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## 2014 Legislative Session: Dark Clouds on the Horizon

The recently concluded 2014 legislative session of the Connecticut General Assembly finished with the enactment of a flurry of budget and tax legislation that was significantly influenced by eroding state budget projections and the impending state elections.

In the face of a dramatic reduction in the projected budget surplus for the current fiscal year, from in excess of \$500 million to less than \$50 million, and a projected aggregate deficit of \$2.8 billion for the 2016 and 2017 fiscal years, the Governor's proposed income tax rebate program of \$155 million was withdrawn. Enacted in its stead were tax collection measures, and selected tax benefits with 2015 or 2016 effective dates. Among the tax collection measures are provisions that accelerate to the 20th day of the month the reporting and payment of sales and use tax by retailers, authorize the Commissioner of Revenue Services to require delinquent taxpayers to remit sales tax on a weekly basis, and expedite the process by which the Commissioner can obtain the bank deposit information of delinquent taxpayers. In addition, the Connecticut Department of Revenue Services is conducting a Connecticut Corporation Business Tax Resolution Initiative for taxpayers looking to resolve corporation business tax issues for open years and/or to establish a basis upon which future corporation business tax returns will be filed, but such taxpayers must file a Participation Form with the Department by **July 15, 2014**.

With regard to the Connecticut personal income tax, new rules were adopted regarding the sourcing to Connecticut of income earned by nonresidents, particularly as it relates to income related to Connecticut property, business income and nonqualified deferred compensation. The exemption from the sales and use tax for nonprescription drugs and medicines was revived, but not until April 1, 2015, and the effective date for the exemption for clothing and footwear, enacted last year, was delayed to July 1, 2015. The General Assembly also extended the angel investor tax credit, made the manufacturing apprenticeship training tax credit available to pass-through entities (but only for sale purposes), and both limited and improved the manufacturing reinvestment account program for small manufacturers.

Despite repeated calls for stability in the state's tax policy, the Connecticut General Assembly enacted legislation calling for a study of the overall state and local tax structure, this time by a panel of experts in tax law, tax accounting, tax policy, economics and state, local and business finance. The panel is to develop recommendations regarding the modernization of state and local tax policy, structure and administration and, as part of the process, evaluate the impact and extent of tax policy upon "business and consumer decision-making."

This Alert summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published during the first months of 2014. Please contact any member of our State and Local Tax Practice Group if you have any questions regarding the new tax law changes or how they affect you and your business.

## INCOME TAX

### I. Legislation

**Nonresident Income from Connecticut Property.** A nonresident must now include in the calculation of his or her Connecticut taxable income the gain or loss from the disposition of an interest in a pass-through entity (i.e., a partnership, limited liability company or S corporation) that owns real property located in Connecticut that has a fair market value that equals or exceeds 50% of all of the assets of the entity on the date of the disposition of that interest by the nonresident. The legislation provides further that: (i) when calculating the 50% test, only assets owned by the entity for at least two years prior to the disposition shall be used in the determination of the fair market value of the assets; and (ii) the gain or loss that will be deemed derived from Connecticut sources from the disposition of the entity interest will be the product of (A) the total gain or loss for federal income tax purposes from such disposition multiplied by (B) a fraction, the numerator of which is the fair market value of all real property in Connecticut owned by the entity on the date of disposition, and the denominator of which is the fair market value of all of the assets of the entity on the date of disposition. Conn. Gen. Stat. §12-711(b), as amended by Conn. Pub. Act No. 14-155, §18 (*effective June 11, 2014, and applicable to taxable years commencing on or after January 1, 2014*).

**Apportionment of Business Income.** New legislation modifies how the income of a nonresident individual from a trade, profession or occupation that has receipts from the sale of property shall be apportioned to Connecticut for income tax purposes. In general, if a business is carried on partly within and outside of Connecticut, the proportion of the net amount of items of income, gain, loss and deduction attributable to the business in Connecticut is determined by multiplying such net amount by the average of the percentages of property, payroll and gross income in Connecticut. The gross income percentage is to be computed by dividing the gross receipts from sales of property or services earned within Connecticut by the total gross receipts from all sales of property or services (both within and outside of the state). Importantly, the legislation changes the sourcing rules for sales of property by sourcing the receipts from such sales to Connecticut if the property is delivered or shipped to a purchaser in Connecticut (regardless of the F.O.B. point or other conditions of sale). Gross receipts from sales of services will continue to be sourced to Connecticut when the services are performed by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise, with or sent out from, offices or branches of the business or other agencies or locations in Connecticut. Conn. Gen. Stat. §12-711(c), as amended by Conn. Pub. Act No. 14-155, §18 (*effective June 11, 2014, and applicable to taxable years commencing on or after January 1, 2014*).

**Nonresident Nonqualified Deferred Compensation.** The Connecticut source income of a nonresident individual includes his or her compensation from nonqualified deferred compensation plans attributable to services performed within Connecticut. New legislation provides that Connecticut source income from deferred compensation plans attributable to services performed in Connecticut shall include, but not be limited to, compensation required to be included in federal gross income under Internal Revenue Code Section 457A. The legislation largely codifies into law Section 12-711(b)-19 of the Regulations of Connecticut State Agencies. Conn. Gen. Stat. §12-711(a), as amended by Conn. Pub. Act No. 14-155, §17 (*effective June 11, 2014*).

**Connecticut Fiduciary Adjustment.** Effective for taxable years commencing on or after January 1, 2014, new legislation amends the calculation of Connecticut adjusted gross income for purposes of the state income tax paid by trusts and estates. In particular, the Connecticut fiduciary adjustment must now include the amount of any lump sum distribution received during the taxable year to the extent that the distribution is not includable in federal taxable income prior to deductions relating to distributions to beneficiaries. Conn. Gen. Stat. §12-701(a)(10), as amended by Conn. Pub. Act No. 14-155, §16 (*effective June 11, 2014, and applicable to taxable years commencing on or after January 1, 2014*).

**Angel Investor Tax Credit.** The angel investor tax credit program, previously scheduled to sunset on June 30, 2014, is extended to June 30, 2016. The program provides credits against the personal income tax for individuals investing at least \$25,000 in start-up, technology-based, Connecticut businesses approved for such credit-eligible investments by Connecticut Innovations, Incorporated (“CII”). The legislation requires CII to review annually the credit program’s effectiveness and report both to the Office of Policy and Management (“OPM”) and to the Commerce Committee. Conn. Gen. Stat. §12-704d, as amended by Conn. Pub. Act No. 14-47, §51 (*effective May 29, 2014, and applicable to taxable years commencing on or after January 1, 2014*).

**Teacher Retirement System Income.** Commencing in 2015, when calculating Connecticut adjusted gross income, an individual will be able to deduct from federal adjusted gross income a portion of the income received by the individual from the state teachers’ retirement system. For 2015, the deduction is 10% of such income; for 2016, the deduction is 25% of such income; and for 2017 and each year thereafter, the deduction is 50% of such income. Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 14-47, §50 (*effective July 1, 2015, and applicable to taxable years commencing on or after January 1, 2015*).

**Refund CHET Contributions.** New legislation allows a taxpayer to contribute any part of his or her state income tax refund to an individual savings plan established under the Connecticut Higher Education Trust (“CHET”) or to the new CHET Baby Scholars Fund. The Commissioner is to amend the income tax return form and instructions to notify taxpayers of the opportunity and to indicate their desire to contribute a refund, if any. Conn. Gen. Stat. §12-743, as amended by Conn. Pub. Act No. 14-217, §28 (*effective July 1, 2014*).

