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2017 Legislative Session: Refusing to Budge(t)

The 2017 regular legislative session ended at midnight on June 7, 2017, with Governor Malloy and the Connecticut General Assembly unable to agree on a biennial budget for the period from July 1, 2017 through June 30, 2019, or on a strategy for how the state will address the estimated \$5 billion deficit projected for that period.

According to a recent report issued by the Office of Fiscal Analysis, a deficit mitigation plan, expenditure reductions and an increased net revenue projection have combined to reduce the projected deficit to \$64.7 million for the fiscal year ended June 30, 2017. Income tax and sales tax revenues were meaningfully below budget and, should the projected deficit be realized, the state will be compelled to transfer the amount of the deficit from the Budget Reserve Fund to the General Fund (leaving approximately \$171 million in the “rainy day fund”). The General Assembly refused to pass either the Governor’s proposed biennial budget or an interim budget for the first quarter of the 2017-2018 fiscal year. As a result, on June 30, 2017, Governor Malloy signed Executive Order No. 58, declaring that an “emergency exists due to the lack of an approved appropriations act” and providing that all expenditures from July 1, 2017 through the approval of an appropriations act be authorized only upon the Governor’s approval of a request by the Office of Policy and Management for periodic spending authorizations. To address the projected deficit, it is anticipated that there will be a sharp reduction in state funding for a number of programs. Shortly before this Alert went to print, Governor Malloy announced that it is unlikely that any budget agreement can be reached before July 18th.

Despite the much-publicized budget dysfunction, the General Assembly did enact significant tax-related legislation, and the Connecticut Department of Revenue Services (“DRS”) published important regulatory guidance for Connecticut taxpayers. The angel investor tax credit has been expanded and new rules have been adopted for withholding on pension and annuity payments. The new receipts sourcing rules, effective for corporations in 2016 and for pass-through entities in 2017, were the subject of an extensive Special Notice drafted by the DRS with input from tax practitioners and helpful examples for most taxpayers. The General Assembly approved a DRS legislative proposal that imposes new permitting and other requirements on tax preparers and facilitators (generally applicable to individuals other than attorneys, certified public accountants and enrolled agents), changes the ordering rule for the application of partial payments, imposes a limitations period on penalty waiver requests and extends the effective period of tax warrants. The sales tax laws have been amended to reduce the effective period of new tax permits, establish a significant civil penalty for the failure to produce timely books and records, and impose more onerous filing and security obligations on delinquent taxpayers. The DRS orally has represented that it will seek to impose economic nexus in the application of the Connecticut sales and use tax.

This Alert summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published by the DRS during the first six months of 2017. Please contact a member of our State and Local Tax Practice Group if you have questions regarding the new tax law changes or how they may affect you and your business.

INCOME TAX

I. Legislation

Angel Investor Tax Credit. The statute governing the angel investor tax credit program has been amended. In general, the program allows qualifying accredited investors who invest at least \$25,000 in a business certified by Connecticut Innovations, Inc. ("CI") to be eligible for a personal income tax credit equal to 25% of their investment (provided that the total tax credits allowed to any investor cannot exceed \$250,000). Effective July 1, 2017, the statute now: (i) permits *all businesses* with a principal place of business in Connecticut to seek to be certified by CI (under former law, only businesses in certain emerging technologies could be certified); and (ii) generally prohibits CI from reserving more than 75% of the angel tax credits available during a fiscal year for investments in emerging technology businesses (unless credits remain available after April 1st in any fiscal year). Currently the annual limit on credits is \$3 million, and tax credits are not to be reserved for any investment made on or after July 1, 2019. Conn. Gen. Stat. §12-704d, as amended by Conn. Pub. Act 17-110, §1 (*effective July 1, 2017*).

Sourcing of Income from Real Property. A nonresident individual must pay Connecticut personal income tax on gains or losses from the sale or disposition of an interest in a partnership, limited liability company or Subchapter S corporation that owns real property that is located in Connecticut and that has a fair market value that equals or exceeds 50% of all of the assets of the entity on the date of sale or disposition of that nonresident individual's interest in that entity. The governing statute has been amended to provide that the sourcing rule applies if the relevant entity owns "directly or indirectly" such real property. Conn. Gen. Stat. §12-711(b)(6), as amended by Conn. Pub. Act No. 17-147, §36 (*effective July 7, 2017*).

Withholding on Pension and Annuity Payments. Current law permits Connecticut residents receiving pensions or annuities to instruct the payer to withhold Connecticut income tax. Effective January 1, 2018, each payer of pension and annuity distributions, including distributions from an employer pension, an annuity, a profit-sharing plan, a stock bonus, a deferred compensation plan, an individual retirement arrangement, an endowment or a life insurance contract, will be required to deduct and withhold Connecticut income tax from such distributions if the payer (i) maintains an office or transacts business in Connecticut, and (ii) makes payment of any amount taxable in Connecticut to a resident individual. The method of determining the amount to be withheld shall be the same as the method used by employers with respect to wages, except for "lump sum distributions". A "lump sum distribution" is taxable at the highest marginal rate unless (i) any portion of the distribution previously was subject to tax, or (ii) the distribution is a rollover that is effected as a direct trustee-to-trustee transfer. A "lump sum distribution" is a payment from a payer to a resident payee of the payee's entire account balance, exclusive of any other tax withholding and any administrative charges and fees. Conn. Gen. Stat. §§12-705 and 12-707(g), as amended by Conn. Pub. Act No. 17-147, §§6, 8 (*effective January 1, 2018*).

Foreign Entity Nonqualified Deferred Compensation. Effective for taxable years commencing on or after January 1, 2017, a taxpayer must include in Connecticut adjusted gross income any compensation required to be recognized under section 457A of the Internal Revenue Code of 1986, as amended ("Code"), that is attributable to services performed within Connecticut to the extent it is not otherwise properly includable in gross income for federal income tax purposes. In general, Code section 457A requires the inclusion of nonqualified deferred compensation from certain foreign corporations or partnerships with foreign or exempt partners when there is no substantial risk of forfeiture of the rights to such compensation. Conn. Gen. Stat. §12-701(a)(20)(A), as amended by Conn. Pub. Act No. 17-147, §2 (*effective July 1, 2017, and applicable to taxable years commencing on or after January 1, 2017*).

