Marine Vessel Brokerage Services. A new exemption from the sales and use tax has been adopted for sales of marine vessel brokerage services provided by a marine vessel broker selling such a vessel for the owner. Conn. Gen. Stat. §12-412(116), as added by Conn. Pub. Act No. 05-251, §87 (*effective October 1, 2005*).

Residential Weatherization Products. A new temporary exemption from the sales and use tax has been adopted for sales of "residential weatherization products" from November 25, 2005 to April 1, 2006. The exempt products for the period from November 25, 2005 through December 14, 2005 are: programmable thermostats; window film; caulking; window and door weather strips; insulation; water heater blankets, water heaters, windows and natural gas furnaces that meet the federal Energy Star standard; and oil furnaces that are not less than 85% efficient. For sales occurring from December 15, 2005 to April 1, 2006, the list of exempt products was amended to provide as follows: programmable thermostats; window film; caulking; window and door weather strips; insulation; water heater blankets; water heaters and boilers; windows and doors that meet the federal Energy Star standard; natural gas and propane furnaces and boilers that meet the federal Energy Star standard; oil furnaces and boilers that are not less than 85% efficient; and ground-based heat pumps that meet the minimum federal energy efficiency rating. Conn. Pub. Act No. 05-2 (Oct. 25 Spec. Sess.), §4 (*effective October 31, 2005*), as amended by Conn. Pub. Act No. 05-4 (Oct. 25 Spec. Sess.), §2 (*effective December 15, 2005, and applicable to sales occurring on or after December 15, 2005*). See DRS Special Notice 2005(13.1), *Sales Tax Holiday For Home Weatherization Products*.

II. Case Law Developments

DaimlerChrysler Services North America, LLC v. Commissioner, 274 Conn. 196 (2005). The Connecticut Supreme Court held that only a "retailer" is entitled to take a credit for sales tax collected and remitted to the State on installment contracts that are ultimately not paid in full and become worthless. The plaintiff-taxpayer provided financing for automobiles sold by other retail automobile dealers, and received an assignment of the installment obligations signed by the buyers of the automobiles. The Court concluded that the statute which permits a credit against taxes paid

in the event of a bad debt, Conn. Gen. Stat. §12-408(2)(B), is limited in its application to only the direct “retailer”, and is not applicable to an assignee of the retailer, and that the right to the credit is not assignable to a third party absent explicit statutory language conferring such a right.

Modern Concrete Pumping, Inc. v. Law, 2004 Conn. Super. LEXIS 3473 (November 22, 2004). The Court held that a “pump truck”, used to pump concrete to various heights and distances did not qualify for the exemption from the Connecticut sales and use tax under Conn. Gen. Stat. §12-412(70) for a “commercial truck” having a gross vehicle weight rating in excess of twenty-six thousand pounds. The court held that the term “commercial truck” means a truck capable of carrying freight. Since the purpose of the pump truck was to pump concrete, and not to carry concrete from one destination to another, it could not qualify as a “commercial truck”.

PERSONAL INCOME TAX

I. Legislative Developments

Civil Unions. As of October 1, 2005, Connecticut now recognizes the civil union of two parties of the same sex. According to the legislation: (i) parties to a civil union are to have the same benefits, protections and responsibilities under the law as are granted to spouses in a marriage; (ii) wherever in the general statutes the terms “spouse,” “family,” “immediate family,” “dependent,” “next of kin” or any other term of spousal relationship are used or defined, a party to a civil union shall be included in such use or definition; and (iii) wherever in the general statutes the term “marriage” is used or defined, a civil union generally shall be included in such use or definition. Conn. Pub. Act No. 05-10, §§1-21 (*effective October 1, 2005*). A provision adopted during the June Special Session clarified that, commencing on January 1, 2006, the Connecticut personal income tax provisions (Chapter 229) shall apply to parties to a civil union recognized under the laws of Connecticut as if federal income tax and federal estate and gift tax law recognized such a civil union in the same manner as Connecticut law. Conn. Pub. Act No. 05-03 (June Sp. Sess.), §58 (*effective July 5, 2005, and applicable to taxable years commencing, gifts made, and estates of decedents dying on or after January 1, 2006*). [Ed. note. Although we are awaiting written guidance from the DRS regarding the tax consequences of this legislation, representatives of the DRS orally have represented that parties to a Connecticut civil union will not be permitted, until the 2006 taxable year, to file joint Connecticut income tax returns, change their Connecticut wage withholding based on the union, make gifts to each other free from the Connecticut gift tax, etc. However, the DRS also has orally represented that it will acknowledge, for certain uniquely Connecticut taxes (e.g., real estate conveyance, sales and use), the status of a civil union as of October 1, 2005. The DRS has published a new Form CT-W4 for 2006 and has instructed an employee who is a party to a civil union recognized under Connecticut law to choose the filing status of civil union filing jointly or civil union filing separately.]

Property Tax Credit. The increase in the property tax credit from \$350 to \$500, scheduled to occur this year, has been both delayed and reduced. The credit will remain at \$350 for the 2005 tax year, and increase to only \$400 in 2006 and succeeding tax years. Pursuant to existing law, the tax credit phases out gradually over certain specified levels of Connecticut adjusted gross

income. Conn. Gen. Stat. §12-704c(b), as amended by Conn. Pub. Act No. 05-251, §77 (*effective July 1, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

Single Filer Tax Reduction Delay. Scheduled increases in (i) a single filer's adjusted gross income exempt from tax and (ii) the income thresholds for reducing a single filer's personal exemption, personal credit and property tax credit, have been delayed for two years. Conn. Gen. Stat. §§12-702(a), 12-703(a)(2), and 12-704c(c), as amended by Conn. Pub. Act No. 05-251, §§74-76 (*effective June 30, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

Deficiency Assessments. The period during which a deficiency assessment for a taxable year may be made has been extended: (i) to six years after a return is filed for such taxable year if the taxpayer failed to disclose on the taxpayer's federal tax return a listed transaction, as defined in Code §6707A; and (ii) indefinitely if the taxpayer "willfully attempts in any manner to defeat or evade" the tax. Conn. Gen. Stat. §12-733(c), as amended by Conn. Pub. Act No. 05-116, §4 (*effective June 24, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

Listed Transaction Penalty. For audits of returns commencing on or after January 1, 2006, if any part of the deficiency for which a deficiency assessment is made is due to a failure to disclose on the taxpayer's federal tax return a listed transaction, as defined in Code §6707A, the Commissioner is to impose a penalty equal to 75% of the amount of such deficiency assessment. Conn. Gen. Stat. §12-728(a)(2), as amended by Conn. Pub. Act No. 05-260, §8 (*effective July 13, 2005*). [Ed. note. The latter amendment, making the new penalty effective for audits of returns commencing on or after January 1, 2006, means that the penalty can be imposed retroactively to returns filed for the 2003 and 2004 tax years and any other open tax years unless the taxpayer participated in the Connecticut Abusive Tax Shelter Compliance Initiative or otherwise disclosed the listed transaction on an original or amended federal tax return. See the information on the CATSCI limited amnesty program and new Form CT-8886 in the Corporation Business Tax section.]

Military Retirement Pay. In calculating Connecticut adjusted gross income, a new subtraction modification will take effect in 2008 permitting a taxpayer to reduce federal adjusted gross income by fifty per cent (50%) of the income received from the United States government as retirement pay by a retired member of the Armed Forces or the National Guard (to the extent such income was included in gross income for federal income tax purposes). Similar amendments are made to the definitions of "adjusted federal tentative minimum tax" and "adjusted federal alternative minimum taxable income." Conn. Gen. Stat. §12-701(a)(20), (24) and (30), as amended by Conn. Gen. Pub. Act No. 05-251, §§71-73 (*each effective June 24, 2005, and applicable to taxable years commencing on or after January 1, 2008*).

