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# CONNECTICUT TAX DEVELOPMENTS

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## 2018: A Year of Reaction Rather Than Proaction

Although the 2018 legislative session of the Connecticut General Assembly ended with the adoption of bipartisan budget legislation, it was marked by a continued failure to conduct a more holistic review of the state's sources of expense and revenue. Such a review was invited by the 2015 report of the State Tax Panel and the more recent report of the Commission on Fiscal Stability and Economic Growth, but there seemed to be little appetite for debate on the subject in this gubernatorial election year. Instead, the General Assembly appointed yet another tax panel, this time to study the Commission's recommendations, and authorized the hiring of a national consultant to generate recommendations regarding efficiency improvements in revenue collection and agency expense management that will somehow result in savings of $500 million without adversely impacting program quality or social services program benefits.

Nevertheless, the 2018 session did generate significant Connecticut tax legislation, largely in reaction to the federal Tax Cuts and Jobs Act of 2017. Like many jurisdictions with a state income tax, Connecticut sought to counteract the new federal income tax limitation on the ability of individuals to take an itemized deduction for certain state and local taxes. The General Assembly enacted a new tax on pass-through businesses, such as Subchapter S corporations and limited liability companies, and other entities taxed as partnerships for federal income tax purposes. The Legislature also authorized each Connecticut municipality to establish a community support organization that can accept charitable contributions for the benefit of the municipality and be the basis for a credit against the municipality's property tax. As discussed in this Alert, the efficacy of these attempts at federal tax relief may be limited based upon current and future federal and state guidance. In addition, Connecticut, together with other states, instituted a lawsuit challenging the new federal limitation on the deduction of state and local taxes.

Tax revenue collected by the state in late 2017 and early 2018, largely as the result of a federal law change related to the taxation of foreign source income, did allow Connecticut to address its current fiscal year budget issues and meaningfully replenish the state's "rainy day" fund. However, the projection of significant future budget deficits caused the General Assembly to enact legislation de-coupling state tax law from a number of the most favorable provisions of the Tax Cuts and Jobs Act of 2017, including 100% bonus depreciation and the asset expensing rules under Internal Revenue Code §179. On a more positive note, for individuals, a new subtraction modification is established for the personal income tax for certain income earned by new venture capital funds that invest in Connecticut bioscience businesses, and the rules governing withholding on payments from pensions and annuities are clarified. Corporations are subject to a new rule that deems the amount of non-deductible expenses related to dividends to be equal to five percent of a corporation's dividends. As part of the state's ongoing attempt to impose nexus for Connecticut sales and use tax purposes on out-of-state retailers, the General Assembly has redefined what constitutes "engaged in business in the state" and imposed new state tax obligations on what are termed "market facilitators" (e.g., businesses that create a forum for sales, such as on the Internet) and "referrers" (e.g., businesses that create a forum for the listing or advertising of property or services for sale). The subsequent decision of the United States Supreme Court in South Dakota v. Wayfair, Inc., however, likely will permit Connecticut to more directly impose sales tax collection, remission and reporting obligations on remote sellers. The Office of Fiscal Analysis has estimated that Connecticut will realize an additional $40 million annually in sales and use tax receipts as a result of the Wayfair decision.

Governor-elect Ned Lamont has yet to announce his nominee for Commissioner of Revenue Services. Although revenues in the current fiscal year are projected to result in a $278.6 million surplus and a further transfer to the State's rainy day fund of $648 million, the Office of Fiscal Analysis is still projecting a multi-billion dollar deficit for the next biennium, setting the stage for another difficult budget legislative session commencing in January 2019.

This Alert summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published by the Connecticut Department of Revenue Services during 2018. 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. **On December 19, 2018, our tax attorneys hosted a CLE Webinar entitled "The New Opportunity Zones Program: What Businesses and Investors Need to Know." Visit our CLE Knowledge Center (www.shipmangoodwin.com/cle-events) or register at https://bit.ly/2BApVsg to view the presentation on demand.**

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# PERSONAL INCOME TAX

## I. Legislation

**New Pass-Through Entity Tax**. As part of its response to the federal Tax Cuts and Jobs Act of 2017 and the new $10,000 limitation ($5,000 for a married individual filing a separate return) on the itemized deduction for individuals for certain state and local taxes, Connecticut has enacted a new entity-level income tax at the rate of 6.99% on most pass-through businesses, including partnerships, S corporations and limited liability companies that are treated as partnerships or S corporations for federal income tax purposes. (The tax is not applicable to a publicly traded partnership as defined in Internal Revenue Code §7704(b) that has agreed to file an annual return pursuant to Conn. Gen. Stat. §12-726.) The income subject to tax generally is the Connecticut source income of the business entity as increased or decreased by the modifications applicable under the Connecticut personal income tax, but guaranteed payments are not included when determining the amount of the business entity's income subject to the new tax. If the business entity is a member of another pass-through business entity, it should subtract its distributive share of Connecticut-source income, or add its distributive share of Connecticut-source loss from such upper-tier entity. Because the new tax will be an expense of the pass-through entity that pays the tax, the impact of the tax will be to lower the federal taxable income that is allocated to the individual owners of a pass-through business, and each such owner shall be entitled to a refundable credit against the Connecticut personal income tax equal to 93.01% of that owner's pro rata share of the tax paid by the pass-through entity. The individual owner, if a resident or part-year resident of Connecticut, also shall be entitled to a credit against the Connecticut personal income tax for that individual's pro rata share of taxes paid to another state or the District of Columbia on income of the pass-through business entity if the Commissioner of Revenue Services determines that the tax is substantially similar to the new Connecticut pass-through entity tax. A nonresident individual shall not be required to file a Connecticut personal income tax return for any taxable year if, for such taxable year, the only Connecticut-source income of the nonresident individual (and the nonresident individual's spouse, if the nonresident individual files a joint return with the spouse) is from one or more pass-through entities, and each of those entities pays the new Connecticut pass-through entity tax. However, a nonresident individual shall be required to file a Connecticut personal income tax return if the pass-through entity of which it is a member has elected to file a "combined return" (see below) with one or more other pass-through entities and the credit(s) allocated to the nonresident individual would not fully satisfy the nonresident individual's Connecticut income tax liability. (The old composite tax return obligation that had a pass-through entity report and pay tax on behalf of its nonresident owners has been repealed.) A trust that is an owner of a pass-through entity may allocate all or a portion of a credit between the trust and its beneficiaries. Please note that a taxpayer cannot claim a pass-through entity tax credit until the taxpayer receives from the entity a Schedule CT K-1 showing the credit.

If the owner of the pass-through business is subject to the Connecticut corporation business tax, that corporate owner shall receive a similar credit against the corporation business tax in an amount equal to that owner's pro rata share of the tax paid by the pass-through entity multiplied by 0.9301. Such credit shall be applied after all other credits applied and shall not be subject to the percentage limits of Conn. Gen. Stat. §12-217zz. Any credit not used by the corporate owner in the income year in which the affected business entity incurs the new Connecticut pass-through entity tax may carry it forward to each succeeding income year until such credit is fully taken against the corporate owner's Connecticut corporation business tax liability.

In lieu of calculating the tax on a business entity's Connecticut source income, the pass-through entity may elect timely to calculate its tax due applying the 6.99% rate to an "alternative tax base" equal to the "resident portion of unsourced income" plus "modified Connecticut source income". The "resident portion of unsourced income" is "unsourced" income multiplied by a percentage equal to the sum of the ownership interests in the business entity owned by individual members who are Connecticut residents. "Unsourced income" generally equals the business's net income for federal tax purposes, as increased or decreased by any adjustments that apply under the personal income tax regardless of the location from which the items of income and adjustments are derived, minus (i) the business's Connecticut-sourced income without any adjustments for tiered business entities, and minus (ii) the business's net income, for federal tax

purposes, that is derived from sources in another state with jurisdiction to tax the entity, as increased or decreased by any adjustments that apply under the personal income tax that are derived from, or connected to, sources in another state with jurisdiction to tax the entity. "Modified Connecticut source income" is defined as the business's Connecticut source income multiplied by a percentage equal to the sum of ownership interests in the business that are owned by individual members that are (i) subject to the Connecticut personal income tax or (ii) pass-through businesses subject to the entity tax to the extent that such businesses are directly or indirectly owned by individuals subject to the Connecticut personal income tax). [Ed. note. Use of the alternative tax base may be to the advantage of Connecticut residents because the base used to calculate the available tax credit is increased to include "unsourced income" as well as Connecticut sourced income. The use of the alternative tax base also should permit a business to avoid paying the pass-through entity tax to the extent of income earned by owners who are not subject to the Connecticut personal income tax, such as Subchapter C corporations and tax-exempt entities. Pass-through entities should consider, however, whether their organizing agreement permits the special allocation of expenses and credits and, in the case of Subchapter S corporations, whether a special allocation would create a prohibited new class of stock.]

Each pass-through entity that is required to file a Connecticut tax return is required to pay the tax on or before the 15th day of the third month following the close of its taxable year (e.g., March 15th for calendar year taxpayers), and to report to the entity's owners their share of the entity's tax payments. "Commonly-owned" pass-through entities (i.e., more than 80% common voting control) may elect to file a combined return. A combined return would allow commonly owned pass-through entities to offset gains and losses. A combined group also may allocate the pass-through entity tax credit to the group's owners in the manner it deems appropriate, but such allocation must be made when the original group return is filed and is irrevocable.

