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2017 SURVEY OF CONNECTICUT TAX LAW DEVELOPMENTS

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There were numerous significant Connecticut tax law developments in 2017. In the case of the Connecticut personal income tax, the angel investor tax credit was made available for investments in companies in all industries, the exemption for Social Security benefits was expanded, the property tax credit was further limited, and pension and annuity payments were made the subject of both a new limited exemption and a tax withholding requirement. The due date for the corporation business tax return was pushed back, the scheduled FAS 109 deduction arising out of the implementation of combined unitary reporting was both delayed until 2021 and extended from seven to 30 years, and two new programs for the use of stranded state research and development tax credits were created. The effective period of sales tax permits was reduced from five to two years, and new enforcement mechanisms were developed for delinquent taxpayers. In addition, there were increases in fees and miscellaneous taxes, such as the cigarette and tobacco products taxes, a lowering of the insurance premium tax and the creation of a new brownfields revitalization tax benefit program. Finally, the Connecticut Department of Revenue Services (“DRS”) was authorized to create a “Fresh Start” Program whereby certain delinquent taxpayers could apply for relief from penalties and one-half of the interest that otherwise would be due on state taxes that have not been reported or were underreported.

This Survey summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published by the DRS during 2017.

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I. PERSONAL INCOME TAX

A. *Legislation*

1. Angel Investor Tax Credit

The statute governing the angel investor tax credit program has been amended. In general, the program allows qualifying accredited investors who invest at least \$25,000 in a business certified by Connecticut Innovations, Inc. (“CI”) to be eligible for a personal income tax credit equal to 25% of their investment (provided that the total tax credits allowed to any investor cannot exceed \$250,000). Effective July 1, 2017, the statute now: (i) permits *all businesses* with a principal place of business in Connecticut to seek to be certified by CI (under former law, only businesses in certain emerging technologies could be certified); and (ii) generally prohibits CI from reserving more than 75% of the angel tax credits available during a fiscal year for investments in emerging technology businesses (unless credits remain available after April 1st in any fiscal year). Currently the annual limit on credits is \$3 million, and tax credits are not to be reserved for any investment made on or after July 1, 2019.¹

2. Withholding on Pension and Annuity Payments

Current law permits Connecticut residents receiving pensions or annuities to instruct the payer to withhold Connecticut income tax. Effective January 1, 2018, each payer of pension and annuity distributions, including distributions from an employer pension, an annuity, a profit-sharing plan, a stock bonus, a deferred compensation plan, an individual retirement arrangement, an endowment or a life insurance contract, will be required to deduct and withhold Connecticut income tax from such distributions if the payer (i) maintains an office or transacts business in Connecticut, and (ii) makes payment of any amount taxable in Connecticut to a resident individual. The method of

¹ CONN. GEN. STAT. § 12-704d, as amended by Conn. Pub. Act 17-110, § 1 (effective July 1, 2017).

determining the amount to be withheld shall be the same as the method used by employers with respect to wages, except for “lump sum distributions”. Connecticut resident individuals who are recipients of pension or annuity payments are now required to provide the payer with a completed Form CT-W4P. If the recipient does not provide a properly-completed Form CT-W4P, the payer must withhold at the highest marginal income tax rate (currently 6.99%). A “lump sum distribution” is also taxable at the highest marginal rate unless (i) any portion of the distribution previously was subject to tax, or (ii) the distribution is a rollover that is effected as a direct “trustee-to-trustee” transfer. A “lump sum distribution” is a payment from a payer to a resident payee of the payee’s entire account balance, exclusive of any other tax withholding and any administrative charges and fees.²

3. Social Security Benefits

Beginning with the 2019 tax year, the income thresholds at which a taxpayer qualifies for a 100% Connecticut income tax exemption for his or her Social Security benefits are increased to (i) federal adjusted gross income of less than \$75,000 (currently \$50,000) for single filers and married couples filing separately, and (ii) federal adjusted gross income of less than \$100,000 (currently \$60,000) for married couples filing jointly and heads of household. A 75% exemption is generally available to those taxpayers with federal adjusted gross income equal to or greater than the applicable threshold.³

² CONN. GEN. STAT. § 12-705 and 12-707(g), as amended by Conn. Pub. Act No. 17-147, §§ 6, 8 (effective January 1, 2018). See DRS Special Notice 2017(5), *New Income Tax Withholding Requirements for Pension and Annuity Payments*; DRS Announcement 2017(11), *Revised Form CT-W4P for Connecticut Resident Recipients of Pension and Annuity Distributions*. On December 7, 2017 the Commissioner issued a memorandum, providing 2018 relief for payers who make good faith efforts to implement the withholding requirements in 2018, and simplifying the new requirements as they relate to non-periodic payments.

³ CONN. GEN. STAT. § 12-701(a)(20)(B), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 641 (effective October 31, 2017, and applicable to taxable years commencing on or after January 1, 2017), as further amended by Conn. Pub. Act No. 17-4 (June Spec. Sess.), § 18 (effective November 21, 2017).

4. Delay of Teachers' Retirement System Exemption

Under prior law, a taxpayer with income from the state teachers' retirement system was entitled to an exemption equal to 10% of that income for the 2015 taxable year, 25% of that income for the 2016 taxable year, and 50% of that income for 2017 and future taxable years. The increase of the exemption from 25% to 50% has been delayed to 2019 and future taxable years (subject to the right of a taxpayer to claim the new exemption for pension and annuity payments described below).⁴

5. Pension and Annuity Exemption

A new exemption for pension and annuity income is phased in 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 that is exempt is 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 2025 and future taxable years.⁵

6. Sourcing of Income from Real Property

Under current law, a nonresident individual must pay Connecticut personal income tax on gains or losses from the sale or disposition of an interest in a partnership, limited liability company or Subchapter S corporation that owns real property that is located in Connecticut and that has a fair market value that equals or exceeds 50% of all of the assets of the entity on the date of sale or disposition of that nonresident individual's interest in that entity. The governing statute has been amended to provide that the sourcing

⁴ CONN. GEN. STAT. § 12-701(a)(20)(B), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 641 (effective October 31, 2017, and applicable to taxable years commencing on or after January 1, 2017).

⁵ CONN. GEN. STAT. § 12-701(a)(20)(B), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 641 (effective October 31, 2017, and applicable to taxable years commencing on or after January 1, 2017).

rule applies if the relevant entity owns “directly or indirectly” such real property.⁶

7. Limitation on Property Tax Credit

For taxable years beginning on or after January 1, 2016, the maximum tax credit for property taxes paid continues to be limited to \$200 per year, subject to certain Connecticut adjusted gross income limitations. However, for the 2017 and 2018 taxable years, the credit is further limited to only Connecticut residents who either (i) attain the age of 65 before the end of the applicable tax year or (ii) validly claim one or more dependents on their federal income tax returns.⁷

8. Reduction in Earned Income Tax Credit

Connecticut's earned income tax credit, which was to increase from 27.5% to 30% for the 2017 taxable year, has been reduced permanently to 23%.⁸

9. Organ Donation Deduction

A taxpayer who donates human bone marrow or all or part of a human liver, pancreas, kidney, intestine or lung to another person for organ transplantation during a taxable year beginning on or after January 1, 2017, may take a deduction from Connecticut taxable income of up to \$10,000 in lost wages and medical, travel and housing expenses incurred by the taxpayer in connection with the donation.⁹

10. STEM Graduate Tax Credit

For taxable years commencing on or after January 1, 2019, an individual who receives, on or after January 1,

⁶ CONN. GEN. STAT. § 12-711(b)(6), as amended by Conn. Pub. Act No. 17-147, § 36 (effective July 7, 2017).

⁷ CONN. GEN. STAT. § 12-704c(b), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 644 (effective October 31, 2017, and applicable to taxable years commencing on or after January 1, 2017).

⁸ CONN. GEN. STAT. § 12-704e(e), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 645 (effective October 31, 2017, and applicable to taxable years commencing on or after January 1, 2017).

⁹ CONN. GEN. STAT. § 12-701(a)(20)(B), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 641-642 (effective October 31, 2017, and applicable to taxable years commencing on or after January 1, 2017).

2019, a bachelor's, master's, or doctoral degree in science, technology, engineering, or a math-related field may claim a new \$500 refundable tax credit for each of the first five years after graduation. In order to claim the credit, the taxpayer must be employed in Connecticut and either reside in Connecticut, or move to Connecticut within two years of graduation.¹⁰

11. Crumbling Foundations Assistance Fund

A Crumbling Foundations Assistance Fund has been established to help create a new captive insurance company, and provide assistance to homeowners with crumbling concrete foundations. The governing legislation provides that an individual shall be entitled to subtract from Connecticut adjusted gross income the amount of any financial assistance received from the Fund or paid to or on behalf of the owner of a residential building to the extent that such amount would be properly includable in gross income for federal income tax purposes.¹¹

12. Foreign Entity Nonqualified Deferred Compensation

Effective for taxable years commencing on or after January 1, 2017, a taxpayer must include in Connecticut adjusted gross income any compensation required to be recognized under section 457A of the Internal Revenue Code of 1986, as amended ("Code"), that is attributable to services performed within Connecticut to the extent it is not otherwise properly includable in gross income for federal income tax purposes. In general, Code section 457A requires the inclusion of nonqualified deferred compensation from certain foreign corporations or partnerships with foreign or exempt partners when there is no substantial risk of forfei-

¹⁰ Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 648 (effective January 1, 2019).