Delinquent Withholding Agent Security. Effective October 1, 2017, the Commissioner can request the posting of security by any employer or payer required to deduct and withhold income tax if that employer or payer: (i) owes such taxes and they have been due or payable for a period of 90 days or longer and for which any administrative or judicial remedies have been exhausted or lapsed; or (ii) failed to file one or more withholding tax returns. The Commissioner shall determine the form and amount of security, but the amount cannot exceed six times the employer's or payer's estimated liability for the prior twelve-month period or the employer's or payer's liability for the next twelve-month period. Upon notice to the person who deposited the security, the Commissioner may sell the security at public auction if it becomes necessary to do so to recover any tax, interest or penalty due. Conn. Gen. Stat. §12-707, as amended by Conn. Pub. Act No. 17-147, §5 (*effective October 1, 2017*).

Nonpayroll Information Returns. Effective January 1, 2018, payers of nonpayroll amounts that are not subject to Connecticut income tax withholding will be required annually to provide by January 31 to each payee a written statement on a form prescribed by the Commissioner showing the amount of nonpayroll amounts paid to the payee during the immediately previous year. The payer additionally must file a copy of the written statement with the Commissioner on or before such January 31 date. Conn. Gen. Stat. §12-706, as amended by Conn. Pub. Act No. 17-147, §7 (*effective January 1, 2018*).

Information Returns. The deadline for the filing of information returns with the DRS for personal income tax purposes (e.g., Forms W-2, W-2G, 1099-MISC) has been accelerated from the last day of February to January 31. Conn. Gen. Stat. §12-727(a), as amended by Conn. Pub. Act No. 17-147, §38 (*effective July 7, 2017, and applicable to taxable years commencing on or after January 1, 2017*).

Mental Health Community Investment Account. Effective July 1, 2017, a taxpayer may contribute any part of a refund of personal income tax to the mental health community investment account. This new, separate General Fund account has been established to obtain contributions for improving mental health programs and services designed to support people diagnosed with mental health conditions. Conn. Gen. Stat. §12-743, as amended by Conn. Pub. Act No. 17-147, §43 (*effective July 1, 2017*).

II. Case Law

Business Income v. Taxpayer's Own Account. In Sobel v. Commissioner, 2017 WL 1240119 (New Britain Super. Ct. March 7, 2017) (*appeal filed March 27, 2017 AC 40273), the Tax Session of the Superior Court was required to consider whether certain income of a taxpayer was income "from property employed in a business, trade or profession" carried on in New York, and subject to taxation by New York, or income from the trading of securities for the taxpayer's own account, and subject to taxation by the jurisdiction in which the taxpayer resides. The taxpayer, who was a resident of Connecticut for at least eighteen months of the two years in question, was a part owner of a limited liability company that had an office in New York City and was a general partner of two limited partnerships. Both limited partnerships directly or indirectly had third party investors, and the general partner managed the assets of the limited partnerships, which consisted primarily of U.S. Treasury bills and stock index options. As compensation for its management services, the general partner received a percentage of the capital gain or profit that each limited partnership earned from trading its assets. The Court concluded that the income earned by the general partner, part of which was allocated to the taxpayer, was income from property employed in a "business, trade or profession" carried on in New York. Accordingly, the taxpayer properly reported and paid tax on the income to New York and took a credit for that tax on the taxpayer's Connecticut income tax return under Conn. Gen. Stat. §12-704. The Court rejected the Commissioner's argument that, by virtue of the

assets involved and the general partner's compensation as a percentage of gain and profit, the relevant income was from the taxpayer trading on his own account. The Court further ruled that the taxpayer had effectively changed his domicile to New York in the middle of the second year, such that, if on appeal its ruling regarding the sourcing of the income was overturned, the assessment for the second income year still had to be reduced proportionately because the taxpayer was only a part-year Connecticut resident.

III. Administrative Pronouncements

New Apportionment and Sourcing Rules. In Special Notice 2017(1), the DRS sets forth guidance on the practical application of the new apportionment and market sourcing rules effective for income years commencing on or after January 1, 2017. The new apportionment rules apply to income from a business, trade, profession or occupation that is carried on or has nexus both within and outside of Connecticut. The Special Notice details how a taxpayer should source receipts from: the sale of tangible personal property; the rental, lease or license of tangible personal property; the sale of services; the rental, lease or license of intangible property; and the sale or rental of real property. Taxpayers who provide financial services are directed to utilize the financial services apportionment and sourcing rules under the corporation business tax to source their receipts from financial services.

Sales and Use Tax

I. Legislation

Sales Tax Permits. The effective period of a Connecticut sales tax permit issued to a retailer will be reduced from the current five years to two years for any permit issued on or after October 1, 2017. Conn. Gen. Stat. §12-409(c), as amended by Conn. Pub. Act No. 17-147, §3 (*effective October 1, 2017*).

Annual Return Filers. The statute governing the remitting of sales and use taxes and the filing of sales and use tax returns has been clarified as it relates to annual filers. In general, if a taxpayer collects and remits sales tax of less than \$1,000 for the twelve-month period beginning July 1st and ending June 30th, the taxpayer may file its return annually by January 31st for sales reported during the previous calendar year. Conn. Gen. Stat. §12-414, as amended by Conn. Pub. Act No. 17-147, §4 (*effective January 1, 2018*).