Each pass-through business subject to the new tax will be required to make quarterly estimated tax payments in a manner similar to the Connecticut personal income tax. The business can calculate the payment due based upon (i) 25% of the "required annual payment" (i.e., 90% of the entity tax due for the current year or 100% of the entity tax due for the preceding year) or (ii) the annualized income installment calculation method. In DRS Special Notice 2018(4), the DRS indicated that a pass-through entity may comply with its 2018 estimated tax payment requirements by: (i) making a catch-up payment with the June 15, 2018 estimated payment that satisfies both the first and second estimated payment requirements; (ii) making three estimated payments (on or before each of June 15, 2018, September 15, 2018, and January 15, 2019) each equal to 22.5% of the tax liability (with the full amount of tax remaining due by the return due date); or (iii) annualizing their estimated payments for the taxable year. On June 5, 2018, the DRS released Form CT-1065/CT-1120SI ES, *2018 Estimated Pass-Through Entity Tax Payment Coupon*, allowing pass-through entities to print and mail the payment coupon together with estimated payments. The DRS subsequently issued a Taxpayer Service Center Update notifying taxpayers that, commencing with the September estimated tax payment, TSC now accepts estimated payments electronically. In addition, the DRS has indicated that a pass-through entity may re-characterize all or a portion of any Connecticut estimated tax payment made by any of the pass-through entity's owners for the first, second and/or third estimated tax periods of 2018, with such owner's consent, to be applied against the pass-through entity's 2018 estimated payment obligation (as though the pass-through entity made the estimated tax payment as of the date the individual owner made the payment). The re-characterization also may apply to an individual owner's overpayment of 2017 income tax if the individual owner had applied the overpayment to the owner's 2018 tax obligation (rather than request a refund). The re-characterization of estimated payments and/or overpayment would increase the tax credit allocable to the owner at the end of the year (and reduce their taxable income). To make a re-characterization request, an owner must complete a Form CT-1065/CT-1120SI RR and submit the request form to the pass-through entity. The pass-through entity must then compile all re-characterization request forms submitted by its owners and submit those forms, together with a Form CT-1065/CT-1120SI RRS (summary sheet) to the DRS by December 31, 2018. The tax collection, enforcement, interest and penalty provisions applicable to the Connecticut personal income tax are generally incorporated into or are made applicable to the new pass-through business entity tax. Conn. Pub. Act No. 18-49, §§1-2 *(effective May 31, 2018, and applicable to taxable years commencing on or after January 1, 2018);* Conn. Gen. Stat. §§12-719(b)(1) and 12-719(c)(1), as amended by Conn. Pub. Act No. 18-49, §§3-4 *(effective May 31, 2018);* and Conn. Gen. Stat. §§12-726 and 12-733(b), as amended by Conn. Pub. Act No. 18-49, §§5-6 *(effective May 31, 2018, and applicable to taxable years*

*commencing on or after January 1, 2018). See* Office of Commissioner Guidance (OCG)-6, *Regarding the Calculation of the Pass-Through Entity Tax*; Office of Commissioner Guidance (OCG)-7, *Regarding the Pass-Through Entity Tax Credit.* [Ed. note. It remains to be seen whether the federal government will challenge the ability of a pass-through entity owner to reduce the owner's federal taxable income by the owner's share of the pass-through entity tax. In its 2018-2019 Priority Guidance Plan (dated November 8, 2018), the Treasury Department indicated its intent to publish guidance "on applying the state and local deduction cap under [I.R.C.] §164(b)(6) to pass through entities." Any sole proprietorship operated as a single member limited liability company treated for federal tax purposes as a disregarded entity, should consult with a tax advisor as to whether the owner should convert to pass-through status by adding a nominal partner to take advantage of the tax benefit afforded by this legislation. Finally, the legislative package submitted by the DRS for the 2019 legislative session of the General Assembly proposes an amendment that would subject guaranteed payments to the new pass-through entity tax commencing in 2019.]

**Federal Bonus Depreciation Decoupled**. An individual subject to the Connecticut personal income tax shall be required to "add back" any additional allowance for federal bonus depreciation for property placed in service after September 27, 2017, when calculating their Connecticut adjusted gross income. However, 25% of the disallowed deduction may be deducted for each of the four succeeding taxable years. Conn. Gen. Stat. §12-701(a)(20), as amended by Conn. Pub. Act No. 18-49, §11 *(effective May 31, 2018, and applicable to taxable years commencing on or after January 1, 2017)*. [Ed. note. Taxpayers should be aware of two potential issues. The first issue relates to the impact of the decoupling provision on qualifying property purchased on or before September 27, 2017, but placed in service after that date. The federal Tax Cuts and Jobs Act of 2017 increases the bonus depreciation rate from 50% to 100% for qualifying property acquired and placed in service after September 27, 2017. The new state decoupling provision summarized above disallows the use of the additional depreciation allowance for qualifying property placed in service after September 27, 2017. By not following the federal statutory language, the provision seemingly disallows both the 50% and the 100% bonus depreciation for property purchased on or before September 27, 2017, but placed in service after that date. Second, the legislation does not address the difference between the federal basis and state basis of an asset after the decoupling from the federal bonus depreciation allowance, a particularly troublesome issue when that asset is sold prior to it being fully depreciated for state purposes. Without a state basis adjustment, a taxpayer will pay income tax based upon the federal gain rather than what should be a lesser state gain, but according to DRS representatives, the taxpayer will continue to be able to take the additional depreciation allowance until fully utilized. Finally, any taxpayer required to add back any additional allowance for federal bonus depreciation for 2017 will be required both to file an amended return and to seek a waiver of any assessment of interest or penalty due to the underpayment on or prior to December 31, 2018. *See* Office of Commissioner Guidance (OCG)-5, *Regarding the Treatment of Bonus Depreciation for Connecticut Income Tax Purposes*. The additional allowance for federal bonus depreciation continues to be disallowed for Connecticut corporation business tax purposes.]

**Federal Asset Expensing Under Internal Revenue Code §179 Decoupled**. For taxable years commencing on or after January 1, 2018, an individual subject to the Connecticut personal income tax shall be required, when calculating his or her Connecticut adjusted gross income, to "add-back" 80% of any deduction that is claimed under the federal asset expensing rules of Internal Revenue Code §179. The taxpayer may, however, take 25% of the disallowed portion of the deduction over each of the next four succeeding income years (i.e., the taxpayer must take the deduction over five years at the rate of 20% each year). Conn. Gen. Stat. §12-701(a)(20), as amended by Conn. Pub. Act No. 18-49, §11 *(effective May 31, 2018, and applicable to taxable years commencing on or after January 1, 2017)*.

**State Tax Credit**. Under current law, a resident or part-year resident is generally allowed a credit against the Connecticut income tax for taxes imposed on the taxpayer by another state or a political subdivision thereof, or the District of Columbia, on income derived from sources located in that jurisdiction. The governing statute has been amended to provide that a comparable credit shall be allowed for any tax on wages that is paid to another taxing jurisdiction by the employer on behalf of the employee and that other taxing jurisdiction grants a credit for such tax. Conn. Gen. Stat. §12-704(a)(5), as added by Conn. Pub. Act No. 18-169, §42 *(effective June 14, 2018, and applicable to taxable years*

*commencing on or after January 1, 2019),* and Conn. Pub. Act No. 18-49, §19 *(effective May 31, 2018, and applicable to taxable years commencing on or after January 1, 2019)*. [Ed. note. This provision is part of Connecticut's response to the federal Tax Cuts and Jobs Act of 2017, and the attempt of some states, such as New York, to adopt a payroll tax to allow their residents to avoid, in whole or in part, the limitation on the federal deductibility of state and local taxes.]

**Bioscience Venture Capital**. A new subtraction modification from Connecticut adjusted gross income has been created for certain income received by a general partner of a "qualified venture capital fund". The amount of the subtraction for a taxable year is equal to the sum of: (i) the amount of income received by the general partner from the sale, transfer, exchange or other disposition of any form of a qualified venture capital fund's equity interests in a Connecticut bioscience business obtained from investments made by the fund in such business on or after January 1, 2018; plus (ii) the amount of income received by the general partner for the management of such fund (except the income described in clause (i) above), multiplied by the fund's "bioscience investment ratio" on the last day of the taxable year. A "qualified venture capital fund" means a venture capital fund, as defined in 17 C.F.R. 275.203(l)-1, that is established on or after January 1, 2018. A "Connecticut bioscience business" means any business with its principal place of business in Connecticut that is engaged in (i) the manufacture of pharmaceuticals, medicines, medical equipment, medical devices and analytical laboratory instruments, (ii) the operation of medical or diagnostic testing laboratories, or (iii) the conducting of pure research and development in life sciences. A "bioscience investment ratio" is defined as the ratio, (i) the denominator of which is the sum of (A) the total amount of money invested by the qualified venture capital fund plus (B) the total amount of money available for other investments by the fund, and (ii) the numerator is the total amount of money invested by such fund in Connecticut bioscience businesses. The Commissioner of Revenue Services is directed to publish regulations to implement this legislation. Conn. Pub. Act No. 18-147, §1 *(effective July 1, 2018, and applicable to taxable years commencing on or after January 1, 2018);* Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 18-147, §2 *(effective July 1, 2018, and applicable to taxable years commencing on or after January 1, 2018).*

**Pension and Annuity Withholding**. Last year, the General Assembly imposed a new requirement, effective January 1, 2018, to withhold Connecticut tax on the taxable portion of a distribution to a Connecticut resident by any person that maintains an office or transacts business in Connecticut from a profit-sharing plan, stock bonus, deferred compensation plan, individual retirement arrangement, endowment or life insurance contract, or pension or annuity. The Commissioner of Revenue Services issued a memorandum dated December 7, 2017, granting transitional relief in 2018, and outlining temporary rules distinguishing among the withholding rules applicable to each of periodic, non-periodic and lump sum distributions. During the 2018 legislative session, the General Assembly amended the governing statute to authorize the potential permanent implementation of the Commissioner's temporary rules. The taxable portion of a "lump sum" distribution is subject to withholding at the highest marginal tax rate (currently 6.99%) except that no withholding shall be required if (i) any portion of the lump sum distribution was previously subject to tax, or (ii) the lump sum distribution is a tax-free rollover that is effected as a direct trustee-to-trustee transfer or as a direct rollover in the form of a check made payable to another qualified account. (A "lump sum" distribution is defined as a payment of the payee's entire account balance, exclusive of any other tax withholding and any administrative charges and fees.) In the case of the taxable portion of a periodic payment to a Connecticut resident, the payer is to solicit from the payee a Form CT-W4P, *Withholding Certificate for Pension or Annuity Payments*, and deduct and withhold the amount based upon the Form and the Connecticut wage withholding tables. In the case of the taxable portion of a non-periodic payment, the payer is to deduct and withhold amounts "in accordance with instructions provided by the [C]ommissioner." These instructions were provided as part of DRS Information Publication 2018(8) and generally are consistent with the Commissioner's December 2017 memorandum. A payer is required to withhold from any non-periodic distribution at the highest marginal tax rate unless the payee certifies that he or she is exempt on a Form CT-W4P or acceptable substitute form. Finally, the statute was amended to provide expressly that (i) the application of the withholding statute shall not result in the nonpayment of any distribution to a Connecticut resident, and (ii) no taxpayer shall be assessed interest for the failure of a payer to comply with the withholding requirement in 2018. Conn. Gen. Stat. §12-705(a), as amended by Conn. Pub. Act No. 18-26, §7 *(effective May 29, 2018)*. *See* DRS Information Publication 2018(8), *Connecticut Tax Guide for Payers of Nonpayroll Amounts*.

