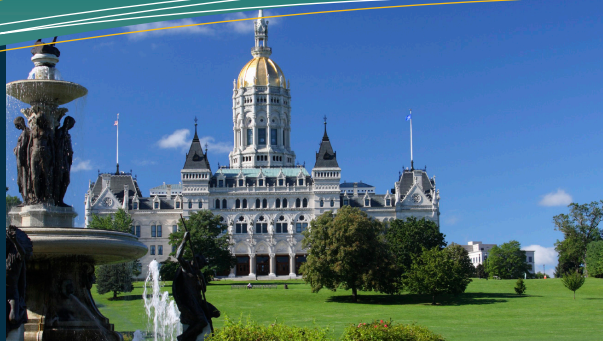


June 18, 2013

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## Mixed Messages, More Taxes

Although the 2013 legislative session of the Connecticut General Assembly was dominated by a series of non-financial issues, such as gun control, it ended with the enactment of a number of finance and tax-related bills, including the passage of a biennial budget for the 2014 and 2015 fiscal years, that will leave many taxpayers scratching their heads.

Mixed messages were the order of the day. Despite a United States Bureau of Economic Analysis report that showed Connecticut to be dead last in economic growth in 2012, the General Assembly extended the corporation business tax surcharge and limited the use of tax credits by businesses investing in Connecticut. The Governor repeatedly vowed the state would not impose any new taxes, but his budget ensures that many Connecticut businesses will pay more taxes during the 2014 and 2015 fiscal years. Legislators bemoaned the state's high per capita debt and high electricity rates, but authorized increased state spending and borrowing, and extended the electric generation tax. Perhaps most emblematic of the oddly constructed budget is the fact that it reduces the state earned income tax credit for the poor for the next two years, and simultaneously lowers the sales tax on luxury yachts costing more than \$100,000.

On a more positive note, the biennial budget provided for a two-month amnesty period from September 16, 2013 through November 15, 2013, during which eligible taxpayers were able to correct errors made in the reporting and/or payment of Connecticut tax for any taxable period ending on or before November 30, 2012, with a reduction in interest charges and relief from criminal and civil penalties. According to Commissioner of Revenue Services Kevin Sullivan, the Department of Revenue Services received over 17,000 amnesty applications and was able to collect approximately \$185 million in revenue for the state. Commissioner Sullivan also instituted this year two initiatives to solicit input from the tax practitioner and taxpayer communities. The first was the creation of a Department of Revenue Services ("DRS") External Advisory Group to provide the DRS with an "outside in" perspective on state tax issues. Alan Lieberman is representing the Connecticut Bar Association as a member of the DRS External Advisory Group. The second initiative was the formation of a DRS External Editorial Review Board which will seek the input of tax practitioners and taxpayers on selected forms, publications and notices to be published by the DRS. Ryan Leichsenring was selected to serve on the DRS External Editorial Review Board.

This Alert summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published during 2013. Please contact any member of our State and Local Tax Practice Group if you have any questions regarding the new tax law changes or how they affect you and your business.

## CORPORATION BUSINESS TAX

### I. Legislation

**Surcharge Continued Again for Two More Years.** The 20% surcharge on the corporation business tax, that was to be applicable only to income years commencing prior to January 1, 2014, is extended for two additional years, through income years commencing prior to January 1, 2016. As under current law, the surcharge is calculated based upon the tax liability of the Subchapter C corporation, excluding any credits, whether calculated based upon the corporation's net income or capital base, and is imposed on the corporation unless either (i) the tax liability of the corporation is equal to \$250 (i.e. the minimum tax) or (ii) the annual gross income of the corporation is less than \$100 million. The \$100 million annual gross income exemption is not available to a corporation that files a combined or unitary return. Conn. Gen. Stat. §§12-214(b)(7) and 12-219(b)(7), as amended by Conn. Pub. Act No. 13-184, §§73-74 (*effective June 18, 2013*).

### II. Administrative Publication

**Electronic Filing.** In a press release dated May 31, 2013, the Connecticut Department of Revenue Services (the "DRS") announced the launch of a new filing platform that allows the state to accept Connecticut corporation business tax returns electronically.

## SALES AND USE TAXES

### I. Legislation

**Special Electronic Sales Tax Remittance Program.** New legislation authorizes the Commissioner of Revenue Services to require any taxpayer with sales tax liability that is delinquent to remit electronically the sales tax due on each sale made by such taxpayer by consumer credit or debit card or electronic transfer during any taxable period commencing on or after October 1, 2013 and prior to April 1, 2014. On or before October 1, 2013, the Commissioner was to notify the taxpayers subject to the program and provide them with a complete listing of processors of consumer credit or debit card payments or electronic transfers approved by the Commissioner. Notified taxpayers will be required to remit sales taxes through an approved processor by the end of the second business day after each applicable sale. Conn. Pub. Act No. 13-184, §80 (*effective July 1, 2013*). [Ed. note. According to the Department, no applications were received by the Department from consumer credit or debit card processors, so the pilot program was not conducted.]

**Sales Tax Permit Penalty.** A new civil penalty has been established for the failure to secure or renew a sales tax permit. The penalty is \$250 for the first day a person engages in or transacts business without a permit and \$100 for each subsequent day. The Commissioner may waive all or any part of the penalty if it is proven to the Commissioner's satisfaction that the failure was due to reasonable cause and was not intentional or due to neglect. Conn. Gen. Stat. §12-409(h), as amended by Conn. Pub. Act No. 13-150, §4 (*effective July 1, 2013*).

**Exemption for Clothing and Footwear.** A new exemption from the sales and use tax is enacted for sales on or after June 1, 2015 of any article of clothing or footwear intended to be worn on or about the human body, the cost of which is less than \$50. The exemption expressly does not include: (i) any special clothing or footwear primarily designed for athletic activity or protective use that is not normally worn except for the activity or use for which it was designed, and

(ii) jewelry, handbags, luggage, umbrellas, wallets, watches and similar items carried on or about the human body but not worn on the body in the manner characteristic of clothing intended for this exemption. Conn. Gen. Stat. §12-412(119), as added by Conn. Pub. Act No. 13-184, §79 (*effective July 1, 2013*).

**Vessel Exemptions and Luxury Tax Rate.** Legislation amended a number of sales and use tax provisions relating to vessels. First, effective July 1, 2013, the sale, storage, acceptance or other use of a vessel in Connecticut is exempt from the Connecticut sales and use tax provided the vessel is docked in the state for sixty or fewer days in a calendar year. Conn. Gen. Stat. §§12-408 and 12-411, as amended by Conn. Pub. Act No. 13-184, §77 (*effective July 1, 2013, and applicable to sales occurring on or after such date*), and §78 (*effective July 1, 2013*). Second, new legislation amends the exemption from the general rule that the transfer for consideration of space or the right to use any space for the purpose of storage or moving of any noncommercial vessel is subject to the sales and use tax. The exemption from the tax for the dry or wet storage or moving of such a vessel during the period from November 1st to and including April 30th has been extended to be effective during the period from October 1st to and including May 31st. Conn. Gen. Stat. §12-407(a)(2) (M), as amended by Conn. Pub. Act No. 13-151, §1 (*effective June 25, 2013*). Similarly, the use tax exemption for vessels delivered to a facility in Connecticut for storage, maintenance or repair, or the actual process of storage, maintenance or repair during the period from October 1st to and including April 30th has been extended to run from the period of October 1st to and including May 31st. Conn. Gen. Stat. §12-413a, as amended by Conn. Pub. Act No. 13-151, §2 (*effective June 25, 2013*). Finally, the sales and use tax rate on a vessel that has a sales price exceeding \$100,000 has been reduced from 7% to 6.35%. Conn. Gen. Stat. §§12-408 and 12-411, as amended by Conn. Pub. Act No. 13-184, §77 (*effective July 1, 2013, and applicable to sales occurring on or after such date*), and §78 (*effective July 1, 2013*).

**Cigarette Sales.** New legislation changes the point at which the sales tax on cigarettes is collected and remitted to the state. Under current law, the sales tax is collected by licensed cigarette dealers from customers at the point of retail purchase. The new rules require both “stampers” (*i.e.* anyone allowed to buy unstamped cigarettes and put cigarette tax stamps on them) and non-stamping licensed distributors to collect sales tax on cigarettes they sell to licensed dealers and remit the tax to the state; that is to say, treat the sales to the licensed dealer as a retail sale rather than an exempt sale for resale. The licensed dealer is then to charge sales tax on the sale to a customer, but when calculating the sales price, the dealer is to exclude the tax paid on the dealer’s wholesale purchase of the cigarettes. The legislation permits the cigarette dealer to claim a credit on each of its sales tax returns equal to the amount of the tax the dealer paid on its wholesale purchases of cigarettes made during the same taxable period. Conn. Gen. Stat. §12-430(8), as added by Conn. Pub. Act No. 13-184, §82 (*effective July 1, 2013, and applicable to sales occurring on or after said date*). See DRS Special Notice 2013(4), *2013 Legislative Changes Requiring Cigarette Stampers and Non-Stamping Distributors to Collect Sales Tax on Cigarettes*.