Delinquent Taxpayers. Under current law, the Commissioner has the authority to give written notice to and require a delinquent taxpayer to remit the tax collected during a weekly period on a weekly basis (regardless of whether the taxpayer otherwise would be required to remit on a monthly or other basis). The law has been amended to require the delinquent taxpayer either to: (i) submit an election, within two business days of receipt of the Commissioner's notice, to remit tax through a "certified service provider" (i.e., a service provider certified by the Streamlined Sales Tax Governing Board); or (ii) establish, within 30 days after receipt of the Commissioner's notice, a separate account at a financial institution for the deposit of all sales tax receipts. The election to retain a certified service provider or to establish a separate account is irrevocable for the period the taxpayer is required to remit taxes on a weekly basis. If the taxpayer timely elects to remit tax with a certified service provider, the taxpayer must contract with, and start remitting sales tax through, that provider within 30 days after receipt of the Commissioner's notice. If, instead, the taxpayer establishes a separate bank account, the taxpayer must: (i) use the account designation "[Name of taxpayer], Trustee, Special Fund in Trust for the State of Connecticut, Department of Revenue Services, Under Section 12-408 of the Connecticut General Statutes"; (ii) provide to the Commissioner, upon request, specified information about the account; and (iii) provide, as trustee, written consent to the financial institution for the disclosure of account-related information to the Commissioner.

Taxes then must be deposited into the segregated account not later than two business days after their collection or receipt. The Commissioner is further authorized, subject to consultation with representatives of the banking industry as to the content of the notice required, to obtain account information from the financial institution, serve notice and obtain payment from the account (if the Commissioner determines that collection of tax will be jeopardized), and request that the Attorney General bring an action to compel such payment if the financial institution refuses to do so. Conn. Gen. Stat. §12-414, as amended by Conn. Pub. Act No. 17-147, §4 (*effective January 1, 2018*).

Security for Taxes. Under current law, the Commissioner may require any person to deposit such security as the Commissioner determines to secure that person's compliance with the sales and use tax laws. The statute governing such authority has been amended to provide that such security shall only be required where that person either (i) owes sales and use taxes which have been finally due and payable for a period of 90 days or longer and for which any administrative or judicial remedies or both, have been exhausted or have lapsed, or (ii) has failed to file three or more returns required under those laws. Conn. Gen. Stat. §12-430(a), as amended by Conn. Pub. Act No. 17-147, §44 (*effective July 7, 2017*).

Production of Records. The Commissioner has the authority to require a person to produce books, papers or records for examination and inspection. Under new legislation, if a person fails to produce such materials by the specified deadline in the Commissioner's written notice, the Commissioner may impose a civil penalty of \$500 per violation (and each distinct violation, and each day of a continued violation, is deemed a separate offense). Conn. Pub. Act No. 17-147, §46 (*effective July 1, 2017*).

II. Administrative Pronouncements

Home Service Contracts or Warranties. In Ruling No. 2017-1, the DRS considered the application of the sales and use taxes to "home service contracts" or "home warranties" entered into with purchasers of residential real property. These contracts generally provide that the company will service, repair or replace certain operational or structural failures in the home for a certain period of time. The DRS concluded that: (i) if the residential real property is being used as income-producing property, the entire price of the contract is subject to sales and use taxes (Conn. Gen. Stat. §12-407(a)(37)(I)); and (ii) if the residential real property is being used as a residence for the owner of the property, the sale of the contract is subject to sales and use taxes, if separately stated, to the extent the contract provides for repairs to tangible personal property or electrical devices. Conn. Gen. Stat. §12-407(a)(37)(Q) and (CC).

Economic Nexus and Sales Tax. In a press release dated March 28, 2017, the DRS stated that "current state law requires out of state sellers of goods that have an economic presence in the state to collect and remit sales tax." The press release indicated that the state is stepping up its efforts to collect sales taxes not paid by on-line and other out of state retailers with a significant volume of sales in Connecticut. The DRS's position is apparently based, in part, on Conn. Gen. Stat. §12-407(a)(15)(A) (adopted in 1989) which defines "engaged in business in the state" as including engaging in the regular or systematic solicitation of sales of tangible personal property in this state by various means, including by "computer data base" or "other communication system", for the purpose of effecting retail sales of tangible personal property, provided one hundred or more retail sales from outside Connecticut to destinations within Connecticut are made during the twelve-month period ended on the September 30th immediately preceding the monthly or quarterly period with respect to which liability for tax is determined. The Commissioner has indicated that taxpayers who fall within this interpretation of economic nexus and who have not been collecting and remitting sales tax should consider taking advantage of Connecticut's voluntary disclosure agreement process. **[Ed. note.** Connecticut has joined a growing number of states seeking to challenge, or otherwise redefine, the physical presence standard affirmed by the United

States Supreme Court in Quill Corp. v. North Dakota, 504 U.S. 298 (1992). The DRS enforcement position unfortunately places taxpayers in jeopardy until the courts again consider the application of nexus in the context of a sales and use tax.]

Corporation Business Tax

I. Legislation

Corporation Business Tax Return Due Date Extended. Effective for income years commencing on or after January 1, 2017, a corporation business tax return shall be due on or before the fifteenth day of the month next succeeding the due date of the corresponding federal income tax return for the income year (i.e., May 15th for a calendar-year taxpayer) or, in the case of a company that is not required to file a federal income tax return for the income year, on or before the fifteenth day of the fifth month next succeeding the end of the income year. The period for calculating estimated tax underpayment penalties has been similarly extended. Conn. Gen. Stat. §§12-222(b) and 12-242d(d), as amended by Conn. Pub. Act No. 17-147, §§24-25 (effective July 7, 2017, and applicable to income years commencing on or after January 1, 2017).

Captive Real Estate Investment Trusts. Under current law, a captive real estate investment trust (“REIT”) is not entitled to a deduction for dividends paid in calculating its net income for Connecticut corporation business tax purposes. A captive REIT is generally one in which more than 50% of the voting power, beneficial interests or shares are owned or controlled, directly or constructively, by a single Subchapter C corporation. The statute defining a captive REIT has been amended to provide that any voting power, beneficial interests or shares in a REIT that are directly owned or controlled by a segregated asset account of a life insurance company shall not be taken into account for purposes of determining whether a REIT is a captive REIT. Conn. Gen. Stat. §12-213(a)(28), as amended by Conn. Pub. Act No. 17-147, §23 (effective July 7, 2017).