**Pension and Annuity Exemption**. In 2017, the General Assembly enacted a new phased-in exemption from the Connecticut personal income tax for pension and annuity income for taxpayers who are single filers, married people filing separately or heads of households with federal adjusted gross income of less than $75,000, and for married couples filing jointly with federal adjusted gross income of less than $100,000. The percentage of such income was to be phased in as follows: 14% for the 2019 taxable year, 28% for the 2020 taxable year, 42% for the 2021 taxable year, 56% for the 2022 taxable year, 70% for the 2023 taxable year, 84% for the 2024 taxable year and 100% for the 2025 taxable year. The governing statute has been amended to have the 100% exemption be effective for 2025 and each taxable year thereafter. Conn. Gen. Stat. §12-701(a)(20)(B), as amended by Conn. Pub. Act No. 18-26, §27 *(effective October 1, 2018)*.

**Convenience of the Employer Test**. Under current law, taxpayers deriving income from a business, trade, profession or occupation generally sourced that income, for Connecticut income tax purposes, to the state where the services were performed by the taxpayer. By way of contrast, the State of New York employs a "convenience of the employer" test, which will allocate a taxpayer's income to the state of his or her principal place of employment, even if attributable to work performed outside of the state, if the taxpayer was performing such work outside of the state for the employee's convenience rather than at the direction of the employer. The Connecticut and New York rules could lead to double taxation of the same income. For example, when a taxpayer is employed by a New York-based employer, but works from home two days each week from his or her Connecticut residence, the income attributable to the two days could be taxed by Connecticut, because the services were performed in Connecticut, and taxed by New York, because the services were performed for a New York-based business and were performed in Connecticut for the convenience of the employee and not for the convenience of the employer. By way of contrast, a nonresident taxpayer who works for a Connecticut-based employer but works from his or her New York residence could avoid Connecticut income taxation because the services are performed outside of the state. To address the latter situation, the law has been amended, effective January 1, 2019, to provide that, for determining his or her Connecticut source income, a nonresident must include income from days worked outside Connecticut for that taxpayer's convenience if that nonresident's state of domicile also employs the convenience of the employer test. Conn. Gen. Stat. §12-711(b)(2), as amended by Conn. Pub. Act No. 18-169, §43 *(effective June 14, 2018, and applicable to taxable years commencing on or after January 1, 2019)*, and Conn. Pub. Act No. 18-49, §20 *(effective May 31, 2018, and applicable to taxable years commencing on or after January 1, 2019).*

**Reportable Transaction Penalties**. For audits of returns commencing on or after January 1, 2006 and prior to January 1, 2018, when it appears that any part of a deficiency for which a deficiency assessment is made is due to failure to disclose a "listed transaction", as defined in Internal Revenue Code §6707A, the Commissioner of Revenue Services is to impose a penalty equal to 75% of the amount of such deficiency assessment. Effective for audits of returns commencing on or after January 1, 2018, a similar 75% penalty is imposed when a deficiency assessment is due to the failure to disclose a "reportable transaction" as defined in Internal Revenue Code §6707A. The law was changed to expand the types of transactions subject to the 75% penalty, because "listed transactions" are only a subset of "reportable transactions" under Internal Revenue Code §6707A. Conn. Gen. Stat. §§12-728(a)(2) and 12-733(c)(3), as amended by Conn. Pub. Act No. 18-26, §§5-6 *(effective May 29, 2018).*

**Tax Delinquent Lottery Winners**. Under current law, if a person redeems a winning lottery ticket worth $5,000 or more at the central office of the Connecticut Lottery Corporation ("CLC"), the CLC must check the name and identifying information of the person against the list of delinquent taxpayers supplied by the Commissioner of Revenue Services and deduct and withhold any delinquent taxes. On and after July 1, 2018, the threshold has been reduced to a winning lottery ticket worth $2,000 or more. Conn. Gen. Stat. §12-829(a), as amended by Conn. Pub. Act No. 18-152, §4 *(effective July 1, 2018).*

**Manufacturing Apprenticeship Tax Credit**. Under current law, a tax credit is available for each apprenticeship in the manufacturing trades commenced by a taxpayer under a qualified apprenticeship program certified by the Labor Commissioner and registered with the Connecticut State Apprenticeship Council. The amount of the credit is the lesser of $6 per hour, $7,500, or 50% of the actual apprenticeship wages, and may be claimed for a period equal to the program's first year for a two-year program and the first three years for a four-year program. Although corporations and pass-

through entities (e.g., partnerships and S corporations) can each earn the credit, the credit can only be claimed against the corporation business tax. New legislation would have allowed the owners of pass-through entities, and the owner of a single member limited liability company that is a disregarded entity for federal tax purposes, to use the tax credit to reduce their personal income tax liability. Conn. Gen. Stat. §12-217g(a), as amended by Conn. Pub. Act No. 18-80, §1 *(effective July 1, 2018, and applicable to income and taxable years commencing on or after January 1, 2018)*. [Vetoed by the Governor on June 6, 2018.]

### II. Administrative Pronouncements

**Section 965 Repatriation Transition Tax**. Pursuant to Internal Revenue Code §965, certain taxpayers with untaxed foreign earnings and profits are required to include their accumulated post-1986 deferred foreign income ("Section 965 income") in their Subpart F income (income from controlled foreign corporations) for the 2017 taxable year. Although federal law allows certain taxpayers to elect to defer payment of their federal repatriation transition tax, the election does not defer the timing for the recognition of the income, and Connecticut does not defer the payment of state tax on that income. For federal income tax purposes, an individual is required to report the net Section 965 amount (the Section 965(a) amount reduced by the Section 965(c) deduction) on Form 1040, page 1, Line 21, Other Income. Since the net Section 965 amount will be included in a taxpayer's federal adjusted gross income, and that is the starting point in determining the taxpayer's Connecticut income tax liability, a resident taxpayer is not required to report separately his or her Section 965 income on the Form CT-1040. A nonresident individual, however, who receives a Schedule CT-K1 from a pass-through entity or other information or documentation relating to Connecticut-sourced Section 965 income, must report the associated income and deductions on the appropriate lines on Schedule CT-SI, *Nonresident or Part-Year Resident Schedule of Income From Connecticut Sources*, and on Form CT-1040NR/PY. On a Connecticut Composite Income Tax Return, the Section 965 amount must be reported on Form CT-1065/CT-1120SI, Part I, Schedule C, Line 11, and Line 13, and the Connecticut sourced portion must also be reported on Part VI, Line 11 and Line 13. Finally, individuals who were unable to timely pay their 2017 tax liability may request a payment plan agreement. Office of Commissioner Guidance (OCG)-4, *Regarding the Connecticut Treatment of the Federal Repatriation Transition Tax Under IRC §965.*

## CORPORATION BUSINESS TAX

### I. Legislation

**Expenses Related to Dividends**. Under current law, a corporate taxpayer is not allowed to deduct, for Connecticut corporation business tax purposes, expenses related to dividends that are allowable as a deduction or credit under the Internal Revenue Code. To resolve disputes regarding the amount of such expenses, the governing statute has been amended to provide that expenses related to dividends shall be deemed to be equal to 5% of all dividends received by a company during an income year. The net income associated with the disallowance of expenses related to dividends shall be apportioned if the taxpayer conducts business within and outside Connecticut or is otherwise required to apportion its income. Conn. Gen. Stat. §12-217(a)(2), as amended by Conn. Pub. Act No. 18-169, §41 *(effective June 14, 2018, and applicable to income years commencing on or after January 1, 2017)*, and Conn. Pub. Act No. 18-49, §13 *(effective May 31, 2018, and applicable to income years commencing on or after January 1, 2017).* [Ed. note. We are hopeful that the DRS issues administrative guidance as to the retroactive effect this provision has on the 2017 corporation business tax liability of taxpayers.]

**Business Interest Expense**. As part of the federal Tax Cuts and Jobs Act of 2017, Congress amended Internal Revenue Code §163(j) to limit the deductibility of business interest expense. In general, the deduction is limited for a taxable year to an amount equal to 30% of the adjusted taxable income and business interest income of a taxpayer. In responding to the federal tax law change, the General Assembly amended the governing statute to provide that, for purposes of determining net income for Connecticut corporation business tax purposes for income years commencing on or after

January 1, 2018, the deduction allowed for business interest paid or accrued shall be determined as provided under the Internal Revenue Code, except that Code §163(j) shall not apply. Conn. Gen. Stat. §12-217(a)(6), as added by Conn. Pub. Act No. 18-169, §41 *(effective June 14, 2018, and applicable to income years commencing on or after January 1, 2017)*, and Conn. Pub. Act No. 18-49, §13 *(effective May 31, 2018, and applicable to income years commencing on or after January 1, 2017)*.

**Federal Asset Expensing Decoupled**. In response to the federal Tax Cuts and Jobs Act of 2017, the General Assembly enacted legislation requiring corporate taxpayers to add back 80% of any asset expensing deduction claimed under Internal Revenue Code §179, effective for income years commencing on or after January 1, 2018. The corporate taxpayer may claim 25% of the disallowed portion of the deduction in each of the four succeeding income years (i.e., the corporate taxpayer must take the deduction over five years at the rate of 20% each year). Conn. Gen. Stat. §12-217(b), as amended by Conn. Pub. Act No. 18-49, §12 *(effective May 31, 2018).* [Ed. note. The additional allowance for federal bonus depreciation, increased to 100% for qualifying property under the federal Tax Cuts and Jobs Act of 2017, continues to be disallowed for Connecticut corporation business tax purposes. Please note that taxpayers will be required to account separately for each of the federal and state tax basis of each asset subject to bonus depreciation or expensing.]

**State Contribution Deduction**. Corporate taxpayers are now entitled to a new deduction from gross income to arrive at net income in the amount of any contribution made to the corporation, on or after December 23, 2017, by the State of Connecticut or a political subdivision thereof to the extent that the contribution is included in the taxpayer's gross income under Internal Revenue Code §118(b)(2). Internal Revenue Code §118(b)(2) generally requires a corporation to include in its gross income any contribution to the corporation made by a governmental entity or civic group (other than a contribution made by a shareholder as such). Conn. Gen. Stat. §12-217(a), as amended by Conn. Pub. Act No. 18-169, §41 *(effective June 14, 2018, and applicable to income years commencing on or after January 1, 2017)*, and Conn. Pub. Act No. 18-49, §13 *(effective May 31, 2018, and applicable to income years commencing on or after January 1, 2017).*

**Tax Credits Eliminated**. The General Assembly is eliminating certain economic development corporation business tax credits. The new legislation terminates the authority of the Commissioner of Economic and Community Development, effective July 1, 2018, to accept new applications for the ten-year tax credit for developing or acquiring facilities in enterprise zones and other designated areas, and prohibits new credits from being claimed under the program for any income year beginning on or after January 1, 2018. Businesses that were approved for credits before July 1, 2018 may continue to claim those credits until the end of the ten-year period. Conn. Gen. Stat. §s12-217e, as amended by Conn. Pub. Act No. 18-145, §1 *(effective July 1, 2018, and applicable to income years commencing on or after January 1, 2018),* and §2 *(effective July 1, 2018)*. The legislation additionally repeals the ten-year credit for creating a business in an enterprise zone and meeting specified employment goals. Conn. Gen. Stat. §12-217v, as repealed by Conn. Pub. Act No. 18-145, §3 *(effective July 1, 2018).*

**Green Building Tax Credit**. The statute governing the green building tax credit, which was sunset as of December 1, 2017, is amended to clarify that any taxpayer issued a tax credit prior to the sunset date may claim that credit. Conn. Gen. Stat. §12-217mm, as amended by Conn. Pub. Act No. 18-26, §2 *(effective May 29, 2018)*.