## II. Case

**Net Operating Loss Treatment.** In *Adams v. Sullivan*, 2014 Conn. Super. LEXIS 1818 (July 24, 2014), the plaintiff taxpayers sought to carryback a net operating loss (“NOL”) incurred in 2008 to offset gains reported on their Connecticut personal income tax returns for prior years and obtain a refund of the Connecticut taxes paid for those years. The plaintiffs sought to employ the NOL in the prior years to the full extent of their Connecticut adjusted gross income (“AGI”). The Commissioner countered that the NOL could only be used to offset Connecticut AGI for any prior year to the extent that the NOL was used by the taxpayers to offset federal taxable income for that year. The Tax Session of the Superior Court agreed with the Commissioner, noting that the lack of Connecticut statutory authority for individuals to deduct NOLs arrived at under federal tax law precluded the taxpayers from deducting NOLs from Connecticut AGI rather than from federal taxable income.

## CORPORATION BUSINESS TAX

### I. Administrative Pronouncement

**Connecticut Corporation Business Tax Resolution Initiative.** The Department of Revenue Services implemented in June a new Connecticut Corporation Business Tax Resolution Initiative. The Initiative is a voluntary program whereby taxpayers can seek to enter into a closing agreement to resolve certain corporation business tax issues for all open years and/or to establish a basis upon which future tax returns may be filed. Among the issues that may be resolved through the Initiative include disputes regarding: transfer pricing arrangements; intercompany transactions (and corresponding add-backs and exceptions); economic nexus; apportionment; and tax credits. A taxpayer interested in the Initiative was required to file by July 15, 2014, a one-page Participation Form providing certain information about the taxpayer and a summary of the corporation business tax issue(s) the taxpayer would like to have addressed. Receipt of the Participation

Form by the Department was to initiate a period of fact finding that, it was hoped, would result in a closing agreement that was to be executed on or before October 15, 2014, when the Initiative was to have ended.

## SALES AND USE TAX

### I. Legislation

**Sales Tax Remittance.** Two significant changes have been made to the statute governing the remittance of sales and use tax to the Department of Revenue Services. Under current law, a taxpayer is to remit sales tax on a monthly basis by the end of the next succeeding month unless the taxpayer's total tax liability for the twelve-month period ending on the preceding June 30th was less than \$4,000 (in which case the tax must be remitted by the taxpayer on a quarterly basis by the end of the next succeeding month after the quarter). New legislation generally accelerates the due date for the remittance of the tax to the 20th day of the month following the monthly or quarterly period. In addition, the Commissioner is now authorized to require a delinquent taxpayer to remit the tax collected during a weekly period (Saturday through Friday) on a weekly basis on or before the next succeeding Wednesday. The delinquent taxpayer, who shall still be required to file monthly or quarterly returns, will be notified by the Commissioner of the requirement to file on a weekly basis (including the manner and method of such requirement) and shall be required to do so for one year from the date set forth in the notice. The Commissioner is not authorized to extend the time for a delinquent taxpayer to make a return or pay any amount. Conn. Gen. Stat. §§12-414 and 12-432c, as amended by Conn. Pub. Act No. 14-155, §§14, 19 (*effective October 1, 2014*). [Ed. note. The acceleration of the due date to the 20th day of the month following the monthly or quarterly period has been delayed until 2015 by DRS administrative pronouncement. Please see the summary of DRS SN 2014(3) below.]

**Nonprescription Drugs and Medicines.** Effective for sales occurring on or after April 1, 2015, new legislation reinstates a sales and use tax exemption for sales of certain nonprescription drugs and medicines for use in or on the body, including: vitamin or mineral concentrates; dietary supplements; natural or herbal drugs or medicines; products intended to be taken for coughs, cold, asthma or allergies, or antihistamines; laxatives; antidiarrheal medicines; astringents; anesthetics; steroidal medicines; anthelmintics; emetics and antiemetics; antacids; and any medication prepared to be used in the eyes, ears or nose. The exemption expressly does not include cosmetics, dentifrices, mouthwash, shaving and hair care products, soaps or deodorants. An identical exemption was repealed in 2011. Conn. Gen. Stat. §12-412(120), as added by Conn. Pub. Act No. 14-47, §48 (*effective July 1, 2014, and applicable to sales occurring on or after April 1, 2015*). [N.B. The statutory reference is subject to change as the new exemption for state credit unions is assigned the same subsection.]

**Clothing and Footwear Exemption.** During the 2013 legislative session, the Connecticut General Assembly reinstated, effective June 1, 2015, an exemption from the Connecticut sales and use tax for the sale of any article of clothing or footwear intended to be worn about the human body the cost of which is less than \$50. Legislation adopted during the 2014 legislative session delays the effective date of the exemption for one month to July 1, 2015. Conn. Gen. Stat. §12-412(119), as amended by Conn. Pub. Act No. 14-47, §47 (*effective July 1, 2014*).

**Dealer or Repairer License.** New legislation prohibits the Commissioner of Motor Vehicles from granting or renewing a motor vehicle dealer or repairer license if the applicant or holder of the motor vehicle dealer or repairer license is delinquent in the payment of sales tax in connection with a business from which it is or was obligated to remit sales tax. The delinquency does not need to relate to the business for which the license is sought. Conn. Gen. Stat. §14-52a(b), as added by Conn. Pub. Act No. 14-130, §15 (*effective July 1, 2014*).

**State Credit Unions.** A new sales and use tax exemption is adopted, effective July 1, 2016, for sales of tangible personal property or services to, and the storage, use or other consumption of tangible personal property or services by, a Connecticut credit union. Federal credit unions currently are exempt from the Connecticut sales and use tax. Conn. Gen. Stat. §12-412(120), as added by Conn. Pub. Act No. 14-217, §196 (*effective July 1, 2016, and applicable to sales occurring on or after said date*). [N.B. The statutory reference is subject to change as the new exemption for nonprescription drugs and medicines is assigned the same subsection.]

**Sharon Hospital.** The sales tax exemption for sales of tangible personal property or services to a for-profit hospital for the construction and equipping of any facility for which a certificate of need was filed before, and is pending on May 12, 2004, is both expanded and limited in time. The new provision grants, for the fiscal years ending June 30, 2015 to June 30, 2017, an exemption for sales of tangible personal property or services to and by a “sole community hospital” for the exclusive purposes of such a hospital. The only hospital that currently qualifies for this exemption is Sharon Hospital (although non-profit charitable hospitals generally are exempt from Connecticut sales and use tax under a different statutory provision). Conn. Gen. Stat. §12-412(5)(C), as amended by Conn. Pub. Act No. 14-217, §223 (*effective July 1, 2014*).

## **II. Administrative Pronouncement**

**Due Date for Sales and Use Tax Returns and Payments.** The DRS announced that the acceleration of the due date for the remittance of sales and use tax to the 20th of the month will not take effect until 2015 and that additional guidance will be published in advance of the effective date. DRS Special Notice 2014(3), *2014 Legislative Changes to the Sales and Use Taxes, Room Occupancy Tax, Prepaid Wireless E 9-1-1 Fee and Admissions Tax*.

**One-Week Exclusion for Clothing and Footwear.** This year’s annual one-week sales and use tax exclusion for purchases of clothing and footwear that cost less than \$300 ran from Sunday, August 17, 2014, through Saturday, August 23, 2014.