Military Family Relief Fund. A Military Family Relief Fund is created as a separate, nonlapsing General Fund account, to be used to make grants to immediate relatives of Connecticut-domiciled, armed forces members on active duty. For tax years starting on or after January 1, 2005, a Connecticut taxpayer may contribute irrevocably all or a part of his or her personal income tax refund to the Fund by indicating this intent on his or her Connecticut income tax return. Conn.

Pub. Act No. 05-03 (June Sp. Sess.), §11 (*effective July 1, 2005, and applicable to taxable years commencing on or after January 1, 2005*).

II. Case Law Developments

Fadner v. Commissioner, 2005 Conn. Super. LEXIS 1446 (June 1, 2005). The taxpayers incurred substantial net operating losses on their 1992 and 1993 federal income tax returns. They elected to carry back the losses to the years 1989 and 1990, and filed amended federal income tax returns for those years reducing their adjusted gross income to zero; however, the taxpayers did not correspondingly amend their Connecticut tax returns (the former tax on capital gains, interest and dividends) for those years. Instead, they claimed a modification for the losses on their 1995 and 1996 Connecticut income tax returns. The Court held that the attempted modifications to the 1995 and 1996 returns were invalid, and that any attempt then to amend their 1989 and 1990 Connecticut tax returns would be barred by the applicable statute of limitations. [Ed. note. The Fadner decision is currently on appeal.]

Blasko v. Commissioner, 2005 Conn. Super. LEXIS 714 (March 10, 2005). This case involved the taxpayers' attempt to claim a Connecticut alternative minimum tax credit on their 1998 Connecticut income tax return based upon alternative minimum tax liability incurred on their 1997 Connecticut income tax return. The 1997 alternative minimum tax liability arose from the exercise of stock options, the gain from which was deferred. The purchased stock was later sold for a gain in 1998. The taxpayers claimed an alternative minimum tax credit on their 1998 federal tax return, but were denied a similar credit on their 1998 Connecticut tax return on the basis that they did not have any Connecticut alternative minimum tax liability. The Court held that such denial was invalid because it was inconsistent with the federal tax treatment of the transactions and would result in double taxation of the deferred gain which was the subject of the alternative minimum tax liability in 1997. [Ed. note. The Blasko decision is currently on appeal.]

Amen v. Commissioner, 2005 Conn. Super. LEXIS 900 (April 14, 2005). The taxpayers asserted that they had changed their domicile from Connecticut to Belgium or, in the alternative, that they could file Connecticut tax returns as nonresidents for the tax years in question. The Court held that the taxpayers had not established by "clear and convincing" evidence that they had changed their domicile as evidenced by: (i) they retained ownership of their Connecticut house; (ii) they made substantial renovations to the Connecticut house while they were in Belgium; (iii) they leased their Connecticut house for short periods, with lease clauses that would permit their termination if the taxpayers returned to the United States; (iv) they retained a local country club membership; (v) their relocation to Belgium was part of an international job assignment that they had represented was to last three to five years; and (vi) the taxpayers' residence in Brussels was leased by the taxpayer's employer and not by the taxpayers. The Court concluded that such factors suggested the taxpayers were not intending to change their domicile; rather, they intended to leave Connecticut only for so long as the taxpayer's employer required him to be in Belgium. The Court, did hold, however, that the taxpayers could file a nonresident tax return because they did reside in Belgium and were in Connecticut less than 30 days during the subject tax year.

REAL ESTATE CONVEYANCE TAX/ CONTROLLING INTEREST TRANSFER TAX

I. Legislative Developments

Two-Year Extension of Additional Municipal Conveyance Tax. The provision increasing the municipal real estate conveyance tax rate from eleven-one hundredths of one percent (0.11%) to one-fourth of one percent (0.25%), scheduled to sunset June 30, 2005, has been extended until June 30, 2007. Conn. Gen. Stat. §12-494(a), as amended by Conn. Pub. Act No. 05-268, §1 (*effective July 1, 2005*).

Indefinite Extension of Additional Municipal Conveyance Tax. Last year, the General Assembly extended indefinitely the statutory authorization to increase the municipal real estate conveyance tax an additional one-fourth of one percent (.25%), so that an aggregate municipal real estate conveyance tax can now be imposed at the rate of one-half of one percent (.50%) by the 17-targeted investment communities and any town that has a manufacturing plant that qualifies for enterprise zone benefits. This authorization was amended to provide that the increase may be up to one-fourth of one percent (0.25%), permitting a municipality to adopt a lower additional tax. Conn. Gen. Stat. §12-494(c), as amended by Conn. Pub. Act No. 05-268, §2 (*effective July 1, 2005*). [Ed. note. As of November 29, 2005, only one of the 18 eligible municipalities, the City of Stamford, has not adopted the maximum increase.]

Limited Liability Companies and Members. A new exemption from the real estate conveyance tax has been adopted for “deeds to or from any limited liability company when the grantors or grantees are the same individuals as the principals or members of the limited liability company.” Conn. Gen. Stat. §12-504(c)(15), as added by Conn. Pub. Act No. 05-190, §7 (*effective July 1, 2005, and applicable to sales, transfers or charges in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).

Other Exemptions. The statutory exemptions to the real estate conveyance tax are renumbered and certain additional changes are made:

- Ø The current exemption for “deeds releasing any property which is a security for a debt or other obligation” is replaced with an exemption for “deeds of foreclosure”.
- Ø The current exemption for “property transferred as a result of death by devise or otherwise...” is restated as “property transferred as a result of death when no consideration is received...”
- Ø The current exemption for land subject to a deed covenant to refrain from selling, transferring or developing such land in a manner inconsistent with its classification as farm land, forest land or open space land for a period of not less than 8 years from the date of transfer is amended to require that any action by a taxpayer to enforce such a covenant must be commenced prior to the ninth year following the date of the deed.

Conn. Gen. Stat. §12-504c, as amended by Conn. Pub. Act No. 05-190, §7 (*effective July 1, 2005, and applicable to sales, transfers or changes in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).

Farm Land, Forest Land and Open Space Land. Under current law, property properly classified by the record owner as farm land, forest land and open space land is exempt from the real estate conveyance tax if sold following the end of the tenth year after the date of such classification. If sold prior to that time, the transfer is subject to a conveyance tax at an annually declining rate (i. e., the tax is equal to 10% of the sales price if sold within the first year following the date of classification, 9% of the sales price if sold within the second year following the date of classification, etc.). If there is a change in the use of the property within such ten-year period, the record owner is to pay a conveyance tax based on such declining tax rate schedule as applied to the fair market value of the property as determined by the assessor. This latter provision has been amended to provide that: (i) the value of such property shall be the fair market value thereof as determined by the assessor in conjunction with the most recent revaluation; and (ii) the date used for purposes of determining such tax “shall be the date on which the use of such property is changed, or the date on which the assessor becomes aware of a change in the use of such property, whichever occurs first.” In addition, the provision governing appeals to the Board of Assessment Appeals from the imposition of the tax under sections 12-504a to 12-504f has been amended to provide that, if the time for appealing to the Board of Assessment Appeals has passed, a taxpayer may appeal at the next regularly scheduled meeting. Conn. Gen. Stat. §§12-504d and 12-504e, as amended by Conn. Pub. Act No. 05-190, §§8-9 (*effective July 1, 2005, and applicable to sales, transfers or changes in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).

Additional Recording Fee. As of October 1, 2005, a town clerk is now required to collect an additional fee of \$30 for each document recorded in the land records of the municipality. One dollar of the fee is to be retained by the town clerk, and three dollars of such fee is to become part of the general revenue of the municipality and used to pay for local capital improvement projects. The remaining \$26 is to be remitted to the State Treasurer for deposit in the General Fund, to be credited to a new land protection, affordable housing and historic preservation account. Conn. Gen. Stat. §7-34a(e), as adopted by Conn. Pub. Act No. 05-228, §5, as amended by Conn. Pub. Act No. 05-3 (June Spec. Sess.), §113 (*effective October 1, 2005*).