II. Administrative Pronouncements

New Apportionment and Sourcing Guidance. In Special Notice 2017(1), the DRS sets forth guidance on the practical application, for purposes of the corporation business tax, of the apportionment rules, and the new market sourcing rules effective for income years commencing on or after January 1, 2016. In order to apportion net income, a taxpayer must conduct business or have means both within and outside of Connecticut. The Special Notice outlines the general, single-factor formula based upon sales receipts, and the specific apportionment formulae for certain industries or activities (e.g., financial services, limited partnership interests, securities brokerage services). The Special Notice also details how a taxpayer should source receipts from the sale of tangible personal property, the rental, lease or license of tangible personal property, the sale of services, the rental, lease or license of intangible property and the sale and rental of real property. Taxpayers who provide financial services are directed to utilize the financial services apportionment rules under the corporation business tax to source their receipts from financial services.

Estate and Gift Tax

I. Case Law

QTIP Elections and Marital Trusts. In Estate of Helen Brooks v. Commissioner, 325 Conn. 705 (2017), the Connecticut Supreme Court rejected arguments that the value of a marital trust, created by a decedent who was a Florida resident at the time of his death, should not be included in the taxable estate of the surviving spouse who was a Connecticut resident at the time of her death. The executors of the Estate of Helen B. Brooks argued that the value of a trust created for the

benefit of Mrs. Brooks by her late husband, who was a Florida resident at the time of his death, and for which her late husband's executor made a federal QTIP (qualified terminable interest property) election so as to qualify the trust for the federal estate tax marital deduction, should not be included in the Connecticut taxable estate of Mrs. Brooks. The Court rejected the Estate's argument that the Connecticut gross estate of the surviving spouse should not include QTIP property where Connecticut had not allowed a marital deduction for such property in the estate of the first to die spouse because that spouse was not a Connecticut resident at the time of his death. The Court emphasized that Conn. Gen. Stat. §12-391(c)(1) defines the Connecticut taxable estate by reference to the federal gross estate, which includes the marital trust. In addition, the Court rejected the argument that the QTIP trust should not be included in the surviving spouse's estate because she did not "own" such property at death. Specifically, prior to a 2013 amendment, Conn. Gen. Stat. §12-391(d)(3) provided that Connecticut had the jurisdiction to tax only that intangible personal property "owned by" a Connecticut resident decedent. The executors contended that, because Mrs. Brooks did not "own" the assets of the marital trust, Connecticut did not have the jurisdiction to impose Connecticut estate tax on those assets. The Court rejected that argument, finding that the plaintiff's reliance on the 2013 statutory change which now refers to assets "included in the gross estate of the decedent" was clarifying in nature, not a substantive change in the law and, therefore, should be applied retroactively.

Property Tax

I. Legislation

New Personal Property Exemptions. Effective October 1, 2017, the following property is now exempt from municipal property taxation: (i) cellular mobile telephones, computers and mobile electronic devices (as defined in Conn. Gen. Stat. §10-222d) used by or belonging to a family; and (ii) machinery and equipment (A) used in the process of coloring or mixing paint, including, but not limited to, spectrographic color matching machines, automatic colorant dispensers, paint shakers, and computer equipment related to such machinery and equipment, and (B) used by retailers that offer paint for sale at retail in Connecticut. Conn. Gen. Stat. §12-81(33), as amended, and Conn. Gen. Stat. §12-81(78) as added, by Conn. Pub. Act No. 17-105, §§10-11 (*effective October 1, 2017, and applicable to assessment years commencing on or after October 1, 2017*).

Brownfields Land Banks. New legislation establishes a framework for organizing and operating local nonprofit land banks ("brownfield land banks") to acquire and remediate brownfields and sell the remediated property for development. A Connecticut brownfield land bank is not required to pay any taxes or assessments upon or in respect of any revenues or property received, acquired, transferred or used by such bank, or upon or in respect of the income from such revenues or property. The legislation also allows a municipality to forgive all or a portion of the principal and interest due on delinquent property taxes for a property the brownfield land bank acquires or plans to acquire in the municipality. Conn. Pub. Act No. 17-214, §5 (*effective July 1, 2017*). Conn. Gen. Stat. §12-81r, as amended by Conn. Pub. Act No. 17-214, §7 (*effective July 1, 2017*).

Municipal Leased Property Exemption. The exemption from property tax for property belonging to or held in trust for a municipal corporation and used for a public purpose is extended to personal and real property leased to a municipal corporation and used for a public purpose, provided such leased property is located within the boundaries of the municipal corporation. Conn. Gen. Stat. §12-81(4), as amended by Conn. Pub. Act No. 17-199, §1 (*effective October 1, 2017*).

Public-Private Partnership Projects. The General Assembly extended from January 1, 2016 to January 1, 2020, the authority of the Governor to approve not more than five public-private partnership projects. The projects are to be an

agreement between a state executive branch or quasi-public agency and a private entity to finance, design, construct, develop, operate or maintain certain eligible facilities. The law exempts from property tax any property developed, operated or held by a private entity pursuant to such an agreement. Conn. Gen. Stat. §4-256(a), as amended by Conn. Pub. Act No. 17-149, §1 (*effective July 7, 2017*).

Veterans-Related Property Exemptions. Current law provides for a number of mandatory and optional property tax exemptions for veterans and their surviving spouses and minor children. New legislation increases the income thresholds for the municipal option of tripling the state-mandated property tax exemption under Conn. Gen. Stat. §12-81(20). In addition, a municipality, upon approval of its legislative body, may now provide that any veteran who is ineligible for an exemption under sections 12-81(19) - (21), and whose qualifying income does not exceed (i) the state income limit for a single person for other veteran property tax exemptions annually set by OPM (\$35,200 for individuals and \$42,900 for married couples in 2017, which includes inflation adjustments), or (ii) an amount established by the municipality (which amount may not exceed the state income tax limit by more than \$25,000), shall be entitled to an exemption from property tax. At the option of the municipality, the exemption may be in an amount up to \$5,000 or up to 5% of the assessed value of the property. Conn. Pub. Act No. 17-189, §§2-4 (*effective October 1, 2017, and applicable to assessment years commencing on or after October 1, 2017*).