¹¹ CONN. GEN. STAT. § 12-701(a)(20)(B), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 342 (effective October 31, 2017, and applicable to taxable years commencing on and after January 1, 2017). It should also be noted that (i) IRS Revenue Procedure 2017-60 addresses the ability of a taxpayer who pays to repair damage caused by a deteriorating concrete foundation to treat the payment as a deductible casualty loss under I.R.C. §165, and (ii) Section 11044 of The Tax Cuts and Jobs Act amends I.R.C. § 165(h) to limit the personal casualty loss itemized deduction for property losses to apply only to losses incurred as a result of federally declared disasters.

ture of the rights to such compensation.¹²

13. Delinquent Withholding Agent Security

Effective October 1, 2017, the Commissioner can request the posting of security by any employer or payer required to deduct and withhold income tax if that employer or payer: (i) owes such taxes and they have been due or payable for a period of 90 days or longer and for which any administrative or judicial remedies have been exhausted or lapsed; or (ii) failed to file one or more withholding tax returns. The Commissioner shall determine the form and amount of security, but the amount cannot exceed six times the employer's or payer's estimated liability for the prior twelve-month period or the employer's or payer's liability for the next twelve-month period. Upon notice to the person who deposited the security, the Commissioner may sell the security at public auction if it becomes necessary to do so to recover any tax, interest or penalty due.¹³

14. Nonpayroll Information Returns

Effective January 1, 2018, payers of nonpayroll amounts that are not subject to Connecticut income tax withholding will be required annually to provide by January 31 to each payee a written statement on a form prescribed by the Commissioner showing the amount of nonpayroll amounts paid to the payee during the immediately previous year. The payer additionally must file a copy of the written statement with the Commissioner on or before such January 31 date.¹⁴

15. Information Returns

The deadline for the filing of information returns with the DRS for personal income tax purposes (e.g., Forms W-2, W-2G, 1099-MISC) has been accelerated from the last day of

¹² CONN. GEN. STAT. § 12-701(a)(20)(A), as amended by Conn. Pub. Act No. 17-147, § 2 (effective July 1, 2017, and applicable to taxable years commencing on or after January 1, 2017).

¹³ CONN. GEN. STAT. § 12-707, as amended by Conn. Pub. Act No. 17-147, § 5 (effective October 1, 2017).

¹⁴ CONN. GEN. STAT. § 12-706, as amended by Conn. Pub. Act No. 17-147, § 7 (effective January 1, 2018).

February to January 31.¹⁵

16. Mental Health Community Investment Account

Effective July 1, 2017, a taxpayer may contribute any part of a refund of personal income tax to the mental health community investment account. This new, separate General Fund account has been established to obtain contributions for improving mental health programs and services designed to support people diagnosed with mental health conditions.¹⁶

B. Case Law

1. Business Income v. Income from Trading for Own Account

In *Sobel v. Commissioner*,¹⁷ the Tax Session of the Superior Court was required to consider whether certain income of a taxpayer was income “from property employed in a business, trade or profession” carried on in New York, and subject to taxation by New York, or income from the trading of securities for the taxpayer’s own account, and subject to taxation by the jurisdiction in which the taxpayer resides. The taxpayer, who was a resident of Connecticut for at least eighteen months of the two years in question, was a part owner of a limited liability company that had an office in New York City and was a general partner of two limited partnerships. Both limited partnerships directly or indirectly had third party investors, and the general partner managed the assets of the limited partnerships, which consisted primarily of U.S. Treasury bills and stock index options. As compensation for its management services, the general partner received a percentage of the capital gain or profit that each limited partnership earned from trading its assets.

The Court concluded that the income earned by the gen-

¹⁵ CONN. GEN. STAT. § 12-727(a), as amended by Conn. Pub. Act No. 17-147, § 38 (effective July 7, 2017, and applicable to taxable years commencing on or after January 1, 2017).

¹⁶ CONN. GEN. STAT. § 12-743, as amended by Conn. Pub. Act No. 17-147, § 43 (effective July 1, 2017).

¹⁷ 2017 WL 1240119 (New Britain Super. Ct. March 7, 2017) (appeal filed March 27, 2017 AC 40273).

eral partner, part of which was allocated to the taxpayer, was income from property employed in a “business, trade or profession” carried on in New York. Accordingly, the taxpayer properly reported and paid tax on the income to New York and took a credit for that tax on the taxpayer’s Connecticut income tax return under General Statutes Section 12-704. The Court rejected the Commissioner’s argument that, by virtue of the assets involved and the general partner’s compensation as a percentage of gain and profit, the relevant income was from the taxpayer trading on his own account. The Court further ruled that the taxpayer had effectively changed his domicile to New York in the middle of the second year, such that, if on appeal its ruling regarding the sourcing of the income was overturned, the assessment for the second income year still had to be reduced proportionately because the taxpayer was only a part-year Connecticut resident.

C. Administrative Pronouncements

1. New Apportionment and Sourcing Rules

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

II. SALES AND USE TAX

A. Legislation

1. Sales Tax Permits

The effective period of a Connecticut sales tax permit

issued to a retailer has been reduced from the current five years to two years for any permit issued on or after October 1, 2017.¹⁸

2. Annual Return Filers

The statute governing the remitting of sales and use taxes and the filing of sales and use tax returns has been clarified as it relates to annual filers. In general, if a taxpayer collects and remits sales tax of less than \$1,000 for the twelve-month period beginning July 1st and ending June 30th, the taxpayer may file its return annually by January 31st for sales reported during the previous calendar year.¹⁹

3. Delinquent Taxpayers

Under current law, the Commissioner has the authority to give written notice to and require a delinquent taxpayer to remit the tax collected during a weekly period on a weekly basis (regardless of whether the taxpayer otherwise would be required to remit on a monthly or other basis). The law has been amended to require the delinquent taxpayer either to: (i) submit an election, within two business days of receipt of the Commissioner's notice, to remit tax through a "certified service provider" (i.e., a service provider certified by the Streamlined Sales Tax Governing Board); or (ii) establish, within 30 days after receipt of the Commissioner's notice, a separate account at a financial institution for the deposit of all sales tax receipts. The election to retain a certified service provider or to establish a separate account is irrevocable for the period the taxpayer is required to remit taxes on a weekly basis. If the taxpayer timely elects to remit tax with a certified service provider, the taxpayer must contract with, and start remitting sales tax through, that provider within 30 days after receipt of the Commissioner's notice. If, instead, the taxpayer establishes a separate bank account, the taxpayer must: (i) use

¹⁸ CONN. GEN. STAT. § 12-409(c), as amended by Conn. Pub. Act No. 17-147, § 3 (effective October 1, 2017).

¹⁹ CONN. GEN. STAT. § 12-414, as amended by Conn. Pub. Act No. 17-147, § 4 (effective January 1, 2018).

the account designation “[Name of taxpayer], Trustee, Special Fund in Trust for the State of Connecticut, Department of Revenue Services, Under Section 12-408 of the Connecticut General Statutes;” (ii) provide to the Commissioner, upon request, specified information about the account; and (iii) provide, as trustee, written consent to the financial institution for the disclosure of account-related information to the Commissioner. Taxes then must be deposited into the segregated account not later than two business days after their collection or receipt. The Commissioner is further authorized, subject to consultation with representatives of the banking industry as to the content of the notice required, to obtain account information from the financial institution, serve notice and obtain payment from the account (if the Commissioner determines that collection of tax will be jeopardized), and request that the Attorney General bring an action to compel such payment if the financial institution refuses to do so.²⁰

4. Security for Taxes

Under current law, the Commissioner may require any person to deposit such security as the Commissioner determines to secure that person’s compliance with the sales and use tax laws. The statute governing such authority has been amended to provide that such security shall only be required where that person either (i) owes sales and use taxes which have been finally due and payable for a period of 90 days or longer and for which any administrative or judicial remedies or both, have been exhausted or have lapsed, or (ii) has failed to file three or more returns required under those laws.²¹

5. Production of Records

The Commissioner has the authority to require a person to produce books, papers or records for examination and inspection. Under new legislation, if a person fails to pro-

²⁰ CONN. GEN. STAT. § 12-414, as amended by Conn. Pub. Act No. 17-147, § 4 (effective January 1, 2018).

²¹ CONN. GEN. STAT. § 12-430(a), as amended by Conn. Pub. Act No. 17-147, § 44 (effective July 7, 2017).

duce such materials by the specified deadline in the Commissioner's written notice, the Commissioner may impose a civil penalty of \$500 per violation (and each distinct violation, and each day of a continued violation, is deemed a separate offense).²²

6. Services Between Related Entities

Under current law, there is an exemption from the sales and use tax for certain enumerated services that are rendered between affiliated businesses when either entity owns 100% of the other entity or 100% of each entity is owned by the same person or persons. Effective July 1, 2019, the ownership requirement is reduced from 100% to at least 80% if the entity is a corporation engaged in the media business or is a single member limited liability company and such single member is a corporation engaged in the media business and has its principal place of business in Connecticut.²³

B. *Administrative Pronouncements*

1. Economic Nexus and Sales Tax

In a press release dated March 28, 2017, the DRS stated that "current state law requires out of state sellers of goods that have an economic presence in the state to collect and remit sales tax." The press release indicated that the state is stepping up its efforts to collect sales taxes not paid by online and other out of state retailers with a significant volume of sales in Connecticut. The DRS's position is apparently based, in part, on General Statutes Section 12-407(a)(15)(A) (adopted in 1989) which defines "engaged in business in the state" as including engaging in the regular or systematic solicitation of sales of tangible personal property in this state by various means, including by "computer data base" or "other communication system", for the purpose of effecting retail sales of tangible personal property, provided one hundred or more retail sales from outside Connecticut to destinations within Connecticut are made

²² Conn. Pub. Act No. 17-147, § 46 (effective July 1, 2017).

²³ CONN. GEN. STAT. § 12-412(62), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 640 (effective October 31, 2017).

during the twelve-month period ended on the September 30th immediately preceding the monthly or quarterly period with respect to which liability for tax is determined.