II. Case Law Developments

LHI, Incorporated v. Commissioner, Old Farms Associates v. Commissioner, and Tuttle Road Associates v. Commissioner, 2005 Conn. Super. LEXIS 1272 (May 24, 2005). The Court determined that a land seller who sold land pursuant to a two-part contract, whereby the purchaser also agreed with a third party builder to have a house constructed on the property, was liable for the real estate conveyance tax based upon the combined sales price of both the land and the house constructed thereon. The Court rejected the land seller’s contention that it owed a conveyance tax calculated based solely upon the consideration it received for the land. Based upon a representative transaction, the Court found that the land seller and the builder had entered into a "joint venture" whereby the sale of the land and the newly-constructed house, though made by

independent parties, were part of one integrated transaction, since the two transfers were made to the purchaser simultaneously. [Ed. note. These decisions have been appealed.]

CONNECTICUT ESTATE, GIFT & SUCCESSION TAXES

The Connecticut General Assembly overhauled the Connecticut estate, gift and succession taxes during the 2005 legislative session. These changes were, in large part, a result of modifications to the federal estate tax and the resulting decrease in the revenue that states, including Connecticut, receive from their own death tax regimes. Connecticut and many other states have responded by revising their death taxes to ameliorate the impact of the federal changes on state revenues. The legislation passed by the General Assembly eliminates the Connecticut succession tax and modifies the Connecticut estate and gift taxes by creating a uniform tax on transfers that is similar to the unified system that existed for federal estate and gift taxes prior to 2005.

Connecticut Estate Tax. Prior to 2005, the Connecticut estate tax was pegged to the maximum permitted state death tax credit (with the exception of a temporary Connecticut estate tax imposed on the estates of decedents who died between July 1, 2004 and December 31, 2004). Due to changes in federal law, the state death tax credit was eliminated for decedents dying in 2005 and thereafter which simultaneously would have eliminated the Connecticut estate tax.

The new legislation essentially reinstates the Connecticut estate tax with a \$2 million exemption. It imposes a tax on transfers whether by gift during life (see Connecticut gift tax below), or at death, that exceed a combined \$2 million. Therefore, Connecticut taxable gifts (made after January 1, 2005) are included in the gross estate at death for Connecticut estate tax purposes. Although estates of less than \$2 million are not subject to tax, executors must file a Connecticut estate tax return (Form CT-706NT) with the probate court rather than the Department of Revenue Services.

The legislation retains the existing definition in Connecticut law of property subject to Connecticut estate tax. Specifically, for Connecticut residents, transfers at death of all property, excluding real or tangible personal property located in another state, is subject to Connecticut estate tax. As under prior law, the legislation permits a credit against Connecticut estate tax for death or inheritance taxes paid to other states.

The legislation also seems to permit a separate election to qualify property for the estate tax marital deduction, even if a corresponding election is not made for federal purposes (known as a "QTIP election"). This allowance would enable decedents' estates to qualify property in excess of the Connecticut estate tax exemption for the marital deduction while taking advantage of the full federal estate tax exemption. Recent statements by representatives of the Department of Revenue Services, however, have questioned the availability of a separate QTIP election. Therefore, this issue is unresolved at this time. The benefit of the marital deduction also applies to partners in Connecticut civil unions commencing for the estates of decedents dying after December 31, 2005.

The legislation has a particularly harsh impact on those estates just slightly in excess of \$2 million. A Connecticut taxable estate of \$2 million has no Connecticut estate tax liability. However, a taxable estate with only one dollar of additional assets (\$2,000,001) does not pay tax on that dollar only, as under current law, but instead, must pay a Connecticut estate tax of approximately \$101,700 because the entire taxable amount is subject to a 5.085% Connecticut estate tax for that bracket.

Conn. Gen. Stat. §§12-391 and 12-392, as amended by Conn. Pub. Act No. 05-251, §§69-70 (*effective June 30, 2005, and applicable to estates of decedents who die on or after January 1, 2005*) and Conn. Pub. Act No. 05-03 (June Sp. Sess.) §55 (*effective July 5, 2005*).

Connecticut Gift Tax. Under current law, Connecticut imposes a gift tax on taxable gifts in excess of \$25,000 per year (over and above the permitted \$11,000 annual exclusion per beneficiary). The \$25,000 Connecticut gift tax exemption was scheduled to increase in \$25,000 increments each year until 2009 when there would be a \$1,000,000 exemption for Connecticut gift tax.

As part of the new unified transfer tax system, the exemption for taxable gifts made during life is \$2 million commencing January 1, 2005. As under current law, taxable gifts are those in excess of the annual exclusion amount. The new Connecticut gift tax rates are identical to those of the Connecticut estate tax and contain the same “cliff” in the rates. As discussed above, taxable gifts made after January 1, 2005 will be included in the gross estate at death for Connecticut estate tax purposes. Similar to existing Connecticut law for married couples, gifts between partners in a civil union are not subject to Connecticut gift tax for gifts made after December 31, 2005.

Conn. Gen. Stat. §§12-642 and 12-643, as amended by Conn. Pub. Act No. 05-251, §§67-68 (*effective June 30, 2005, and applicable to calendar years commencing on or after January 1, 2005*).

Connecticut Succession Tax. The Connecticut succession tax has been eliminated for all classes for the estates of decedents dying after December 31, 2004. [Ed. note. Prior to this legislation, Classes A (spouse) and AA (parents, children, grandchildren and great-grandchildren) were exempt from Connecticut succession tax. The succession tax applicable to Class B beneficiaries (siblings, nieces and nephews, etc.) was scheduled to be eliminated in 2006 and eliminated in 2008 for Class C beneficiaries (more remote relatives and unrelated beneficiaries).] Conn. Gen. Stat. §§12-344, as amended by Conn. Pub. Act No. 05-251, §66 (*effective June 30, 2005, and applicable to calendar years commencing on or after January 1, 2005*).

PROPERTY TAX

I. Legislative Developments

Farm Land, Forest Land and Open Space Land.

- Ø The statutes governing the classification, transfer and taxation of farm land, forest land and open space land have been amended to provide expressly that such classifications are deemed to be personal to the particular owner who requests and receives such classification and shall not run with the land. If the use of such land is changed, or the land is sold or transferred by the record owner who obtained such classification, the classification ceases upon such change in use, or upon such sale or transfer. In the case of a sale or transfer, the new record owner must file a timely revised application for the classification with the assessor. In that regard, the section governing the classification of land as forest land has been amended to provide expressly that the application must be submitted to the assessor by October 1st. (The sections governing the classification of land as farm land and open space land have their own deadlines.) Conn. Gen. Stat. §§12-107c - 12-107e, 12-504a and 12-504h, as amended by Conn. Pub. Act No. 05-190, §§3-6 and 10 (*effective July 1, 2005, and applicable to sales, transfers or changes in use of land classified as farm land, forest land or open space land that occur on or after July 1, 2005*).
- Ø Under current law, a tax assessor files annually with the town clerk, for recording on the land records, a certificate for any land classified as farm land, forest land or open space land, setting forth the date of the initial classification and the obligation to pay the conveyance tax to the extent required by law. As of July 1, 2005, a town clerk must now notify the tax assessor of the filing in the land records of the sale of any such land and, upon receipt of such notice, the tax assessor is to inform the new owner of the tax benefits of classification of such land as farm land, forest land or open space land. Conn. Gen. Stat. §12-504f, as amended by Conn. Pub. Act No. 05-190, §11 (*effective July 1, 2005*).
- Ø The Commissioner of Agriculture is authorized to provide an advisory opinion, upon request by any municipality, state agency, tax assessor or landowner, as to what constitutes agriculture or farming, or regarding classification of land as farm land or open space land pursuant to Conn. Gen. Stat. §§12-107b to 12-107f. Conn. Gen. Stat. §22-4c(a)(4), as added by Conn. Pub. Act No. 05-160 (*effective July 1, 2005*).