Gold Star Parents and Spouses Exemption. New legislation authorizes a municipality, upon approval by its legislative body, to provide for an exemption from property tax for a parent or surviving spouse of a person who was killed in action while performing active military duty with the armed forces. To be eligible, the qualifying income of the parents or surviving spouse cannot exceed (i) the state income limit for a single person for other veteran property tax exemptions annually set by OPM (\$35,200 for individuals and \$42,900 for married couples in 2017, which includes inflation adjustments), or (ii) an amount established by the municipality (which amount may not exceed the state income limit by more than \$25,000). At the option of the municipality, the exemption may be in an amount up to \$25,000 or in an amount up to 10% of the assessed value of the property. Conn. Pub. Act No. 17-65, §1 (*effective October 1, 2017, and applicable to assessment years on or after October 1, 2017*).

C-PACE Program Liens. The statute governing the Connecticut Green Bank's Commercial Property Assessed Clean Energy Program (C-PACE) is amended to clarify the status of a "benefit assessment lien" used to secure the financing of "energy improvements" under the program. By law, C-PACE benefit assessment liens take precedence over all liens or encumbrances except municipal property tax liens. The amendment specifies that, when a property subject to a municipal property tax lien is foreclosed or enforced by levy and sale, the benefit assessment lien for any payments due and owing on the date of the judgment or levy and sale will be extinguished but the lien for payments due after the judgment or levy and sale survives. Conn. Gen. Stat. §16a-40g, as amended by Conn. Pub. Act No. 17-201, §1 (*effective October 1, 2017*).

PILOT Payments and MDC Assessments. Effective May 16, 2017, the Secretary of the Office of Policy and Management is required to withhold, in whole or in part, a grant in lieu of taxes due to a municipality if the municipality has failed to pay timely a sewer use assessment to the Metropolitan District Commission (the "MDC"). The withholding is the amount due plus a five percent surcharge, and the Secretary is to remit the amount withheld for the unpaid assessment to the MDC if the assessment remains unpaid. The Secretary may retain the 5% surcharge withheld. Conn. Pub. Act No. 17-1, §4 (*effective May 16, 2017*).

Municipal Foreclosure Actions. Under new legislation, an action by a municipality to foreclose on a tax lien pursuant to Conn. Gen. Stat. §12-181, on or after January 1, 2018, shall be privileged with respect to assignment for trial. Conn. Pub. Act No. 17-126, §1 (*effective January 1, 2018*).

II. Case Law

Timely Service of Appeal. In Chestnut Point Realty, LLC v. East Windsor, 324 Conn. 528 (2017), the taxpayer filed its property tax appeal complaint with the Superior Court within sixty days of the mailing of the decision of the Board of Assessment Appeals, but the marshal did not serve the complaint, citation and recognizance on the Town until after that sixty-day period. The Supreme Court affirmed the dismissal of the appeal as untimely, holding that Conn. Gen. Stat. §12-117a requires the service of the appeal on the town within the sixty-day period. In a decision published on the same day, Kettle Brook Realty, LLC v. East Windsor, 324 Conn. 544 (2017), the Supreme Court reached the same conclusion in a similar case, relying upon the reasoning in the Chestnut Point Realty decision.

Multitenant Office Building. In Fairfield Merrittview Limited Partnership v. Norwalk, 172 Conn. App. 160, cert. denied, 326 Conn. 901 (2017), the Connecticut Appellate Court affirmed the sustaining of the taxpayer's appeal of an assessment on a multitenant office building. In doing so, the Court confirmed the discretion of the trial court, in applying the income capitalization method of valuation, to: (i) determine the property's net rentable area when conflicting documentation is provided; (ii) exclude from the valuation formula interest income from a money market account held by the taxpayer on the basis that it was unrelated to the property; and (iii) exclude other alleged income of the taxpayer the source of which the municipality could not establish.

Miscellaneous Taxes

Tax Preparers and Facilitators. A new regulatory structure has been established for tax preparers and facilitators. A "tax preparer" is an individual who provides federal or state personal income tax preparation services for a fee or other consideration. A "facilitator" is a person that individually or in conjunction or cooperation with another person: (i) solicits the execution of, processes, receives or accepts an application or agreement for a refund anticipation loan or refund anticipation check; (ii) serves or collects upon a refund anticipation loan or refund anticipation check; or (iii) in any other manner, facilitates the making of a refund anticipation loan or refund anticipation check. The new law sets forth a list of actions that a person providing tax preparation services or acts as a facilitator shall be prohibited to engage in effective October 1, 2017, including: (i) imposing any fee or other consideration in the making or facilitation of a refund anticipation loan or check other than the fee charged by the creditor or bank that originated such loan or check; (ii) engage in unfair or deceptive acts or practices in the making or facilitating of a refund anticipation loan or check; (iii) directly or indirectly arrange for a third party, other than an originating creditor or bank, to impose any interest, fee or charge related to a refund anticipation loan or check; (iv) include certain provisions in any documents provided with respect to a refund anticipation loan or check (i.e., a hold harmless clause, confession of judgment clause, any assignment of or order for payment of wages, a waiver of any provision of the federal or state taxpayer bill of rights, or waiver of the right to equitable relief or relief on a class-wide basis); (v) take or arrange for a creditor to take a security interest in any property interest of the taxpayer other than the proceeds of the tax refund to secure payment of a refund anticipation loan; (vi) engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee; (vii) fail or refuse to return to a taxpayer, within a reasonable period of time, any documents or copies of documents provided by the taxpayer; (viii) fail or refuse to provide to a taxpayer, for the taxpayer's own records, a copy of any document requiring the taxpayer's signature, within a reasonable time after the taxpayer signs the document; (ix) fail to maintain a copy of any return prepared for a taxpayer for a period of four years from the date of completion or the due date of the return, whichever

is later; (x) require or allow a taxpayer to sign blank or incomplete tax returns; (xi) require a taxpayer to designate the tax preparer or facilitator as the payee for a federal or state personal income tax refund; or (xii) require a taxpayer to designate and use a specific depository institution or debit card or stored value card provider for the purposes of receiving a federal or state personal income tax refund. Finally, the new law requires each tax preparer preparing a return to sign the return and include his or her preparer tax identification number issued by the IRS. The Commissioner may impose a civil penalty of not more than \$500 for each violation of any of the foregoing rules. Conn. Pub. Act No. 17-147, §15 (effective October 1, 2017).