## **TAX CREDITS AND PROGRAMS**

### **I. Legislation**

**Historic Home Rehabilitation Tax Credit.** There currently is a tax credit program for owners rehabilitating historic homes or taxpayers making contributions to qualified rehabilitation expenditures. The aggregate amount of all tax credits that may be reserved by the Department of Economic and Community Development (“DECD”) under the program may not exceed three million dollars in any one fiscal year. Under new legislation, effective July 1, 2015, 70% of the tax credits reserved must be for the rehabilitation of historic homes that are located in one of the 24 municipalities designated as “regional centers” in the state’s current five-year plan of conservation and development. Conn. Gen. Stat. §10-416 as amended by Conn. Pub. Act No. 14-217, §139 (*effective July 1, 2015*).

**Certified Historic Structure Rehabilitation Tax Credit.** New legislation sunsets the current tax credit program for the rehabilitation of certified historic structures (Conn. Gen. Stat. §10-416a) and the tax credit program for the rehabilitation of certified historic structures for mixed use or affordable housing (Conn. Gen. Stat. §10-416b), by providing that no tax credit can be reserved under either program on or after July 1, 2014. In their place, the legislation creates a new, broader tax credit program for the rehabilitation of any “certified historic structure” for (i) residential use of five units or more, (ii) mixed residential and non-residential use or (iii) non-residential use consistent with the historic character of such property or the district in which it is located. The amount of the tax credit that a taxpayer can seek to be reserved is 25% of the projected qualified rehabilitation expenditures (or 30% if it satisfies certain affordable housing requirements). As under

current law, the credits may be applied against the insurance premium, corporation business, air carrier, railroad company, cable and satellite television and hospital taxes. The amount of tax credits that may be reserved in any one year is capped at \$31.7 million, and the tax credits for any one project are capped at \$4.5 million. Conn. Gen. Stat. §§8-37III, 10-416a and 10-416b, as amended by Conn. Pub. Act No. 14-217, §§165-168 (*effective July 1, 2014, and applicable to income years commencing on or after January 1, 2014*).

**Manufacturing Apprenticeship Training Credit.** Effective July 1, 2015, new legislation extends the availability of the current credit against the corporation business tax for the conduct of a qualified apprenticeship training program in the manufacturing trade to S corporations, limited liability companies, limited liability partnerships and limited partnerships, and makes the credit transferable by such entities. Conn. Gen. Stat. §12-217g(a), as amended by Conn. Pub. Act No. 14-217, §251 (*effective July 1, 2015, and applicable to income years commencing on or after January 1, 2015*). [Ed. note. Such transfers of the credit will be necessary as the pass-through entities, themselves, are not subject to the corporation business tax and cannot directly use the credit.]

**Manufacturing Reinvestment Account Program.** New legislation makes significant changes to the Manufacturing Reinvestment Account Program. In general terms, the Program extends to a select number of small manufacturers chosen by the DECD a tax break, from both the corporation business tax and the personal income tax, for up to a maximum amount invested by such a manufacturer and withdrawn for qualifying purposes, such as capital investments and the training of employees. The changes made by the legislation include: (i) reducing the number of manufacturers that may participate in the program from 100 to 50; (ii) increasing the maximum number of employees a qualifying manufacturer may have from 50 to 150; and (iii) increasing the amount of the exemption from tax from 50% to 100% of the qualifying withdrawals made by a participating manufacturer. Conn. Gen. Stat. §32-9zz, as amended by Conn. Pub. Act No. 14-69, §1 (*effective July 1, 2014*); Conn. Gen. Stat. §§12-213(a)(9) and 12-701(a)(20), as amended by Conn. Pub. Act No. 14-69, §2-3 (*effective July 1, 2014, and applicable to taxable years commencing on or after January 1, 2014*).

**UTC Tax Credit Reinvestment.** New legislation, written effectively for the benefit of only United Technologies Corporation (“UTC”), authorizes the DECD Commissioner to enter into an agreement with UTC that will permit UTC to exchange and be compensated for up to \$400 million in unused state research and development tax credits to pay for eligible expenditures for qualifying, large industrial reinvestment projects certified by the Commissioner. The aggregate amount of payments that can be made are subject to an annual cap of \$20 million for the first five payment years, and of \$33,634,000 for the sixth and any subsequent year. The legislation additionally limits UTC’s ability to earn additional research and development tax credits during the exclusion period under the agreement with the DECD. To provide incentives for business growth and the retention and creation of jobs, the Commissioner is directed to analyze and, as appropriate, seek additional legislative approval for programs permitting other taxpayers to exchange accumulated credits. Conn. Pub. Act No. 14-2, §1 (*effective May 8, 2014*).

**New Markets Tax Credits.** New legislation allows state general obligation bond proceeds, with the approval of the Bond Commission and the State Treasurer, to pass to a proposed project through a “qualified community development entity” eligible for federal new markets tax credits (I.R.C. §45D). Conn. Gen. Stat. §3-20(z), as added by Conn. Pub. Act No. 14-98, §27 (*effective May 22, 2014*).

**Urban and Industrial Site Reinvestment Program.** The aggregate amount of tax credits available under the Urban and Industrial Site Reinvestment Program has been increased from \$650 million to \$800 million. Conn. Gen. Stat. §32-9t(i), as amended by Conn. Pub. Act No. 14-98, §44 (*effective July 1, 2014*).

## ESTATE TAX

### I. Legislation

**Double Taxation Relief.** Effective for estates of those decedents dying after January 1, 2015, the definition of “Connecticut taxable estate” is modified to exclude property that is also included in the Connecticut taxable estate as a lifetime gift. The legislation also provides a credit for any Connecticut gift taxes paid with respect to such gifts. This legislation corrects an anomaly under prior law that essentially taxed twice certain types of assets, such as transfers with a retained life estate. The new legislation makes the correction by (1) excluding from the definition of “Connecticut taxable estate” Connecticut taxable gifts that are otherwise included in the gross estate for federal estate tax purposes, and (2) providing a credit for Connecticut gift tax paid by the taxpayer or the taxpayer’s spouse for Connecticut taxable gifts when such gift tax is otherwise included in the decedent’s gross estate. Conn. Gen. Stat. §12-391(c) and (d), as amended by Conn. Pub. Act No. 14-155, §11 (*effective June 11, 2014*).

## PROPERTY TAX

### I. Legislation

**OPM Property Tax Pilot Program.** OPM is authorized to establish a pilot program for not more than five municipalities of varying sizes and in different regions of the state to allow for the assessment of a commercial property based on the net profits of the business or businesses occupying such property rather than the fair market value of the property. Where the property was vacant during the previous calendar year, the assessment shall be based upon the anticipated net profits. A participating municipality shall provide, by ordinance, for the assessment of not more than three commercial properties based on such net profits measure. The legislation creating the pilot program provides both for the publicizing of the program and for an annual report on the program by OPM to the Finance Revenue and Bonding Committee. Conn. Pub. Act No. 14-174, §§1-2 (*effective July 1, 2014, and applicable to assessment years commencing on and after October 1, 2014*).

**Homeownership Incentive Program.** Effective July 1, 2015, a new program has been created to encourage homeownership in sections of a municipality with relatively low homeownership rates. If a municipality adopted the property tax system under Conn. Gen. Stat. §12-62r, or a municipality votes to participate, the municipality shall designate two census blocks that have owner-occupied home rates of 15% or less. “Owner-occupied homes” do not include dwellings or common interest communities with more than three dwelling units. In general, homeowners and eligible renters living within these census blocks can qualify for up to 100% municipal property tax abatements and state income tax exemptions until such time as the number of owner-occupied homes within the homeownership incentive block meets or exceeds 49% of the dwelling units on the block (at which point the benefits are phased out over five years). Conn. Pub. Act No. 14-174, §3 (*effective July 1, 2015*).