In a speech on November 15, 2017, the Commissioner announced that the DRS will issue in 2018 new guidance and regulations on the “taxability of Connecticut destined e-commerce sales” targeted at e-retailers that have annual sales in Connecticut of \$300,000 or more. The Commissioner indicated that the guidance is likely to incorporate the approach for the taxation of an “Internet vendor” adopted by Massachusetts in Regulation 830 CMR 64H.1.7. That regulation generally finds there to be nexus in Massachusetts for sales and use tax if an Internet vendor had, during the immediately preceding year, in excess of \$500,000 in Massachusetts sales and sales resulting in a delivery into Massachusetts in 100 or more transactions, and there is in-state “physical presence” by virtue of (i) property interests in Massachusetts and/or the use of in-state software (such as “apps”) and ancillary data (such as “cookies”) which are distributed to or stored on computers or other physical communications devices of Massachusetts customers and may enable the vendor’s use of such physical devices, (ii) contracts or other arrangements with content distribution networks resulting in the use of in-state servers and/or the receipt of other related in-state services, and/or (iii) contracts or other relationships with online marketplace facilitators and/or delivery companies resulting in in-state services.

Connecticut has joined a growing number of states seeking to challenge, or otherwise redefine, the physical presence standard affirmed by the United States Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). On January 20, 2018, the United States Supreme Court announced that it would revisit the *Quill* holding by agreeing to hear the case of *South Dakota v. Wayfair*.²⁴

²⁴ The Supreme Court’s decision was released on June 21, 2018. In *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), the Supreme Court held, by a 5-4 majority, that the Dormant Commerce Clause permits states to charge sales tax on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state.

2. Home Service Contracts or Warranties

In Ruling No. 2017-1, the DRS considered the application of the sales and use taxes to “home service contracts” or “home warranties” entered into with purchasers of residential real property. These contracts generally provide that the company will service, repair or replace certain operational or structural failures in the home for a certain period of time. The DRS concluded that: (i) if the residential real property is being used as income-producing property, the entire price of the contract is subject to sales and use taxes (General Statutes Section 12-407(a)(37)(I)); and (ii) if the residential real property is being used as a residence for the owner of the property, the sale of the contract is subject to sales and use taxes, if separately stated, to the extent the contract provides for repairs to tangible personal property or electrical devices.²⁵

3. Cooperative Community Services

In Ruling No. 2017-3, the DRS ruled that the sale of property management services to a cooperative community is subject to the Connecticut sales and use tax as a service to commercial, industrial or income-producing property under General Statutes Section 12-407(a)(37)(I). The ruling concludes that the property owned by a cooperative is income-producing property because: (i) the cooperative members (i.e. the residents) own interests in the cooperative and do not own the real property; (ii) each cooperative member is obligated to pay to the cooperative a share of the cooperative community’s expenses; and (iii) the cooperative is required to treat those payments as income. The DRS expressly distinguished a cooperative from a condominium association where the units are individually owned by the residents and the common area is jointly owned.²⁶

4. Motor Vehicle Towing and Road Services

In Ruling No. 2017-4, the DRS considered the application of the Connecticut sales and use tax to certain towing and

²⁵ CONN. GEN. STAT. § 12-407(a)(37)(Q) and (CC).

²⁶ Conn. Agencies Reg. § 12-407(2)(i)(l)-1(f)(4).

road services to a company engaged in the short-term rental and long-term lease of motor vehicles under General Statutes Section 12-407(a)(37)(II). The DRS held the purchase of motor vehicle transportation services to move its motor vehicles between rental lots, or from rental lots to an auction lot, are not taxable if the transport is conducted with an automobile carrier truck, and are taxable if the transport is conducted using a wrecker or flatbed wrecker. In the case of transportation services used to transport motor vehicles by wrecker or flatbed wrecker to a repair or body shop, such services are taxable unless purchased for resale because the company will charge its customers for such services (and include sales tax on such charge). Finally, the DRS ruled that the purchase by the company of roadside assistance services is subject to sales tax unless the company charges the customer for these services and collects tax on such charges.

5. Spinal Orthotics

In Ruling No. 2017-5, the DRS ruled that sales of spinal orthotics, such as back braces and cervical collars, are exempt from the sales and use tax pursuant to General Statutes Section 12-412(19)(B) if the products are artificial devices individually designed, constructed or altered solely for the use of a particular patient. Standard devices that are available for sale to the general public “over the counter” do not qualify for the exemption.

6. Urinary Tract Medical Device

In Ruling No. 2017-7, the DRS ruled that sales of a medical device designed to correct benign prostatic hyperplasia, that is implanted into the male urinary tract, are exempt from the sales and use tax pursuant to General Statutes Section 12-412(19)(C) because the product is a correction for a functioning portion of the body.

7. Mobile Devices and Services

In Ruling No. 2017-6, the DRS considered the application of the sales and use tax to an arrangement whereby a company that has a chain of restaurants provides its customers

with mobile point-of-sale devices (tablets) that can be used to place and pay for orders and, for an additional fee, access premium content. An out-of-state vendor provides the company with the devices (and the servers, Wi-Fi controllers and other property necessary to make the devices function at each restaurant) for either a specified monthly fee or for all or a portion of the revenue collected from the premium content. The DRS ruled that the fees charged by the company to its restaurant customers for premium content is subject to the sales and use tax on computer and data processing services. The amounts paid by the company to the vendor of the devices are subject to the sales and use tax on the lease of tangible personal property. As the out-of-state vendor has property in Connecticut, it has nexus to this state and must register to collect and remit such taxes.

III. CORPORATION BUSINESS TAX

A. *Legislation*

1. Corporation Business Tax Return Due Date Extended

Effective for income years commencing on or after January 1, 2017, a corporation business tax return shall be due on or before the fifteenth day of the month next succeeding the due date of the corresponding federal income tax return for the income year (i.e., May 15th for a calendar-year taxpayer) or, in the case of a company that is not required to file a federal income tax return for the income year, on or before the fifteenth day of the fifth month next succeeding the end of the income year. The period for calculating estimated tax underpayment penalties has been similarly extended.²⁷

2. FAS 109 Deduction

As part of the adoption of combined unitary reporting in 2016 for the Connecticut corporation business tax, a deduction was authorized for publicly-traded companies (includ-

²⁷ CONN. GEN. STAT. §§ 12-222(b) and 12-242d(d), as amended by Conn. Pub. Act No. 17-147 §§ 24-25 (effective July 7, 2017, and applicable to income years commencing on or after January 1, 2017).

ing affiliated corporations participating in the filing of a publicly-traded company's financial statements prepared in accordance with generally accepted accounting principles, as of January 1, 2016). If the adoption of combined unitary reporting resulted in an aggregate increase to the members' net deferred tax liability or an aggregate decrease to the members' net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group is entitled to a deduction to offset such aggregate increase, aggregate decrease or aggregate change. The deduction was to be taken, commencing with the first income year commencing on or after January 1, 2018, ratably over seven years. The period over which the deduction must be taken has now been extended to 30 years beginning in the first income year that begins in 2021, and the requirement that the taxpayer calculate the deduction without regard to its impact on federal taxes has been eliminated.²⁸

3. Stranded Tax Credit Programs

The Department of Economic and Community Development ("DECD") is required to establish two new programs to allow taxpayers to use certain "stranded" or "accumulated" tax credits (i.e., tax credits that a taxpayer has earned but has not been able to take). The first program will allow an in-state business to use stranded non-incremental research and development tax credits²⁹ against the corporation business tax and the sales and use tax in exchange for a capital project, planned or underway, in Connecticut that would (i) expand the scale or scope of the business, (ii) increase employment at the business or (iii) generate a substantial return to the state economy. The taxpayer must submit an application to the DECD Commissioner providing certain information about the project and a proposal regarding the amount of accumulated credits that the business

²⁸ CONN. GEN. STAT. § 12-218g, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 661 (effective October 31, 2017), as further amended by Conn. Pub. Act No. 17-4 (June Spec. Sess.), § 19 (effective November 21, 2017).

²⁹ Earned pursuant to CONN. GEN. STAT. § 12-217n.

should be able to utilize.

The Commissioner is to perform an econometric analysis of each application and only approve an application if the Commissioner determines that the project will generate revenues for the state in excess of the amount of the accumulated credits proposed to be utilized. The Commissioner additionally is not to approve the utilization of the accumulated credits until the capital project generates revenues for the state that exceed the amount of the accumulated credits proposed to be utilized.

The second program for the use of accumulated credits requires the DECD Commissioner, in consultation with the DRS Commissioner and the Chief Executive Officer of Connecticut Innovations (“CEO”), to hold innovation investment fund tax credit auctions and/or enter into agreements to allow taxpayers holding stranded incremental and non-incremental research and development tax credits³⁰ to use the credits in exchange for making investments in their corporate venture funds. The DECD Commissioner is to set the terms of an auction, including the minimum number of cents for each dollar of credit that may be bid, and is to select the winning bid or bids based upon the amount of credits proposed to be exchanged, the amount the bidder proposes to invest for the exchange and any other criteria the Commissioner and the CEO deem appropriate to evaluate the bids. The DECD Commissioner is then to invest the bid amounts received in the winning bidder’s corporate venture fund subject to the following requirements: (i) all investments shall be made under the advisement of a representative of Connecticut Innovations who is a member of the corporate venture fund’s investment committee; (ii) the amount invested in the fund shall not be less than \$5 million nor more than \$10 million; (iii) all amounts must be invested in start-up businesses located in the state or spin-off companies located in the state from the bidder’s research and development department; (iv) the portion of profits attributable to the investments shall be divided equally

³⁰ CONN. GEN. STAT. §§ 12-217j and 12-217n.

between the state and the bidder; and (v) the bidder agrees to reinvest the bidder's profits attributable to such investments in the bidder's corporate venture fund. In lieu of such auction, the DECD Commissioner in consultation with the CEO may enter into an agreement with a taxpayer with accumulated credits to allow the taxpayer to utilize the credits in exchange for making such an investment in the taxpayer's corporate venture fund. The DECD Commissioner is required to hold tax credit auctions or proactively seek individual agreements until a minimum of two deals with different corporate venture funds are reached.