## *II. Administrative Pronouncements*

**Section 965 Repatriation Transition Tax**. Pursuant to Internal Revenue Code §965, certain taxpayers with untaxed foreign earnings and profits are required to include their accumulated post-1986 deferred foreign income ("Section 965 income") in their Subpart F income (income from controlled foreign corporations) for the 2017 taxable year. Although federal law allows certain taxpayers to elect to defer payment of their federal repatriation transition tax, the election does not defer recognition of the income and Connecticut does not defer the payment of state tax on that income. The Section 965 income must be included on a taxpayer's Connecticut corporation business tax return for its last taxable year beginning before January 1, 2018. Since Section 965 income is treated as Subpart F income for federal tax purposes, and Connecticut treats Subpart F income as dividend income, Section 965 income is treated as dividend income for

Connecticut tax purposes. Connecticut provides a dividend received deduction that fully offsets the dividend income that a corporation received from foreign corporations to the extent such income is not otherwise deducted. Note, however, that Connecticut does require a corporation to add back its expenses that are related to dividend income subject to the dividend received deduction. Pursuant to new legislation summarized above, the expenses related to dividends is deemed to be 5% of the dividend income. Office of Commissioner Guidance (OCG)-4, *Regarding the Connecticut Treatment of the Federal Repatriation Transition Tax Under IRC §965*.

**Global Intangible Low-Taxed Income**. As a result of changes made by the federal Tax Cuts and Jobs Act of 2017, certain United States taxpayers will be subject to tax on their global, intangible low-taxed income ("GILTI") for income years beginning on or after January 1, 2018. In Special Notice 2018(7), the DRS announced that Connecticut will treat GILTI as dividend income because "GILTI is treated in a manner similar to Subpart F income for federal tax purposes...." Since Connecticut provides a dividend received deduction that fully offsets the dividend income that a corporation receives from foreign corporations to the extent that income is not otherwise deducted, a corporation that is required to now include GILTI on its Connecticut corporation business tax return will be entitled to claim a deduction to fully offset that income. The DRS notes, however, that the corporation is required to add back 5% of the gross amount of the GILTI as attributable to non-deductible expenses that relate to this deemed dividend income. Previously taxed GILTI is excluded from income, and GILTI must be excluded from the apportionment factor.

# SALES AND USE TAX

## I. Legislation

**Sales and Use Tax Nexus**. For years, a debate has raged over the ability of a taxing jurisdiction, such as Connecticut, to impose on a remote seller (i.e. a retailer which has no physical presence in the taxing jurisdiction) the obligation to collect, remit and report that jurisdiction's sales tax on sales made to purchasers in that jurisdiction. As reflected in this section of sales and use tax legislative developments, Connecticut and other jurisdictions have enacted direct and indirect requirements in an attempt to collect sales tax on those remote sales. As part of this effort, at the urging of the Department of Revenue Services, the General Assembly this session modified the Connecticut nexus standard for sales and use tax, which is embodied in the statutory definition of "engaged in business in the state". The Legislature modified this definition and the definition of "retailer" so as to now subject to Connecticut taxing jurisdiction, to the extent not prohibited by the United States Constitution, an out-of-state retail business that engages in the regular or systematic solicitation of sales of tangible personal property in Connecticut, including by means of the Internet, provided that at least $250,000 of gross receipts are received, and 200 or more retail sales to destinations in Connecticut are made, during the twelve-month period ending on the September 30th immediately preceding the taxable period for which the liability is determined. Similarly, a retailer will be deemed to be "engaged in business in the state" if the retailer sells tangible personal property or services through an agreement with a person located in Connecticut, for a commission or other consideration that is based upon such sales, under which the Connecticut person directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the retailer, provided the cumulative gross receipts from such referred sales is in excess off $250,000 (formerly $2,000) during the four preceding four quarterly periods ending on the last day of March, June, September and December. Conn. Gen. Stat. §§12-407(a)(12) and (15), as amended by Conn. Pub. Act. No. 18-152, §§2-3 *(effective December 1, 2018)*. [Ed. note. In the landmark decision of South Dakota v. Wayfair, Inc., issued after the end of the 2018 Connecticut legislative session, the United States Supreme Court struck down the "physical presence" nexus requirement for the imposition of sales tax collection, remission and reporting obligations. Although the decision remands the case for a further determination as to whether South Dakota's sales tax laws are constitutional, it likely opens the door to Connecticut and thousands of other sales tax jurisdictions to impose sales tax obligations on remote sellers. As the new Connecticut nexus standard is similar to the South Dakota nexus standard reviewed by the Court, it is likely to survive constitutional scrutiny, at least to the extent applied on a prospective basis.]

**Marketplace Facilitators**. New legislation imposes on a "marketplace facilitator" the sales and use tax collection, remittance and reporting obligations of a Connecticut retailer for each sale the facilitator facilitates on its forum for a marketplace seller. A "marketplace facilitator" is any person who (i) facilitates retail sales of at least $250,000 (both to Connecticut and elsewhere) during the prior twelve-month period by marketplace sellers by providing a forum that lists or advertises taxable tangible personal property or services for sale by marketplace sellers, (ii) directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers, and (iii) receives compensation or other consideration for such services. A "forum" is a physical or electronic place, including a store, a booth, an Internet website, a catalog or a dedicated sales software application where taxable tangible personal property or taxable services are offered for sale. A marketplace seller, which otherwise may be subject to the obligations as a Connecticut retailer, will not be required to collect or report sales tax for a particular sale if (i) the marketplace seller can show that such sale was facilitated by a marketplace facilitator (A) with whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all taxable sales facilitated by the facilitator, or (B) from which the marketplace seller requested and received in good faith a properly completed Certificate of Collection (Form DRS-055) certifying that such facilitator is registered to collect sales tax and will collect sales tax on all taxable sales by such seller and facilitated by the facilitator; and (ii) any failure of such facilitator to collect the proper amount of tax for such sale was not the result of such seller providing such facilitator with incorrect information. However, according to new guidance from the DRS, an out-of-state marketplace seller that makes sales solely through a marketplace facilitator will still be required to register for sales tax by completing a Form REG-1 and to file an annual sales and use tax return. Although the marketplace facilitator legislation is effective December 1, 2018, the bill does provide for limited relief for each of a marketplace facilitator and a marketplace seller for a failure to collect the tax for taxable sales occurring on or after December 1, 2018, but on or before December 31, 2019, if (i) the facilitator and the marketplace seller are not affiliated persons, and (ii) the failure was not due to an error in sourcing the sale. The relief is a modest 5% reduction in the amount of each of tax and interest, and the waiver of any associated penalties. Conn. Gen. Stat. §12-407(a)(12)(M), as added by Conn. Publ. Act. No. 18-152, §2 *(effective December 1, 2018);* and Conn. Pub. Act. No. 18-152, §§4-5 *(effective December 1, 2018). See* DRS Office of the Commissioner Guidance OCG-8, *Regarding Marketplace Facilitators and Marketplace Sellers*.

**Fulfillment House**. Under current law, an out-of-state retailer not otherwise engaged in business in Connecticut is not required to collect and remit sales tax to Connecticut sales tax solely because the retailer purchases fulfillment services from an unaffiliated in-state company or owns property stored on that company's premises. In general, a company provides "fulfillment services" when it receives orders from a retailer or its agent, fills them from the retailer's inventory stored on its premises and ships them to the retailer's customers. New legislation provides that the exclusion for fulfillment services shall not be applicable if such services are provided by a marketplace facilitator. Conn. Gen. Stat. §12-407(a)(15)(C), as amended by Conn. Pub. Act. No. 18-152, §3 *(effective December 1, 2018*).

**Referrer Liability**. New legislation imposes notice and filing requirements on any business that is characterized as a "referrer." A "referrer" is defined as any person who (i) contracts or otherwise agrees with a seller to list or advertise for sale one or more items of tangible personal property by any means, including an Internet website and a catalog, provided such listing or advertisement includes the seller's shipping terms or a statement of whether the seller collects sales tax, (ii) offers a comparison of similar products offered by multiple sellers, (iii) receives commissions, fees or other consideration in excess of $125,000 during the prior twelve-month period from a seller or sellers for such listings or advertisements, (iv) refers, via telephone, Internet website link or other means, a potential customer to a seller or an affiliate of the seller, and (v) does not collect payments from the customer for the seller. Effective December 1, 2018, to the extent not prohibited by the United States Constitution, a referrer is required to post a conspicuous notice on its medium (e.g., its Internet website) that informs customers (i) that sales and use tax is due from Connecticut purchasers on certain purchases, (ii) that the seller might not collect and remit sales tax on a purchase, (iii) that Connecticut requires Connecticut purchasers to file a use tax return if sales tax is not imposed at the time of the sale by the seller, (iv) of the instructions for obtaining additional information from the DRS regarding the remittance of sales and use taxes on purchases made by Connecticut purchasers, and (v) that such notice is being provided pursuant to the public act. The referrer also is required to provide, not later than July 1, 2019, a quarterly notice to each seller to whom such referrer transferred during the previous calendar

year a potential purchaser located in Connecticut that contains: (i) a statement that Connecticut imposes a sales or use tax on sales made to Connecticut purchasers; (ii) a statement that a seller making sales to Connecticut purchasers must collect and remit sales and use taxes to the DRS; and (iii) instructions for obtaining additional information regarding Connecticut sales and use taxes from the DRS. Finally, not later than January 31, 2020, and annually thereafter, each referrer must submit electronically to the DRS a report, in a form prescribed by the DRS, that contains (i) the name and address of each seller that received the notice described above from the referrer in the immediately preceding calendar year, and (ii) the name and address of each seller for which the referrer knows that such seller (A) listed or advertised such seller's tangible personal property on or in the referrer's medium, and (B) collected and remitted Connecticut sales and use taxes. Conn. Pub. Act No. 18-152, §6 *(effective December 1, 2018)*.