**Precious Metals or Stones Dealers.** The statute governing the licensure of precious metals or stones dealers is amended, in part, to provide that a license cannot be issued if the applicant fails to produce evidence that it has a Connecticut sales tax permit and a Connecticut tax registration number, and is registered with the Connecticut Secretary of State to do business in the state. Conn. Gen. Stat. §21-100, as amended by Conn. Pub. Act No. 13-255, §1 (*effective October 1, 2013*).

**Collection and Remittance of Sales Tax Report.** The Commissioner of Revenue Services is directed to analyze methods to enhance the collection and remittance of sales taxes by retailers. The Commissioner is to consider the following: (i) the amount of such sales taxes that are annually uncollected or consistently delinquent; (ii) the availability and effectiveness of alternative methods of collection (including electronic remittance); (iii) the advisability of requiring

more frequent remittance of taxes; and (iv) whether such methods are likely to reduce deficiencies and increase collections. The Commissioner is to submit his report, with any findings and recommendations, to the Finance, Revenue and Bonding Committee no later than February 1, 2014. Conn. Pub. Act No. 13-184, §81 (*effective July 1, 2013*).

## **II. Case**

**Vessel Transfer.** In Mukon v. Gollnick, 2013 WL 951328, (Super. Ct. Feb. 15, 2013), the Superior Court held that an accountant committed professional malpractice when he failed to advise his client that the dissolution of a limited liability company, and the resulting transfer of a vessel by the company to the client, would result in the client incurring use tax liability.

**Municipal Refuse Removal.** In Groton v. Sullivan, 2013 Conn. Super. LEXIS 1669 (July 29, 2013), the Superior Court upheld a sales and use tax assessment against a municipality that provides refuse removal services for a fee to commercial and income-producing properties located within its boundaries. The Court held that the provision of refuse removal services to such properties is subject to the sales and use tax and is not exempt as a conduit sale, as an essential governmental function or as a service to be used or otherwise consumed in the operation a waste-to-energy facility under Conn. Gen. Stat. §12-412(95).

## **III. Administrative Publications**

**Audit Examination Policy.** In Policy Statement 2013(1), the DRS establishes a policy to reduce the potential multiple sales and use taxation of retail transactions where one or more of the transactions is with a perpetually audited taxpayer, or both the retailer and the customer have been or are the subject of sales and use tax audits for overlapping tax periods. See DRS Policy Statement 2013(1), *Audit Examination Policy for Retail Transactions*.

**Drop Shipments.** The DRS explains the Connecticut sales and use tax rules applicable to drop shipments in Policy Statement 2013(3). The rules impose an obligation on the manufacturer or wholesaler of tangible personal property to collect and remit sales tax when it delivers property to a customer in Connecticut on behalf of an out-of-state retailer who is not registered to collect sales tax in the state. See DRS Policy Statement 2013(3), *Sales and Use Tax Rules for Drop Shipments*.

**One-Week Exclusion for Clothing and Footwear.** The DRS announced that this year's annual one-week sales and use tax exclusion for purchases of clothing and footwear that cost less than \$300 will run from Sunday, August 18, 2013 through Saturday, August 24, 2013.

See DRS Special Notice 2013(5), *2013 Legislative Changes Affecting Sales and Use Taxes*.

# **PERSONAL INCOME TAX**

## **I. Legislation**

**Department Personal Income Tax Study.** The Commissioner of Revenue Services has been directed to conduct a study of the personal income tax structure to consider the impact upon taxpayers, by state tax filing status, of the various

personal income tax rates and credits. The study is to include the following: (i) an analysis of the taxes and credits based on adjusted gross income imposed on each group of taxpayers at the same or equivalent income level, and whether such taxes and credits are the same or equivalent; (ii) a comparison of the effect of basing the state personal income tax on federal adjusted gross income rather than on federal taxable income; and (iii) consideration of how such tax rates and credits might be restructured to insure that tax liability is shared equitably among all taxpayers, while maintaining the current state revenue levels. The report is due to the Finance, Revenue and Bonding Committee on or before January 15, 2014. Conn. Pub. Act No. 13-232, §12 (*effective June 25, 2013*).

**Withholding of Income Tax.** The statute that generally prohibits an employer from withholding or diverting any portion of an employee's wages is amended to permit an employer, when required to under the law of another state, to withhold the income tax of such other state with respect to (i) employees performing services of the employer in such other state or (ii) employees residing in such other state. Conn. Gen. Stat. §31-71e, as amended by Conn. Pub. Act No. 13-8, §1 (*effective October 1, 2013*).

**Earned Income Tax Credit.** The state earned income tax credit has been reduced from 30% to 25% of the federal earned income tax credit for the 2013 tax year, and from 30% to 27.5% of the federal earned income tax credit for the 2014 tax year. For subsequent years, the state earned income tax credit is restored to 30% of the federal credit. Conn. Gen. Stat. §12-704e, as amended by Conn. Pub. Act No. 13-184, §83 (*effective June 18, 2013, and applicable to taxable years commencing on or after January 1, 2013*).

## TAX CREDITS

### I. Legislation

**Credit Cap Reduction Continued.** The "temporary" reduced cap on the tax credit or credits allowable against a taxpayer's insurance premium/subscriber charge tax liability (generally limiting the aggregate tax credits allowable to 30% of the amount of the tax due) has been extended for the 2013 and 2014 calendar years. In a change from the 2012 calendar year rules, however, all three "film" tax credits (i.e. the film production tax credit, the entertainment industry infrastructure tax credit and the digital animation production companies' tax credit) are subject to a limitation of only 55% of the amount of tax due. The insurance reinvestment fund tax credit remains subject to the old 70% limitation. Conn. Gen. Stat. §12-211a(a), as amended by Conn. Pub. Act 13-184, §72 (*effective June 18, 2013, and applicable to calendar years commencing on or after January 1, 2013*).

**Credits Against Insurance Premium and Net Direct Subscriber Charges Taxes.** New legislation establishes the following priority for the claiming of tax credits when a company subject to the tax on insurance premiums and net direct subscriber charges is eligible to claim more than one credit:

- Any credit that may be carried backward to a preceding calendar year or years shall first be claimed (a) with any credit carry-back that will expire first being claimed prior to any credit carry-back that will expire later or will not expire at all, and (b) if the credit carry-backs will expire at the same time, in the order in which the company may receive the maximum benefit;
- Any credit that may not be carried backward to a preceding calendar year or years and that may not be carried

forward to a succeeding calendar year or years shall next be claimed, in the order in which the company may receive the maximum benefit; and

- Any credit that may be carried forward to a succeeding calendar year or years shall next be claimed (a) with any credit carry-forward that will expire first being claimed prior to any credit carry-forward that will expire later or will not expire at all, and (b) if the credit carry-forwards will expire at the same time, in the order in which the company may receive the maximum benefit.

Conn. Pub. Act No. 13-232, §7 (*effective June 25, 2013 and applicable to calendar years commencing on and after January 1, 2013*). In addition, commencing in 2015, an insurance company or health care center will be able to transfer to an affiliate any credit allowed against taxes imposed on the premiums or subscriber charges of insurance companies and health centers, provided that notice of such transfer is provided to the Commissioner of Revenue Services. The affiliate may only use an assigned credit against the same types of taxes. Conn. Pub. Act No. 13-232, §17 (*effective July 1, 2015, and applicable to calendar years commencing on or after January 1, 2015*).

**Film Production Tax Credit Moratorium.** For the state fiscal years ending June 30, 2014 and June 30, 2015, a moratorium is imposed on the issuance of any tax credit voucher for a motion picture that was not designated a state-certified production prior to July 1, 2013, except that, for the state fiscal year ending June 30, 2015, there is an exemption from the moratorium for a motion picture for which 25% or more of the principal photography shooting days are in Connecticut at a facility that receives not less than \$25 million in private investment and opens for business on or after July 1, 2013. Conn. Gen. Stat. §12-217jj(a)(3), as amended by Conn. Pub. Act No. 13-184, §75, as further amended by Conn. Pub. Act No. 13-247, §129 (*effective July 1, 2013, and applicable to tax credits issued on or after such date*).

**Entertainment Industry Infrastructure Tax Credit.** The statute authorizing a tax credit for infrastructure projects in the entertainment industry is amended to delete the requirement that any taxpayer holding the credit must claim the credit for the income year in which the expenditures were made for the infrastructure project. Conn. Gen. Stat. §12-217kk, as amended by Conn. Pub. Act No. 13-232, §10 (*effective June 25, 2013*).