Alias Tax Warrants. In an effort to encourage the service of alias tax warrants, the governing law has been amended to: (i) increase from 10% to 15% the share of taxes collected that a state marshal or constable receives when executing an alias tax warrant and collecting delinquent municipal taxes (plus allowable expenses); and (ii) increase the minimum fee for serving tax warrants from \$20 to \$30. Conn. Gen. Stat. §12-162, as amended by Conn. Pub. Act No. 05-135, §2 (*effective June 24, 2005, and applicable to the execution of tax warrants issued on or after July 2, 2003*).

Special Contaminated Property Remediation and Insurance Fund. Under prior law, a municipality was required to contribute to the Special Contaminated Property Remediation and Insurance Fund a portion of the property taxes collected on certain contaminated sites for the five assessment years after they are remediated. This requirement, which was scheduled to sunset on December 31, 2005, was repealed effective July 13, 2005. Conn. Gen. Stat. §12-63f, repealed by Conn. Pub. Act No. 05-285, §4 (*effective July 13, 2005*).

Buffers to Inland Wetlands Area. Property required as a buffer pursuant to any permit issued by an inland wetlands agency under regulations adopted under Conn. Gen. Stat. §22a-42a must be assessed at a value equal to the value of such property if it were an inland wetland or watercourse area. Conn. Pub. Act No. 05-190, §1 (*effective July 1, 2005*).

Farm Building Exemption. The current exemption from the property tax that can be adopted by a municipality for any building used actually and exclusively in farming, to the extent of an assessed value of \$100,000, has been amended to: (i) broaden its scope to include any building used to provide housing for seasonal employees of such farmer; and (ii) enable the municipality to establish the amount of the exemption up to \$100,000 with respect to each eligible building. Conn. Gen. Stat. §12-91(c), as amended by Conn. Pub. Act No. 05-228, §8 and Conn. Pub. Act No. 05-3 (June Spec. Sess.), §113 (*effective October 1, 2005, and applicable to assessment years commencing on and after October 1, 2005*).

Interest Abatement. A municipality may, by ordinance, provide that no interest shall be charged or collected for a period of one year on any property tax payable by a Connecticut resident for real property assessed on the 2003 grand list, provided that such resident is domiciled with, and the spouse of, a member of the armed forces of the United States or of any state or of any reserve component thereof who: (i) has been called to active service for military operations that will entail military action in Iraq; and (ii) is serving in the Middle East on the final day that payment of such property tax is due. Conn. Pub. Act. No. 05-03 (June Sp. Sess.), §9 (H.B. 7502) (*effective July 5, 2005*).

Air and Water Pollution Control Structures and Equipment. The statutory exemptions from the property tax for air pollution control structures and equipment and water pollution control structures and equipment have been amended to: (i) extend the exemption for water pollution control structures and equipment to both purchased and leased equipment (similar to the exemption for air pollution control structures and equipment); (ii) provide that the owner or lessee of the structures or equipment (rather than the “person claiming the exemption”) shall file an application for exemption with the local assessor or board of assessors, together with the certification of the Commissioner of Environmental Protection, on or before November 1st of an assessment year; and (iii) require, in the event of a change in the name of the owner or lessee of any structure or equipment for which an exemption is granted, that the new owner or lessee file a revised application with the local assessor or board of assessors on or before November 1st immediately following the end of the assessment year during which such change occurs (except that, for the assessment year commencing October 1, 2005, a revised application may be filed when there has been a change in the name of the owner or lessee during any assessment year and the exemption shall continue to be granted for each assessment year following such change). The amended exemptions also provide that, if a revised

application is required from a new owner or lessee, the new owner or lessee is not required to obtain or provide a certification from the Commissioner of Environmental Protection, and shall be entitled to a continuation of the exemption, if the subject structures or equipment have not been altered in any manner. Conn. Gen. Stat. §§12-81(51) and (52), as amended by Conn. Pub. Act No. 05-03 (June Sp. Sess.), §§37-38 (*effective July 5, 2005*). [Ed. note. This legislation is intended to overrule and/or ameliorate, in whole or in part, the holding in Dominion Nuclear v. Waterford, 2005 Conn. Super. LEXIS 1422 (May 27, 2005) (DEP certification of air pollution control structures and equipment is not assignable to purchaser of structures and equipment).]

II. Case Law Developments

Seymour v. Region One Board of Education, 274 Conn. 92, cert. denied, 74 U.S.L.W. 3301 (November 14, 2005). The Connecticut Supreme Court upheld the dismissal of a taxpayer's action on the basis that she lacked standing to challenge a Connecticut property tax cost allocation formula. The taxpayer had argued that Conn. Gen. Stat. §10-51(h) was unconstitutional because it allocated the educational costs for regional school districts among the towns in the district based upon the number of resident pupils in each town rather than upon a single mil rate applied against the property values of the taxpayers in each town.

New Haven v. Bonner, 272 Conn. 489 (2005). The Supreme Court concluded that a municipality seeking to collect delinquent taxes is entitled to include as part of its claim the collection fees of a collection agency, without having to establish the relationship between the amount of that fee and the specific services performed by the agency relative to a delinquent taxpayer.

Cecarelli v. North Branford, 272 Conn. 485 (2005). The Supreme Court affirmed a decision by the Superior Court holding that deed restrictions should be considered in determining the tax value of a farm house and its curtilage. As a result, the restriction on the use of the building as a residence only for persons directly involved in the operation of the farm was found to reduce the assessed value of the property.

Waterbury Equity Hotel, LLC v. Waterbury, 85 Conn. App. 480 (2004). The Appellate Court ruled that, where a municipal assessor failed to conduct a mandatory revaluation, the assessor's valuation is not entitled to a presumption of correctness. Rather, the Court ruled that a periodic revaluation is only valid for the length of time allowed by the statute; thus, an assessment based upon a prior valuation was not valid beyond the limited period provided by statute.

Dominion Nuclear v. Waterford, 2005 Conn. Super. LEXIS 1422 (May 27, 2005). The Court held that the certifications issued by the Department of Environmental Protection ("DEP") that certain structures and equipment qualified as air pollution control structures or equipment entitled to the exemption from property taxation pursuant to Conn. Gen. Stat. §12-81(52) are personal to the taxpayer that initially obtained such certifications, and may not be assigned to another. Specifically, the Court determined that, since the granting statute makes no express provision for assignments to other taxpayers, the exemptions apply only to the original purchaser or lessor of the qualifying equipment. Concerning the original certification grantees, the Court further held that a municipal assessor has no authority under Conn. Gen. Stat. §12-81(52) to withhold an exemption

granted pursuant to a certification by the DEP until the DEP, and not the assessor, decertifies the property as provided for in the statute.

American Cyanamid Co. v. Board of Assessment Appeal of the City of Stamford, 2005 Conn. Super. LEXIS 523 (February 18, 2005). In May, 2004, the City took advantage of a state law allowing municipalities to delay the implementation of a revaluation of real property for the 2003, 2004 or 2005 reassessment years, and reinstated for all properties the 1999 property valuation. The Court held, however, that a taxpayer who had initiated an appeal for a reassessment based upon the City's 2003 revaluation in accordance with the applicable statutory requirements was entitled to judicial review, despite the City's claim that taxpayer had not exhausted administrative remedies with respect to the reinstated 1999 valuation.

Saranor Apartments Limited Partnership v. Milford, 2005 Conn. Super. LEXIS 911 (April 15, 2005). In applying the income approach to valuation, a low-income housing complex subject to rent limitations in return for state-subsidized, below-market financing was entitled to compute its capitalization rate based upon the mortgage interest rates in the prevailing rental market rather than upon the taxpayer's actual subsidized financing rate. The Court agreed with the property owner that the value of the property should be determined independent of the interest rate, regardless of whether the lower interest rate would raise the potential sales price of the property.