**Vessels and Accessories**. Effective July 1, 2018, the sales and use tax rate is reduced from 6.35% to 2.99% on the sale of a vessel, a motor for a vessel or a trailer used for transporting a vessel. A "vessel" eligible for the reduced rate is defined as those that must be registered with the Connecticut Department of Motor Vehicles. The sale of a vessel continues to be exempt from the sales and use tax if the vessel is docked in Connecticut for 60 or fewer days in a calendar year. Conn. Gen. Stat. §§12-408(1) and 12-411(1), as amended by Conn. Pub. Act No. 18-81, §§62-63 *(effective July 1, 2018, and applicable to sales occurring on or after July 1, 2018). See* DRS Information Publication 2018(20), *Q&A on Purchases of Vessels.*

**Veteran Farmers**. The sales tax exemption for tangible personal property for use in agricultural production by a farmer engaged in such production as a business is amended to expand the definition of a "veteran" farmer. Effective October 1, 2018, a veteran will be defined as any person (i) honorably discharged from, or released under honorable conditions from active service in, the armed forces, or (ii) with a "qualifying condition" as defined in Conn. Gen. Stat. §27-103, who has received a discharge other than bad conduct or dishonorable from active service in the armed forces. A "qualifying condition" means a qualifying diagnosis of post-traumatic stress disorder or traumatic brain injury made by, or an experience of military sexual trauma, as described in 38 U.S.C. §1720D, disclosed to an individual licensed to provide health care services at a United States Department of Veteran Affairs facility. Conn. Gen. Stat. §12-412(63)(D), as amended by Conn. Pub. Act No. 18-47, §14 *(effective October 1, 2018)*.

**Feminine Hygiene Products and Diapers**. Effective July 1, 2018, sales of feminine hygiene products and sales of disposable or reusable diapers are exempt from the Connecticut sales and use tax under legislation enacted in 2016. Conn. Gen. Stat. §§12-412(122) and 12-412(123), as added by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §202 *(effective July 1, 2018, and applicable to sales occurring on and after said date).*

## II. Administrative Pronouncements

**Resale of Meals**. In DRS Ruling No. 2018-1, the DRS considered a situation where a food delivery business purchases meals from a chain of restaurants and resells and delivers the meals to customers. A customer places a meal order directly with the delivery business at the price on the chain's menu, and the delivery business purchases the meal from the chain at a discounted price and then resells it to the customer at the chain's menu price plus a delivery fee. The DRS ruled that the chain need not collect Connecticut sales tax on the sale of the meal to the delivery business if the chain receives a resale certificate from the delivery business, but the delivery business must collect and remit sales tax on its sale of the meal to the customer based upon the sales price of the meal to the customer plus the delivery charge.

**Healthcare Personnel Services**. In IRS Ruling No. 2018-2, the IRS reviewed the application of the Connecticut sales and use tax to the operations of a company that recruits registered nurses and physical therapists from outside the United States and places them with healthcare providers throughout the country, typically under long-term contracts of two to three years. The foreign practitioners are employees of the placement company but must adhere to the directives of the healthcare provider clients in the delivery of healthcare services for the benefit of the patients of those clients. The DRS concluded that the services provided by the placement company are taxable personnel services under Conn. Gen. Stat.

§12-407(a)(37)(C) because the company employs the foreign practitioners, but the service recipients (i.e., the healthcare providers) have control over the work of those practitioners and how that work is performed.

### II. Case Law

**Financed Sale Refunds**. In Home Depot U.S.A., Inc. v. Commissioner, 2018 WL 4839856 (New Britain Super. Ct. Sept. 17, 2018), the Tax Session of the Superior Court dismissed two appeals filed by the retailer-taxpayer from denials of sales tax refund claims. The refund claims were based upon accounts receivable arising from private label credit card sales that the taxpayer claimed had been determined to be worthless. Under its agreements with finance companies, the retailer-taxpayer is reimbursed by the finance companies for the entire retail price and sales tax paid by each cardholder, less a merchant discount of approximately 3%. The merchant discount is to cover the finance companies' costs and bad debt, and the finance companies provide regular reports to the taxpayer regarding worthless accounts to permit the parties to evaluate the amount of the merchant discount. The Superior Court ruled that the taxpayer could not obtain a refund of any sales tax attributable to such worthless accounts as the taxpayer could not establish whether, and to what extent, the taxpayer had actually not been reimbursed for the sales tax attributable to such worthless accounts. The fact that the merchant fee is based, in part, on the risk of bad debt was held to not constitute sufficient evidence of the amount of a refund claim.

## ESTATE AND GIFT TAX

### I. Legislation

**Phase-In of Increased Threshold Delayed**. In 2017, the General Assembly enacted legislation that would have phased in the threshold for the state estate and gift tax to meet the federal threshold over three years: $2.6 million in 2018, to $3.6 million in 2019, and equal to the federal basic exclusion amount in 2020 and thereafter. The federal Tax Cuts and Jobs Act of 2017 subsequently doubled the federal threshold (to $11.18 million in 2018, after adjusting for inflation). In response, the General Assembly extended the period for the phase-in of the increase in the estate and gift tax threshold by setting the gift and estate tax threshold at $5.1 million for 2020, $7.1 million for 2021, $9.1 million for 2022, and the federal exclusion amount for 2023 and thereafter. Consistent with this approach, the threshold for filing an estate tax return only with the probate court, rather than with the DRS, is set at $5.1 million for deaths occurring during 2020, $7.1 million for deaths occurring during 2021, $9.1 million for deaths occurring during 2022, and the federal threshold for deaths occurring on or after January 1, 2023. Conn. Gen. Stat. §§12-391(g), 12-642(a), 12-392(b)(3), 12-391(c) and 12-643, as amended by Conn. Pub. Act No. 18-49, §§14-18 *(effective May 31, 2018)*, as further amended by Conn. Pub. Act No. 18-81, §§66-68 *(effective May 15, 2018)*. [Ed. note. According to a DRS representative, the budget legislation (Conn. Pub. Act No. 18-81) supersedes Conn. Pub. Act No. 18-49 because it was passed by the General Assembly after Public Act No. 18-49.]

## PROPERTY TAX

### I. Legislation

**Credit for Donations to Community Supporting Organizations**. New legislation authorizes a municipality to provide a residential property tax credit for the following fiscal year in an amount not to exceed the lesser of (i) the amount of property tax owed, or (ii) 85% of the amount of voluntary, unrestricted and irrevocable cash donations made by or on behalf of the owner of a residential property located in the municipality to a "community supporting organization during the calendar year preceding the year in which an application for the tax credit is filed." If a municipality desires to provide such a credit against the municipal property tax, the municipality must designate a single community supporting

organization to receive the cash donations that will qualify for the tax credit and then enter into an agreement with that organization that requires the organization to (i) accept only voluntary, unrestricted and irrevocable cash donations; (ii) provide, on or after July first but not later than July thirty-first of each fiscal year for which the tax credit has been approved, a grant to the municipality in an amount equal to all cash donations received during the prior fiscal year and a written statement setting forth certain information about each donor and donation; and (iii) provide a contemporaneous written receipt to the donor of the donation. The agreement also must compel the municipality to provide to the community supporting organization a written statement of the municipal programs and services supported by the grant, and to act as the administrative and fiscal agent for the organization. A taxpayer who has made a donation to the community supporting organization may file an application for the tax credit with the municipal tax collector on or after January 1st and prior to April 2nd prior to the fiscal year for which the tax credit is claimed. The application must be accompanied by evidence of the donation and an affidavit affirming the donation on a form prescribed by the Office of Policy and Management ("OPM"). Conn. Pub. Act No. 18-49, §10 *(effective July 1, 2018)*. [Ed. note. The creation of a credit against the municipal property tax represents an additional attempt to avoid the federal income tax limitation on the deductibility of state and local taxes by allowing a taxpayer to make a charitable contribution in lieu of a property tax payment. In IRS Notice 2018-54, the IRS cautioned taxpayers that federal law controls the proper characterization of payments, such as purported charitable contributions, for federal income tax purposes. The Treasury Department subsequently issued proposed regulations (REG-112176-18) in August governing the availability of a charitable contribution deduction under Internal Revenue Code §170 when a taxpayer receives or expects to receive a corresponding state or local tax credit. Taxpayers should consult with their tax advisors before taking a deduction for any contribution to a community supporting organization on their federal income tax returns.]

**Out-of-State Vehicles**. In 2017, the General Assembly enacted legislation that required a local assessor to notify the Commissioner of Motor Vehicles if the assessor were to determine that a motor vehicle registered outside of Connecticut is, in fact, subject to Connecticut municipal property tax. The Commissioner was then to provide the assessor with certain information about the motor vehicle and its owner, and the assessor was to add the value of the motor vehicle to its taxable grand list. This legislation was repealed by the General Assembly. Conn. Gen. Stat. §12-71b(h), as repealed by Conn. Pub. Act No. 18-164, §14 *(effective June 13, 2018)*.

**Motor Vehicle Property Tax Grants**. Under current law, municipalities and special taxing districts may tax motor vehicles at a different rate than other taxable property, but it imposes a cap on the mill rate for motor vehicles (currently 39 mills and increasing to 45 mills for the 2019 fiscal year). In addition, any municipality that imposes a mill rate on real and personal property (other than motor vehicles) that is greater than the capped motor vehicle mill rate is eligible for a property tax grant equal to the difference between (i) the amount of property taxes the municipality and any district located therein levied on motor vehicles for the 2013 assessment year and (ii) the amount of the 2013 levy if the mill rate for that year was 39 mills. A municipality also could apply, beginning in the 2018 fiscal year for a supplemental motor vehicle property tax grant if it had a mill rate of more than 39 mills in the 2017 fiscal year, provided that the municipality had implemented a real property revaluation in the 2014 or 2015 assessment year that resulted in a minimum of a four mill rate increase in the prior mill rate. Under new legislation: (i) the municipal motor vehicle property tax grant program for the 2019 fiscal year has been recast as a specified amount of grants that will be paid to 12 specified municipalities; (ii) the formula for the motor vehicle property tax grant program for the 2020 and future fiscal years will be based upon the 2016 assessment year (rather than the 2013 assessment year) and the amount of the 2016 levy if the mill rate for that year had been 45 mills; and (iii) the supplemental motor vehicle property tax program is eliminated after the 2018 fiscal year. Conn. Pub. Act No. 18-81, §23 *(effective July 1, 2018)*; Conn. Gen. Stat. §4-66l(c), as amended by Conn. Pub. Act No. 18-81, §24 *(effective July 1, 2018)*.