**Machinery and Equipment Exemption.** New legislation makes changes to the exemption from property tax for machinery and equipment, including machinery and equipment used in connection with biotechnology. First, the exemption statute is amended to provide that the owner of the machinery or equipment must file on or before November 1st an annual request with the local assessor on a form prescribed by the assessor. Conn. Gen. Stat. §12-81(76), as amended by Conn. Pub. Act No. 14-183, §2 (*effective October 1, 2014, and applicable to assessment years commencing on or after said date*). Second, the statute that authorizes an assessor or board of assessors to extend the deadline to December 15th if an applicant requests the extension and pays a late fee, that is applicable for certain other machinery and equipment-related tax exemptions, is extended to the exemption for machinery and equipment. Conn. Gen. Stat.

§12-81k, as amended by Conn. Pub. Act No. 14-183, §3 (*effective October 1, 2014*). Finally, the statute that permits the legislative body of a municipality to grant a property exemption to an applicant, even where the applicant failed to file a timely request or an application for an extension of time, is extended to the exemption for machinery and equipment. The statute is additionally amended to provide that, if the legislative body is a town meeting, the exemption can be granted by the board of selectmen. Conn. Gen. Stat. §12-94e, as amended by Conn. Pub. Act No. 14-183, §4 (*effective October 1, 2014*).

**Farm, Open Space, Forest and Marine Heritage Land.** Under what is known as the “490 Program”, eligible farm, forest, open space and marine heritage land is assessed for property tax purposes based upon its current use, rather than its full market value; however, the law generally imposes a conveyance tax if such property is transferred within ten years of its classification as farm, forest, open space or marine heritage land. New legislation enacts a number of changes to the 490 Program including: (i) eliminating a conflict in the statutes regarding when a certified forester’s report and an application for property to be classified as forest land have to be filed; (ii) requiring the filing of a new, rather than revised, application for classification as 490 Program property when such property is transferred and not exempted from the conveyance tax; (iii) providing that when a transfer of 490 Program property is transferred in a manner not subject to the conveyance tax (e.g., for no consideration to a family member, upon death if there is no consideration paid, or resulting from foreclosures), then the 10-year period is measured from (A) the date on which the land received its 490 Program classification in the case of open space or maritime heritage land or (B) from the earlier the transferor received title to the land or the land received its 490 Program classification, in the case of farm or forest land; (iv) requiring individuals who obtain title to 490 Program land pursuant to a transfer that was exempt from the conveyance tax to notify the town assessor on a form prescribed for that type of land; and, in the case of transfer of forest land, a certified forester’s report evaluating the property’s eligibility unless such a report was submitted within the 10 years prior to that transfer; and (v) extending from November 30 to January 31 the annual deadline for a tax assessor to file with the town clerk a certificate for any land classified under the 490 Program for any year in which a revaluation of all real property becomes effective. Conn. Gen. Stat. §§12-107d(g), 12-504a(a), 12-504c and 12-504f, as amended by Conn. Pub. Act No. 14-33, §§3-6 (*effective October 1, 2014, and applicable to assessment years commencing on or after said date*).

**Revaluations and Phase-Ins Delayed.** The General Assembly again has adopted legislation permitting certain municipalities to delay the implementation, or the phase-in, of a revaluation that otherwise is required every five years. First, any municipality required to effect a revaluation of real property for the assessment year commencing October 1, 2013 or October 1, 2014, by vote of its legislative body, shall not be required to effect a revaluation prior to the assessment year commencing October 1, 2015. Second, any municipality that is in the process of phasing in a real property assessment increase or portion thereof as of July 1, 2014, by vote of its legislative body, may suspend such phase-in to not later than the assessment year commencing October 1, 2015. Conn. Pub. Act No. 14-19, §2 (*effective May 5, 2014*).

**Reinstatement of Rental Rebate Program for the Elderly and Permanently Disabled.** In 2013, the General Assembly adopted legislation providing for the phase out of the program that provides for the partial state refund of rent and utility bills paid by certain elderly and permanently disabled persons with qualifying income within certain threshold requirements. New legislation reinstates the program and returns its administration from the Department of Housing to OPM, which must report annually on the program to the Finance Revenue and Bonding Committee. If the Secretary of OPM determines that a renter was overpaid in connection with a rebate payment, the Secretary may reduce the amount of a subsequent rebate payment or payments to recoup the amount of the overpayment. Conn. Gen. Stat. §§12-120b, 12-170d, 12-170f, 12-170g, 12-170bb, 17b-90 and 8-37qqq as amended, and Conn. Gen. Stat. §§8-37ppp and 12-170ee as repealed, by Conn. Pub. Act No. 14-217, §§48-54 and 258 (*effective June 13, 2014, and applicable to applications made on or after April 1, 2014*).

**DMV Tax Delinquency Program.** The Department of Motor Vehicles (“DMV”) currently administers a program whereby it will not issue a registration for a motor vehicle or snowmobile if it has been notified by a local tax collector that property tax on such motor vehicle or snowmobile remains unpaid. Effective July 1, 2015, the statute governing such program is amended to: (i) eliminate the requirement that municipalities and other taxing authorities contribute to the costs of administering the program; and (ii) require the tax collector of each taxing authority to file monthly with the DMV a list of any outstanding delinquent taxpayers. Only if such a list is provided to the DMV is the DMV required to deny registration. Conn. Gen. Stat. §14-33, as amended by Conn. Pub. Act No. 14-19, §1 (*effective July 1, 2015*).

**Real Property Held in Trust.** Under current law, a municipality may, by vote of its legislative body on recommendation of its board of finance or equivalent body, provide limited property tax relief for the principal residence of senior and disabled homeowners. The governing statute is amended to expand the exemption to property held in trust for and occupied by such persons as their principal residence. Conn. Gen. Stat. §12-129n(a), as amended by Conn. Pub. Act No. 14-124, §1 (*effective October 1, 2014, and applicable to assessment years commencing on and after said date*).

**Historic Agricultural Structures.** A municipality now may abate the property taxes due for a term of up to 10 years with respect to an “historic agricultural structure” if the legislative body of the municipality, by ordinance, adopts the preservation program described in new legislation adopted this session. An application for abatement must be accompanied by an offer to grant a preservation easement to the municipality for the term of the abatement, and a certification that the owner shall maintain the structure in keeping with its historic integrity and character. The municipality is to establish a property tax payment for the structure to reflect the value of the public benefit received from the preservation easement. Conn. Pub. Act No. 14-101, §1 (*effective June 6, 2014*).

**Horses and Ponies.** Under current law, horses and ponies are considered personal property subject to the property tax; however, the law exempts from tax (i) horses and ponies used exclusively for farming and (ii) the first \$1,000 of assessed value for those horses and ponies used for other purposes. New legislation allows a municipality, by vote of its legislative body (or in a municipality where the legislative body is a town meeting, by vote of the board of selectmen), to fully exempt all horses and ponies of any value from property tax. Conn. Pub. Act No. 14-33, §1 (*effective October 1, 2014, and applicable to assessment years commencing on or after said date*).