Daniels v. Norwich, 2005 Conn. Super. LEXIS 357 (February 15, 2005). A taxpayer who attested that she received no notice of a revaluation of her property until she received her property tax bill from the City was not barred under the statutorily-prescribed time limits for contesting the assessment. Rather, the Court held that the tolling period of the 60-day appeal period only begins to run once actual notice (i.e., in this taxpayer's case, her property tax bill) was received.

Biber v. Preston, 2004 Conn. Super. LEXIS 3824 (December 23, 2004). The Court ruled that an inaccurate description of property subject to a tax lien invalidates the lien. Since the purpose of a tax lien certificate is to give notice that a tax lien exists against a particular parcel of land, an inaccurate description does not provide sufficient notice to the affected taxpayer.

Fern v. Town of Bloomfield, Board of Assessment Appeals, 2005 Conn. Super. LEXIS 2666 (October 5, 2005). The Court denied the defendant's motion to dismiss the property owner's appeal under Conn. Gen. Stat. §12-117a on the basis that the defendant named in the summons was the town's Board of Assessment Appeals rather than the town itself. The Court found that the taxpayer had timely amended the appeal and that Conn. Gen. Stat. §§52-123 and 52-128 permits the correction of circumstantial errors, particularly since the appeal had been served on the town clerk, who was the town's agent for service of process.

Cadlerock Properties Joint Venture, L.P. v. Ashford, 2005 Conn. Super. LEXIS 2730 (October 14, 2005). The Court held that the taxpayer had actual knowledge of the environmental contamination of the commercial lots that were part of the subject appeal at the time it purchased such lots and, accordingly, it was not entitled to a reduction in value of such commercial lots pursuant to Conn. Gen. Stat. §12-63e.

C & H Associates L.P. v. Stratford, 2005 Conn. Super. LEXIS 3001 (November 7, 2005). The Court ruled against the taxpayer's challenges to the grand lists of October 1, 1998 and October 1, 2000, on the basis that: (i) the challenge to the 1998 grant list was based on a collateral challenge to a judicial ruling on an appeal of the 1994 grand list rather than on a *de novo* challenge to the 1998 grand list under Conn. Gen. Stat. §12-117a; and (ii) the challenge to the 2000 grand list was based on the testimony of one of the plaintiff's principals and his real estate experience rather than on accepted valuation methods such as the market sales approach.

MISCELLANEOUS TAXES

Surcharge on Rental Machinery. A new 1.5% surcharge is imposed on "machinery" rented within Connecticut by a "rental company" to a lessee for a period of less than 31 days. "Machinery" is defined as heavy equipment without an operator that may be used for construction, mining or forestry, including, but not limited to, bulldozers, earthmoving equipment, well-drilling machinery and equipment or cranes. A "rental company" is any business entity engaged in the business of renting machinery in Connecticut and that uses for rental purposes five or more pieces of machinery. The surcharge must be separately stated on the invoice for each piece of machinery, is in addition to any other tax due on the transaction and is to be included in gross receipts for purposes of the sales and use tax. The surcharge is to be used by the lessor to pay any property tax and/or registration and titling fees due to the Connecticut Department of Motor Vehicles, and the excess is to be remitted to the DRS, together with an annual return (due on or before February 15th) indicating the amount of surcharges received and taxes and fees paid. Conn. Gen. Stat. §12-692, as amended by Conn. Pub. Act No. 05-163, §1 (*effective July 1, 2005*). See DRS Special Notice 2005(11), *Rental Surcharge Daily Rental of Machinery*.

Nursing Home Resident User Fee. A new resident user fee will be imposed on each nursing home in Connecticut as part of legislation that is intended to permit the State to receive federal financial participation matching funds and to pay increased Medicaid rates to nursing homes, intermediate care facilities and residential care homes. The Department of Social Services ("DSS") is directed to file an amendment to its Medicaid State Plan to implement the new fee and to secure a waiver of the federal requirements for uniform and broad-based user fees in accordance with 42 CFR 433.68 (to exempt from the fee any nursing facility owned by certain continuing care communities and to charge a lower fee to certain municipal-owned nursing homes and nursing homes licensed for more than 230 beds). For each calendar quarter commencing on or after July 1, 2005, a resident user fee, which is to be treated as a tax, is imposed on each nursing home in Connecticut, which fee shall be equal to the product of (i) the nursing home's total resident days during the calendar quarter multiplied by (ii) a user fee determined as of July 1, 2005, and annually thereafter, by the DSS (\$15.90 for the calendar quarter beginning July 1, 2005). (The user fee initially is to be calculated by taking the sum of each home's anticipated nursing home net revenue over the twelve-month period ending on June 30th of the succeeding calendar year, multiplying that sum by 6%, and then dividing the product by the sum of each nursing home's anticipated resident days during that same 12-month period. The user fee is to be recalculated by the DSS in the event federal approval is granted of the waiver of federal requirements for uniform and broad-based user fees in accordance with 42 CFR 433.68.) The fee for a calendar quarter is to be paid to the DRS by electronic funds transfer and the nursing home must file electronically a

quarterly return, (Form OP-336, *Nursing Home User Fee Return*), due on or before the last day of the month immediately succeeding the end of that calendar quarter (i.e., October 31, 2005, in the case of the calendar quarter commencing July 1, 2005). Delinquent amounts are subject to interest and a penalty, and may be set-off against amounts otherwise payable by the DSS to the delinquent nursing home. [Ed. note. Please note that the new resident day user fee is not to be collected until all necessary approvals are in effect to secure federal financial participation matching funds, and such collection is to cease in the event such approvals are withheld or withdrawn. The increased Medicaid rates are contingent upon the ongoing receipt of such matching funds. In addition, for the fiscal year ending June 30, 2006, any nursing home experiencing a “net gain in revenue” must apply at least 85% of such net gain to increased employee wages and benefits and additional direct and indirect component staffing. (The net gain may not be applied to wage and salary increases provided to the administrator, assistant administrator, owners or related party employees.) “Net gain in revenue” is defined as (i) (A) the difference between the rate in effect June 30, 2005, and the rate in effect on July 1, 2005, multiplied by (B) the number of resident days eligible for state payment for the period between July 1, 2005, and June 30, 2006, less (ii) state revenue taxes accrued for the period between July 1, 2005, and June 30, 2006. Any revenue not so properly applied must be remitted to the State.] Conn. Gen. State §§17b-340(f)(4), (g) and (h)(1) amended, and new sections enacted, by Conn. Pub. Act No. 05-251, §§78-85 (*effective July 1, 2005*). See DRS Special Notice 2005(4), *2005 Legislation Imposing a Nursing Home Fee*.

Unemployment Compensation Experience Rated Tax System. Under a new law intended to meet the minimum requirements of the federal SUTA (State Unemployment Tax Acts) Dumping Prevention Act of 2004 (Public Law 108-295): (i) it shall be a violation of law if a person acquires the assets, organization, trade or business of an employer solely or primarily for the purpose of obtaining a lower contribution rate to the Unemployment Compensation Fund, the result of which shall be that the person shall be required to pay contributions at the greater of (A) the “new” employer rate provided in Conn. Gen. Stat. §31-225a(d) (i.e., the rate at which an employer which has not been chargeable with benefits for a sufficient period of time to have such employer’s rate otherwise computed), or (B) the person’s charged tax rate; and (ii) if an employer transfers all or a portion of its assets, organization, trade or business to another employer which shares substantially common ownership, management or control, then (A) the unemployment experience of the transferring employer will be transferred to the receiving employer, and (B) the contribution rates of both employers will be recalculated effective upon the date of transfer. A person who violates either of the two foregoing new provisions can be fined up to \$2,000 and/or imprisoned for up to one year. A knowing violation or attempted violation by a person of either of the preceding new provisions can result in: (i) if the person is an employer, such person will be assigned a penalty rate of contributions of two per cent (2%) of taxable wages for the year during which the violation or attempted violation occurred and for the following three years; and (ii) if the person is not an employer, a civil penalty of between \$500 and \$5,000. Conn. Pub. Act No. 05-85 (*effective for unemployment compensation tax years beginning on and after January 1, 2006*).