The total amount of investments made under the second program and the accumulated credits used under the first program, at full value, are not to exceed \$50 million in the aggregate.³¹

4. Film Production Tax Credit

The statute governing the film production tax credit is amended: (i) to restore and make permanent the moratorium on the issuing of any credit for a motion picture that had not been designated as a state-certified "qualified production" prior to July 1, 2013; (ii) to allow the credit to be claimed also against the gross receipts tax on cable, satellite and competitive video services (the "Video Gross Receipts Tax") for income years commencing on or after January 1, 2018; (iii) for the income year commencing on or after January 1, 2018, to limit the ability of a transferee of a credit to use the credit against the Video Gross Receipts Tax to (A) those transferees who have at least fifty percent common ownership with the eligible production company that transferred the credit, and (B) ninety-two percent of the amount of the credit; and (iv) for income years commencing on or after January 1, 2019, to provide that a transferee may claim only ninety-five percent of the credit or, if there is common ownership of at least fifty percent between the

³¹ Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 701-702 (effective October 31, 2017); CONN. GEN. STAT. § 12-217zz, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 703 (effective October 31, 2017).

transferee and the eligible production company that transferred the credit, only ninety-two percent of the credit.³²

5. Captive Real Estate Investment Trusts

Under current law, a captive real estate investment trust (“REIT”) is not entitled to a deduction for dividends paid in calculating its net income for Connecticut corporation business tax purposes. A captive REIT is generally one in which more than 50% of the voting power, beneficial interests or shares are owned or controlled, directly or constructively, by a single Subchapter C corporation. The statute defining a captive REIT has been amended to provide that any voting power, beneficial interests or shares in a REIT that are directly owned or controlled by a segregated asset account of a life insurance company shall not be taken into account for purposes of determining whether a REIT is a captive REIT.³³

6. Green Building Tax Credit

The green building tax credit is sunset by allowing the credit to be used only for income years commencing on and after January 1, 2012, but prior to December 1, 2017.³⁴

B. *Administrative Pronouncements*

1. New Apportionment and Sourcing Guidance

In Special Notice 2017(1), the DRS sets forth guidance on the practical application, for purposes of the corporation business tax, of the apportionment rules, and the new market sourcing rules effective for income years commencing on or after January 1, 2016. In order to apportion net income, a taxpayer must conduct business or have nexus both within and outside of Connecticut. The Special Notice outlines the general, single-factor formula based upon sales receipts, and the specific apportionment formulae for certain indus-

³² CONN. GEN. STAT. § 12-217jj, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 626 (effective October 31, 2017).

³³ CONN. GEN. STAT. § 12-213(a)(28), as amended by Conn. Pub. Act No. 17-147, § 23 (effective July 7, 2017).

³⁴ CONN. GEN. STAT. §§ 12-217mm(a) and (b), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 647 (effective October 31, 2017).

tries or activities (e.g., financial services, limited partnership interests, securities brokerage services). The Special Notice also details how a taxpayer should source receipts from the sale of tangible personal property, the rental, lease or license of tangible personal property, the sale of services, the rental, lease or license of intangible property and the sale and rental of real property. Taxpayers who provide financial services are directed to utilize the financial services apportionment rules under the corporation business tax to source their receipts from financial services.

2. Combined Unitary FAQs

The DRS Office of the Commissioner Guidance published, and then revised in October, a set of frequently asked questions and responses addressing particular issues related to the calculation of the corporation business tax on a combined unitary basis.³⁵

IV. ESTATE AND GIFT TAX

A. Legislation

1. Estate and Gift Tax Exemption Increase

The Connecticut estate and gift tax exemptions will be increased over the next three years from the current \$2 million threshold to match the federal exemption threshold. The state exemption increases to \$2.6 million in 2018, to \$3.6 million in 2019 and to the federal exemption in 2020 and thereafter. Unlike the federal exemption, the Connecticut exemption is not portable between spouses. The legislation also modifies the marginal rate schedules for taxable gifts and estates.³⁶ The Tax Cuts and Jobs Act significantly increased the federal exemption threshold for

³⁵ OCG-3, *Calculation of Corporation Business Tax on a Combined Unitary Basis FAQs* (original issue date: January 20, 2017; revised October 17, 2017).

³⁶ CONN. GEN. STAT. §§ 12-391 and 12-642, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 632-633 (effective October 31, 2017); CONN. GEN. STAT. § 12-643, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 634 (effective January 1, 2018, and applicable to gifts made on or after January 1, 2018); CONN. GEN. STAT. § 12-392, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 635 (effective January 1, 2018, and applicable to estates of decedents dying on or after January 1, 2018).

2018 through 2025, and it remains to be seen whether the General Assembly will further amend the state statute to limit the Connecticut exemption.

2. Estate and Gift Tax Cap Reduction

The cap on the maximum combined Connecticut gift and estate tax payable for the estates of decedents dying after January 1, 2019 has been lowered from \$20 million to \$15 million. With respect to Connecticut taxable gifts made by a donor during a calendar year commencing on or after January 1, 2019, the aggregate amount of gift tax imposed for all calendar years similarly cannot exceed \$15 million.³⁷

B. Case Law

1. QTIP Elections and Marital Trusts

In *Estate of Helen Brooks v. Commissioner*,³⁸ the Connecticut Supreme Court rejected arguments that the value of a marital trust, created by a decedent who was a Florida resident at the time of his death, should not be included in the taxable estate of the surviving spouse who was a Connecticut resident at the time of her death.

The executors of the Estate of Helen B. Brooks argued that the value of a trust created for the benefit of Mrs. Brooks by her late husband, who was a Florida resident at the time of his death, and for which her late husband's executor made a federal QTIP (qualified terminable interest property) election so as to qualify the trust for the federal estate tax marital deduction, should not be included in the Connecticut taxable estate of Mrs. Brooks. The Court rejected the Estate's argument that the Connecticut gross estate of the surviving spouse should not include QTIP property where Connecticut had not allowed a marital deduction for such property in the estate of the first to die spouse because that spouse was not a Connecticut resident at the time of his death. The Court emphasized that General Statutes Section 12-391(c)(1) defines the Connecticut taxable estate by refer-

³⁷ CONN. GEN. STAT. §§ 12-391 and 12-642, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 632-633 (effective October 31, 2017).

³⁸ 325 Conn. 705 (2017).

ence to the federal gross estate, which includes the marital trust. In addition, the Court rejected the argument that the QTIP trust should not be included in the surviving spouse's estate because she did not "own" such property at death. Specifically, prior to a 2013 amendment, General Statutes Section 12-391(d)(3) provided that Connecticut had the jurisdiction to tax only that intangible personal property "owned by" a Connecticut resident decedent. The executors contended that, because Mrs. Brooks did not "own" the assets of the marital trust, Connecticut did not have the jurisdiction to impose Connecticut estate tax on those assets. The Court rejected that argument, finding that the plaintiff's reliance on the 2013 statutory change which now refers to assets "included in the gross estate of the decedent" was clarifying in nature, not a substantive change in the law and, therefore, should be applied retroactively.

V. PROPERTY TAX

A. Legislation

1. Local Budgets and Tax Levies

As part of the state budget legislation, the General Assembly afforded limited relief to local entities which adopted a budget prior to the enactment of the state budget. If a municipality is to receive a lower amount of state aid than it had projected in its budget, the municipality may, with certain limitations, amend its education and non-education budgets and adjust its tax levies. If, on the other hand, a municipality or regional board of education is to receive an amount in excess of \$100,000 of state aid more than projected in its budget, the municipality or regional board of education may amend its budget, adjust any tax levy and issue tax refunds or rebates.³⁹

2. Shared Tax Assessors

New legislation authorizes a regional council of governments or two or more municipalities to jointly appoint one

³⁹ Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 265 (effective October 31, 2017), and Conn. Pub. Act. No. 17-4 (June Spec. Sess.), §§ 20 (effective November 21, 2017).

or more tax assessors.⁴⁰

3. Motor Vehicle Mill Rate

The cap on the mill rate for motor vehicles has been increased from 32 mills (37 mills in the case of combined rates with a district or borough) to (i) 39 mills for the October 1, 2016 assessment year, and (ii) 45 mills for the October 1, 2017 assessment year and each assessment year thereafter. Municipalities are authorized to revise, no later than December 15, 2017, their mill rates for the October 1, 2016 assessment year.⁴¹

4. Out-of-State Vehicles

Effective October 31, 2017, if an assessor determines that a motor vehicle that is registered outside of Connecticut is subject to local property tax, the assessor is to make a reasonable effort to provide information regarding that registration to the Commissioner of Motor Vehicles. The Commissioner is then to make a reasonable effort to provide to the assessor identifying information regarding the vehicle and its registered owner so that the assessor can add the vehicle to its grand list. One percent of the tax collected on such vehicle must be paid by the municipality into the Special Transportation Fund to fund the costs associated with the registration of that vehicle.⁴²

5. New Personal Property Exemptions

Effective October 1, 2017, the following property is now exempt from municipal property taxation: (i) cellular mobile telephones, computers and mobile electronic devices (as defined in General Statutes Section 10-222d) used by or belonging to a family; and (ii) machinery and equipment (A) used in the process of coloring or mixing paint, including, but not limited to, spectrographic color matching machines,

⁴⁰ CONN. GEN. STAT. § 7-100k, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 110 (effective October 31, 2017).

⁴¹ CONN. GEN. STAT. §§ 12-71e and 4-66l, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 699-700 (effective October 31, 2017).