**Farm Machinery.** Under current law, municipalities are required to exempt from property tax farm machinery, other than motor vehicles, with a fair market value up to \$100,000, and may expand that exemption up to an additional \$100,000. New legislation increases the mandatory exemption by providing that the exemption extends to farm machinery with an assessed value (which generally is 70% of fair market value) of \$100,000. Conn. Gen. Stat. §12-91, as amended by Conn. Pub. Act No. 14-33, §2 (*effective October 1, 2014, and applicable to assessment years commencing on or after that date*).

**Sewer Benefit Assessment Appeals.** Effective October 1, 2014, a municipality may adopt an ordinance authorizing the board of assessment appeals to hear sewer benefit assessment appeals related to a municipal sewer system. The appeal must be filed within 21 days of the filing of the assessment. An appeal can be taken from the decision of the board of assessment appeals to the Superior Court. Conn. Gen. Stat. §7-250, as amended by Conn. Pub. Act No. 14-183, §1 (*effective October 1, 2014*).

**Incentive Adjustment for Owner-Occupied Residences.** For assessment years commencing on and after October 1, 2016, any municipality that adopts a property tax system based upon residential assessment ratios may enact, by vote of its legislative body, an ordinance to establish a program to encourage homeownership by adjusting the annual assessment rates so that the rate for owner-occupied residential properties will be lower than the rate for nonownership-

occupied residential properties. Conn. Gen. Stat. §12-62r, as amended by Conn. Pub. Act No. 14-174, §4 (effective October 1, 2014).

**Retail Business Tax Abatement.** New legislation authorizes a municipality to enter into a written agreement fixing the assessment, for a period of years specified in an ordinance, for improvements (including the rehabilitation of existing structures) on land used or to be used for any retail business in an area designated in such ordinance. Conn. Gen. Stat. §12-65b, as amended by Conn. Pub. Act No. 14-174, §5 (effective October 1, 2014). The same legislation also permits a municipality, by affirmative vote of its legislative body, to enter into a written agreement fixing the assessment of personal property located at a wholesale and retail business. Conn. Gen. Stat. §12-65h, as amended by Conn. Pub. Act No. 14-174, §6 (effective October 1, 2014).

## **II. Cases**

**Proper Appellant.** In Fairfield Merrittview Limited Partnership v. Norwalk, 149 Conn. App. 468, cert. granted, 314 Conn. 901 (2014), the Connecticut Appellate Court reversed a lower court's decision granting a taxpayer's appeal from an excessive assessment on the basis that the wrong party had taken the appeal to the Board of Assessment Appeals and had initiated the appeal to the Superior Court. An entity named Fairfield Merrittview Limited Partnership had filed the appeal to the Board of Assessment Appeals and the Court from an October 1, 2008 assessment even though a deed recorded on the land records showed that the partnership had transferred the subject property to Fairfield Merrittview SPE, LLC on June 12, 2007. The partnership amended the court tax appeal to add the limited liability company as an additional plaintiff, and argued that the amendment cured the defect and that the two entities had the same beneficial owners. Although the Superior Court ruled that the appellants had standing to bring the appeal, the Appellate Court disagreed holding that the property owner is the proper party to bring the appeal, the partnership did not own the property as of the valuation date, and the limited liability company did not establish that it was the same entity as the partnership. Since a party must have standing for the court to have subject matter jurisdiction, the Appellate Court directed that the appeal be dismissed.

**Apportionment of Tax Payments.** In American Tax Funding, LLC v. Basher, 147 Conn. App. 493 (2014), the plaintiff sought to foreclose on municipal tax liens relating to taxes due for the 2001-2005 tax years that had been sold to it by the City of Danbury. The defendant raised as a defense to the action that the defendant had made a payment of \$12,500 to the plaintiff pursuant to an agreement that the payment would be applied to the liens for each of the five tax years. The plaintiff moved for summary judgment as to the counts based on the 2004 and 2005 tax years, however, arguing that, pursuant to Conn. Gen. Stat. §12-144b, the partial payment was applied to the oldest liens first, paying off the 2001 and 2002 liens in their entirety, and partially paying off the 2003 lien. Since the defendant could not proffer any evidence of the alleged agreement to apportion the payment over all years, the trial court granted summary judgment for the plaintiff on the counts relating to the 2004 and 2005 assessment years because there was no factual dispute that the liens for the later years had not been paid. The Connecticut Appellate Court affirmed the judgment.

**Clerical Omission or Mistake.** Conn. Gen. Stat. §12-60 permits an assessor or a board of assessment appeals to correct any "clerical omission or mistake" in the assessment of taxes not later than three years following the tax due date. In JBRV, LLC v. Stonington, 2014 Conn. Super. LEXIS 253 (Jan. 31, 2014), the assessor retroactively reassessed one lot ("Lot 1B") when, as a result of a tax appeal of an assessment of the adjoining lot ("Lot 1A") it was discovered that the assessor had mistakenly assumed that a building located on Lot 1A was actually on Lot 1B. The owner of Lot 1B challenged the reassessment asserting that the error was not a "clerical omission or mistake" and the Superior Court agreed granting the appeal. The Court ruled that a "clerical omission or mistake" is more in the nature of an error in the recording of numbers, and not a substantive error made by the assessor or the taxpayer. The key factor was the intent of the assessor at the time the assessment was recorded, and not what the assessor would have done with the benefit of

hindsight or additional information.

**Tax Sale Challenge.** The plaintiff in JJT&M, Inc. v. Oxford, 2014 Conn. Super. LEXIS 213 (Jan. 31, 2014) brought an action against the Town of Oxford and 66 Hawley Road, LLC (“Hawley”), the successor to a third party who had purchased the plaintiff’s former property at a tax sale. The plaintiff alleged that the Town’s assessor had engaged in a number of improper acts resulting in the over-assessment of the property and its subsequent foreclosure and sale. Hawley moved to strike the count in the complaint asserted against it on the grounds that Conn. Gen. Stat. §12-159 validates any tax sale unless the property owner alleges that the property owner did not receive notice of the sale or “the property was not by law liable to be sold to satisfy the tax . . . .” The Court granted the motion to strike because the plaintiff did not allege that it did not have notice of the sale and there was no suggestion that the property was not liable for sale to satisfy the tax lien. The plaintiff’s allegations went to whether the assessment was valid and proper and not whether, if the assessment was valid, the property could be the subject of a tax sale.

**Exhaustion of Administrative Remedies/Equal Protection.** In Pipkin v. Carvalho, 2014 U.S. Dist. LEXIS 64729 (D. Conn. 2014), the taxpayer brought an action claiming violations of the Fourteenth Amendment to the United States Constitution by the City of Bridgeport and its assessor based upon their failure to reduce the assessed value of the taxpayer’s property for the 2005-2007 assessment years. The District Court granted summary judgment for the defendants on the grounds that the taxpayer (i) had failed to exhaust her state administrative remedies by timely appealing the relevant assessments; and (ii) had not proffered any evidence that the defendants selectively treated the taxpayer because of her race or gender.

**Exempt Owner and Lessee.** In Generations Willimantic, LLC v. Windham, 2014 Conn. Super. LEXIS 758 (Apr. 4, 2014), the Superior Court denied a motion to strike all four counts of a tax appeal filed by the owner and the lessee of real property, both of which are tax-exempt organizations. As part of its ruling, the Court noted that legislation enacted in 2007 amended Conn. Gen. Stat. §12-81(7), the general property tax exemption for certain tax-exempt organizations. Section 12-81(7) formerly provided for a tax exemption only for property owned or held in trust for a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes if the property was used exclusively for carrying out one or more of such purposes or for the preservation of open space land. The 2007 legislative amendment provided further that real property will still be eligible for the exemption regardless of whether it is used by another corporation organized exclusively for scientific, educational, literary, historical or charitable purposes. Accordingly, the Court concluded that the appeal stated a cause of action for which relief could be granted.