Insurance Retaliatory Tax Laws. Connecticut generally imposes on a non-Connecticut domiciled insurer premium, income and other taxes, and fees, fines, penalties, licenses, deposit requirements and other obligations, prohibitions or restrictions (collectively “Obligations”), to the extent that the jurisdiction in which that non-Connecticut insurer is domiciled imposes such Obligations on

Connecticut-domiciled insurers and those Obligations are in excess of the Obligations imposed by Connecticut. This retaliatory law did not apply to ad valorem taxes on real or personal property, personal income taxes, fees for agents' licenses, certain special purpose assessments or premium taxes on special health care plans as defined under Conn. Gen. Stat. §38-564. This carve-out has now been amended so that it is applicable except in the case where the other jurisdiction imposes upon Connecticut-domiciled insurers retaliatory charges for such taxes, fees or assessments. Conn. Gen. Stat. §12-211, as amended by Conn. Pub. Act No. 05-100 (*effective October 1, 2005*).

Health Care Center Tax. New exemptions from the tax on the total net direct subscriber charges received by a health care center have been adopted for any new or renewal contract or policy entered into on or after July 1, 2005, to provide health care coverage to (i) employees of community action agencies and their dependents, or (ii) retired members (i.e., individuals eligible for a retirement benefit from the Connecticut municipal employees' retirement system) and their dependents, each under a plan procured under Conn. Gen. Stat. §5-259 (the "Municipal Employee Health Insurance Plan"). Conn. Gen. Stat. §12-202a, as amended by Conn. Pub. Act No. 05-238, §2 (*effective July 1, 2005, and applicable to income years commencing on or after January 1, 2005*).

Dry Cleaning Establishment Remediation Account. Under current law, each dry cleaning establishment pays a surcharge of 1% of its gross receipts at retail for any dry cleaning service. The surcharge receipts are deposited in the "dry cleaning establishment remediation account". The Department of Economic and Community Development is permitted to make grants from such account to an owner or operator of a dry cleaning establishment for the purposes of the containment and removal or mitigation of environmental pollution on or at the site of the dry cleaning establishment or for measures undertaken to prevent such pollution which are approved by the Commissioner of Environmental Protection. The governing statute has been amended to, among other things: (i) expand the class of applicants eligible for such grants to include an owner of property on which an eligible dry cleaning business has been in operation for at least one year prior to the approval of the application and where there exists a dry cleaning establishment at the time of release of the funds; (ii) increase the maximum grant per year from \$50,000 to \$300,000 for each applicant; and (iii) allow the dry cleaning establishment remediation account to be used to fund environmental site assessments. Conn. Gen. Stat. §12-263m, as amended by Conn. Pub. Act No. 05-176, §1 (*effective July 1, 2005*).

Cigarette Taxes. See generally, DRS Special Notice 2005(8), *2005 Legislation Affecting the Cigarette Taxes*.

- Ø **Chain Stores.** For purposes of the Connecticut cigarette minimum pricing laws, the statutory definition of "chain store" has been amended to limit its application to only an operator, and not also a franchisor, of "five or more retail establishments with common ownership and control." The statutes in question relate to what is required in connection with an initial application for a distributor's license and the provisions relating to the required percentage mark-up of cigarettes. Conn. Gen. Stat. §§12-286(a)(1) and 12-326a(a)(3), as amended by Conn. Pub. Act No. 05-96 (*effective July 1, 2005*).

- Ø **Tobacco Product Manufacturers.** Conn. Gen. Stat. §4-28m required the DRS to compile and publish on or before July 1, 2005, a directory of tobacco product manufacturers that are complying with the tobacco settlement agreement with the State, together with their cigarette brands and brand families. This directory is currently available on the DRS website. It is illegal to sell, offer to sell, distribute, or possess for sale in Connecticut cigarettes whose manufacturer or brand family is not listed in the directory. In addition, any tobacco manufacturer selling cigarettes to consumers in Connecticut, either directly or through a distributor, dealer or other intermediary, must obtain and renew annually a cigarette manufacturer's license from the DRS. The Commissioner of the DRS has now been directed not to include or to retain in the directory of tobacco product manufacturers the name or brand families of any manufacturer that fails to secure and retain such license. Conn. Gen. Stat. §12-285b, as amended by Conn. Pub. Act No. 05-260, §1 (*effective July 1, 2005*). [Ed. note. In DRS Announcement 2005(13), the DRS announced the publishing of the Connecticut Tobacco Directory on its website. A tobacco product manufacturer can be listed on the website if it files a current and accurate Form TPM-2, *Certification for Listing in Connecticut Directory*, setting forth all brand families on the form.]
- Ø **Cigarette Vending Machines.** Under prior law, a licensed distributor or dealer who owned or operated more than five cigarette vending machines had to file a monthly report containing certain specified information. Such reports were required to be filed semi-annually by owners or operators of less than five vending machines. The governing statute has been revised to grant to the Commissioner discretion to decide when reports are to be filed by any licensed distributor or dealer who operates cigarette vending machines, as well as what is to be included in such report. Conn. Gen. Stat. §12-293a(b), as amended by Conn. Pub. Act No. 05-260, §3 (*effective July 13, 2005*). [Ed. note. According to DRS Special Notice 2005(8), effective July 13, 2005, "any person(s) who own or operate cigarette vending machines is no longer required to file Form OP-182, *Vending Machine Report/Cigarette Distributors and Dealers*, with DRS."]
- Ø **Tobacco Products Distributors/Licensed Unclassified Importers.** In general, each licensed tobacco products distributor and licensed unclassified importer is required to file a monthly report, which is to be accompanied by the tax shown to be due on the report. The reporting statute has been amended to: (i) provide that licensed distributors which do not acquire untaxed tobacco products need only file an annual return, on or before July 25th of each year, for the twelve-month period ending June 30th, but must maintain certain purchase and sale records; (ii) eliminate the Commissioner's authority to adopt regulations requiring distributors and unclassified importers to report the names and addresses of customers; and (iii) authorize the Commissioner to adopt regulations to exempt unclassified importers from current licensing and monthly reporting requirements, but to require them to report untaxed tobacco products in their possession. Conn. Gen. Stat. §12-330d, as amended by Conn. Pub. Act No. 05-260, §4 (*effective October 1, 2005, and applicable to returns for periods commencing on or after October 1, 2005*).

Petroleum Products Gross Earnings Tax. The quarterly gross earnings tax on companies that distribute products in Connecticut which contain, or are made from, petroleum or a petroleum derivative is increased from the current 5% tax rate to: (i) 5.8% for all calendar quarters commencing on or after July 1, 2005, and prior to July 1, 2006; (ii) 6.3% for all calendar quarters commencing on or after July 1, 2006 and prior to July 1, 2007; (iii) 7% for all calendar quarters commencing on or after July 1, 2007 and prior to July 1, 2008; (iv) 7.5% for all calendar quarters commencing on or after July 1, 2008 and prior to July 1, 2013; and (v) 8.1% for all calendar quarters commencing on or after July 1, 2013. Conn. Gen. Stat. §12-587, as amended by Conn. Pub. Act No. 05-4 (June Sp. Sess.), §40 (*effective July 1, 2005*). See DRS Special Notice 2005(3), *2005 Legislative Changes Affecting the Petroleum Products Gross Earnings Tax Effective July 1, 2005*.