**Job Expansion Tax Credit.** The statute governing the two-year job expansion tax credit is amended to provide expressly that: (i) the Commissioner of Economic and Community Development is required, on or after January 1, 2014, to render a decision upon completed credit applications and, if approved, to issue certification letters that pertain to qualifying or veteran employees for whom credits have been previously granted; and (ii) the total amount of credits granted under the job expansion tax credit program and the three other job creation tax credit programs cannot exceed \$40 million over the duration of the job expansion tax credit program, including the two immediately succeeding income years after such credits are granted. Conn. Gen. Stat. §12-217pp, as amended by Conn. Pub. Act No. 13-232, §11 (*effective July 1, 2013*). [Ed. note. DRS Special Notice 2013(7) provides that this legislation authorizes the Commissioner to deny the second or third year credit for a new employee for whom a credit has previously been granted if such a decision is consistent with the state's economic development priorities.]

**Tax Credit for Land Donations.** The two statutes governing the tax credits against the corporation business tax for fifty percent of any donation of, respectively, open space land and land for educational use are combined into a single tax credit statute. In addition, the provisions governing the tax credit for donations of land for educational use are amended to: (i) expressly provide for donations to a school district or regional school district; and (ii) extend, from 15 years to 25 years, the maximum time during which taxpayers may carry forward the credit. Conn. Gen. Stat. §§12-217dd and 12-

217ff, as amended by Conn. Pub. Act No. 13-232, §§8-9 (effective July 1, 2013, applicable to income years commencing on or after January 1, 2013).

**Manufacturing Apprenticeship Tax Credit.** Effective for 2015, the statute governing the corporation business tax credit for hiring apprentices under a qualified apprenticeship training program in the manufacturing trade is amended to: (i) increase the amount of the credit from \$4.00 per hour to \$6.00 per hour; and (ii) raise the annual cap on the total amount of credit a business can claim for this purpose, from \$4,800 or 50% of the actual apprentice wages to \$7,500 or 50% of such wages. Conn. Gen. Stat. §12-217g(a), as amended by Conn. Pub. Act No. 13-265, §1 (effective July 1, 2015, and applicable to income years commencing on or after January 1, 2015).

**Tax Credit for Rehabilitation of Historic Home.** Effective for 2015, the statute governing the historic home rehabilitation tax credit is favorably amended to: (i) make the credit available for the rehabilitation of “historic homes” throughout the state and not just located in statutorily designated targeted areas; (ii) reduce the minimum amount of money that must be spent on the rehabilitation from \$25,000 to \$15,000; and (iii) increase, from \$30,000 to \$50,000 per dwelling unit, the maximum credit allowed if the owner is a nonprofit corporation. A “historic home” is defined as a building with one-to-four dwelling units of which at least one unit will be occupied as the principal residence of the owner for not less than five years following the completion of the rehabilitation. In addition, a “historic home” must be: (i) listed individually on the National or State Register of Historic Places; or (ii) located in a district listed on the National or State Register of Historic Places and have been certified by the Department of Economic and Community Development as contributing to the historic character of the district. Conn. Gen. Stat. §10-416, as amended by Conn. Pub. Act No. 13-266, §1 (effective July 1, 2015, and applicable to income years commencing on or after January 1, 2015).

**Repeal of Tax Credits.** Effective July 1, 2013, the following tax credits have been repealed: (i) the tax credit for expenditures for grants to institutions of higher education for research and development related to technological advancements; (ii) the tax credit for employing persons who are receiving benefits from the temporary family assistance program; (iii) the tax credit for electric suppliers hiring displaced workers; and (iv) the tax credit for hiring displaced workers. Conforming changes are made to other statutes that referenced these tax credits. Conn. Gen. Stat. §§12-217l, 12-217y, 12-217bb and 12-217hh, as repealed by Conn. Pub. Act No. 13-232, §18 (effective July 1, 2013); Conn. Gen. Stat. §§12-217n(h) and 16-245l, as amended by Conn. Pub. Act No. 13-232, §13-14 (effective July 1, 2013). See also Conn. Gen. Stat. §12-217y, as repealed by Conn. Pub. Act No. 13-140, §22 (effective June 18, 2013).

**Urban and Industrial Sites Reinvestment Tax Credit.** The Department of Economic and Community Development is authorized to establish a program to offer payments to holders of certificates of eligibility for the urban and industrial sites reinvestment tax credit to replace the credits allowed to be claimed under those certificates. The State Bond Commission is given the power to authorize the issuance of bonds not to exceed an aggregate of \$40 million for this purpose, provided \$20 million of which authorization is effective July 1, 2014. Conn. Pub. Act No. 13-184, §95 (effective July 1, 2013).

## **ESTATE AND GIFT TAX**

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

**Application of Connecticut Estate Tax to Out-of-State Property.** The statutes pertaining to the application of the Connecticut estate tax to real or tangible personal property located outside of Connecticut are amended to eliminate the Connecticut estate taxation of such property. Previously, if such property was not subject to tax by another state,

Connecticut applied an estate tax to such out-of-state property. The legislation provides that the Connecticut estate tax now must be reduced by the proportion the out-of-state real or tangible personal property bears to the gross estate, regardless of whether the property is subject to tax in another state. Conn. Gen. Stat. §§12-391(d) and (e), as amended by Conn. Pub. Act No. 13-247, §120 (*effective June 19, 2013, and applicable to estates of decedent dying on or after January 1, 2013*).

**Interest on Refunds.** The refund statutes for the estate tax and the gift tax are amended to provide that interest on a refund will no longer commence running from the later of the due date of the applicable return or the date of the tax payment; rather, interest shall run from the later of the 91st day after (i) the last date prescribed for the filing of the tax return or (ii) the date such return was filed (or amended return, if applicable). Conn. Gen. Stat. §§12-392(a)(3) and 12-647(d), as amended by Conn. Pub. Act No. 13-232, §§2 and 6 (*effective July 1, 2013, and applicable to refunds issued on or after said date*).

## II. Case

**Constitutional Challenge Dismissed.** In *Coyle v. Commissioner*, 142 Conn. App. 198, *cert. granted*, 309 Conn. 906 (2013), the Connecticut Appellate Court affirmed the dismissal of a declaratory judgment action seeking a ruling that the enactment and retroactive implementation of a decrease in the estate tax threshold from \$3.5 million to \$2 million, and taxing estates valued between \$2 million and \$3.6 million at 7.2%, was unconstitutional. The action was filed by the executrix of the estate of a decedent who died on April 23, 2011, shortly prior to the enactment of the challenged legislation on May 3, 2011. The Appellate Court held that the trial court lacked subject matter jurisdiction to hear the declaratory judgment action because the executrix had failed to exhaust her administrative remedies. The Court ruled that, in order to raise the constitutional objection, the executrix could have: (i) filed an appeal pursuant to Conn. Gen. Stat. §12-395 (which the Court held was available for a challenge to the amount of a levied estate tax, as well as a challenge based upon a domicile dispute); (ii) paid the tax and sought a refund pursuant to Conn. Gen. Stat. §12-550; (iii) refused to pay the tax, and then have waited until a deficiency assessment was imposed and appeal the assessment; or (iv) petitioned the Commissioner for a declaratory ruling pursuant to Conn. Gen. Stat. §4-176.

## PROPERTY TAX

### I. Legislation

**Municipal Tax Collection.** The statutes governing the collection of municipal taxes are extensively amended to implement a number of changes including the following: (i) broaden how special taxing districts and their treasurers may enforce tax liens; (ii) authorize municipal officers to inspect, for tax collection purposes, commercial and financial information included in personal property declarations, which are not open for public inspection under existing law; (iii) give tax liens issued under the optional property tax deferral program for certain residential property taxes in excess of 8% of the occupants' income, the same precedence as other tax liens; (iv) allow tax collectors to deny a property tax refund if a taxpayer is delinquent in other taxes or has other debt; (v) modify the time limit for a municipality to give property tax refunds under certain circumstances; (vi) eliminate specific tax collector fees; (vii) specify that, for tax collection purposes, tax amounts include interest, penalties, fees and charges, including collection agency fees, attorneys' fees and tax collector fees; (viii) eliminate a requirement that tax collectors include, as part of a tax bill, a statement of the year and amount of any back taxes due; (ix) modify the order in which property tax payments are to be applied, giving



priority to expenses related to tax and delinquency-related charges before the principal on the oldest outstanding tax; (x) authorize a municipality's legislative body to waive property taxes that total less than \$25 after they are due; (xi) expand the circumstances under which a municipality or a district health department may withhold or revoke a license or permit if a business owes taxes that are at least one year delinquent; (xii) allow a person to stop a tax sale under the same process that currently applies to a person contesting the sale's validity; and (xiii) explicitly bar a tax collector from compromising or releasing any tax amount without authority or knowingly submit a false report to the Commissioner of Motor Vehicles to remove a motor vehicle from the delinquent tax list. Conn. Gen. Stat. §§7-109, 7-328(a), 12-41(c), 12-81d, 12-117a, 12-124, 12-124a(b), 12-125a, 12-128, 12-129, 12-130, 12-132, 12-134, 12-135, 12-137, 12-138, 12-140, 12-141, 12-141a, 12-144b, 12-144c, 12-145, 12-146, 12-146a, 12-147, 12-150, 12-153, 12-154, 12-155, 12-157, 12-158, 12-159, 12-159a(a), 12-159b, 12-165, 12-166, 12-168, 14-33a, 12-169, 12-195h and 16-262c(e), as amended by, and Conn. Gen. Stat. §§12-143, 12-149, 12-151 and 12-180 as repealed by, Conn. Pub. Act No. 13-276, §§1-41 and 43 (*effective October 1, 2013*). In addition, the legislation requires a municipality to include the Judicial Branch's form on community-based resources for people involved in foreclosure mediation with any complaint to judicially foreclose on an arrearage for property taxes. Conn. Gen. Stat. §49-31r(b), as amended by Conn. Pub. Act No. 13-276, §42 (*effective July 11, 2013*).