**Burden of Proof.** In Ionescu v. Stratford, 2014 Conn. Super. LEXIS 1228 (May 14, 2014), the Superior Court held that a taxpayer failed to sustain his burden of proof in an appeal from a property tax assessment by testifying himself as to the value of the property and the use of an internet valuation service (“Zillow”) which was not accepted by the Court for valuation purposes. The Court agreed to a slight reduction in the assessment to account for testimony by a real estate agent regarding certain defects in the structure on the property.

**Res Judicata.** In Redding Life Care, LLC v. Redding, 2014 Conn. Super. LEXIS 977 (Apr. 22, 2014), the plaintiff sought to appeal the assessment of its property on the October 1, 2011 grand list. The identical property previously had been the subject of an appeal from an assessment on the October 1, 2007 grand list, the year of the last town-wide revaluation of property in Redding. The 2007 tax appeal was denied by the Connecticut Supreme Court in Redding Life Care, LLC v. Redding, 308 Conn. 87 (2013), affirming the trial court’s conclusion that the plaintiff’s valuation of its property lacked credibility “because it was based on calculations and a formula that did not reflect a reasonable value of the real estate.” The Court rejected the plaintiff’s assertion that the 2007 appeal never reached the question of the property’s value. The Court instead concluded that the denial of the 2007 appeal, based upon the plaintiff’s failure to sustain its burden of establishing with credible evidence that the property had been overvalued, was a decision on the merits. Accordingly, an

appeal of the valuation for any subsequent assessment year would be barred by the doctrine of *res judicata* until there was a new town-wide revaluation.

**Small Claims Action.** In a procedural twist, a taxpayer filed a small claims action seeking to challenge a property tax assessment for a motor vehicle the taxpayer claimed he never owned. In Flynn v. Norwalk Dept. of Finance, 2014 Conn. Super. LEXIS 808 (Apr. 7, 2014), the Superior Court denied two motions to dismiss filed by the defendants based upon respectively, the taxpayer's failure to sign the original small claims suit papers under oath and the taxpayer's failure to bring his action within one year of the wrongful assessment pursuant to Conn. Gen. Stat. § 12-119. As to the first issue, the Superior Court found that the defendant had not established that the absence of an oath implicates subject matter jurisdiction, and to the extent it is a personal jurisdictional matter, it had been waived by the defendants by virtue of their three-year delay in raising the issue. As for the defense based upon the one-year statute of limitations contained in section 12-119, the Court concluded that a time limit is not jurisdictional in nature and, therefore, cannot be raised by a motion to dismiss.

**Interim Assessment Appeal.** In Reznick v. Milford, 2014 Conn. Super. LEXIS 1646 (July 7, 2014), the plaintiff property owners filed an appeal with the Superior Court under both Conn. Gen. Stat. §12-117a and Conn. Gen. Stat. §12-119 from an interim assessment made in August 2012 on their residence. The defendant municipality filed a motion to dismiss the count brought pursuant to section 12-117a on the ground that the plaintiffs had failed first to file an appeal with the Board of Assessment Appeals. The plaintiffs protested that such an administrative appeal would have been futile because, by the time the interim assessment was made, the statutory time period for the filing of an appeal with the Board of Assessment Appeals had expired for the 2011 Grand List. The Court granted the motion to dismiss because, although the statutory period for an administrative appeal had passed, the municipality contended it would have convened a meeting of the Board of Assessment Appeals had an appeal been filed.

**Open Space.** In Hampden v. Ridgefield, 2014 Conn. Super. LEXIS 1534 (June 20, 2014), the plaintiffs sought to obtain open space classification for a portion of two properties, both of which had dwellings. Based upon its own open space rules, the municipality had concluded that in a three-acre zone, a parcel must consist of at least six acres if any portion of that parcel is to be eligible for an open space classification, and that only unimproved land on such a parcel in excess of the mandatory three-acre lot size for the zone may be classified as open space. The Court agreed with the municipality with respect to one of the plaintiffs' properties, finding that a parcel consisting of 7.42 acres and one dwelling could only qualify as open space with respect to 4.42 acres. The Court overruled the municipality's application of its open space rule with respect to a second parcel consisting of 15.47 acres and two dwellings because the two dwellings existed prior to the adoption of zoning in the municipality and therefore were pre-existing legal non-conforming uses. The Court found that 12.47 acres of the second parcel should be classified as open space.

## **MISCELLANEOUS TAXES**

### ***I. Legislation***

**State and Local Tax Study.** The General Assembly directed the chairs of the Finance, Revenue and Bonding Committee to convene a panel of experts in tax law, tax accounting, tax policy, economics and state, local and business finance to review the state's overall state and local tax structure. The members of the panel were appointed jointly by the Governor and the chairs and ranking members of the Committee. Although the panel's membership is not to exceed 15, many of the leaders of the Connecticut General Assembly, the Secretary of OPM and the Commissioner of Revenue Services, or their designees, are made ex-officio, non-voting members. The panel is to consider and evaluate options to modernize tax policy, structure and administration with respect to (i) efficiency, (ii) cost of administration, (iii) equity, (iv) reliability, (v)

stability and volatility, (vi) sufficiency, (vii) simplicity, (viii) incidence, (ix) economic development and competitiveness, (x) employment, (xi) affordability and (xii) overall public policy. All such options are to include consideration and evaluation of the impact and extent of such tax policy upon “business and consumer decision-making.” The panel is to submit a report not later than January 1, 2015, but may request an extension of time to continue its work, but not beyond January 1, 2016. Conn. Pub. Act No. 14-217, §137 (*effective June 13, 2014*). [Ed. note. The panel convened its first meeting on September 29, 2014, and elected as its co-chairs William Dyson and William Nickerson, two former state legislators.]