TAX PROCEDURE

Penalty for Abusive Tax Shelter Promoters. A new Connecticut penalty is imposed on any person who engages in the activities described in Section 6700 of the Internal Revenue Code (i.e., organizing or promoting a tax shelter and, in doing so, making false or fraudulent statements, or gross valuation overstatements), and who is subject to the federal fifty per cent (50%) penalty imposed thereunder, whether or not such penalty is imposed. The Connecticut penalty is equal to fifty per cent (50%) of the gross income derived from, or to be derived from, such activities by such person. Conn. Pub. Act No. 05-116, §1 (*effective June 24, 2005, and applicable to any open tax period*).

Tax Refund Anticipation Loans. Last year's legislation regulating the making of an income tax refund anticipation loan is amended to provide that: (i) such a loan can only be made at a location at which the principal business is tax preparation; and (ii) the interest rate for such a loan cannot exceed (A) sixty per cent (60%) per annum for the initial 21 days of the loan, and (B) twenty per cent (20%) per annum for the period commencing on the 22nd day of such loan and ending on the date of payment. Conn. Gen. Stat. §42-480, as amended by Conn. Pub. Act No. 05-107 (*effective October 1, 2005*).

Tax Revenues. The laws governing the recording of certain tax receipts is amended to allow the State comptroller to record as revenue for any fiscal year any tax payments the DRS receives within five business days after the last day of July immediately following the end of such fiscal year (or August 15, in the case of the corporation business tax). Conn. Gen. Stat. §§3-114c through 3-114h, 3-114m and 3-114n, as amended by Conn. Pub. Act No. 05-145 (*effective June 24, 2005*).

ESCHEAT

Gift Certificates. The statutes governing the escheat of abandoned property to the Treasurer of the State of Connecticut are amended, effective October 1, 2005, to: (i) exclude gift certificates; (ii) repeal the three-year presumption for the abandonment of gift certificates; and (iii) provide that, any person who, prior to August 16, 2003, failed to report or deliver abandoned gift

certificates to the Treasurer shall not be liable to the Treasurer for interest or any other penalty relating to such failure. In addition, the issuer or seller of a gift certificate no longer is required to obtain, and maintain a record of, the address of the owner of the gift certificate. Conn. Gen. Stat. §§3-65b and 42-460 as amended, Conn. Gen. Stat. §3-73a(e) as added, and Conn. Gen. Stat. §3-60d as repealed, by Conn. Pub. Act No. 05-189, §§1-4 (*effective October 1, 2005*). As of July 13, 2005, the issuer or seller of a gift certificate cannot impose a dormancy charge or fee, abandoned property charge or fee, unclaimed property charge or fee, escheat charge or fee, inactivity charge or fee, or any similar charge, fee or penalty for inactivity with respect to the gift certificate (or to include language on the gift certificate suggesting that the certificate is subject to such a fee). The law already prohibits the issuance of a gift certificate subject to an expiration date. Conn. Gen. Stat. §3-65c, as amended by Conn. Pub. Act No. 05-273, §1 (*effective July 13, 2005*).

ADMINISTRATIVE PRONOUNCEMENTS

Announcements

AN 2005(1), Information for Married Individuals Who Are Both Employed and Are Filing a Joint Connecticut Income Tax Return

AN 2005(2), Obtaining Connecticut Publications in Booklet Form

AN 2005(3), Use of Revised Form OP-236, Real Estate Conveyance Tax Return, Required On or After May 15, 2005

AN 2005(4), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2005(4.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2005(4.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2005(5), List of DRS-Registered Natural Gas Suppliers

AN 2005(6), CLHIGA Member Insurers to Pay 50% of Refunded Assessment to DRS

AN 2005(7), Annual Revision of Form TPM-1

AN 2005(8), New Tobacco Products Tax Return and Alcoholic Beverages Tax Return

AN 2005(9), New Motor Vehicle Fuels Tax Returns and Schedules

AN 2005(10), New Petroleum Products Gross Earnings Tax Return

AN 2005(11), Retailer's Acceptance Faxed Copies of Resale Certificates

AN 2005(12), New Order Form for Connecticut Cigarette Tax Stamps and New Cigarette Tax Refund Claim Form for Stamps Affixed to Packages

AN 2005(13), The Connecticut Tobacco Directory

AN 2005(15), 2005 Abusive Tax Shelter Compliance Initiative

Informational Publications

IP 2005(1), Is My Connecticut Withholding Correct?

IP 2005(2.3), Topical Indexes to Rulings and Administrative Pronouncements Covering Income Tax

IP 2005(3.3), Topical Indexes to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2005(4.3), Numerical Index to Rulings and Administrative Pronouncements as Affected, if at all, by Later-Issued Rulings and Pronouncements

IP 2005(5.3), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Tax

IP 2005(6.3), Topical Indexes to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2005(7), Connecticut Employer's Tax Guide - Circular CT

IP 2005(8), Fisherman's Guide to Sales and Use Taxes and Estimated Income Tax

IP 2005(9), Connecticut Income Tax Information for Armed Forces Personnel and Veterans

IP 2005(10), Q&A: Income Tax Credit for Property Taxes Paid to a Political Subdivision

IP 2005(12), Farmer's Guide to Sales and Use Taxes, Motor Vehicle Fuels Tax, Estimated Income Tax and Withholding Tax

IP 2005(13), Connecticut Income Tax Changes Affecting Pass-Through Entities

IP 2005(14), Guide to Calculating Annualized Estimated Corporation Business Tax Installments

IP 2005(15), Connecticut Income Tax Treatment of Gambling Winnings Other Than State Lottery Winnings

IP2005(16), Connecticut State Income Tax Treatment of State Lottery Winnings Received by Residents and Nonresidents of Connecticut

IP 2005(17), Q&A on the Connecticut Individual Use Tax

IP 2005(21), Form W-2 Magnetic Media Filing Requirements for Tax Year 2005

IP 2005(22), Connecticut Magnetic Media Filing Requirements for Tax Year 2005 for Forms 1098, 1099-MISC, 1099-R, 1099-S, W-2G

IP 2005(23.1), Federal/State Electronic Filing Handbook

IP 2005(24), Connecticut Tax Tips for Senior Citizens

IP 2005(25), Personal Taxes

IP 2005(26), Business Taxes

IP 2005(27), A Guide to Calculating Your Annualized Estimated Income Tax Installments and Worksheet CT-1040 AES

IP 2005(28), Estimated Connecticut Income Taxes

IP 2005(30), Paying Connecticut Taxes by Electronic Funds Transfer

IP 2005(31), Q&A: The Connecticut Alternative Minimum Tax

Policy Statements

PS 2005(1), Income Tax Withholding for Athletes or Entertainers

PS 2005(2), Connecticut Income Tax on Bonds or Obligations Issued by the United States Government, by State Governments, or Municipalities

PS 2005(3), Application of Sales and Use Taxes to Vessels

PS 2005(4), Designated Private Delivery Services and Designated Types of Service

Special Notices

- SN 2005(1), 2004 Legislation Affecting Tobacco Product Manufacturers, Licensed Cigarette Distributors and Licensed Cigarette Dealers, and Licensed Distributors for Tobacco Products Tax Purposes
- SN 2005(2), Effect for Petroleum Products Gross Earnings Tax Purposes of Federal Excise Tax Rate Change on 10% Gasohol
- SN 2005(3), 2005 Legislative Changes Affecting The Petroleum Products Gross Earnings Tax Effective July 1, 2005
- SN 2005(4), 2005 Legislative Changes Affecting Sales and Use Taxes and the Dry Cleaning Establishment Surcharge
- SN 2005(5), 2005 Legislation Imposing a Nursing Home User Fee
- SN 2005(6), 2005 Legislation Affecting the Direct Shipment of Wine to State Residents
- SN 2005(7), 2005 Legislative Changes Affecting the Corporation Business Tax
- SN 2005(8), 2005 Legislation Affecting the Cigarette Taxes
- SN 2005(10), 2005 Legislation Repealing the Succession Tax and Amending the Connecticut Gift Tax and the Connecticut Estate Tax
- SN 2005(11), Rental Surcharge Daily Rental of Machinery
- SN 2005(12), Nonresident Contractor Bonds and Deposits
- SN 2005(13.1), Sales Tax Holiday for Home Weatherization Products