**Veterans' Property Tax Exemptions**. The General Assembly amended two statutes that authorize, but do not require, a municipality to exempt certain veterans' property from municipal property taxation if the income of the veteran is below a limit set by OPM or an amount set by the municipality. Under current law, the municipal-set income limit could be up to $25,000 more than the applicable OPM-set income limit. As a result of the amendment, the municipal-set income limit can be no less than the OPM-set income limit. Conn. Gen. Stat. §§12-81f(a)-(c) and 12-81jj, as amended by Conn. Pub.

Act No. 18-102, §§1-2 *(effective October 1, 2018, and applicable to assessment years commencing on or after October 1, 2018)*. *See also* Conn. Gen. Stat. §§12-81(20) and (21), as amended by Conn. Pub. Act No. 18-72, §23 (effective October 1, 2018), and Conn. Gen. Stat. §12-81jj(a), as amended by Conn. Pub. Act No. 18-72, §43 *(effective October 1, 2018, and applicable to assessment years commencing on or after October 1, 2018)*.

**Annual Adjustments for Apartment and Residential Properties**. The statute requiring the City of Hartford to make annual adjustments to the assessment rate charged to apartment and residential property is amended. The definition of "apartment property" is amended to include condominium units converted after July 1, 2018, unless the conversion is of a building of four or more units into a common interest community and the purchaser of the building invests in excess of 35% of the purchase price within three years of the purchase. The definition of "residential property" is also changed to expressly include: (i) common interest communities converted from apartment properties prior to July 1, 2018; and (ii) condominiums that are used for residential purposes that are converted from apartment properties prior to July 1, 2018. Conn. Gen. Stat. §12-62r, as amended by Conn. Pub. Act No. 18-169, §45, and further amended by Conn. Pub. Act No. 18-170, §3 *(effective July 1, 2018, and applicable to assessment years commencing on or after October 1, 2018)* and §4.

**Small Value Personal Property**. A new exemption from the municipal property tax has been enacted for tangible personal property with an original value of not more than $250 that is owned by a business organization. The exemption is not available, however, for the first ten full assessment years following the assessment year in which the property is acquired. Conn. Gen. Stat. §12-81(79), as added by Conn. Pub. Act No. 18-79, §1 *(effective October 1, 2018, and applicable to assessment years commencing on or after October 1, 2018)*.

**Coloring or Mixing Paint Equipment**. Under current law, machinery and equipment used by paint retailers in the process of coloring or mixing paint is exempt from municipal property taxation. Effective July 1, 2018, any person claiming this exemption shall file an exemption request with the assessor, on a form prescribed by the assessor, not later than November 1st. Conn. Gen. Stat. §12-81(78), as amended by Conn. Pub. Act No. 18-136, §2 *(effective July 1, 2018)*. [Awaiting action by the Governor.]

**Farm Land**. Connecticut grants favorable property tax treatment for land that qualifies as "farm land" under the law. The governing statute is amended to provide that an assessor cannot deny the application of an owner of land for classification of that land as farm land if the land meets the criteria for classification as farm land. Conn. Gen. Stat. §12-107c(a), as amended by Conn. Pub. Act No. 18-176, §1 *(effective October 1, 2018, and applicable to assessment years commencing on or after October 1, 2018).*

**Delinquent Sewer Assessments**. Under current law, the interest rate for a delinquent sewer benefits assessment is set at 18% annually, or 1.5% per month or a portion thereof. New legislation compels the Public Utilities Regulatory Authority ("PURA"), not later than January 1, 2019, to establish a program to regulate any applicable charges and assessments and lien processes, including foreclosures, of any water pollution control authorities located in municipalities with populations of not fewer than 100,000 that are served by a private water company regulated by PURA. Each of these municipalities additionally is required to adopt an ordinance, if applicable, to: (i) protect seniors, veterans and low-income families from water pollution control foreclosures by restricting accelerated foreclosure proceedings for past due sewer fees; (ii) lower the interest rate charged by the municipality on delinquent sewer assessments; and (iii) restrict assignees of water pollution control authorities from purchasing foreclosed properties and to establish financial guidelines that trigger foreclosure for nonpayment of fees. On and after July 1, 2018, no action to foreclose a lien shall be instituted for a period of one year after such action is filed by a water pollution control authority or its representative. Conn. Pub. Act No. 18-174, §§1-2 *(effective July 1, 2018)*.

**Brownfield Remediation Tax Incentive**. The law currently authorized a municipality to reduce or otherwise abate the property taxes attributable to real property designated as a brownfield (as defined by C.G.S. §32-760) while the current owner remediates the property (for a maximum of seven years) under a voluntary remediation program with the Department of Energy and Environmental Protection and in compliance with the Connecticut Transfer Act. The governing

statute is amended to authorize a municipality to enter into an abatement agreement with a prospective owner, as well as the current owner of the subject property. Conn. Gen. Stat. §12-81r, as amended by Conn. Pub. Act No. 18-85, §6 *(effective October 1, 2018)*.

## II. Case Law

**Pharmacy Retail Property**. In Walgreen Eastern Co., Inc. v. West Hartford, 329 Conn. 484 (2018), the Connecticut Supreme Court considered an appeal by the plaintiff-lessee pharmacy from a property tax assessment on real estate leased by the pharmacy for a retail store. During the Superior Court proceedings, the plaintiff submitted two appraisals based on the finding that the highest and best use of the subject property was for continued retail/commercial use. The appraisers determined the fair market value of the property employing the income capitalization approach relying upon the fair market rent paid for comparable triple net retail properties, but not taking into account the actual rent paid by the plaintiff for the subject property. The Town's appraiser determined that the highest and best use for the property was continued use as a retail pharmacy as the property's improvements were designed and constructed to the plaintiff's specifications, and were in good condition and in compliance with local zoning laws. For valuation purposes, the Town's appraiser referred to only comparable stand-alone pharmacy properties, and, when employing the income capitalization approach, considered both market rent and the actual rent paid for the subject property. The Supreme Court affirmed the Superior Court's finding that the fair market value of the property was the value as determined by the Town's appraiser, and ruled that: (i) Conn. Gen. Stat. §12-63b(b) compels a court, when employing the income capitalization approach, to consider the actual rental income of the subject property; (ii) the lower court had properly valued the fee simple interest, and not the leased fee interest, of the property in arriving at the property's fair market value; and (iii) the lower court did not err in selecting too narrow a highest and best use of the subject property as there was evidence that there is a national chain pharmacy submarket of real estate.

**Fee Award Appeal**. In Ledyard v. WMS Gaming, Inc., 330 Conn. 75 (2018), the Connecticut Supreme Court ruled that a lower court determination that requires a property owner to pay the attorneys' fees incurred by a municipality in actions brought to collect delinquent property taxes was appealable even though the amount of those fees had not yet been determined. The property owner had leased slot machines to the Mashantucket Pequot Tribal Nation and the Tribal Nation had filed a federal action challenging the municipality's authority to impose personal property taxes on the machines. The federal court upheld the right to tax the property, and the state court later held that the municipality could collect its fees attributable to both the state collection action and the federal court challenge. The property owner immediately appealed that ruling prior to the actual determination of the amount of the fee award.

**Certificate of Change**. In Tirado v. Torrington, 179 Conn. App. 95 (2018), the Connecticut Appellate Court upheld the dismissal of a motor vehicle personal property tax appeal. In 2010, the City of Waterbury agreed to remove the subject motor vehicle from its 2004 grand list after receiving information that the plaintiff owner lived in Torrington on October 1, 2004. Waterbury issued a certificate of change on March 22, 2010, which was forwarded to the City of Torrington. On March 24, 2010, Torrington issued a certificate of change adding the plaintiff's motor vehicle to its 2004 grand list. On February 10, 2014, the plaintiff owner filed an action asserting that the three-year statute of limitations for the issuance of certificates of change under Conn. Gen. Stat. §12-57 had expired and, therefore, Torrington's assessment was wrongful. The Appellate Court ruled that the Superior Court did not have subject matter jurisdiction for the appeal as the plaintiff had not exhausted her administrative remedies (i.e., appealed to the Board of Assessment Appeals) as required under Conn. Gen. Stat. §12-117a, and Conn. Gen. Stat. §12-119 (allowing the Superior Court to grant relief when property is wrongfully assessed) was not applicable to this appeal.

**Elderly Property Tax Relief**. In Gianetti v, Dunsby, 182 Conn. App. 855 (2018), the Connecticut Appellate Court considered an appeal of a mandamus action brought by a taxpayer against individual members of the Easton Board of Selectmen. The genesis of the action was a denial by the Easton Board of Selectmen of the taxpayer's application under a local ordinance that provides for limited property tax relief for elderly property owners with income below certain specified thresholds. The Connecticut Appellate Court held that the trial court did not have subject matter jurisdiction to

hear the action as there is no statutory right to appeal the Board of Selectmen decision and the Connecticut Uniform Administrative Procedure Act is not applicable to a local board of selectmen decision.

**Alias Tax Warrants**. In O'Brien-Kelly, Ltd. v. Goshen, 2018 WL 1475725 (Super. Ct. Feb. 27, 2018), the Superior Court ruled that a state marshal was entitled to collect his fee pursuant to Conn. Gen. Stat. §52-261 despite the fact that the taxpayer had paid the principal amount of the delinquent tax due under an alias tax warrant after receiving a demand letter from the state marshal but before there had been an actual levy on any assets of the taxpayer. The Court concluded that the demand letter constituted a constructive execution of the alias tax warrant pursuant to Conn. Gen. Stat. §12-162(c).

**Change In Ownership**. In 100 Berlin Holdings, LLC v. Cromwell, 2018 WL 523656 (Super. Ct. Jan. 12, 2018), the Superior Court granted a motion to dismiss a personal property tax appeal taken by the plaintiff purchaser of a hotel property based upon the plaintiff purchaser's claim that the assessor over-valued certain personal property. Although the hotel property had been purchased on March 31, 2015, neither the seller nor the purchaser of the hotel had advised the town assessor. Compounding the situation, the seller mistakenly filed a Personal Property Declaration for the property on or about November 9, 2015, and the purchaser filed no declaration. An assessment was made based upon the Declaration and no timely appeal was taken. The purchaser eventually learned of the error and filed an appeal in its name on May 20, 2016. The Court dismissed the appeal finding that the fault lay with the purchaser and not with the town.

**Lien Foreclosures**. Two recent Superior Court decisions underscore the importance of challenging an assessment pursuant to Conn. Gen. Stat. §§12-117a and 12-119 prior to the institution of a lien foreclosure proceeding by a municipality. In Simsbury v. McCue, 2018 WL 1936464 (Super. Ct. Mar. 28, 2018), the Superior Court held that the prior pending action doctrine does not bar a municipal lien foreclosure action because the property owner had filed a prior declaratory judgment action seeking to have the municipal liens invalidated. In Branford v. Woermer, 2018 WL 2709884 (Super. Ct. May 15, 2018), the Court granted summary judgment to the municipality in its foreclosure action on delinquent tax and sewer liens, finding that the property owner's request for relief based upon the circuit breaker tax relief program or other valuation argument was untimely.