**Repeal of Tax Regulations.** A number of state tax regulations have been repealed by statute including the following (each a reference to the sections of the Regulations of Connecticut State Agencies): (i) §12-2-2a (conferences and hearings regarding taxes); (ii) §12-2-3a (procedure for requesting the promulgation, amending, or repeal of a regulation); (iii) §12-2-4a (petition for declaratory ruling on applicability of any statute or regulation); (iv) §12-2-10 (request for disclosure of confidential information); (v) §12-242-8 (changes of accounting period for corporation business tax); (vi) §12-242-9 (changes of accounting basis); (vii) §12-313-18a (cigarette tax definitions); (viii) §12-349-1 (payments under retirement or pension plans, trusts or contracts); (ix) §12-407(2)(i)(BB)-1 (enumerated services to other than industrial, commercial or income-producing real property); (x) §12-426-6 (circulating libraries as retailers for sales tax purposes); (xi) §12-430(7)-1 (taxation of services to real property by nonresident contractors); (xii) §12-449-4a (alcoholic beverages taxes, withdrawal from internal revenue bonded warehouse); (xiii) §12-449-12a (alcoholic beverages taxes, inventories); (xiv) §12-494-3 (real estate conveyance tax returns); (xv) §12-638-3 (referral to agency overseeing implementation under Neighborhood Assistance Act program); (xvi) §12-638-5 (proof of expenditures for charitable purposes under Neighborhood Assistance Act); (xvii) §12-700(b)-1 (calculation of income tax for nonresident individuals); (xviii) §12-701(a)(2)-1 (defining nonresident for purpose of imposing income tax); (xix) §12-701(a)(20)-1 (defining adjusted gross income of a resident individual for purposes of income tax); (xx) §12-706(c)-1 (income tax: withheld amounts to be credited against income tax liability of employees); (xxi) §12-708-2 (income tax: change of accounting period); (xxii) §12-711(b)-2 (income tax: income and deductions from Connecticut sources); (xxiii) §12-712(a)(1)-1 (partnership income and deductions of a nonresident partner derived from Connecticut sources); (xxiv) §12-714(b)-1 (calculation of tax for trust or estate in year with no federal distributable net income); (xxv) §12-717-5 (designation of part-year resident taxpayers to whom special accrual rules apply); (xxvi) §12-723-2 (tax filing extension for certain business entities); (xxvii) §12-727(a)-1 (tax filing on magnetic media requirements); (xxviii) §12-740-7 (income tax: returns must be made and filed even if not mailed by the department); (xxix) §12-740(c)-1 (records retention for income tax filings). Conn. Pub. Act No. 14-187, §54 (*effective June 11, 2014*). [Ed. note. Article Second of the Connecticut Constitution allows the General Assembly to delegate regulatory authority to the executive branch, subject to the disapproval of the Regulation Review Committee. There remains a question as to whether the Connecticut Constitution permits the General Assembly to repeal regulations that already have been approved.]

**Taxpayer Lists.** Under current law, the Commissioner of Revenue Services is required to prepare an annual report for the Governor of delinquent taxpayers. New legislation requires the Commissioner to indicate on the list, when a taxpayer is being removed, whether the removal is due to payment in full of all taxes, interest and penalties, a negotiated settlement or a determination that the tax is uncollectible. The legislation additionally authorizes the Commissioner to publish for public inspection a list of those persons who have applied to the Commissioner for a license, permit or certificate and whose applications were denied, and those persons who were issued a license, permit or certificate but which has been revoked, suspended or not renewed. The list is to be arranged by tax type and may include the date of denial, revocation, suspension or non-renewal, and the reasons for such action. Conn. Gen. Stat. §12-7a, as amended by Conn. Pub. Act No. 14-155, §13 (*effective July 1, 2014*).

**Identification of Taxpayer Assets.** The Commissioner has been directed to enter into agreement with financial institutions to develop and operate a data match system using automated data exchanges. The Commissioner shall provide to each financial institution a list of taxpayers who owe taxes to the state (and with respect to which all appeals

rights have expired or lapsed). Within 90 days of receipt of that list, a financial institution is to provide the Commissioner with the name of each delinquent taxpayer who has an account at the institution and a statement as to whether the account balance exceeds \$1,000. The legislation exempts the disclosure by the Commissioner from the tax records confidentiality restrictions of Conn. Gen. Stat. §12-15, and provides liability protection for a financial institution that discloses information to the Commissioner. Conn. Pub. Act No. 14-155, §15 (*effective June 11, 2014*); Conn. Gen. Stat. §36a-42, as amended by Conn. Pub. Act No. 14-155, §20 (*effective June 11, 2014*).

**Biennial Tax Expenditure Report.** New legislation extends, from January 1, 2015 to February 1, 2016, the deadline by when the Office of Fiscal Analysis must prepare and submit the next biennial tax expenditure report to the Finance, Revenue and Bonding Committee. The report provides certain information relating to each tax exemption, deduction or credit resulting in less tax revenue to the state or municipalities. Conn. Gen. Stat. §12-7b(e), as amended by Conn. Pub. Act No. 14-81, §2 (*effective October 1, 2014*).

**Commission on Connecticut's Leadership in Corporation and Business Law.** The General Assembly has established a Commission on Connecticut's Leadership in Corporation and Business Law as part of the Legislative Department. The Commission's charge is to: (i) develop and recommend policies to establish Connecticut as a leading and highly desirable jurisdiction in which to organize a business entity and adjudicate matters related to corporation and business law; (ii) develop and recommend policies to attract and encourage business entities to organize under Connecticut law and establish and maintain their headquarters and significant operations in Connecticut; (iii) examine the impact of statutory and common law in Connecticut and other states on the organization and retention of business entities in Connecticut and recommend legislation or other administrative or policy changes to achieve the purposes described in clauses (i) and (ii) above; (iv) develop and recommend policies to enhance and improve the Connecticut Business Corporation Act; (v) develop and recommend policies to establish a docket in the Judicial Branch with exclusive jurisdiction over business matters; and (vi) develop and recommend policies to assist the Secretary of the State to develop best-in-the-nation business services and support. In conducting its work, the Commission is to consider the impact of: (i) the Connecticut Business Corporation Act; (ii) state business taxes; (iii) Judicial Branch operations on business entity organization; (iv) the Office of the Secretary of the State and the state's procedures for business entity organization and filing; and (v) each of Delaware and New York law, courts and other statutory and administrative provisions in each such state's laws on its respective economy and economic development. The members of the Commission are to consist of the chair of the Business Law Section of the Connecticut Bar Association, the Commissioner of Economic and Community Development or a designee; the Chief Court Administrator or a designee, and other members selected by the Governor and the leadership of the Connecticut General Assembly. The Commission is to submit a ten-year action plan to the General Assembly by October 1, 2015. Conn. Pub. Act No. 14-89, § 50 (*effective October 1, 2014*).

**Applicants for Financial Assistance.** Effective October 1, 2014, the DECD Commissioner and the board of directors of Connecticut Innovations, Incorporated are required, when determining whether to grant any economic development financial assistance, to consider whether the applicant for such financial assistance or any principal of such applicant has any amount of taxes due and unpaid to the state or a municipality. Conn. Pub. Act No. 14-85, §1 (*effective October 1, 2014*).

**Foreclosure by Market Sale Conveyance.** Under current law, in a foreclosure proceeding involving real property, a court may issue a judgment of foreclosure by sale or strict foreclosure. New legislation adds another option for foreclosures of a first mortgage on a one-to-four family residential property that is the mortgagor's principal residence. The option is called a "foreclosure by market sale," which is a court-approved sale upon the mortgagee's (lender's) request and with the mortgagor's consent. The legislation sets forth the requirements for such a foreclosure and exempts transfers made pursuant to a foreclosure by market sale from the real estate conveyance tax. Conn. Gen. Stat. §12-

498(a)(9), as amended by Conn. Pub. Act 14-84, §13 (*effective October 1, 2014*).

**Tobacco Sale Penalties.** New legislation amends the penalty provisions applicable to sales of cigarettes or tobacco products to minors to: (i) provide that a minor cannot be subject to the greater civil penalty for second or subsequent offenses unless they occur within 24 months of the first violation; and (ii) provide that the civil penalty of \$200 that can be assessed against an individual, or owner of an establishment with a vending machine, who or that has sold, given or delivered such cigarettes or tobacco products to a minor will not, in fact, be assessed if the individual successfully completes an online tobacco prevention education program administered by the Department of Mental Health and Addiction Services within 30 days after the Commissioner's finding of a violation. Conn. Gen. Stat. §12-295a, as amended by Conn. Pub. Act No. 14-76, §2 (*effective October 1, 2014*). The legislation also imposes the following fines on anyone selling cigarettes except in unopened packages of at least 20 cigarettes that originated from the manufacturer and bear the legally required health warning: (i) a maximum fine of \$200 for a first offense; (ii) \$300 for a second offense within 24 months of the first offense; and (iii) \$500 for each subsequent offense within 24 months of the first offense. Conn. Pub. Act No. 14-76, §3 (*effective October 1, 2014*).