Regulations

Proposed Amendments to the Individual Income Tax Regulations. In the October 18, 2005 edition of the Connecticut Law Journal at page 5C, the DRS published a notice of intent to amend the regulations governing the imposition of the Connecticut individual income tax. The proposed amendments include: (i) the addition of provisions permitting the execution of a return as prescribed in the forms, instructions or other appropriate guidance of the DRS [Ed. note. DRS representatives orally have stated that the intent is to eliminate the manual signature requirement and have the state rules mirror those applicable to the signing of federal returns.]; (ii) the elimination of references to S corporations paying the corporation business tax and the updating of references to the new composite return for partnerships and S corporations; (iii) the addition of a provision making subject to Connecticut income taxation a nonresident S corporation shareholder's

separately and nonseparately computed income or loss derived from or connected with sources within Connecticut; (iv) a provision requiring a nonresident alien to enter his or her individual taxpayer identification number on a Connecticut return; (v) the replacement of references to a program no longer in existence (A.F.D.C.) with references to the current program (T.A.N.F.); and (iv) the updating of the withholding regulations to reflect statutory changes requiring payers generally to be either a weekly, monthly or quarterly remitter.

Rulings

Ruling 2005-1, Sales and Use Taxes/Contractors/Machinery (Manufacturing). The DRS ruled that a company that makes bituminous concrete (i.e., hot asphalt) is not a “manufacturer” for purposes of the Connecticut sales tax because only 20% of its total sales are asphalt alone. The remaining asphalt is used in its paving service and, even if separately invoiced, would still be considered to be consumed by the company in the provision of its paving service.

Ruling 2005-2, Income Tax/Residency of Appointive Trust. The DRS ruled that the residency status of an appointive trust created by the exercise of a power of appointment that is not a general power of appointment is to be determined by the residency of the donor of the power of appointment. The residency status of an appointive trust created by the exercise of a general power of appointment is to be determined by the residency of the donee of the power of appointment.

Ruling 2005-3, Sales and Use Taxes/Returned Merchandise. The DRS ruled that a registered retailer which, pursuant to a warranty policy or customer satisfaction policy, exchanges or replaces taxable merchandise with identical or similar merchandise for no additional consideration (an “even exchange”), need not collect additional sales tax regardless of whether the customer is unable to produce the original sales receipt or other sales verification and/or the exchange or replacement takes place more than 90 days after the original sale. The retailer is required to maintain books and records sufficient to permit the DRS to verify the even exchange. If, however, the retailer were to permit an “uneven exchange” (i.e., an exchange for a less expensive taxable item plus cash or credit, or an exchange plus cash for a more expensive taxable item), the sales tax paid on the original sale may only be credited or refunded if the customer produces the original receipt or other sales verification and the return is made within 90 days of the date of the original sale.

Ruling 2005-4, Sales and Use Taxes, Room Occupancy Tax/Community Antenna Television Services. The DRS ruled that a company which charges hotel guests directly for the provision of in-room movies must collect and remit a sales tax on such charges, but is not subject to the occupancy tax because the charge is exacted directly by the company rather than by the hotel.

Ruling 2005-5, Petroleum Products Gross Earnings Tax/Biodiesel Fuel. A company will sell: (i) a blend of 5% by volume pure biodiesel and 95% by volume petroleum diesel suitable for motor vehicle fuel; and (ii) a blend of 5% by volume pure biodiesel and 95% by volume number 2 heating oil suitable for heating purposes. The DRS ruled that the gross earnings from the first sale

of the first product are subject to the petroleum products gross earnings tax, whereas the gross earnings from the first sale of the second product are not subject to such tax.

SOLICITATION OF CHARITABLE FUNDS ACT

In general, unless otherwise exempted, a charitable organization which seeks to solicit charitable contributions in the state of Connecticut currently is obligated to register first with the Connecticut Department of Consumer Protection (“DCP”) and, thereafter, to file an annual report, including a financial statement, with the DCP. The Solicitation of Charitable Funds Act (the “Act”) is amended in a number of meaningful ways, including the following:

Annual Registration. The former one-time registration and annual reporting scheme is replaced with a new annual registration requirement. An organization subject to the Act is now required to file an annual application for registration which must include: (i) a Form PCUREG-01, *Charitable Organization Registration Application*; (ii) an annual registration fee of \$50; (iii) a copy of the Internal Revenue Service Form 990, Form 990-EZ or Form 990-PF (whichever is applicable) for its most recently completed fiscal year; and (iv) if the organization reported on the IRS form that it had gross revenue in excess of \$200,000 for such year (not including grants or fees from government agencies or the revenue derived from funds held in trust for the benefit of the organization), an audit report of a certified public accountant (which report can relate to the IRS form or to a separate set of audited financial statements). An application for registration shall be deemed approved unless the DCP notifies the organization within ten days after receipt of the application for registration that the application is not in compliance with the Act. An organization can appeal a rejection of its registration application, but must file the appeal within seven days of the notice of noncompliance. The DCP must then hold a hearing within seven days of receipt of the appeal, and render a determination no more than three days after such hearing.

Due Date and Penalty. The annual application for registration is due no later than five months after the end of such organization’s fiscal year. Upon written request and good cause shown, the DCP can grant an extension of time, not to exceed 180 days, for the filing of an organization’s annual financial report (during which time the previous registration will remain in effect). A request for an extension of time must be made prior to the expiration of the current registration, and must include: (i) the organization’s Connecticut Charities Registration Number; (ii) the name and address of the organization; (iii) the organization’s federal employer identification number; (iv) the date the current registration expires; and (v) the number of days of extension requested. An untimely registration application is subject to a late fee of \$25 for each month, or part thereof, the application is late (other than any month for which an extension has been granted). The DCP also can require an organization to file an annual financial report for each year it was required, but failed, to file an application for registration or an annual financial report.

Disclosure. The information contained in an organization’s financial report must now be made available to the public.

Consolidated Registration. A chapter, branch or affiliate in Connecticut of a registered parent organization shall not be required to file a separate registration provided the parent organization

files a consolidated annual registration for itself and its chapter, branch or affiliate. A consolidated annual registration can be filed regardless of whether the parent organization has its principal office in Connecticut.

Prohibitions. The list of actions that constitute violations of the Act is amended to make it a violation of the Act for (i) any charitable organization, “or any person engaged in the conduct of the affairs of a charitable organization” to engage in any financial transaction which is not related to the accomplishment of its charitable purpose, or which jeopardizes or interferes with the ability of the organization to accomplish its charitable purpose; and (ii) any person “to appropriate any property of a charitable organization for a private use.” Violations of the Act currently are subject to the imposition of a fine up to \$5,000 and/or a period of imprisonment for up to one year.

Paid Solicitors. Under current law, a paid solicitor for a charitable organization must first register with the DCP and file, prior to the commencement of each solicitation campaign, a copy of the solicitor’s written contract with the organization and a completed solicitation notice. The Act is amended to: (i) increase the paid solicitor registration fee from \$125 to \$500; (ii) require the DCP, prior to the commencement of any solicitation campaign, to publicize such solicitation through the issuance of a press release and the posting on the DCP web site of information describing the terms of the contract with the paid solicitor, the dates of the campaign and the percentage of raised funds to be retained by the paid solicitor; and (iii) make available to the public the information contained in the financial report for a solicitation campaign filed by a paid solicitor.

Conn. Gen. Stat. §§21a-190b, 21a-190c, 21a-190f and 21a-190h, as amended by Conn. Pub. Act No. 05-101, §§1-5 (*effective June 7, 2005, except for the amendments to the paid solicitor provisions that are effective October 1, 2005*). [Ed. note. Please note that any organization registered on September 30, 2005, shall be deemed to be registered until the last day of the fifth month after the close of the fiscal year in effect on September 30, 2005.]

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