**Assignment of Real Property Tax Lien.** New legislation requires any party to whom a municipality has assigned a tax lien (or any subsequent assignee) to provide a written notice of the assignment, within 30 days after the date of such assignment, to any holder of a mortgage on the real property (provided that the mortgage holder is of record as of the date of the assignment). The notice must include information sufficient to identify (i) the property that is subject to the lien and in which the mortgage holder has an interest, (ii) the name and addresses of the assignee, and (iii) the amount of unpaid taxes, interest and fees being assigned as of the date of the assignment. Conn. Gen. Stat. §12-195h, as amended by Conn. Pub. Act No. 13-135, §16 (*effective October 1, 2013*).

**Authority to Phase-In Revaluation Decrease Eliminated.** As part of the special June 12, 2012 legislative session, the General Assembly authorized any municipality to phase in all or part of the decreases in real property assessments after a property revaluation. That authority has been eliminated. Conn. Gen. Stat. §12-62c, as amended by Conn. Pub. Act No. 13-204, §1 (*effective July 1, 2013, and applicable to assessment years commencing on or after October 1, 2013*).

**Phase Out of Rental Rebate Program for the Elderly and Permanently Disabled.** The administration of the program that provides for the partial state refund of rent and utility bills paid by certain elderly and permanently disabled persons is shifted from the Office of Policy and Management to the Department of Housing. In addition, applications for the program are phased out by providing that: (i) an individual who did not receive a grant for the 2011 calendar year is not eligible to apply for another grant; and (ii) an individual who did receive a grant for the 2011 calendar year will lose his or her eligibility if they do not receive a grant in any subsequent year. Conn. Gen. Stat. §12-120b, as amended by Conn. Pub. Act No. 13-234, §36 (*effective July 1, 2013, and applicable to assessment years commencing on or after October 1, 2013*); Conn. Gen. Stat. §12-170d, as amended by Conn. Pub. Act No. 13-234, §38 (*effective July 1, 2013, and applicable to applications received on and after April 1, 2013*); Conn. Gen. Stat. §§12-170f(a), 12-170g and 12-170bb, as amended and supplemented by Conn. Pub. Act No. 13-234, §§37, 39-42 (*effective July 1, 2013*).

**Interest Rate on Delinquent Property Taxes.** Municipalities are authorized to establish an interest rate on delinquent property taxes from 15% to 18%. Conn. Gen. Stat. §12-157(f), as amended by Conn. Pub. Act No. 13-247, §69 (*effective October 1, 2013, and applicable to assessment years commencing on or after said date*).

**Exemption for Renewable Energy Sources.** Under current law, a Class I renewable energy source (e.g., solar power, wind power, a fuel cell, methane gas from landfills, ocean thermal power, wave or tidal power, and run-of-the river hydropower facilities under five megawatts that began operation after July 1, 2003) and Class II hydropower are exempt from property tax if they were installed on or after October 1, 2007 to generate electricity for farm and residential use on farms and private residences. Legislation adopted this session establishes a new exemption from the property tax for the following renewable energy sources if they are or were installed to generate or displace electricity for commercial or industrial use and purposes and the nameplate capacity of such source does not exceed the load for the location where such generation or displacement is located: (i) any Class I renewable energy source; (ii) any hydropower facility described in Conn. Gen. Stat. §16-1(a)(27); or (iii) any solar thermal or geothermal renewable energy source (each, an “Exempt Renewable Energy Source”). In summary, all such Exempt Renewable Energy Sources installed on or after January 1, 2014 will be exempt from property tax effective with assessment years commencing on or after January 1, 2014. The new property tax exemption additionally will be effective for the assessment year commencing on October 1, 2013, in the case of: (i) an Exempt Renewable Energy Source installed on or after January 1, 2010 in a “distressed municipality,” as defined in Conn. Gen. Stat. §32-9p, with a population between 125,000 and 135,000 (i.e. New Haven); or (ii) an Exempt Renewable Energy Source installed between January 1, 2010 and December 31, 2013 located in any other municipality if that municipality approves such abatement up to 100% of the tax. In order to obtain the foregoing property tax exemption, the property owner must file a written application with the town assessor or board of assessors by November 1. Failure to file a timely application constitutes a waiver of the exemption for that assessment year. Once an application has been approved, no renewal is required by that property owner unless the Exempt Renewable Energy Source is altered in a way that requires a building permit. Conn. Gen. Stat. §12-81(57), as amended by Conn. Pub. Act No. 13-61, §1 (*effective from passage and applicable to assessment years commencing on and after October 1, 2013*).

**Totally Disabled Veteran Exemption.** Under current law, a veteran who has a disability rating of 100% as determined by the United States Department of Veteran Affairs qualifies for a base exemption up to \$3,000 of the veteran’s property, which base exemption is doubled to \$6,000 if the veteran’s household income, excluding the veteran’s disability payments, is no more than \$18,000, if single, or \$21,000, if married. (The exemption is 1.5 times the base exemption if these income levels are exceeded.) Effective for the assessment year commencing October 1, 2013, and for each assessment year thereafter, any municipality may increase the exemption for a totally disabled veteran to three times the base exemption amount (\$9,000) if the veteran’s household income does not exceed the thresholds outlined above. Any claimant who willfully fails to disclose all matters or who makes a false statement with the intent to defraud will forfeit his or her right to claim the additional exemption. Since a municipality can seek reimbursement for such additional exemptions to the extent of any appropriation or such reimbursement, the Office of Policy and Management (“OPM”) is directed to promulgate regulations governing the additional exemption program. Conn. Gen. Stat. §12-81g, as amended by Conn. Pub. Act No. 13-224, §1 (*effective October 1, 2013, and applicable to assessment years commencing on and after said date*).

**Recycling Machinery and Equipment.** New legislation authorizes a municipality to adopt an ordinance that exempts from property tax any machinery or equipment used in connection with recycling that is installed on or after October 1, 2013. Such an exemption may apply only to: (i) the increased value of the commercial or industrial property that is attributable to such machinery or equipment; and (ii) the first 15 assessment years following the installation of such machinery or equipment. Conn. Pub. Act No. 13-285, §8 (*effective October 1, 2013, and applicable to assessment years commencing on or after said date*).

**Exemption for EMT's Surviving Spouse.** The authority of any municipality to establish, by ordinance, a program to abate all or a portion of the property taxes due with respect to real property owned and occupied as the principal residence of the surviving spouse of a police officer or firefighter who dies while in the performance of his or her duties, is expanded to include the real property of a surviving spouse of an emergency medical technician. Conn. Gen. Stat. §12-81x, as amended by Conn. Pub. Act No. 13-204, §2 (*effective October 1, 2013*).

**Land Value Tax Pilot Program.** In 2009, OPM was authorized to establish a pilot program in a single, small, state-designated distressed municipality to tax land at a higher rate than buildings. The chosen municipality is to design a plan to implement land value taxation with differentiated tax rates for (i) land or land exclusive of buildings and (ii) buildings on land. Upon approval of the plan by the municipality's legislative body, the plan is to be submitted for the review of the General Assembly. The legislation provides for the planning of a land value tax program, but does not authorize its implementation. New legislation expands the land value tax pilot program to include up to three municipalities. Conn. Gen. Stat. §12-63h, as amended by Conn. Pub. Act No. 13-247, §329 (*effective October 1, 2013*).

**Victims of Domestic Abuse.** The statutory exemption for temporary housing belonging to, or held in trust for, any organization that is exempt from federal income tax, which housing is primarily used for "battered or abused women and children" is amended to refer instead to "victims of domestic violence." Conn. Gen. Stat. §12-81(7)(B), as amended by Conn. Pub. Act No. 13-214, §6 (*effective October 1, 2013*).