Tax Preparer and Facilitator Permits. In addition to the foregoing set of rules governing all tax preparers and facilitators, the Connecticut General Assembly adopted a new permit requirement for certain non-exempt tax preparers or facilitators effective January 1, 2019. In general, a non-exempt tax preparer or facilitator will need to obtain from the Commissioner a tax preparer permit and/or facilitator permit which will be renewable every two years. An applicant will need to satisfy certain criteria, including the provision of evidence satisfactory to the Commissioner that the applicant has the requisite experience, education or training to perform the services and, on and after January 1, 2020, a certificate of completion of an annual filing season program administered by the Internal Revenue Service. The fee for an initial application shall be \$100, and for a renewal shall be \$50, and the Commissioner is to render a decision on the application within 60 days. Individuals exempt from this new permit requirement include: (i) an accountant holding an active license issued by the State Board of Accountancy, or a valid and active permit, license or equivalent professional credential issued by another state or jurisdiction of the United States; (ii) an attorney and any person engaged in providing tax preparation services under the supervision of an attorney; (iii) an enrolled agent; (iv) an individual employed by a local, state or federal government agency while engaged in the performance of that person's official duties; (v) an individual serving as an employee of or assistant to a tax preparer or a person who is exempt from the permit requirement, in the performance of his or her official duties for the tax preparer or exempt person; (vi) an individual employed, full-time or part-time, to act as a tax preparer solely for the business purposes of such individual's employer; (vii) a person acting as a fiduciary on behalf of an estate; and (viii) an IRS-qualified tax preparer. Conn. Pub. Act No. 17-147, §16 (effective October 1, 2018).

Tax Preparer Disclosure. Effective October 1, 2018, prior to providing tax preparation services, any tax preparer requiring a permit from the Commissioner to provide tax preparation services (see the preceding summary description) shall provide to any person requiring such services a written disclosure that includes: (i) the tax preparer's name, principal business address and primary business telephone number; (ii) an estimate of the total charge for completion of all requested tax preparation services; and (iii) a warranty that the tax preparer shall, by encryption or other means, provide for the secure storage and transmission of a taxpayer's personal and tax record information. Conn. Pub. Act No. 17-147, §17 (effective October 1, 2018).

Tax Preparer and Facilitator Discipline. Effective October 1, 2018, the Commissioner may deny the issuance of an initial or renewal permit, or suspend or revoke a tax preparer or facilitator permit, for violations of the requirements set forth in the two preceding summary paragraphs or any of the following acts or omissions: (i) engage in a criminal act resulting in the conviction of the tax preparer or facilitator or in unprofessional conduct resulting in a final disciplinary action by the federal government, any state or jurisdiction of the United States, any governmental agency or a professional licensing board or similar entity, provided such act or conduct is substantially related to qualification as a tax preparer or facilitator; (ii) procure or attempt to procure a tax preparer and/or facilitator permit by material misrepresentation or fraud; or (iii) violate, attempt to violate or assist in or abet the violation of any of the above-described rules governing tax preparers and facilitators. The discipline may be by issuing a written warning, suspending a permit for a period not to exceed one year or revoking a permit. The subject tax preparer or facilitator has a right to notice of the proposed discipline and may request a hearing. Conn. Pub. Act No. 17-147, §18 (effective October 1, 2018).

Partial Payments. Effective July 1, 2017, the statute governing how a partial payment is to be credited against state tax obligations is changed. Notwithstanding any instructions by the payor to the contrary, a partial payment is to be applied first to any penalties unless a waiver has been requested and approved. Then, contrary to former law, any amount in excess of such penalty is to be applied first, to any tax outstanding tax, and then to the interest on such tax. Conn. Gen. Stat. §12-39h, as amended by Conn. Pub. Act No. 17-147, §1 (*effective July 1, 2017*).

Penalty Waiver Request Period. New legislation removes the authorization of the Commissioner to waive all or part of a penalty when the penalty waiver request is received more than one year from the date a notice of such penalty was first sent to the person on whom the penalty was imposed. In the case of any penalty that is reported by a taxpayer on a return filed by the taxpayer, the filing date of the return shall be considered the date on which the person was notified of the penalty. Conn. Pub. Act No. 17-147, §39 (*effective July 1, 2017, and applicable to waiver requests received on or after July 1, 2017*).

Tax Warrants. The statute governing the issuance by the DRS of tax warrants on any intangible personal property of a taxpayer is amended. The statute now allows the warrant for tax due to include an order to continually deliver, during the 180 days following the issuance of the warrant or until the tax is fully paid, whichever occurs earlier, all intangible property that is due and that becomes due to the person owing the tax. Conn. Gen. Stat. §12-35(b), as amended by Conn. Pub. Act No. 17-147, §10 (*effective July 1, 2017*).