**Motor Vehicle Fuels Tax on Gaseous Fuels.** On or before June 15, 2014, and on or before June 15th each year thereafter, the Commissioner of Revenue Services is required to publish certain information concerning the computation of the motor vehicle fuels tax on fuel in gas form (e.g., natural gas or propane). The information must include the conversion factor used to determine the liquid gallon equivalent of such fuel, which conversion factor must be consistent with the applicable federal standard. As applied to propane, the new law is limited in application to only that propane used in a motor vehicle owned by the purchaser of the propane and stored in a cylinder or tank owned by the purchaser. Conn. Pub. Act No. 14-155, §2 (*effective June 11, 2014*). See DRS Special Notice 2014(2), *Changes to the Conversion Factors on Motor Vehicle Fuels Occurring in Gaseous Form*.

**Vessels.** During the legislative session, the General Assembly adopted the Uniform Certificate of Title for Vessels Act effective January 1, 2016. As part of the Act, the DMV is authorized to require that an application for a certificate of title be accompanied by payment or evidence of payment of any or all fees and taxes payable by the applicant under Connecticut law. The requirement also extends to an application for a certificate of title in the event of a transfer of title to a secured party or to a transfer by operation of law (e.g., because of death, divorce, merger, dissolution, bankruptcy). Conn. Pub. Act No. 14-63, §§7, 18-19 (*effective January 1, 2016*).

**Vessel Fuel Tax Exemptions.** A new exemption from the sale of petroleum products gross earnings tax is enacted for bunker fuel oil, intermediate fuel, marine diesel oil and marine gas oil to be used in any vessel primarily engaged in interstate commerce. Conn. Gen. Stat. §12-587(b)(2), as amended by Conn. Pub. Act No. 14-222, §9 (*effective from passage*). In addition, a new exemption from the motor vehicle fuels tax is enacted for fuel sold for use in any vessel (i) having a displacement exceeding 4,000 dead weight tons, or (ii) primarily engaged in interstate commerce. Conn. Gen. Stat. §12-458(a)(3), as amended by Conn. Pub. Act No. 14-222, §10 (*effective June 13, 2014*).

**Admissions Tax Exemptions.** A new exemption from the admissions tax is adopted for: (i) any event at the XL Center in Hartford, Conn. Gen. Stat. §12-541(a) as amended by Conn. Pub. Act No. 14-47, §49 (*effective July 1, 2014*); and (ii) for any event at the Webster Bank Arena in Bridgeport. Conn. Gen. Stat. §12-451(a), as amended by Conn. Pub. Act No. 14-217, §225 (*effective July 1, 2014*).

**Dry Cleaning Establishment Remediation Program.** The Dry Cleaning Establishment Remediation Program provides grants to dry cleaning businesses to prevent, contain and remediate pollution from hazardous chemicals used in the business. The grants, which are administered by the DECD, are funded through a 1% surcharge on dry cleaning gross retail receipts. New legislation eliminates the annual allocation of funds from the Program account to pay for DECD

administration costs, which was based upon the greater of \$100,000 or 5% of the maximum balance of the account in the preceding year. Conn. Gen. Stat. §12-263m(e), as amended by Conn. Pub. Act No. 14-217, §47 (*effective July 1, 2014*).

**Heating Fuel Dealers.** Not later than June 15th of each year, the Commissioner of Revenue Services must notify the Department of Consumer Protection of any outstanding tax delinquencies owed to the state by any heating fuel dealer. Conn. Pub. Act No. 14-51, §8 (*effective May 30, 2014*).

## **II. Cases and Administrative Pronouncements.**

**Conveyance Tax and Federal Exemption.** In *Bridgeport v. Federal National Mortgage Assn.*, 2014 U.S. Dist. LEXIS 55509 (D. Conn. 2014), the City of Bridgeport sought to maintain a class action on behalf of itself and other Connecticut municipalities asserting that the defendants Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Company (“Freddie Mac”) and Federal Housing Finance Agency (“FHFA”), as conservator for Fannie Mae and Freddie Mac, are liable for the Connecticut conveyance tax on deeds recorded in this state. Citing to numerous decisions issued by courts in other jurisdictions, including the United States Court of Appeals for the Third, Fourth, Sixth, Seventh and Eighth Circuits, the District Court dismissed the lawsuit. Quoting specifically the exemption statute applicable to Fannie Mae, the District Court noted that federal legislation exempts each of the three defendants “from all taxation now or hereafter imposed by any State, . . . or by any county, . . . except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.” The District Court held that the exception to the exemption was not applicable to conveyance or transfer taxes, so the defendants were not subject to the Connecticut conveyance tax.

**Satellite Television.** In late 2013, the Tax Session of the Superior Court issued a Memorandum of Decision addressing the application of the gross earnings tax on satellite television providers. In *Dish Network LLC v. Sullivan*, 2013 Conn. Super. LEXIS 2692 (Dec. 2, 2013), the Court held that the tax does not apply to the earnings of the satellite television provider from equipment, installation and maintenance, as well as from Dish Magazine, as these amounts are not “from” video transmission. The Court ruled further, however, that payment-related fees (such as late charges, reconnection charges and returned check charges) and DVR service fees are subject to the gross earnings tax.

**Motor Vehicles Fuel Tax.** Effective as of July 1, 2014, the motor vehicles fuel tax on diesel fuel is reduced from 54.9 cents per gallon to 54.5 cents per gallon. DRS Announcement 2014(5).

## **ADMINISTRATIVE PRONOUNCEMENTS**

### **Announcements**

- AN 2014(1), Corrective Guidance Regarding Filing Requirements for Risk Retention Groups
- AN 2014(2), Assessments Refunded by the Connecticut Insurance Guaranty Association
- AN 2014(3), Annual List of Distributors For Motor Vehicle Fuels Tax Purposes
- AN 2014(3.1), Quarterly List of Distributors For Motor Vehicle Fuels Tax Purposes
- AN 2014(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
- AN 2014(4), Annual Revision of Forms TPM-1, TPM-2, and TPM-3
- AN 2014(5), Motor Vehicle Fuels Tax Rate on Diesel Fuel Decreased Effective July 1, 2014

### **Informational Publications**

- IP 2014(1), Connecticut Circular CT Employer’s Tax Guide
- IP 2014(2.2), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax



- IP 2014(3.2), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax
- IP 2014(4.2), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements
- IP 2014(5.2), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes
- IP 2014(6.2), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics
- IP 2014(7), Is My Connecticut Withholding Correct?
- IP 2014(8), Connecticut Tax Guide for Payers of Nonpayroll Amounts
- IP 2014(13), Attorney Occupational Tax and Client Security Fund Fee

### **Policy Statements**

- PS 2014(1), Tax Exemptions for Certain Water Pollution Control Equipment

### **Special Notices**

- SN 2014(2), Changes to the Conversion Factors on Motor Vehicle Fuels Occurring in Gaseous Form
- SN 2014(3), 2014 Legislative Changes to the Sales and Use Taxes, Room Occupancy Tax, Prepaid Wireless E 9-1-1 Fee and Admissions Tax

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## **Our State and Local Tax Practice**

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

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

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