**Nursing Home Facility.** The definitions under the public health statutes are amended to remove a "residential care home" (RCH) from the definition of "nursing home facility" and to establish a new definition of an RCH. Conn. Gen. Stat. §19a-521, as amended by Conn. Pub. Act No. 13-208, §24 (*effective July 1, 2013*). The definitional change is relevant as the following property tax relief statutes, when calculating an applicant's qualifying income, provide for an exclusion for the Social Security income of the applicant's spouse if the spouse is a resident of a "nursing home facility" (which will no longer include an RCH): Conn. Gen. Stat. §§12-170aa (tax relief for certain elderly or totally disabled homeowners); 12-170d (rental and utility rebate program for renters age 65 or over or under 65 with a permanent total disability); and 12-170v (municipally-approved property tax relief for certain elderly homeowners).

**Capital City Economic Development District.** New legislation requires the City of Hartford to assess all apartments with four or more units that the Capital Region Development Authority constructs or converts in the Capital City Economic Development District that receive a certificate of occupancy on or after July 1, 2013, in the same manner the City assesses residential property with three or fewer units. Conn. Pub. Act No. 13-184, §96 (*effective July 1, 2013, and applicable to assessment years commencing on and after October 1, 2013*).

**Municipal Tax Abatements.** Under current law, a municipality may, by affirmative vote of its legislative body, enter into a written agreement fixing the assessment of real property or air space, and all improvements thereon or therein, for certain specified purposes (i) for a period of not more than seven years, provided the cost of the improvements to be constructed is not less than \$3 million, (ii) for a period of not more than two years, provided the cost of the improvements to be constructed is not less than \$500,000, or (iii) to the extent of not more than 50% of such increased assessment, for a period of not more than three years, provided the cost of such improvements to be constructed is not less than \$25,000. New legislation amends the applicable law to lower the last financial threshold from \$25,000 to \$10,000, and expands the specified purposes for which the subject property can be used to include mixed-use development. Conn. Gen. Stat. §12-65b, as amended by Conn. Pub. Act No. 13-246, §1 (*effective October 1, 2013*).

## II. Cases

**Continuing Care Facilities and Hypothetical Assumptions.** In Redding Life Care LLC v. Redding, 308 Conn. 87 (2013), the Connecticut Supreme Court affirmed the decision of the trial court denying the appeal filed by a property owner from an assessor's valuation of property on which a continuing care facility is operated. The Supreme Court first ruled that the property owner had failed to sustain its burden under Conn. Gen. Stat. §12-117a by providing adequate, credible evidence that the property was overvalued. In its ruling, the Court noted that the trial court did not find the property owner's expert to be credible. In a 4-3 split decision, the Court further held that the property owner had failed to establish that the Town's valuation of the property was manifestly excessive and contrary to law despite the use by the Town's appraiser of a hypothetical assumption or condition in arriving at the valuation of the property as a going concern. In particular, the appraiser took account of the fact that a resident of the continuing care facility must pay to the property owner a sizable entry fee, of which the resident or his or her beneficiary receives a flat 85% refund upon death, voluntary withdrawal or permanent transfer to certain other specified facilities. Although the continuing care facility did not maintain the entry fee monies in an interest-bearing account, the Town's appraiser included in the valuation a hypothetical assumption of annual interest income on the basis that the entry fee was analogous to an interest-free loan. The majority of the Supreme Court held that the use of a hypothetical condition in a real estate valuation is contemplated by the Uniform Standards of Professional Appraisal Practice and that the property owner had failed to establish its use of such a hypothetical condition by the Town's appraiser was misfeasance or malfeasance.

**Partially Completed Construction.** In Kasica v. Columbia, 309 Conn. 85 (2013), the Connecticut Supreme Court reversed a lower court opinion and held that a municipal assessor has the authority to conduct an interim assessment of a property between revaluations and to assign value to incomplete or partially completed construction because it is a taxable improvement to the property. The Court concluded that Conn. Gen. Stat. §12-55 grants broad authority to an assessor to conduct interim assessments of real property if the assessor deems that assessment necessary to equalize the grand list, and there is no statutory exemption for incomplete or partially completed construction. [Ed. note. In response to the lower court opinion, the Connecticut General Assembly amended the governing statutes to provide expressly that partially completed new construction of real estate is liable for the payment of municipal taxes effective with the October 1, 2012 assessment year.]

**Enforcement of Stipulated Judgment.** The City of Bridgeport brought an action against a property owner seeking to foreclose tax liens for alleged unpaid property taxes assessed on the October 1, 2004 grand list. In response to the action, the property owner filed a counterclaim based on a 2002 stipulated judgment in which the parties agreed on how the subject property was to be taxed for the years 1996 through 2000, and subsequent years if the use of the property remained unchanged. In Bridgeport v. White Eagle's Society of Brotherly Help, Inc., 140 Conn. App. 663 (2013), the Connecticut Appellate Court affirmed the grant of summary judgment in favor of the City on the counterclaim. The Appellate Court ruled that the 2002 stipulated judgment should have been raised by the property owner as part of a tax appeal timely filed under Conn. Gen. Stat. §§12-111 or 12-119. Since the property owner failed to exhaust his administrative remedies properly contesting the assessment using the statutory procedures provided, the lower court could not grant to the property owner the relief requested.

**Second Challenge to Assessment.** Connecticut Public Act No. 09-196, §1, amended Conn. Gen. Stat. §12-111 by providing that once a board of assessment appeals increases or decreases an assessment, the amount of the assessment is fixed until the next town revaluation unless the assessor amends the assessment to (i) comply with an order of a court of jurisdiction, (ii) reflect an addition for new construction, (iii) reflect a reduction for damage or demolition,

or (iv) correct a factual error by issuance of a certificate of correction. In Samnard Associates, LLC v. New Britain, 140 Conn. App. 290 (2013), the Connecticut Appellate Court held that Public Act No. 09-196 was intended to be clarifying legislation and, therefore, had retroactive effect. Accordingly, the trial court properly denied a tax appeal brought by a property owner where the assessment of the subject property already had been reduced by the board of assessment appeals as a result of an appeal for an earlier assessment year, and no intervening city-wide revaluation had occurred.

**Leased Property to Indian Tribe.** The Town of Ledyard assessed personal property tax upon vendors leasing slot machines to the Mashantucket Pequot Tribe. In Mashantucket Pequot Tribe v. Ledyard, 722 F.3d 457 (2nd Cir. 2013), the United States Court of Appeals for the Second Circuit upheld the imposition of the personal property tax and ruled that: (i) the Tribe had standing to challenge the tax; (ii) neither the Tax Injunction Act, 28 U.S.C. §1362, nor comity barred the action; (iii) the tax was not preempted by the Indian Trader Statutes, 25 U.S.C. §§261-264, or by the Indian Gaming Regulatory Act, 25 U.S.C. §§2701 et seq. ("IGRA"); and (iv) the interest of the State of Connecticut and the Town in the integrity and uniform application of their tax system outweighs the federal and tribal interests reflected in IGRA.

**Vacated Building.** In Lifetouch National School Studio, Inc. v. Derby, 2013 WL 2382968 (Super. Ct. May 7, 2013), the Superior Court upheld the taxpayer's appeal of an assessment of its property which had been vacant for over three years at the time of revaluation. The Court found the City's appraisal not to be credible as it did not account for any deterioration due to the three-year vacancy and was based on comparable sales of buildings that largely were built in the 1980s, whereas the subject building dated back to 1900.

**Filing of Tax Liens.** In Touchstone Development Associates, LLC v. Haddam, 2013 Conn. Super. LEXIS 1495 (July 18, 2013), the record owner of 14 vacant building lots brought a slander of title action against the town. The town had filed a certificate of continuing tax lien against the building lots after the plaintiff had filed an appeal of the property tax assessments and paid 75 percent of the taxes claimed due by the Town. The Superior Court granted judgment for the town holding that the filing of the tax appeal, and payment of 75 percent of the taxes claimed due pursuant to Conn. Gen. Stat. §12-117a, did not prevent the Town from preserving its rights by filing a certificate of continuing tax lien pursuant to Conn. Gen. Stat. §12-175.

**Waste-to-Energy Facility.** In Wheelabrator Bridgeport, L.P. v. Bridgeport, 2013 Conn. Super. LEXIS 1439 (June 28, 2013), the Superior Court considered two tax appeals challenging the valuation of real and personal property associated with a waste-to-energy facility. The Court dismissed the first appeal because, as of the relevant assessment dates, the property was neither owned nor leased under a lease that had been recorded on the land records by the parties which filed the appeal. As to the second appeal, the Court ruled that: (i) an appeal from a valuation of real property should be taken separately from an appeal from a valuation of personal property; (ii) the governing statutes permit a lessee of real property to take an appeal from the valuation of real property, but do not provide for a lessee of personal property to take an appeal from the valuation of personal property; and (iii) the appropriate method by which a waste-to-energy facility should be valued is the reproduction cost method as there are insufficient comparable facilities to employ the comparable sales method or the income approach, and the replacement cost method would require the valuation of a newly-constructed facility with different, modern technology.