⁴² CONN. GEN. STAT. § 12-71b(h), as added by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 556 (effective October 31, 2017).

automatic colorant dispensers, paint shakers, and computer equipment related to such machinery and equipment, and (B) used by retailers that offer paint for sale at retail in Connecticut.⁴³

6. Brownfields Land Banks

New legislation establishes a framework for organizing and operating local nonprofit land banks (“brownfield land banks”) to acquire and remediate brownfields and sell the remediated property for development. A Connecticut brownfield land bank is not required to pay any taxes or assessments upon or in respect of any revenues or property received, acquired, transferred or used by such bank, or upon or in respect of the income from such revenues or property. The legislation also allows a municipality to forgive all or a portion of the principal and interest due on delinquent property taxes for a property the brownfield land bank acquires or plans to acquire in the municipality.⁴⁴

7. Municipal Leased Property Exemption

The exemption from property tax for property belonging to or held in trust for a municipal corporation and used for a public purpose is extended to personal and real property leased to a municipal corporation and used for a public purpose, provided such leased property is located within the boundaries of the municipal corporation.⁴⁵

8. Public-Private Partnership Projects

The authority of the Governor to approve not more than five public-private partnership projects has been extended from January 1, 2016, to January 1, 2020. The projects are to be an agreement between a state executive branch or quasi-public agency and a private entity to finance, design, construct, develop, operate or maintain certain eligible facil-

⁴³ CONN. GEN. STAT. § 12-81(33), as amended, and CONN. GEN. STAT. § 12-81(78) as added, by Conn. Pub. Act No. 17-105, §§ 10-11 (effective October 1, 2017, and applicable to assessment years commencing on or after October 1, 2017).

⁴⁴ Conn. Pub. Act No. 17-214, § 5 (effective July 1, 2017). CONN. GEN. STAT. § 12-81r, as amended by Conn. Pub. Act No. 17-214, § 7 (effective July 1, 2017).

⁴⁵ CONN. GEN. STAT. § 12-81(4), as amended by Conn. Pub. Act No. 17-199, § 1 (effective October 1, 2017).

ities. The law exempts from property tax any property developed, operated or held by a private entity pursuant to such an agreement.⁴⁶

9. Veterans-Related Property Exemptions

Current law provides for a number of mandatory and optional property tax exemptions for veterans and their surviving spouses and minor children. New legislation increases the income thresholds for the municipal option of tripling the state-mandated property tax exemption under General Statutes Section 12-81(20). In addition, a municipality, upon approval of its legislative body, may now provide that any veteran who is ineligible for an exemption under sections 12-81(19) - (21), and whose qualifying income does not exceed (i) the state income limit for a single person for other veteran property tax exemptions annually set by OPM (\$35,200 for individuals and \$42,900 for married couples in 2017, which includes inflation adjustments), or (ii) an amount established by the municipality (which amount may not exceed the state income tax limit by more than \$25,000), shall be entitled to an exemption from property tax. At the option of the municipality, the exemption may be in an amount up to \$5,000 or up to 5% of the assessed value of the property.⁴⁷

10. Gold Star Parents and Spouses Exemption

New legislation authorizes a municipality, upon approval by its legislative body, to provide for an exemption from property tax for a parent or surviving spouse of a person who was killed in action while performing active military duty with the armed forces. To be eligible, the qualifying income of the parents or surviving spouse cannot exceed (i) the state income limit for a single person for other veteran property tax exemptions annually set by OPM (\$35,200 for individuals and \$42,900 for married couples in 2017, which includes inflation adjustments), or (ii) an amount estab-

⁴⁶ CONN. GEN. STAT. § 4-256(a), as amended by Conn. Pub. Act No. 17-149, § 1 (effective July 7, 2017).

⁴⁷ Conn. Pub. Act No. 17-189, §§ 2-4 (effective October 1, 2017, and applicable to assessment years commencing on or after October 1, 2017).

lished by the municipality (which amount may not exceed the state income limit by more than \$25,000). At the option of the municipality, the exemption may be in an amount up to \$25,000 or in an amount up to 10% of the assessed value of the property.⁴⁸

11. C-PACE Program Liens

The statute governing the Connecticut Green Bank's Commercial Property Assessed Clean Energy Program (C-PACE) is amended to clarify the status of a "benefit assessment lien" used to secure the financing of "energy improvements" under the program. By law, C-PACE benefit assessment liens take precedence over all liens or encumbrances except municipal property tax liens. The amendment specifies that, when a property subject to a municipal property tax lien is foreclosed or enforced by levy and sale, the benefit assessment lien for any payments due and owing on the date of the judgment or levy and sale will be extinguished but the lien for payments due after the judgment or levy and sale survives.⁴⁹

12. PILOT Payments and MDC Assessments

Effective May 16, 2017, the Secretary of the Office of Policy and Management ("OPM Secretary") is required to withhold, in whole or in part, a grant in lieu of taxes due to a municipality if the municipality has failed to pay timely a sewer use assessment to the Metropolitan District Commission (the "MDC"). The withholding is the amount due plus a five percent surcharge, and the OPM Secretary is to remit the amount withheld for the unpaid assessment to the MDC if the assessment remains unpaid. The OPM Secretary may retain the 5% surcharge withheld.⁵⁰

13. Municipal Foreclosure Actions

Under new legislation, an action by a municipality to

⁴⁸ Conn. Pub. Act No. 17-65, § 1 (effective October 1, 2017, and applicable to assessment years on or after October 1, 2017).

⁴⁹ CONN. GEN. STAT. § 16a-40g, as amended by Conn. Pub. Act No. 17-201, § 1 (effective October 1, 2017).

⁵⁰ Conn. Pub. Act No. 17-1, § 4 (effective May 16, 2017).

foreclose on a tax lien pursuant to General Statutes Section 12-181, on or after January 1, 2018, shall be privileged with respect to assignment for trial.⁵¹

B. Case Law

1. Timely Service of Appeal

In *Chestnut Point Realty, LLC v. East Windsor*,⁵² the taxpayer filed its property tax appeal complaint with the Superior Court within sixty days of the mailing of the decision of the Board of Assessment Appeals, but the marshal did not serve the complaint, citation and recognizance on the Town until after that sixty-day period. The Supreme Court affirmed the dismissal of the appeal as untimely, holding that General Statutes Section 12-117a requires the service of the appeal on the town within the sixty-day period. In a decision published on the same day, *Kettle Brook Realty, LLC v. East Windsor*,⁵³ the Supreme Court reached the same conclusion in a similar case, relying upon the reasoning in the Chestnut Point Realty decision.

2. Multi-tenant Office Building

In *Fairfield Merrittview Limited Partnership v. Norwalk*,⁵⁴ the Connecticut Appellate Court affirmed the sustaining of the taxpayer's appeal of an assessment on a multi-tenant office building. In doing so, the Court confirmed the discretion of the trial court, in applying the income capitalization method of valuation, to: (i) determine the property's net rentable area when conflicting documentation is provided; (ii) exclude from the valuation formula interest income from a money market account held by the taxpayer on the basis that it was unrelated to the property; and (iii) exclude other alleged income of the taxpayer the source of which the municipality could not establish.

3. Condemnation Proceeds

In *Stratford v. Hawley Enterprises, Inc.*,⁵⁵ the

⁵¹ Conn. Pub. Act No. 17-126, § 1 (effective January 1, 2018).

⁵² 324 Conn. 528 (2017).

⁵³ 324 Conn. 544 (2017).

⁵⁴ 172 Conn. App. 160, *cert. denied*, 326 Conn. 901 (2017).

⁵⁵ 175 Conn. App. 369 (2017).

Connecticut Appellate Court considered the proper disbursement of the proceeds from the condemnation by a municipality of certain property for open space. Although the first mortgage holder's claim exceeded the amount of the condemnation proceeds, the municipality was entitled to withhold from the proceeds the amount of back taxes due with respect to the condemned property even though the municipality had failed to claim an interest in the condemnation award in the statement of compensation as required by General Statutes Section 8-129(a)(3).

4. Pretrial Conferences

In *Faile v. Stratford*,⁵⁶ the Connecticut Appellate Court considered the entry of a nonsuit against two plaintiff individuals and a plaintiff limited liability company, each of whom had appealed from a property tax assessment of their respective hangars at Sikorsky Memorial Airport. The nonsuits were entered by the lower court on the stated basis that the plaintiffs had failed to comply with the pretrial conference order which compelled them to (i) have in attendance someone with ultimate authority to settle the appeal and, in the case of the individual plaintiff, have every physical piece of paper that would be introduced into evidence. The Appellate Court held that the entry of the nonsuit against one of the individuals was an abuse of the trial court's discretion because the individual was present, his attorney had all of the evidentiary documents on his laptop at the hearing and his unwillingness not to agree to a settlement below a certain figure did not mean that he did not have settlement authority. Similarly, the Court reversed the grant of nonsuit against the other individual and limited liability company noting that the individual (also the LLC's sole member) had been hospitalized but had given settlement authority to his attorney.

5. Conversions and Sewer Assessments

In *777 Residential LLC v. The Metropolitan District Commission*,⁵⁷ the Superior Court held that a water pollu-

⁵⁶ 177 Conn. App. 183 (2017).

⁵⁷ 2017 WL 4159721 (Hartford Super. Ct. Aug. 1, 2017).

tion control authority is authorized pursuant to General Statutes Section 7-249 to levy a supplemental sewer assessment as a consequence of the interior conversion of a building from commercial office space to residential apartments.

6. Tax Abatement Applications

In *Murray v. Suffield*,⁵⁸ the plaintiff brought an action in small claims court, that was subsequently transferred to Superior Court, seeking to appeal a denial of a request for an abatement of motor vehicle and real property taxes due to the plaintiff's low income. The Superior Court held that, even if the application for abatement had been made pursuant to General Statutes Sections 12-124 or 12-124a, the Court did not have jurisdiction to adjudicate the plaintiff's action.