**Valuation and Depreciation**. In Kohl's Department Stores, Inc. v. Rocky Hill, 2018 WL 4042443 (New Britain Super. Ct. Aug. 7, 2018), the plaintiff department store challenged the depreciated value of its furniture fixtures and equipment as part of an appeal from a property tax assessment. Although either the municipality or the taxpayer can question the depreciation factor applied in the valuation of a taxpayer's personal property, the burden is on the taxpayer to establish aggrievement. Here, the taxpayer was the only party to present evidence at trial on the depreciated value of the subject property and the trial court granted the appeal.

**Lien Priority**. In Thomas Industries, Inc. v. Bristol, 2018 WL 4054917 (D. Conn. Aug. 25, 2018), the United States District Court for the District of Connecticut considered the proper disbursement of the proceeds from the sale of certain machines formerly owned by a taxpayer who had failed to pay federal quarterly employee withholding taxes, state unemployment contributions and municipal personal property taxes owed to the City of Bristol. Each of the IRS, the Department of Labor and the City had filed liens against the taxpayer and the subject machinery. The District Court held, in relevant part, that: (i) federal law determines lien priority when a federal tax lien is involved; (ii) a federal tax lien takes priority over any competing liens unless the competing lien was choate, or fully established, prior to the attachment of the federal lien; (iii) a federal tax lien is effective upon assessment even in the absence of recordation of the lien; and (iv) the state statute that grants a super-priority to a perfected municipal tax lien on personal property is not recognized under federal law, even as against other state liens.

**Deficiency Judgment**. In New Haven v. Y&H Investments, LLC, 2018 WL 4373823 (New Haven Super. Ct. Aug. 20, 2018), the Superior Court considered a motion to strike portions of a complaint to foreclose on municipal tax liens. The Court: (i) denied the motion to strike the *ad damnum* clause as the clause gave the defendant notice of the amount in controversy; and (ii) granted the motion to strike the portion of the prayer for relief requesting a deficiency judgment because there is no statutory authority permitting a municipal taxing authority to pursue a deficiency judgment. The Court

did, however, note that a municipality has other options to collect its taxes, including an alias tax warrant, a direct suit, the withholding of payments and the assignment of liens.

**Limited Liability Company Standing**. In Barton v. Stonington, Docket No. KNL-CV-18-5018150 (New London Super. Ct. Oct. 10, 2018), the Superior Court denied a motion to dismiss a tax appeal brought by the individual single member of a limited liability company ("LLC") arising out of a property tax assessment made against real property owned by the LLC. The opinion suggests that members of a LLC have standing to bring a tax appeal but, in any event, the failure to name the LLC as a plaintiff was a circumstantial error as it was apparent from the pleading that the LLC was challenging the tax assessment. [Ed. note. When a LLC owns the assessed real property, taxpayers are well advised to bring the appeal in the name of the LLC.]

**Service of Appeal**. In Perelli v. Madison, 2018 WL7107311 (New Haven Super. Ct. Dec. 26, 2018), the Superior Court dismissed for lack of subject matter jurisdiction a property tax appeal that was filed with the Court within the two-month period after the adverse decision of the Board of Assessment Appeals, but which was served on the town and returned to the Court after such two-month period. The Court held that Conn. Gen. Stat. §12-117a requires complete service of the appeal within the two-month appeal period.

# MISCELLANEOUS TAXES

## I. Legislation

**Panel to Study Commission Recommendations**. The General Assembly has established a panel to study and make recommendations regarding the proposals made by the Commission on Fiscal Stability and Economic Growth (the "Commission") concerning "the rebalancing of state taxes to better stimulate economic growth without raising new taxes." The study is to include reviews of (i) options for expanding revenue services for municipalities, and (ii) base-broadening methodologies for the sales and use taxes, taking into account the work of the Commission and the former State Tax Panel. The Commission, which was authorized during the 2017 legislative session, submitted its final report in March 2018. Among its recommendations were the following: (i) a reduction of the marginal tax rates for the personal income tax (including the highest tax rate from 6.99% to 5.75%); (ii) the levy of an 0.8% payroll tax across all companies regardless of structure (C corporations, pass-through entities, etc.); (iii) an increase in the general sales and use tax rate from 6.35% to 7.25%; (iv) the elimination of approximately 14% of the dollar value of current state tax exemptions to generate approximately $750 million in additional revenue; and (v) the repeal of the state estate and gift taxes. The new panel is to be comprised of six members selected by the leaders of the Connecticut General Assembly and the Commissioner of Revenue Services as an *ex officio*, nonvoting member. The panel is to submit a report with its findings and recommendations to the Committee on Finance, Revenue and Bonding on or before January 1, 2019. Conn. Pub. Act No. 18-81, §56 *(effective May 15, 2018).* In a related action, the General Assembly directed the Secretary of OPM to issue a request for proposals to hire a national consultant to study and make recommendations regarding efficiency improvements in revenue collection and agency expense management that will result in savings of at least $500 million without adversely impacting program quality or social services program benefits. The Secretary is to consult with former members of the Commission on the study and its progress, and the consultant is required to submit a report with its findings and recommendations to the Committee on Finance, Revenue and Bonding on or before February 1, 2019. Conn. Pub. Act No. 18-81, §57 *(effective May 15, 2018).* [Ed. note. It is our understanding that the Study Panel commissioned by the General Assembly was never convened. Despite the expiration of its original legislative authority, the Commission on Fiscal Stability and Economic Growth continued to meet and issued a Report 2.0 in November. The Report 2.0 includes revised legislative recommendations, including the following tax proposals: (i) eliminate the alternative capital stock base method of calculating the corporation business tax; (ii) liberalize the corporation business tax rules governing the use of net operating losses; (iii) reduce the cap on the use of research and development and certain other tax credits; (iv) allow the sunset of the 10% surcharge on the corporation business tax; (v) eliminate the business entity tax; (vi)

repeal the provision that eliminates the benefit of lower marginal tax brackets for the personal income tax; (vii) lower the highest personal income tax bracket from 6.99% to 6.7%; (viii) increase the maximum potential property tax credit to $400; (ix) increase the maximum available earned income tax credit; (x) repeal the new income tax exemption for pensions and annuities; (xi) repeal the estate and gift tax; and (xii) extend the sales and use tax to dentistry; legal services, tax preparation and accounting (consumers only); nonprescription drugs; renovations and repairs of residential property; veterinary services; parking; dry cleaning; newspapers and magazines; amusements and recreation; and groceries (at a rate of 2%).]

**Cigarette and Tobacco Products Tax Penalties**. New legislation increases criminal and civil penalties for various offenses related to sales of cigarettes and tobacco products. The legislation increases from a Class D felony to a Class C felony the penalties for repeat violations of the cigarette shipment or transport law, the willful attempt to evade cigarette taxes or failure to pay taxes on 20,000 or more cigarettes, illegal sales of untaxed tobacco products that would be taxed at least $2,500 and the willful attempt to evade tobacco products or failure to pay tobacco product taxes of $2,500 or more, and the willful delivery or disclosure to the DRS of fraudulent or false cigarette or tobacco products tax documents. (The maximum civil penalty that may be imposed, by the DRS for each of the foregoing violations, is increased from $5,000 to $10,000.) The legislation also increases the penalties for selling (i) cigarettes or taxes tobacco products without a DRS license, (ii) untaxed cigarettes or tobacco products, and (iii) improperly packaged cigarettes. The definition of "racketeering" under the Corrupt Organizations and Racketeering Act (CORA) is amended to (i) include in the definition of "racketeering" the willful attempt to evade cigarette taxes or failure to pay tax on 20,000 or more cigarettes, and (ii) eliminate from the definition of "racketeering" the possessing, transporting for sale, selling or offering for sale of 20,000 or more cigarettes in certain stamped or illegally stamped packages. Finally, the legislation exempts from the tobacco products tax cigars that are (i) exported from Connecticut and (ii) owned by a distributor located on the premises of a company performing fulfillment services for the distributor. Conn. Gen. Stat. §§12-285c, 12-286(e), 12-304, 12-306b(b), 12-314(a), 12-330f, 12-330j and 12-330c, as amended by Conn. Pub. Act No. 18-25, §§1-7 and 10 *(effective July 1, 2018).*

**Ambulatory Surgical Center Tax**. Effective July 1, 2019, the current 6% tax on the gross receipts of an ambulatory surgical center is amended to exempt from the tax both Medicaid payments and Medicare payments received by the center. The General Assembly also directed the Commissioner of Social Services, in consultation with the Connecticut Association of Ambulatory Surgical Centers, to establish a pilot program to study ways to increase access to medical care and decrease costs for such care under the Medicaid program. Conn. Gen. Stat. §12-263i, as amended by Conn. Pub. Act No. 18-170, §1 *(effective July 1, 2018)*; Conn. Pub. Act No. 18-170, §2 *(effective June 14, 2018)*.

**Homeowner Insurance Surcharge**. Beginning on January 1, 2019, and continuing until December 31, 2029, a new surcharge is imposed at the rate of $12 on the named insured under each policy of homeowners insurance delivered, issued for delivery, renewed, amended or endorsed on or after January 1, 2019, for a personal risk insurance policy on owned dwellings with four or fewer units or on condominiums. All surcharges are to be collected by insurers and remitted to the Insurance Commissioner. With the exception of an amount equal to the cost of funding an administrative offerer position at the Insurance Department to facilitate the surcharge collection, the Insurance Commissioner is to deposit the collected surcharge into a newly created General Fund account to be known as the "Healthy Homes Fund." Eighty-five percent of such deposits are to be transferred to the Crumbling Foundations Assistance Fund to assist homeowners with concrete foundations damaged by the presence of pyrrhotite. The remaining monies are to fund: (i) grants to certain homeowners in New Haven and Woodbridge with structural damage from subsidence or water infiltration; and (ii) certain lead, radon and other containment activities. Conn. Pub. Act No. 18-160, §1 *(effective January 1, 2019, and applicable to policies delivered, issued or renewed on or after January 1, 2019),* and §2 *(effective June 13, 2018).* [Ed. note. As noted by Governor Malloy, the legislation is poorly drafted. As an example, rather than impose the $12 surcharge on each policy, it imposes the policy on each insured. Hopefully these errors can be addressed during the 2019 legislative session.]