**Failure to Appear.** In Drawn Metal Tube Co. v. Thomaston, 2013 Conn. Super. LEXIS 1650 (July 22, 2013), the town sought to have a personal property tax appeal dismissed for lack of subject matter jurisdiction on the basis that the taxpayer had failed to appear at the board of assessment appeals hearing on its appeal. Since Conn. Gen. Stat. §12-113 does not permit a board of assessment appeals to reduce a valuation when a taxpayer does not appear at the hearing

on its appeal, the town argued that the taxpayer failed to exhaust its administrative remedies and had no basis to take a further appeal to the Superior Court. Relying on the case of Morris v. New Haven, 77 Conn. 108 (1904), however, the Court denied the motion to dismiss holding that the failure to appear at the board of assessment appeals does not deprive the taxpayer of its right to file an appeal with the Superior Court.

**Class Action.** In Tuohy v. Groton, 2013 Conn. Super. LEXIS 1586 (July 15, 2013), a group of homeowners in the Groton Long Point subdivision sought to bring a class action pursuant to Conn. Gen. Stat. §12-119 to challenge the application by the town of a multiplier of 1.35 to the taxable value of all residential buildings in the subdivision. The Superior Court granted the motion for class certification, ruling that section 12-119 does not prohibit class actions, including a class action on behalf of homeowners who had not timely filed an appeal under section 12-119, and that the plaintiffs had satisfied the requirements for class certification.

**Appellate Process.** In Murphy v. Stamford, Civil Action No. 3:13-CV-00942 (JCH) (D. Conn. Oct. 25, 2013), the plaintiff taxpayers coupled their appeal of a property tax assessment with federal law claims under 42 U.S.C §§1983 and 1985 against the City, the Board of Assessment Appeals, members of the Board and certain City employees. The City removed the case to federal court and then sought to dismiss the complaint and/or seek its return to state court. The District Court held that the Tax Injunction Act stripped the Court of jurisdiction over the section 1983 claims, and dismissed the section 1985 claim for failure to plead properly a conspiracy cause of action under that section. The plaintiff taxpayers were permitted leave to amend their complaint to attempt to state a cause of action under section 1985, but should they fail to do so, the case was to be returned to state court to decide the state law causes of action.

**Tax Lien Assignee Rights.** In Connecticut Tax Liens 1, LLC v. Lee, 2013 Conn. Super. LEXIS 1857 (Aug. 19, 2013), the Superior Court held that an assignee of a municipal tax lien pursuant to Conn. Gen. Stat. §12-195h acquires the same powers and privileges as the municipality for matters regarding the precedent and priority of the lien, the accrual of interest and the receipt of fees and collection costs. However, as to the enforcement of the lien, the assignee has only the rights and privileges of any other private party lien holder. Accordingly, the Court ruled that the plaintiff tax lien assignee was not entitled to the appointment of a receiver of rents.

**Airplane Hangars.** In Stratford v. Jacobelli, 2013 Conn. Super. LEXIS 2362 (Oct. 23, 2013), the town filed a declaratory judgment action as to whether it could add to its tax list as real property owners the owners of portable airplane hangars who leased or subleased space for the hangars at Sikorsky Memorial Airport. The Tax Session of the Superior Court held in favor of the town finding that the portable hangars are sufficiently similar to a shed which Conn. Gen. Stat. §12-64(a) specifically enumerates as real estate liable to taxation. The Court further held that the listing of the hangars as personal property in prior assessment years did not estop the town from re-characterizing the hangars in subsequent assessment years.

## **MISCELLANEOUS TAXES**

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

**Tax Amnesty Program.** The Commissioner of Revenue Services is required to establish a tax amnesty program for any taxpayer that owes Connecticut state taxes (other than the motor carrier road tax) for any taxable period ending on or before November 30, 2012. The amnesty program is to run from September 16, 2013 through November 15, 2013, and

the Commissioner is to prepare an amnesty application that requires the applicant to specify the taxes and taxable periods for which amnesty is being sought, and which, at the Commissioner's discretion, may need to be filed electronically. If a taxpayer's amnesty application is accepted, and the taxes and interest due are paid in full on or before November 15, 2013, the interest will be reduced to one-quarter of the interest due, all civil penalties will be waived and the Commissioner will not seek criminal prosecution; however, the taxpayer will be deemed to have waived any administrative or judicial rights to appeal, no payment made for an affected taxable period shall be refunded or credited, and the Commissioner shall not exercise his or her authority to cancel any tax penalty or interest that is deemed to have been erroneously or illegally assessed. Amnesty is not available to any person who: (i) is a party to any criminal investigation or to any criminal litigation that is pending on July 1, 2013, in any federal or Connecticut court; (ii) is a party to a closing agreement with the Commissioner; (iii) has made an offer of compromise that has been accepted by the Commissioner; or (iv) is a party to a managed audit agreement. Interestingly, a taxpayer currently under audit, or who has an assessment under appeal, remains eligible for amnesty. The failure to pay all amounts due to the state for a taxable period ending on or before November 30, 2012, will invalidate the grant of amnesty. Finally, unlike prior amnesty programs, if a person owes any state tax for a taxable period ending on or before November 30, 2012 for which no tax return has been filed, and the person fails to file a timely amnesty application for such taxable period, that person shall be subject to an additional penalty equal to 25% of the tax owed for the affected taxable period, which penalty may not be subject to waiver. Conn. Pub. Act No. 13-184, §70 (*effective July 1, 2013*). [Ed. note. The 2013 amnesty program concluded on November 15, 2013, and reportedly resulted in over 17,000 applications and approximately \$185 million in revenue for the state.]

**Transparency.** On December 3, 2013, Governor Malloy issued Executive Order No. 38 requiring the disclosure of certain information regarding the use of state economic assistance and tax credits in Connecticut. On or before March 31, 2014, the DECD is to establish a searchable electronic database or databases that disclose certain information about the economic assistance (i.e. state-authorized grants, loans and loan guarantees) awarded by the state and the recipients of that economic assistance. The DECD also is to disclose, with input from the DRS, aggregate information about the utilization of state credits and the businesses who claim those credits.

**Regulations.** On October 16, 2013, Governor Malloy signed Executive Order No. 37 mandating a review of all state regulations and purporting to implement a more transparent and efficient state regulatory process. Public comment was solicited as to whether any regulation that was promulgated four or more years ago is outdated, unnecessarily burdensome, insufficient or ineffective. Each state agency now is required to review such public comment and the regulations under its jurisdiction and to submit a report, on or before February 3, 2014, summarizing the review of its regulations and proposing a plan to implement any regulatory recommendations the agency deems appropriate.

**Tax Incidence Study.** On or before December 31, 2014, and biennially thereafter, the Commissioner of Revenue Services must submit to the Finance, Revenue and Bonding Committee a report on the overall incidence of the income tax, sales and excise taxes, the corporation business tax and property tax. The report is to present information on the distribution of the tax burden as follows: (a) for individuals: (i) income classes, including income distribution expressed for every ten percentage points and (ii) other appropriate taxpayer characteristics; and (b) for businesses: (i) business size as established by gross receipts; (ii) legal organization; and (iii) industry by North American Industrial Classification System (NAICS) code. This report is to be made public on the Department's website. Conn. Pub. Act No. 13-247, §330 (*effective July 1, 2013*).

**Electric Generation Tax Extended.** The temporary tax on electric generation facilities that was scheduled to sunset on June 30, 2013, has been extended for three months to September 30, 2013. The tax generally is imposed on any person

providing electric generation services and uploading electricity generated at such person's electric generation facility in Connecticut to the regional bulk power grid. The tax does not apply to any net kilowatt hours of electricity generated at: (i) an electric generation facility in Connecticut exclusively through the use of fuel cells or an alternative energy, such as solar or wind system; (ii) a resources recovery facility; or (iii) customer-side distributed resources. The audit, collection, and other tax administration procedures applicable to the admissions and dues taxes apply to the electric generation tax except where inconsistent. Conn. Gen. Stat. §12-268s, as amended by Conn. Pub. Act No. 13-184, §76 (*effective June 18, 2013*). See DRS Special Notice 2013(8), *Legislation Affecting the Electric Generation Tax*.

**Penalty Review Committee.** Prior to July 1, 2013, the Penalty Review Committee was to review and approve any waiver of a penalty in excess of five hundred dollars which the Commissioner of Revenue Services or the Commissioner of Consumer Protection is authorized to waive. New legislation increased the size of the penalty to one thousand dollars that can be waived by the Commissioner without Penalty Review Committee review. Conn. Gen. Stat. §12-3a, as amended by Conn. Pub. Act No. 13-150, §1 (*effective July 1, 2013*).