DRS Data Match Program. In 2016, the General Assembly authorized the establishment of a data match system by the DRS and financial institutions to facilitate the DRS obtaining account information of delinquent taxpayers. New legislation amends the governing statute to compel the DRS and financial institutions to enter into agreements regarding the administration of the system, subject to the right of the Commissioner to waive that requirement for any bank. The Commissioner will provide each financial institution a list of delinquent taxpayers with their addresses, taxpayer identification numbers and other information as may be necessary or convenient for the administration of the data match system. Not later than 90 days after receipt of such list, the financial institution must provide the account information for those delinquent taxpayers who maintain an account at that financial institution, including the account number and balance in each such account. The new legislation now expressly authorizes the financial institution to share the return information it receives from the Commissioner with (i) a service provider engaged by the financial institution to carry out the data processing and data receipt and transmission functions, to the extent necessary for the financial institution to comply with the data match system requirements, and (ii) an authorized representative of a governmental regulatory authority having jurisdiction over the financial institution, to the extent required by such representative in the course of such representative's duties. Any individual who receives such return information pursuant to these exceptions may not further disclose such return information. Conn. Gen. Stat. §12-39cc, as amended by Conn. Pub. Act No. 17-147, §21 (*effective July 7, 2017*).

IRS Forms 1099-K. Effective for returns due for calendar years commencing on or after January 1, 2017, any reporting entity that is required to file with the Internal Revenue Service Forms 1099-K, *Payment Card and Third Party Network Transactions*, shall file a duplicate of those information returns with the DRS not later than 30 days thereafter in such form and manner as prescribed by the Commissioner. Each failure to timely file such duplicate return is subject to a \$50 penalty for each month due which such failure continues, subject to an annual maximum penalty of \$250,000 for a reporting entity. Conn. Pub. Act No. 17-147, §9 (*effective July 1, 2017, and applicable to information returns due for calendar years commencing on or after January 1, 2017*).

Tobacco Products Tax Successor Liability. Effective July 1, 2017, a purchaser or assignee of the business or stock of goods of a distributor or unclassified importer of tobacco products must withhold a sufficient amount of the purchase price to pay all tobacco products taxes due from that distributor or unclassified importer until that distributor or unclassified importer provides a receipt from the Commissioner showing that all taxes have been paid or a certificate stating that no amount is due. If such withholding is not done, the successor or assignee shall be personally liable for the payment of the amount required to be withheld to the extent of the purchase price. The Commissioner has to issue a certificate that no amount is due, or mail a notice of the amount that must be paid, within 60 days of the latest of the following dates: (i) the date the Commissioner receives a written request from the successor or assignee for a certificate; (ii) the date of the sale of the business or stock of goods; or (iii) that date the former owner's records are made available for audit. Conn. Gen. Stat. §12-330b, as amended by Conn. Pub. Act No. 17-147, §30 (*effective July 1, 2017*).

Tobacco Products Records. A tobacco products distributor or unclassified importer must maintain complete and accurate records of all tobacco products manufactured, produced, purchased or sold. These records must be maintained for three years on the premises where such tobacco products are possessed, stored or sold and must be available at all times. Effective October 1, 2017, if upon request by the Commissioner or his or her agent, a distributor or unclassified importer fails to immediately produce or provide electronic access to such records, the Commissioner may impose a civil penalty of \$1,000 per day until those records are produced or electronic access provided. Conn. Gen. Stat. §12-330i, as amended by Conn. Pub. Act No. 17-147, §31 (*effective October 1, 2017*).

Tobacco Products and CORA. The definition of "racketeering activity" under the Corrupt Organization Racketeering Act (CORA) is amended to include violations of certain tobacco products-related crimes, including: (i) transporting for sale, selling, or offering for sale untaxed tobacco products that should be taxed at \$2,500 or more; (ii) willfully attempting to evade tobacco products taxes or failing to pay tobacco product taxes of \$2,500 or more; and (iii) willfully delivering or disclosing to the Commissioner or his authorized agent any list, report, account, statement, or other document known to be materially fraudulent or false. Conn. Gen. Stat. §53-394(a), as amended by Conn. Pub. Act No. 17-147, §41 (*effective July 1, 2017*).

Cigarette Tax Successor Liability. The statute that imposes successor liability for cigarette taxes on the successors or assigns of a cigarette distributor is amended to impose such successor liability on the successors or assigns of a cigarette dealer. In general, a purchaser or assignee of the business or stock of goods of a cigarette distributor or dealer must withhold a sufficient amount of the purchase price to pay any outstanding Connecticut cigarette taxes until the distributor or dealer provides a receipt from the Commissioner showing that all taxes have been paid or a certificate stating that no amount is due. Failure to do so can result in the successor or assign being personally liable for the taxes due to the extent of the purchase price for the business or stock of goods. Conn. Gen. Stat. §12-294, as amended by Conn. Pub. Act No. 17-147, §28 (*effective July 1, 2017*).

Federal Cigarette Tax Exemptions. Effective July 7, 2017, the cigarette tax shall not apply, to the extent prohibited by law, to cigarettes sold to United States veterans' hospitals or to members of the armed forces of the United States through officially recognized agencies, established pursuant to regulations issued by the appropriate branch of the United States Armed Forces, that are physically located at military bases. Conn. Gen. Stat. §12-297, as amended by Conn. Pub. Act No. 17-147, §29 (*effective July 7, 2017*).

Invest CT Tax Credits. Under current law, an insurance company may earn tax credits for investing in Invest CT funds (i.e., insurance reinvestment funds). The governing statute previously limited the transfer of those credits to only affiliates of that insurance company. The statute has been amended to allow the sale, assignment or transfer of such credits, in

whole or in part, to one or more taxpayers, provided that no such transferee may claim the credit in an income year other than the transferee's income year in which such transferee bought, was assigned or was otherwise transferred the credit. Conn. Gen. Stat. §38a-88a, as amended by Conn. Pub. Act No. 17-244, §2 (*effective July 1, 2017*).

Domestic Surplus Lines Insurer. Effective July 1, 2017, the Connecticut Insurance Commissioner may designate a qualifying domestic insurance company as a "domestic surplus lines insurer." Surplus lines insurance written by a domestic surplus lines insurer is subject to the 4% gross premium tax imposed under Conn. Gen. Stat. §38a-743, but is exempt from the 1.75% premium tax imposed under Conn. Gen. Stat. §12-202. Conn. Pub. Act No. 17-125, §1 (*effective July 1, 2017*).