7. Tardy Income and Expense Reports

In *MSK Properties, LLC v. Hartford*,⁵⁹ the plaintiff sole member of 28 separate limited liability companies purported to bring an appeal on behalf of each of those 28 companies of an assessment of a ten-percent penalty arising from the late filing of an income and expense report by the prior owners of each of the properties now owned by the 28 companies. The subject reports were each filed one day late and the plaintiff contended that the ten-percent penalty resulted in the unjust enrichment of the City. The Court ruled that the penalty was properly imposed for the failure to file timely the income and expense reports required by General Statutes Section 12-63c(a).

8. Penalty Imposition

In *Wilton Campus 1691, LLC v. Wilton*,⁶⁰ the defendant Town's assessor imposed the statutory ten-percent penalty provided for in General Statutes Section 12-63c(a) because the plaintiff filed its income and expenses report two days late. The penalty was imposed by the assessor after the

⁵⁸ 2017 WL 2452558 (Hartford Super. Ct. May 9, 2017).

⁵⁹ 2017 WL 3332728 (New Britain Super. Ct. July 3, 2017).

⁶⁰ 2017 WL 3625572 (New Britain Super. Ct. July 12, 2017).

signing of the Grand List for the relevant assessment year pursuant to the assessor's practice to retroactively impose the penalty pursuant to General Statutes Section 12-60. The Superior Court held that the assessor was required to impose the penalty prior to the signing of the Grand List as General Statutes Section 12-60 is intended only to allow the correction of clerical errors. By intentionally failing to timely impose the penalty, the assessor improperly limited the time period during which the plaintiff could appeal the penalty. The Court held, however, that the only redress for the assessor's failure is to extend the appeal period and, as any appeal would be denied because the income and expense reports were filed late, judgment was entered in favor of the Town.

9. Ratio Testing Standards

In *Tuohy v. Groton*,⁶¹ the plaintiffs brought a class action property tax appeal pursuant to General Statutes Section 12-119. The plaintiffs asserted that the assessments of the properties in their neighborhood were manifestly excessive because the Town applied ratio testing standards at the neighborhood level, making an upwards valuation adjustment for their neighborhood and not making an upward valuation adjustment for any other neighborhood in the municipality. The Court held for the Town finding that the adjustment was merited based upon market sales and that the application of ratio testing standards did not violate the law.

VI. MISCELLANEOUS TAXES

A. Legislation

1. Fresh Start Program

Pursuant to authority granted by the General Assembly, 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

⁶¹ 2017 WL 3332742 (Hartford Super. Ct. July 5, 2017).

full amount of tax properly due on a previously filed tax return, that was due on or before December 31, 2016. The Program is effective through November 30, 2018. 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 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).⁶² The DRS published on its website information and FAQs regarding the Fresh Start Program.

2. Insurance Premium Tax

Effective January 1, 2018, the tax on total net direct insurance premiums is reduced from 1.75% to 1.50%. In addition, the three-tiered insurance premium tax credit cap structure that was due to expire at the end of 2016 is restored with no sunset provision.⁶³

⁶² Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 656 (effective October 31, 2017).

⁶³ CONN. GEN. STAT. §§ 12-202, 12-210 and 12-211a(a), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 622, 624 and 625 (effective October 31, 2017).

3. Net Direct Subscriber Charges Tax

Effective January 1, 2018, the tax on the total net direct subscriber charges of a health care center is reduced from 1.75% to 1.50%.⁶⁴

4. Tax Preparers and Facilitators

A new regulatory structure has been established for tax preparers and facilitators. A “tax preparer” is an individual who provides federal or state personal income tax preparation services for a fee or other consideration. A “facilitator” is a person that individually or in conjunction or cooperation with another person: (i) solicits the execution of, processes, receives or accepts an application or agreement for a refund anticipation loan or refund anticipation check; (ii) serves or collects upon a refund anticipation loan or refund anticipation check; or (iii) in any other manner, facilitates the making of a refund anticipation loan or refund anticipation check.

The new law sets forth a list of actions that a person providing tax preparation services or acts as a facilitator shall be prohibited to engage in effective October 1, 2017, including: (i) imposing any fee or other consideration in the making or facilitation of a refund anticipation loan or check other than the fee charged by the creditor or bank that originated such loan or check; (ii) engage in unfair or deceptive acts or practices in the making or facilitating of a refund anticipation loan or check; (iii) directly or indirectly arrange for a third party, other than an originating creditor or bank, to impose any interest, fee or charge related to a refund anticipation loan or check; (iv) include certain provisions in any documents provided with respect to a refund anticipation loan or check (i.e., a hold harmless clause, confession of judgment clause, any assignment of or order for payment of wages, a waiver of any provision of the federal or state taxpayer bill of rights, or waiver of the right to equitable relief or relief on a class-wide basis); (v) take or arrange for a cred-

⁶⁴ CONN. GEN. STAT. § 12-202a, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 623 (effective October 31, 2017).

itor to take a security interest in any property interest of the taxpayer other than the proceeds of the tax refund to secure payment of a refund anticipation loan; (vi) engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee; (vii) fail or refuse to return to a taxpayer, within a reasonable period of time, any documents or copies of documents provided by the taxpayer; (viii) fail or refuse to provide to a taxpayer, for the taxpayer's own records, a copy of any document requiring the taxpayer's signature, within a reasonable time after the taxpayer signs the document; (ix) fail to maintain a copy of any return prepared for a taxpayer for a period of four years from the date of completion or the due date of the return, whichever is later; (x) require or allow a taxpayer to sign blank or incomplete tax returns; (xi) require a taxpayer to designate the tax preparer or facilitator as the payee for a federal or state personal income tax refund; or (xii) require a taxpayer to designate and use a specific depository institution or debit card or stored value card provider for the purposes of receiving a federal or state personal income tax refund. Finally, the new law requires each tax preparer preparing a return to sign the return and include his or her preparer tax identification number issued by the IRS.

The Commissioner may impose a civil penalty of not more than \$500 for each violation of any of the foregoing rules.⁶⁵

5. Tax Preparer and Facilitator Permits

In addition to the foregoing set of rules governing all tax preparers and facilitators, new permit requirements have been adopted for certain non-exempt tax preparers or facilitators effective January 1, 2019. In general, a non-exempt tax preparer or facilitator will need to obtain from the Commissioner a tax preparer permit and/or facilitator permit which will be renewable every two years. An applicant will need to satisfy certain criteria, including the provision

⁶⁵ Conn. Pub. Act No. 17-147, § 15 (effective October 1, 2017). See DRS Special Notice 2017(8), *New Requirements for Income Tax Preparers and Facilitators of Refund Anticipation Loans or Checks*.

of evidence satisfactory to the Commissioner that the applicant has the requisite experience, education or training to perform the services and, on and after January 1, 2020, a certificate of completion of an annual filing season program administered by the Internal Revenue Service. The fee for an initial application shall be \$100, and for a renewal shall be \$50, and the Commissioner is to render a decision on the application within 60 days.

Individuals exempt from this new permit requirement include: (i) an accountant holding an active license issued by the State Board of Accountancy, or a valid and active permit, license or equivalent professional credential issued by another state or jurisdiction of the United States; (ii) an attorney and any person engaged in providing tax preparation services under the supervision of an attorney; (iii) an enrolled agent; (iv) an individual employed by a local, state or federal government agency while engaged in the performance of that person's official duties; (v) an individual serving as an employee of or assistant to a tax preparer or a person who is exempt from the permit requirement, in the performance of his or her official duties for the tax preparer or exempt person; (vi) an individual employed, full-time or part-time, to act as a tax preparer solely for the business purposes of such individual's employer; (vii) a person acting as a fiduciary on behalf of an estate; and (viii) an IRS-qualified tax preparer.⁶⁶

6. Tax Preparer Disclosure

Effective October 1, 2018, prior to providing tax preparation services, any tax preparer requiring a permit from the Commissioner to provide tax preparation services (see the preceding summary description) shall provide to any person requiring such services a written disclosure that includes: (i) the tax preparer's name, principal business address and primary business telephone number; (ii) an estimate of the total charge for completion of all requested tax preparation services; and (iii) a warranty that the tax preparer shall, by

⁶⁶ Conn. Pub. Act No. 17-147, § 16 (effective October 1, 2018).

encryption or other means, provide for the secure storage and transmission of a taxpayer's personal and tax record information.⁶⁷

7. Tax Preparer and Facilitator Discipline

Effective October 1, 2018, the Commissioner may deny the issuance of an initial or renewal permit, or suspend or revoke a tax preparer or facilitator permit, for violations of the new requirements described above or any of the following acts or omissions: (i) engage in a criminal act resulting in the conviction of the tax preparer or facilitator or in unprofessional conduct resulting in a final disciplinary action by the federal government, any state or jurisdiction of the United States, any governmental agency or a professional licensing board or similar entity, provided such act or conduct is substantially related to qualification as a tax preparer or facilitator; (ii) procure or attempt to procure a tax preparer and/or facilitator permit by material misrepresentation or fraud; or (iii) violate, attempt to violate or assist in or abet the violation of any of the above-described rules governing tax preparers and facilitators.

The discipline may be by issuing a written warning, suspending a permit for a period not to exceed one year or revoking a permit. The subject tax preparer or facilitator has a right to notice of the proposed discipline and may request a hearing.⁶⁸

8. Crediting of Partial Payments

Effective July 1, 2018, the statute governing how a partial payment is to be credited against state tax obligations is changed. Notwithstanding any instructions by the payor to the contrary, a partial payment is to be applied first to any penalties unless a waiver has been requested and approved. Then, contrary to former law, any amount in excess of such penalty is to be applied first, to any outstanding tax, and then to the interest on such tax.⁶⁹

⁶⁷ Conn. Pub. Act No. 17-147, § 17 (effective October 1, 2018).

⁶⁸ Conn. Pub. Act No. 17-147, § 18 (effective October 1, 2018).

⁶⁹ CONN. GEN. STAT. § 12-39h, as amended by Conn. Pub. Act No. 17-147, § 1 (effective July 1, 2018).