**Rental Machinery Surcharge**. Effective July 1, 2018, the surcharge on machinery rented within Connecticut by a rental company for a period of less than 365 days or under an open-ended contract is increased from 1.5% to 2.75%. A "rental company" is any business entity that has five or more pieces of machinery for rental and that derives at least 51% of its

total revenue from rental income. Conn. Gen. Stat. §12-692, as amended by Conn. Pub. Act No. 18-136, §1 *(effective July 1, 2018, and applicable to machinery rented on or after July 1, 2018)*.

**Qualified Opportunity Zones**. The federal Tax Cuts and Jobs Act of 2017 allows states, such as Connecticut, to nominate one or more low-income communities to be designated by the Secretary of the Treasury to be a "qualified opportunity zone". Taxpayers who invest in a qualified opportunity fund that makes investments in a qualified opportunity zone can qualify for certain federal tax benefits related to those investments. On May 18, 2018, Governor Malloy announced that 72 opportunity zones, located in 27 municipalities across Connecticut, have received the required federal designation. The General Assembly has directed the Commissioner of Economic and Community Development to conduct a study to identify best practices for the marketing of the benefits of qualified opportunity zones. The Commissioner is to submit the results of the study to the Finance, Revenue and Bonding Committee on or before January 1, 2019. Conn. Pub. Act No. 18-49, §21 *(effective May 31, 2018)*.

**Utility Companies Tax**. Effective January 1, 2020, the statute providing for the utility companies gross earnings tax is amended to provide that gross earnings from providing electric transmission services or electric distribution services shall not include the conservation adjustment mechanisms charged under Conn. Gen. Stat. §16-245m. Conn. Gen. Stat. §12-264(c)(2), as amended by Conn. Pub. Act No. 18-50, §11 *(effective January 1, 2020).*

**Dyed Diesel Fuel.** Effective July 1, 2018, an exemption from the motor vehicle fuels tax is established for dyed diesel fuel (as defined in Conn. Gen. Stat. §12-487) sold to a licensed owner or operator of marine fuel docks exclusively for marine purposes, provided (i) the fuel is delivered, upon such sale, to a tank in which fuel is kept exclusively for marine purposes, and (ii) a statement, on a Form AU - 478, *Marine Fuel Dock Owner or Operator Declaration/Motor Vehicles Fuels Tax Exemption*, that the fuel is used exclusively for marine purposes, is submitted by the purchaser to the distributor. Conn. Gen. Stat. §12-458, as amended by Conn. Pub. Act No. 18-81, §64 (effective July 1, 2018, and applicable to sales occurring on or after July 1, 2018). The legislation creating this exemption also sets forth the conditions under which the Commissioner of Revenue Services may license the owner or operator of marine fuel docks to purchase the exempt dyed diesel fuels. These conditions include controls to ensure that the exempt fuel can be dispensed directly into the fuel tank of any vessel or vessel motor, and the obligation to maintain and retain for three years records relating to sales of the fuel. Each distributor of dyed diesel fuel shall be required to file with the DRS a monthly sales report. Conn. Pub. Act No. 18-81, §65 (effective July 1, 2018). [Ed. note. Please noted that while such purchases and sales of dyed diesel fuel will be exempt from the motor vehicles fuels tax, they will become subject to the Connecticut Sales and Use Tax as of July 1, 2018.] DRS Special Notice 2018(5.1), *Legislative Changes Affecting Motor Vehicle Fuels Tax, Sales and Use Taxes, and Rental Surcharge*.

**Electronic Lien Signatures**. The Commissioner is now authorized to use electronic signatures for any filing authorized under the law concerning liens on personal property for delinquent state taxes (i.e., Uniform Commercial Code filings). Conn. Gen. Stat. §12-35a(h), as added by Conn. Pub. Act No. 18-26, §1 *(effective May 29, 2018)*.

## *II. Administrative Pronouncements*

**Fresh Start Program**. As a reminder, from October 31, 2017 through November 30, 2018, the Commissioner of Revenue Services is conducting a Fresh Start Program (the "Program") for any "qualified taxpayer" who failed to file a tax return, or failed to report the full amount of tax properly due on a previously filed tax return, that was due on or before December 31, 2016. If a taxpayer applies for and is accepted into the Program, the taxpayer can enter into a fresh start agreement which shall provide for a waiver of all penalties and 50% of the interest attributable to such failure, and may also provide for a limited look-back period. The Program covers all Connecticut taxes except the motor carrier road tax. An "eligible taxpayer" is a taxpayer who voluntarily comes forward and files an application for the Program for a particular tax type or types and tax period or tax periods prior to, with respect to those tax type(s) and tax period(s), the receipt by the taxpayer of a notice of audit or billing notice, execution of a closing agreement, acceptance of an offer of compromise, filing of a protest from an

audit determination or institution of litigation against the Commissioner. As part of the fresh start agreement, the taxpayer must: (i) voluntarily and fully disclose all material facts pertinent to the tax liability; ii) file any tax returns or documents that may be required by by the Commissioner; (iii) pay in full the tax and portion of interest due; (iv) agree to timely file all tax returns and pay all taxes due for a period of three years after the agreement is signed; and (v) waive all administrative and judicial rights of appeal for the relevant tax period(s). [Ed. note. The DRS has published on its website information and FAQs regarding the Fresh Start Program.]

**Diesel Fuel**. Effective for the twelve-month period beginning July 1, 2018, the motor vehicle fuels tax rate per gallon on the sale or use of diesel fuel is increased from 41.7 cents to 43.9 cents. DRS Announcement 2018(2), *Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2018*.

**Dry Cleaning Establishments**. In Special Notice 2018(6), the DRS provides information regarding 2017 legislation exempting "dropstores" from the dry cleaning establishment surcharge and regarding the use tax obligations of dry cleaning establishments.

### III. Case Law

**SATV Gross Earnings Tax**. In Dish Network, LLC v. Commissioner, 330 Conn. 280 (2018), the Connecticut Supreme Court resolved a long-standing dispute regarding the proper scope of the gross earnings tax to satellite television ("SATV") operations. The plaintiff taxpayer is a SATV operator and was the subject of a gross earnings tax audit. An assessment was imposed, but the taxpayer did not challenge the assessment. Subsequently, however, the taxpayer filed amended tax returns for tax periods inclusive of the periods audited, and sought a refund of tax paid for what earnings the SATV operator asserted were not attributable to the "transmission to subscribers in [Connecticut] of video programming…" and, therefore, were not taxable under Conn. Gen. Stat. §12-256(b). The Connecticut Supreme Court ruled that: (i) the taxpayer was not barred from seeking a refund of taxes paid for tax periods that previously had been the subject of a Connecticut audit; (ii) the gross earnings tax did not apply to earnings from "nonprogramming goods and services" such as the sale or lease of satellite dishes and related equipment, equipment installation and maintenance, DVR service and subscription to Dish Magazine; (iii) the gross earnings tax did apply to the fee for the transmission of video programming and for "payment related fees" (e.g., fees collected based on the failure to timely pay bills, for reconnecting a subscriber after being disconnected for nonpayment and for certain types of payment plans); and (iv) the taxpayer was properly denied interest on the refund because it had failed to request an interest award.

## ADMINISTRATIVE PRONOUNCEMENTS

### Announcements

AN 2018(2), Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2018
AN 2018(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2018(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2018(3.2), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2018(3.3), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
AN 2018(5), 2018 Revisions of Forms TPM-1 and TPM-2
AN 2018(6), Assessments Refunded by the Connecticut Insurance Guaranty Association
AN 2018(7), Taxability of Social Security Benefits for Connecticut Income Tax Purposes

### Informational Publications

IP 2018(1), Connecticut Circular CT Employer's Tax Guide
IP 2018(2), Building Contractors' Guide to Sales and Use Taxes
IP 2018(3), Exemptions from Admissions Tax
IP 2018(4), Pay-When-Paid Method for Materialmen
IP 2018(5), Getting Started in Business
IP 2018(6), Procedures to Request Disclosure of Tax Returns and Tax Return Information
IP 2018(7), Is My Connecticut Withholding Correct?
IP 2018(8), Connecticut Tax Guide for Payers of Nonpayroll Amounts
IP 2018(9), 2018 Q&A on Estimated Corporation Business Tax and Worksheet CT-1120AE
IP 2018(10), Successor Liability and Request for Tax Clearance
IP 2018(11), A Guide to Calculating Your Annualized Estimated Income Tax Installments and Worksheet CT-1040AES

IP 2018(12.1), Forms 1099-R, 1099-MISC, 1099-K, and W-2G Electronic Filing Requirements for Tax Year 2018
IP 2018(13), Form W-2 Electronic Filing Requirements for Tax Year 2018
IP 2018(14), 2018 Federal/State Electronic Filing Handbook
IP 2018(15), Connecticut Income Tax Information for Armed Forces Personnel and Veterans
IP 2018(16), Estimated Connecticut Income Taxes
IP 2018(17), Status Letters
IP 2018(18), Connecticut Voluntary Disclosure Program
IP 2018(19), Farmer's Guide to Sales and Use Taxes, Motor Vehicles Tax, Estimated Income Tax, and Withholding Tax
IP 2018(20), Q&A on Purchases of Vessels
IP 2018(21), State of Connecticut IFTA Manual

### *Office of Commissioner Guidance*

OCG-4, Regarding Treatment of IRC §965
OCG-5, Regarding the Treatment of Bonus Depreciation for Connecticut Income Tax Purposes
OCG-6, Regarding the Calculation of the Pass-Through Entity Tax
OCG-7, Regarding the Pass-Through Entity Tax Credit
OCG-8, Regarding Marketplace Facilitators and Marketplace Sellers

### *Policy Statements*

PS 2018(1), Income Tax Withholding for Athletes or Entertainers
PS 2018(3), Request for Waiver of Civil Penalties

### *Rulings*

Ruling No. 2018-1, Sales and Use Taxes - Resale of Meals, Delivery Charges
Ruling No. 2018-2, Sales and Use Taxes - Personnel Services

### *Special Notices*

SN 2018(2), Conversion Factors for Motor Vehicle Fuels Occurring in Gaseous Form Beginning July 1, 2018
SN 2018(3), Change to the Prepaid Wireless E 9-1-1 Fee
SN 2018(4), Guidance on 2018 Estimated Payments for the Newly Enacted Pass-Through Entity Tax
SN 2018(5.1), Legislative Changes Affecting Motor Vehical Fuels Tax, Sales and Use Taxes, and Rental Surcharge
SN 2018(6), Obligation of Dry Cleaners for the Dry Cleaning Establishment Surcharge and Business Tax
SN 2018(7), Treatment of Global Intangible Low-Taxed Income for Connecticut Corporation Business Tax Purposes
SN 2018(8), Permit Requirements for Tax Preparers and Facilitators
SN 2018(9), 2018 Legislative Changes Affecting the Income Tax

## 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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