PEGPETIA Tax Penalties. Cable television, satellite television and certified video service providers are subject to a 0.25% tax on their gross earnings to fund the public, educational, and governmental programming and education technology investment account. New legislation applies the same penalties to this tax as exist under the general gross earnings tax on these providers. Conn. Gen. Stat. §16-331cc(c), as amended by Conn. Pub. Act No. 17-147, §40 (*effective July 7, 2017*).

Boxing and Mixed Martial Arts Gross Receipts Tax. Effective October 1, 2017, the 5% receipts tax on paid admissions to boxing or mixed martial arts matches is repealed. Conn. Gen. Stat. §§29-143m and 29-143n, as repealed by Conn. Pub. Act No. 17-116, §3 (*effective October 1, 2017*).

Commission on Equity and Opportunity Study. The General Assembly has commissioned the Commission on Equity and Opportunity to conduct a study and recommend ways to provide (i) persons recently released from correctional facilities with enhanced employment opportunities, and (ii) tax incentives to employers who provide employment opportunities to such persons. The report on such study is due not later than January 1, 2018. Conn. Special Act No. 17-15, §1 (*effective October 1, 2017*).

Microbiome Sector Study Group. The General Assembly has established a working group to study and develop legislative and programmatic initiatives and a roadmap to foster the microbiome sector in Connecticut. Among other matters, the working group is to review state tax policy to develop a tax incentive program to lower the tax liability of established microbiome companies that relocate to or establish new lines of business in Connecticut and to enhance the state's competitiveness within the Northeast. Conn. Special Act No. 17-16, §1 (*effective May 31, 2017*).

Bed and Breakfast Occupancy Tax. Under current DRS practice (DRS Policy Statement 2003(1)), a bed and breakfast room occupancy charge that includes lodging and meals at a fixed price are allocated according to a specified schedule with the percentage of the charge allocable to meals subject to the 6.35% general sales tax rate and the percentage of the charge allocated to the room taxed at the 15% occupancy tax rate. Effective for sales occurring on or after October 1, 2017, the total amount of rent received by a bed and breakfast establishment for the first period not exceeding 30 consecutive calendar days shall be subject to a uniform tax rate of 11%. A "bed and breakfast establishment" is defined as any private operator-occupied house, other than a hotel or lodging house, with 12 or fewer rooms in which persons are lodged for hire and a full morning meal is included in rent. Conn. Gen. Stat. §§12-408(1)(B), 12-411(1)(B) and 12-407, as amended by Conn. Pub. Act No. 17-147, §§12-14 (*effective October 1, 2017, and applicable to sales occurring on or after October 1, 2017*).

Admissions Tax Security. Under current law, the Commissioner may require any person to deposit such security as the Commissioner determines to secure that person's compliance with the admissions and dues tax laws. The statute governing such authority has been amended to provide that such security shall only be required where that person either

(i) owes admissions and dues taxes which have been finally due and payable for a period of 90 days or longer and for which any administrative or judicial remedies or both, have been exhausted or have lapsed, or (ii) has failed to file three or more returns required under those laws. Conn. Gen. Stat. §12-555, as amended by Conn. Pub. Act No. 17-147, §45 (effective July 7, 2017).

Mileage Tax Study. The General Assembly has expressly prohibited the Department of Transportation from expending any state funds for any studies, plans, programs, materials or activities regarding a mileage-based user fee on motor vehicles operated on state highways unless the expenditure is approved by the General Assembly. Conn. Pub. Act No. 17-174, §1 (effective July 11, 2017).

Dry Cleaning Drop Stores. Effective October 1, 2017, dry cleaning drop stores (i.e., businesses that accept clothing or fabrics to be cleaned by another dry cleaning establishment) will no longer be subject to the 1% dry cleaning surcharge. Conn. Gen. Stat. §12-263m, as amended by Conn. Pub. Act No. 17-147, §26 (effective October 1, 2017, and applicable to calendar quarters commencing on or after October 1, 2017).

II. Administrative Pronouncements

Admissions Tax/Charitable SMLLC. In DRS Ruling No. 2017-2, the DRS considered the application of the admissions tax to the daily greens fees and seasonal greens fees charged by a golf course owned by a limited liability company, the sole member of which is a tax-exempt 501(c)(3) organization. The DRS ruled that the daily greens fees are exempt from the admissions tax pursuant to Conn. Gen. Stat. §12-541(2). With regard to the seasonal greens fees, however, the single member limited liability company (SMLLC) could not take advantage of the exemption under Conn. Gen. Stat. §12-54(a)(3) that would have been available to its tax-exempt organization parent if it owned the golf course.

ADMINISTRATIVE PRONOUNCEMENTS

Announcements

AN 2017(2), 2017 Revisions of Forms TPM-1 and TPM-2

AN 2017(5), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2017(5.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes

AN 2017(6), Assessments Refunded by the Connecticut Insurance Guaranty Association

AN 2017(7), Information for Married Individuals Who Are Both Employed and File a Joint Connecticut Income Tax Return

AN 2017(8), Revision to the Connecticut Real Estate Conveyance Tax Return

AN 2017(9), Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2017

Informational Publications

IP 2017(1), Connecticut Circular CT Employer's Tax Guide

IP 2017(2.1), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2017(3.1), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2017(4.1), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2017(5.1), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2017(6.1), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics



- IP 2017(7), Is My Connecticut Withholding Correct?
- IP 2017(9), Real Estate Conveyance Tax Return Information
- IP 2017(10), Deposit in the Nature of a Cash Bond
- IP 2017(17), Bringing or Importing Alcoholic Beverages into Connecticut
- IP 2017(21), Pay When Paid Method for Materialmen

Special Notices

- SN 2017(1), Legislative Changes Regarding Single-Sales Factor Apportionment and Market-Based Sourcing
- SN 2017(2), Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Form Beginning July 1, 2017
- SN 2017(3), Change to the Prepaid Wireless E 9-1-1 Fee

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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.

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