9. Penalty Waiver Request Period

New legislation removes the authorization of the Commissioner to waive all or part of a penalty when the penalty waiver request is received more than one year from the date a notice of such penalty was first sent to the person on whom the penalty was imposed. In the case of any penalty that is reported by a taxpayer on a return filed by the taxpayer, the filing date of the return shall be considered the date on which the person was notified of the penalty.⁷⁰

10. Tax Warrants

The statute governing the issuance by the DRS of tax warrants on any intangible personal property of a taxpayer has been amended to allow the warrant for tax due to include an order to continually deliver, during the 180 days following the issuance of the warrant or until the tax is fully paid, whichever occurs earlier, all intangible property that is due and that becomes due to the person owing the tax.⁷¹

11. DRS Data Match Program

In 2016, the General Assembly authorized the establishment of a data match system by the DRS and financial institutions to facilitate the DRS obtaining account information of delinquent taxpayers.

New legislation amends the governing statute to compel the DRS and financial institutions to enter into agreements regarding the administration of the system, subject to the right of the Commissioner to waive that requirement for any bank. The Commissioner will provide each financial institution a list of delinquent taxpayers with their addresses, taxpayer identification numbers and other information as may be necessary or convenient for the administration of the data match system. Not later than 90 days after receipt of such list, the financial institution must provide the account information for those delinquent taxpayers who maintain

⁷⁰ Conn. Pub. Act No. 17-147, § 39 (effective July 1, 2017, and applicable to waiver requests received on or after July 1, 2017).

⁷¹ CONN. GEN. STAT. § 12-35(b), as amended by Conn. Pub. Act No. 17-147, § 10 (effective July 1, 2017).

an account at that financial institution, including the account number and balance in each such account. The new legislation now expressly authorizes the financial institution to share the return information it receives from the Commissioner with (i) a service provider engaged by the financial institution to carry out the data processing and data receipt and transmission functions, to the extent necessary for the financial institution to comply with the data match system requirements, and (ii) an authorized representative of a governmental regulatory authority having jurisdiction over the financial institution, to the extent required by such representative in the course of such representative's duties. Any individual who receives such return information pursuant to these exceptions may not further disclose such return information.⁷²

12. 7/7 Brownfield Revitalization Program

New legislation establishes the "7/7 program" within the DECD to provide incentives to businesses for redeveloping and utilizing brownfields and real property that has been abandoned or underutilized for ten or more years. An eligible owner whose application is approved by the DECD shall be entitled, upon completion of the remediation and notice to the Commissioners of DECD and DRS, to the following tax relief for income attributable to the operation of the owner's business located on the site: (i) if the owner is subject to the corporation business tax (A) such income is exempt from tax for the first taxable year in which the owner begins business operations and the succeeding six taxable years, and (B) a deduction may be taken against income in the amount of not more than 8.57% of the "qualified expenditures" associated with the remediation of the site in the eighth year after the initiation of business operations and in each of the succeeding six taxable years; and (ii) if the owner is subject to the income tax, each member, shareholder or partner (a) is granted a credit for the full amount of tax due that is attributable to such income, after

⁷² CONN. GEN. STAT. § 12-39cc, as amended by Conn. Pub. Act No. 17-147, § 21 (effective July 7, 2017).

the deduction of all other credits, for the first taxable year in which the owner begins business operations and in each of the succeeding six taxable years, and (B) a deduction from Connecticut adjusted gross income of an amount not to exceed 8.57% of the “qualified expenditures” associated with the remediation of the site in the eighth year after the initiation of business operations and in each of the succeeding six taxable years.

In addition, (i) the sales and use tax shall not apply to any purchase of an item by an owner if the item is purchased for use in the ordinary course of business at the site; and (ii) for five assessment years after an owner obtains a building permit to begin construction on the site, the assessed value of the site shall remain at the value it was when the DECD approved the owner’s applications to participate in the program.⁷³

13. IRS Forms 1099-K

Effective for returns due for calendar years commencing on or after January 1, 2017, any reporting entity that is required to file with the Internal Revenue Service Forms 1099-K, *Payment Card and Third Party Network Transactions*, shall file a duplicate of those information returns with the DRS not later than 30 days thereafter in such form and manner as prescribed by the Commissioner. Each failure to timely file such duplicate return is subject to a \$50 penalty for each month due which such failure continues, subject to an annual maximum penalty of \$250,000 for a reporting entity.⁷⁴

14. Hospitals, Nursing Homes and Intermediate Care Facilities

A new provider tax regime has been adopted to replace the taxes and fees on hospitals, nursing homes and inter-

⁷³ Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 168 (effective October 31, 2017, and applicable to taxable and income years commencing on or after January 1, 2017); CONN. GEN. STAT. § 12-217(a)(1), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 169 (effective October 31, 2017, and applicable to income years commencing on or after January 1, 2017).

⁷⁴ Conn. Pub. Act No. 17-147, § 9 (effective July 1, 2017, and applicable to information returns due for calendar years commencing on or after January 1, 2017).

mediate care facilities for individuals with intellectual disabilities that existed under prior law.

The new legislation imposes quarterly resident day user fees on nursing homes (\$21.02) and intermediate care facilities (\$27.26) that are generally the same as those imposed under prior law. The prior tax on the net patient revenue of hospitals sunset as of June 30, 2017, and a new provider tax was established on hospital inpatient services and hospital outpatient services. For each of the 2018 and 2019 fiscal years, the tax rate for (i) inpatient hospital services is set at 6% of a hospital's audited net revenue for the 2016 fiscal year attributable to such services, and (ii) outpatient hospital services is set at \$900 million minus the total tax imposed on all hospitals for the provision of inpatient hospital services, divided by the total audited net revenue for the 2016 fiscal year attributable to outpatient hospital services of all hospitals that are required to pay the tax. On or after July 1, 2019, the rate of tax for the provision of inpatient hospital services and outpatient hospital services shall be \$384 million divided by the total audited net revenue for the 2016 fiscal year of all hospitals that are required to pay the tax. No tax credit or credits are allowable against the taxes or fees imposed under the new provider tax regime, but a health provider that has been assigned tax credits under the urban and industrial site reinvestment program may further assign such credits with certain limitations. The Commissioner of Social Services is to seek approval from the federal Centers for Medicare and Medicaid Services (CMS) for certain statutory exemptions from the provider taxes.

The legislation further provides that the tax on inpatient and outpatient hospital services is not to be imposed for the state fiscal years ending June 30, 2018 and June 30, 2019, if CMS (i) determines that the tax is an impermissible tax under Section 1903(w) of the Social Security Act, or (ii) does not approve the applicable Medicaid state plan amendments necessary for the state to receive federal financial participation under the Medicaid program for the payments described in General Statutes Sections 176-239(i) and 17b-

239e(b).⁷⁵

15. Cigarette Tax

Effective December 1, 2017, the cigarette tax rate was increased from \$3.90 to \$4.35 per pack, but reduced to fifty percent of that tax rate for any product that the United States Department of Health and Human Services (“HHS”) determines to be a “modified risk tobacco product.” An excise or “floor” tax of 45 cents was imposed on each pack of cigarettes that dealers and distributors have in their inventories at the earlier of the close of business or 11:59 p.m. on November 30, 2017. Each dealer or distributor was required to report to the DRS by December 15, 2017 the number of cigarettes in inventory as of November 30, 2017 (Form FT-TFT), or the DRS Commissioner had the right to file a report and impose penalties on the dealer or distributor.⁷⁶

16. Cigarette Tax Successor Liability

The statute that imposes successor liability for cigarette taxes on the successors or assigns of a cigarette distributor has been amended to impose such successor liability on the successors or assigns of a cigarette dealer. In general, a purchaser or assignee of the business or stock of goods of a cigarette distributor or dealer must withhold a sufficient amount of the purchase price to pay any outstanding Connecticut cigarette taxes until the distributor or dealer provides a receipt from the Commissioner showing that all taxes have been paid or a certificate stating that no amount is due. Failure to do so can result in the successor or assign being personally liable for the taxes due to the extent of the purchase price for the business or stock of goods.⁷⁷

⁷⁵ Conn. Pub. Act No. 17-4 (June Spec. Sess.), §§ 1-10, 15 and 28 (effective November 21, 2017). CONN. GEN. STAT. §§ 12-263b(a), 12-263j(b)(1), 17b-320(1)(4), 17b-321(a), 17b-323, 17b-340a(b)(1), and 17b-340b, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 611-617 (effective October 31, 2017).

⁷⁶ CONN. GEN. STAT. §§ 12-296 and 12-316, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 628-629 (effective December 1, 2017, and applicable to sales occurring on or after December 1, 2017); Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 630 (effective October 31, 2017). See DRS Special Notice 2017(9), *2017 Special Session Tax Increases for Cigarettes and Snuff*.

⁷⁷ CONN. GEN. STAT. § 12-294, as amended by Conn. Pub. Act No. 17-147, § 28 (effective July 1, 2017).

17. Federal Cigarette Tax Exemptions

Effective July 7, 2017, the cigarette tax does not apply, to the extent prohibited by law, to cigarettes sold to United States veterans' hospitals or to members of the armed forces of the United States through officially recognized agencies, established pursuant to regulations issued by the appropriate branch of the United States Armed Forces, that are physically located at military bases.⁷⁸

18. Tobacco Products Tax

Effective December 1, 2017, the tobacco products tax is amended to: (i) increase the tax on tobacco snuff products from \$1.00 to \$3.00 per ounce of snuff; and (ii) reduce the tax rate by fifty percent for any tobacco product that HHS determines to be a "modified risk tobacco product." There is no floor tax due to the increase in the tax on snuff.⁷⁹

19. Tobacco Products Tax Successor Liability

Effective July 1, 2017, a purchaser or assignee of the business or stock of goods of a distributor or unclassified importer of tobacco products must withhold a sufficient amount of the purchase price to pay all tobacco products taxes due from that distributor or unclassified importer until that distributor or unclassified importer provides a receipt from the Commissioner showing that all taxes have been paid or a certificate stating that no amount is due. If such withholding is not done, the successor or assignee shall be personally liable for the payment of the amount required to be withheld to the extent of the purchase price. The Commissioner has to issue a certificate that no amount is due, or mail a notice of the amount that must be paid, within 60 days of the latest of the following dates: (i) the date the Commissioner receives a written request from the successor or assignee for a certificate; (ii) the date of the sale of the business or stock of goods; or (iii) that date the former

⁷⁸ CONN. GEN. STAT. § 12-297, as amended by Conn. Pub. Act No. 17-147, § 29 (effective July 7, 2017).