**License or Permit Issuance or Renewal.** Under new legislation, prior to issuing or renewing (i) a cigarette dealer, distributor or manufacturer license, (ii) a tobacco product distributor license and (iii) a sales tax seller's permit, the Commissioner may determine whether the applicant owes taxes to the state, which taxes are finally due and payable and with respect to which any administrative or judicial remedies have been exhausted or have lapsed. If the Commissioner determines that the applicant owes taxes, the Commissioner may not issue or renew such a license or permit until the taxes are paid or an arrangement has been made to the satisfaction of the Commissioner to pay such taxes. Conn. Pub. Act No. 13-150, §5 (*effective July 1, 2013*).

**Elimination of Gaming Policy Board.** The Gaming Policy Board is eliminated and its functions and responsibilities are transferred to the Department of Consumer Protection. Gaming-related appeals will now go directly to Superior Court. Conn. Pub. Act No. 13-299, §§45-94 (*effective July 1, 2013*).

**Like-Kind Exchanges.** New legislation imposes requirements on people or businesses who act as a qualified intermediary (a "QI" or "exchange facilitator") for purposes of facilitating the exchange of like-kind property. An "exchange facilitator" generally is a person who: (i) maintains an office in the state for the purpose of soliciting business facilitating the exchange of like-kind property; or (ii) for a fee facilitates an exchange of like-kind property by entering into an agreement with a client to (A) acquire the contractual rights to sell the client's relinquished property located in Connecticut and transfer a replacement property to the client as a QI, (B) take title to a property in this state as an exchange accommodation titleholder, or (C) act as a qualified trustee or qualified escrow holder. The new requirements do not apply to certain financial institutions acting solely as a depository for exchange funds or solely as a qualified escrow holder or qualified trustee, certain individuals and entities teaching about tax-deferred exchanges, and entities that are wholly-owned by an exchange facilitator. Among the new requirements imposed upon exchange facilitators include: (a) the provision of a notice in the event of a change in control of the exchange facilitator; (b) the maintenance of a \$1 million fidelity bond, use of a separately-identified account for exchange funds and client written authorizations for withdrawals, or use of a qualified escrow account or qualified trust with a financial institution and client written authorizations for withdrawals; and (c) the maintenance of a minimum of \$250,000 errors and omissions insurance policy or deposit of at least \$250,000 cash or securities or irrevocable letters of credit. The exchange facilitator also must: (i) hold all of the client's exchange funds in a way that provides liquidity and preserves principal; (ii) notify the client how the exchange funds will be invested or deposited; and (iii) deposit or invest exchange funds in investments that satisfy liquidity and



preservation of principal investment goals and meet the prudent investor standard. The legislation establishes a new civil cause of action for violations of these new requirements. Conn. Pub. Act No. 13-135, §§5-12 (*effective October 1, 2013*).

**Interest on Refunds.** The refund statutes for the public service companies taxes and the petroleum products gross earnings tax are amended to provide that interest on a refund will no longer commence running from the later of the due date of the applicable return or the date of the tax payment; rather, interest shall run from the later of the 91st day after (i) the last date prescribed for the filing of the tax return or (ii) the date such return was filed (or amended return, if applicable). Intentional overpayments continue not to accrue interest. Conn. Gen. Stat. §§12-268c(b) and 12-589(b), as amended by Conn. Pub. Act No. 13-232, §§1 and 5 (*effective July 1, 2013, and applicable to refunds issued on or after said date*).

**Petroleum Products Gross Earnings Tax.** Effective July 1, 2013, the petroleum products gross earnings tax rate increased from 7% to 8.1%. In addition, the statutes governing the imposition of the petroleum products gross earnings tax are amended to: (i) exempt from the tax any first sale occurring on or after July 1, 2013, of cosmetic grade mineral oil; (ii) establish a credit that may be claimed by a company when the petroleum products sold or imported by it in a first sale in Connecticut are incorporated by the purchaser or importer thereof into a material that is included in U.S. industry group 3255 in the North American Industrial Classification System, and such products are subsequently exported for sale or use outside this state; and (iii) exempt from the tax any first sale on or after July 1, 2013, of propane gas to be used as a fuel for a school bus. Conn. Gen. Stat. §12-587(b)(2), as amended by Conn. Pub. Act No. 13-232, §3 (*effective July 1, 2013*); Conn. Gen. Stat. §12-587a, as amended by Conn. Pub. Act No. 13-232, §4 (*effective July 1, 2015 and applicable to quarterly periods commencing on or after said date*); Conn. Gen. Stat. §12-587(b)(2), as amended by Conn. Pub. Act No. 13-247, §66 (*effective July 1, 2013*). See DRS Special Notice 2013(3), *Legislative Changes to the Petroleum Products Gross Earnings Tax Effective July 1, 2013*.

**Estimated Insurance Premium Tax Overpayments.** Applicable to estimated tax payments for calendar years commencing on or after January 1, 2014, if a domestic insurance company timely files its Connecticut insurance premium tax return, and the return shows an overpayment for the tax year, the Company will be allowed to credit such overpayment against the company's estimated tax for the succeeding tax year, and the payment will be treated as paid on the due date of the first required installment of estimated tax for that succeeding tax year. Such reported overpayments shall be credited against otherwise unpaid installments in the order they ordinarily would become due. Conn. Gen. Stat. §12-204f, as amended by Conn. Pub. Act No. 13-232, §16 (*effective July 1, 2013, and applicable to estimated tax payments for calendar years commencing on or after January 1, 2014*).

**Charitable Hospitals.** A hospital exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code (the "Code") is required to submit annually to the Office of Health Care Access ("OHCA") its policies regarding the provision of charity care and its audited financial statements. Effective October 1, 2013, a charitable hospital also is now required to submit annually a complete copy of its most recently-completed IRS Form 990, including all parts and schedules, and, in a form and manner prescribed by OHCA, data compiled to prepare the hospital's community health needs assessment as required by Code §501(r). Conn. Gen. Stat. §19a-649, as amended by Conn. Pub. Act No. 13-234, §147 (*effective October 1, 2013*).

**Captive Insurance Companies.** The due date for the annual tax payable by captive insurance companies to the Commissioner of Revenue Services is changed from "in the month of March" to "on or before March first." Conn. Gen. Stat. §38a-91nn(b), as amended by Conn. Pub. Act No. 13-232, §15 (*effective July 1, 2013*).

**First Five Plus Program Extended.** The First Five Plus Program provides substantial financial assistance to up to fifteen eligible business development projects. The program, which was scheduled to sunset on June 30, 2013, has been extended for two years until June 30, 2015. Conn. Gen. Stat. §§32-4l, as amended by Conn. Pub. Act No. 13-247, §132 (*effective July 1, 2013*).

**Attorney Occupational Tax.** The law governing the application of the occupational tax on attorneys is amended to increase from less than \$450 to less than \$1,000 the maximum amount an attorney who does not practice law as his or her primary occupation can earn per year in legal fees or other compensation for legal services without being required to file an annual return and pay the occupational tax. Conn. Gen. Stat. §51-81b(g), as amended by Conn. Pub. Act No. 13-112, §1 (*effective October 1, 2013*). In addition, the statutes governing the unauthorized practice of law are amended, in pertinent part, to cover individuals disqualified from the practice of law due to resignation, disbarment, being placed on inactive status or suspension, to include additional prohibited categories of activities and to increase the applicable penalty. The amendment provides, however, that no person whose admission or permission to practice law has been suspended solely on the basis of the failure to pay the occupational tax on attorneys or the client security fund fee shall be subject to prosecution for the unauthorized practice of law under these statutes during the period of such suspension. Conn. Gen. Stat. §51-88(b), as amended by Conn. Pub. Act No. 13-29, §1 (*effective October 1, 2013*).

**Return or Return Information Disclosure.** The statute authorizing the Commissioner of Revenue Services to disclose returns or return information is amended to include disclosure in connection with a personnel proceeding, including any related administrative or judicial proceeding, involving an employee or former employee of the Department of Revenue Services if the Commissioner determines that such information is relevant and material to such proceeding. Disclosure also is permitted upon request by the employee or former employee regardless of whether the Commissioner introduces or otherwise uses the information. Conn. Gen. Stat. §12-15(b) as amended, and Conn. Gen. Stat. §5-240 as added, by Conn. Pub. Act No. 13-150, §§2-3 (*effective June 25, 2013*).

**Unemployment Compensation.** To combat unemployment compensation fraud and comply with the federal Trade Adjustment Assistance Extension Act of 2011, the General Assembly enacted a new penalty scheme for claimants who knowingly make a false statement or representation, or knowingly fail to disclose a material fact to obtain or increase benefits. In general, any overpayment made on or after October 1, 2013 must be repaid and a penalty can be imposed of (i) 50% of the overpayment for a first offense and (ii) 100% of the overpayment for subsequent offenses. The legislation further permits the state to seek a withholding of a state income tax refund for claimants who fail to repay accidental overpayments (as well as fraudulent overpayments) and to seek repayment of fraudulent overpayments through a withholding of the claimant's federal tax refund if the state income tax refund is insufficient to recover the entire overpayment. Conn. Gen. Stat. §31-273, as amended by Conn. Pub. Act No. 13-66, §1 (*effective October 1, 2013*). As part of a separate public act, an employer will now be required to notify electronically the Commissioner of Labor within 30 days of becoming subject to the state's unemployment law or of the acquisition of substantially all of the assets, organization, trade or business, including employees, of another employer that is subject to the state's unemployment law. A \$50 civil penalty per violation is established for a violation of either notice requirement. In addition, a \$25 fee is established for any employer that fails to submit its required quarterly wage reports under a property state unemployment compensation registration number. Conn. Gen. Stat. §§31-223 and 31-225a, as amended by Conn. Pub. Act No. 13-288, §§1-2 (*effective October 1, 2013*).

**Unemployment Tax Returns.** Commencing with the first calendar quarter of 2014, the requirement to file electronically quarterly unemployment tax returns, and to reimburse electronically the unemployment system for benefits paid to former

employees, will be extended to all employers and not just to employers with 250 or more employees. The legislation allows employers or their agents to request a waiver from the electronic reporting and electronic reimbursement requests. Conn. Gen. Stat. §31-225a, as amended by Conn. Pub. Act No. 13-141, §1 (*effective January 1, 2014*).

**Professional Truck Drivers.** A new exemption from the state's unemployment law is created for any operator of a motor vehicle transporting property for compensation pursuant to an agreement with a contracting party provided that: (i) the motor vehicle has a gross vehicle weight rating in excess of 10,000 pounds; (ii) the operator owns the motor vehicle or holds it under a bona fide and commercially reasonable lease arrangement (or loan or loan guarantee) not with the contracting party or any related party; (iii) the operator's compensation is based on factors, which may include, but not be limited to, mileage-based rates, a percentage of any schedule of rates or by the hours or time expended in relation to actual performance of the service contracted for or an agreed upon flat fee; and (iv) the operator may refuse to work without consequence and may accept work from multiple contracting entities in compliance with statutory and regulatory limitations without consequence (but the State cannot find the operator is an employee of the contracting party solely because the operator chooses to perform services only for that contracting party). Although the legislation creates an exception from the unemployment law's "ABC test" for finding that a truck driver is not an employee, it expressly provides that it is not applicable to the determination of whether the truck driver is an employee for purposes of the Connecticut income tax. Conn. Gen. Stat. §31-222(a)(5), as amended by Conn. Pub. Act No. 13-168, §1 (*effective October 1, 2013*).

**Tax Fraud Penalties.** New legislation amends 17 tax statutes addressing the penalty for fraud involving various Connecticut taxes. The legislation converts such tax fraud from an unclassified crime punishable by one to five years in prison and a fine up to \$5,000, to a class D felony. Conn. Gen. Stat. §§12-206e, 12-231(b), 12-268e(b), 12-304(b), 12-306b(b), 12-330f(c), 12-330j(b), 12-405d(g), 12-428(2), 12-452(b), 12-464(b), 12-482(b), 12-519(b), 12-551(b), 12-591(b), 12-638g(b) and 12-737(b), as amended by Conn. Pub. Act No. 13-258, §§42-58 (*effective October 1, 2013*).

**Joint Enforcement Commission on Employment Misclassification.** The statute establishing the Joint Enforcement Commission on Employment Misclassification is amended to add to the Commission the Insurance Commissioner and the Commissioner of Consumer Protection, and to provide that the Commission is required to file with the Governor and the General Assembly a report on a biennial, rather than annual, basis. Conn Gen. Stat. §31-57h, as amended by Conn. Pub. Act No. 13-140, §8 (*effective June 18, 2013*).

## ***II. Administrative Publications***

**Regulation Review.** On October 16, 2013, Governor Malloy issued Executive Order No. 37, soliciting public comment on every regulation that has been in effect greater than four years as to whether the regulation is outdated, unnecessarily burdensome, insufficient or ineffective. Public comment is due by December 16, 2013. Each state agency is to independently review all regulations under its jurisdiction, and the comments received from the public, and then submit to the Governor a report with its recommendations relating to such regulations on or before February 3, 2014. Finally, the Executive Order provides for a new procedure for the issuance, modification or repeal of a regulation to promote a more transparent and efficient regulatory process, including, when appropriate, gathering public input prior to the issuance of a formal notice of a proposed regulation.

**Electronic Filing and Payment.** The DRS published on November 7, 2013, a set of frequently asked questions and answers confirming that, effective for tax periods beginning on or after January 1, 2014, the DRS will require everyone

registered for any of the following tax types to file returns and pay the associated taxes electronically: sales and use tax; business use tax; room occupancy tax; admission and dues tax; income tax withholding; corporation business tax; and composite income tax. See DRS Information Publication 2013(15), *Paying Connecticut Taxes by Electronic Funds Transfer*.

**Motor Vehicle Fuels Tax Rate.** The Commissioner announced that the new diesel fuel tax rate for the 12-month period beginning July 1, 2013 is 54.9 cents per gallon. See DRS Announcement 2013(5), *Motor Vehicles Fuels Tax Rate on Diesel Fuel Increased Effective July 1, 2013*.

**Prepaid Wireless E 9-1-1 Fee Assessment.** The Connecticut Public Utility Regulatory Authority set the fee that is assessed on sales to telecommunications service subscribers, which also applies to sales of a prepaid wireless communications service. For sales occurring on or after July 1, 2013, the fee is 70 cents. See DRS Special Notice 2013(2), *Changes to the Prepaid Wireless E 9-1-1 Fee*.

**Admissions Tax.** In DRS Ruling 2013-1, the Department ruled that admission charges to attend basketball games of a tax-exempt university at a private venue were exempt from the admissions tax under Conn. Gen. Stat. §12-541(a)(3) because the University bore the financial risk for all expenses associated with the basketball games.

## **ADMINISTRATIVE PRONOUNCEMENTS**

### **Announcements**

AN 2013(1), Assessments Refunded by the Connecticut Insurance Guaranty Association

AN 2013(2), Annual List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2013(2.2), Quarterly List of Distributors For Motor Vehicle Fuels Tax Purposes

AN 2013(3), List of DRS-Registered Natural Gas Suppliers

AN 2013(4), Annual Revision of Forms TPM-1, TPM-2, and TPM-3

AN 2013(5), Motor Vehicles Fuels Tax Rate on Diesel Fuel Increased Effective July 1, 2013

AN 2013(6), Error Corrected in Real Estate Conveyance Tax Return and Instructions

### **Informational Publications**

IP 2013(1), 2013 Connecticut Employer's Tax Guide Circular CT

IP 2013(2.2), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax

IP 2013(3.2), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax

IP 2013(4.2), Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements

IP 2013(5.2), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes

IP 2013(6.2), Topical Index to Rulings and Administrative Pronouncements Covering Miscellaneous Taxes and Administrative Topics

IP 2013(7), Is My Connecticut Withholding Correct?

IP 2013(8), Connecticut Tax Guide for Payers of Nonpayroll Amounts

IP 2013(9), The Connecticut Neighborhood Assistance Act Tax Credit Program



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[www.shipmangoodwin.com](http://www.shipmangoodwin.com)

IP 2013(11), Q & A on Tumbleweed Secure Email System [No longer on DRS website]

IP 2013(15), Paying Connecticut Taxes by Electronic Funds Transfer

IP 2013(16), Forms 1099-R, 1099-MISC and W-2G Electronic Filing Requirements for Tax Year 2013

IP 2013(17), Form W-2 Electronic Filing Requirements for Tax Year 2013

## Special Notices

SN 2013(1), Legislative Changes to the Connecticut Business Entity Tax

SN 2013(2), Changes to the Prepaid Wireless E 9-1-1 Fee

SN 2013(3), Legislative Changes to the Petroleum Products Gross Earnings Tax Effective July 1, 2013

SN 2013(4), 2013 Legislative Changes Requiring Cigarette Stampers and Non-Stamping Distributors to Collect Sales Tax on Cigarettes

SN 2013(5), 2013 Legislative Changes Affecting Sales and Use Tax

SN 2013(7), 2013 Legislative Changes Affecting the Income Tax

SN 2013(8), 2013 Legislation Affecting the Electric Generation Tax

## Policy Statements

PS 2013(1), Audit Examination Policy for Retail Transactions

PS 2013(3), Sales and Use Tax Rules for Drop Shipments

PS 2013(5), Requests for Waiver of Civil Penalties

## 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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