⁷⁹ CONN. GEN. STAT. § 12-330c, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 631 (effective December 1, 2017, and applicable to sales occurring on or after December 1, 2017).

owner's records are made available for audit.⁸⁰

20. Tobacco Products Records

A tobacco products distributor or unclassified importer must maintain complete and accurate records of all tobacco products manufactured, produced, purchased or sold. These records must be maintained for three years on the premises where such tobacco products are possessed, stored or sold and must be available at all times. Effective October 1, 2017, if upon request by the Commissioner or his or her agent, a distributor or unclassified importer fails to immediately produce or provide electronic access to such records, the Commissioner may impose a civil penalty of \$1,000 per day until those records are produced or electronic access provided.⁸¹

21. Tobacco Products and CORA

The definition of “racketeering activity” under the Corrupt Organization Racketeering Act (CORA) is amended to include violations of certain tobacco products-related crimes, including: (i) transporting for sale, selling, or offering for sale untaxed tobacco products that should be taxed at \$2,500 or more; (ii) willfully attempting to evade tobacco products taxes or failing to pay tobacco product taxes of \$2,500 or more; and (iii) willfully delivering or disclosing to the Commissioner or his authorized agent any list, report, account, statement, or other document known to be materially fraudulent or false.⁸²

22. Invest CT Tax Credits

Under current law, an insurance company may earn tax credits for investing in Invest CT funds (i.e., insurance reinvestment funds). The governing statute previously limited the transfer of those credits to only affiliates of that insur-

⁸⁰ CONN. GEN. STAT. § 12-330b, as amended by Conn. Pub. Act No. 17-147, § 30 (effective July 1, 2017).

⁸¹ CONN. GEN. STAT. § 12-330i, as amended by Conn. Pub. Act No. 17-147, § 31 (effective October 1, 2017).

⁸² CONN. GEN. STAT. § 53-394(a), as amended by Conn. Pub. Act No. 17-147, § 41 (effective July 1, 2017).

ance company. The statute has been amended to allow the sale, assignment or transfer of such credits, in whole or in part, to one or more taxpayers, provided that no such transferee may claim the credit in an income year other than the transferee's income year in which such transferee bought, was assigned or was otherwise transferred the credit.⁸³

23. Domestic Surplus Lines Insurer

Effective July 1, 2017, the Connecticut Insurance Commissioner may designate a qualifying domestic insurance company as a "domestic surplus lines insurer." Surplus lines insurance written by a domestic surplus lines insurer is subject to the 4% gross premium tax imposed under General Statutes Section 38a 743, but is exempt from the 1.75% premium tax imposed under General Statutes Section 12-202.⁸⁴

24. Elimination of Mandatory Surcharge on Car, Truck and Machinery Rentals

Under prior law, the state imposed a surcharge on certain car, truck and machinery rentals (3% for car and truck rentals, and 1.5% for machinery rentals), and required rental companies to remit the surcharges collected to the extent they exceed the Connecticut property taxes and Department of Motor Vehicles licensing and titling fees paid on the vehicles and equipment.

Effective January 1, 2018, the surcharge on car and truck rentals was eliminated, and rental companies are authorized to charge a lessee individually itemized charges or other fees pursuant to a rental agreement (e.g., a vehicle cost recovery fee, airport access fee or airport concession fee). The fees charged must (i) represent the rental company's estimate of the annual costs for any required licensing, titling, registration, tax or inspection of, or number plates for such vehicle or truck, prorated to a daily rate, and (ii) be described in the terms and conditions of the rental agree-

⁸³ CONN. GEN. STAT. § 38a-88a, as amended by Conn. Pub. Act No. 17-244, § 2 (effective July 1, 2017).

⁸⁴ Conn. Pub. Act No. 17-125, § 1 (effective July 1, 2017).

ment as the average per day cost incurred by the rental company for such expenses. If the total amount of fees so collected for a calendar year exceeds the actual permitted costs for the calendar year, the rental company is allowed to retain the excess, but must reduce its estimate of such costs for the following calendar year by an amount equivalent to the excess.⁸⁵

25. Neighborhood Assistance Act Tax Credit

The annual cap on the aggregate tax credits allowed under the Neighborhood Assistance Act, which was to increase from \$5 million to \$10 million in 2017, is maintained at \$5 million.⁸⁶

26. PEGPETIA Tax Penalties

Cable television, satellite television and certified video service providers are subject to a 0.25% tax on their gross earnings to fund the public, educational, and governmental programming and education technology investment account. New legislation applies the same penalties to this tax as are applicable to the general gross earnings tax on these providers.⁸⁷

27. Boxing and Mixed Martial Arts Gross Receipts Tax

Effective October 1, 2017, the 5% receipts tax on paid admissions to boxing or mixed martial arts matches is repealed.⁸⁸

28. Commission on Equity and Opportunity Study

The General Assembly has commissioned the Commission on Equity and Opportunity to conduct a study and recommend ways to provide (i) persons recently released from correctional facilities with enhanced employ-

⁸⁵ CONN. GEN. STAT. § 12-692, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 653 (effective January 1, 2018).

⁸⁶ CONN. GEN. STAT. § 12-632(i), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 646 (effective October 31, 2017).

⁸⁷ CONN. GEN. STAT. § 16-331cc(c), as amended by Conn. Pub. Act No. 17-147, § 40 (effective July 7, 2017).

⁸⁸ CONN. GEN. STAT. §§ 29-143m and 29-143n, as repealed by Conn. Pub. Act No. 17-116, § 3 (effective October 1, 2017).

ment opportunities, and (ii) tax incentives to employers who provide employment opportunities to such persons. The report on such study was due not later than January 1, 2018.⁸⁹

29. Microbiome Sector Study Group

The General Assembly has established a working group to study and develop legislative and programmatic initiatives and a roadmap to foster the microbiome sector in Connecticut. Among other matters, the working group is to review state tax policy to develop a tax incentive program to lower the tax liability of established microbiome companies that relocate to or establish new lines of business in Connecticut and to enhance the state's competitiveness within the Northeast.⁹⁰

30. Bed and Breakfast Occupancy Tax

Under prior DRS practice⁹¹ a bed and breakfast room occupancy charge that included lodging and meals at a fixed price was allocated according to a specified schedule with the percentage of the charge allocable to meals subject to the 6.35% general sales tax rate and the percentage of the charge allocated to the room taxed at the 15% occupancy tax rate.

Effective for sales occurring on or after October 1, 2017, the total amount of rent received by a bed and breakfast establishment for the first period not exceeding 30 consecutive calendar days shall be subject to a uniform tax rate of 11%. A "bed and breakfast establishment" is defined as any private operator-occupied house, other than a hotel or lodging house, with 12 or fewer rooms in which persons are lodged for hire and a full morning meal is included in rent.⁹²

31. Admissions Tax

Effective December 1, 2017, the admission charge to the

⁸⁹ Conn. Special Act No. 17-15, § 1 (effective October 1, 2017).

⁹⁰ Conn. Special Act No. 17-16, § 1 (effective May 31, 2017).

⁹¹ See DRS Policy Statement 2003(1).

⁹² CONN. GEN. STAT. §§ 12-408(1)(B), 12-411(1)(B) and 12-407, as amended by Conn. Pub. Act No. 17-147, §§ 12-14 (effective October 1, 2017, and applicable to sales occurring on or after October 1, 2017).

following events are no longer exempt from the admissions tax: (i) any event at the XL Center in Hartford or the Webster Bank Arena in Bridgeport; (ii) any athletic event presented by a member team of the Atlantic League of Professional Baseball at the Ballpark at Harbor Yard in Bridgeport or at the New Britain Stadium; and (iii) any event at Dunkin' Donuts Park in Hartford.⁹³

32. Admissions Tax Security

Under current law, the Commissioner may require any person to deposit such security as the Commissioner determines to secure that person's compliance with the admissions and dues tax laws. The statute governing such authority has been amended to provide that such security shall only be required where that person either (i) owes admissions and dues taxes which have been finally due and payable for a period of 90 days or longer and for which any administrative or judicial remedies or both, have been exhausted or have lapsed, or (ii) has failed to file three or more returns required under those laws.⁹⁴

33. Local Admission Surcharge

The statute that authorizes a municipality, by ordinance, to impose a surcharge on the admission charge for any event that is held at a facility located in a municipality is amended to clarify what constitutes an "admission charge" and to exempt charges for motion picture shows.⁹⁵

34. Tax Incidence Report

The Commissioner of Revenue Services is required to submit to the General Assembly, and post on the DRS website, a biennial report on the overall incidence of the income tax, sales and excise taxes, the corporation business tax and the property tax. The report is to present information on the

⁹³ CONN. GEN. STAT. § 12-541(a), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 627 (effective December 1, 2017).

⁹⁴ CONN. GEN. STAT. § 12-555, as amended by Conn. Pub. Act No. 17-147, § 45 (effective July 7, 2017).

⁹⁵ CONN. GEN. STAT. § 7-168a(a), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 111 (effective October 31, 2017).

distribution of the tax burden among individuals (including among income classes) and businesses (including among industries by NAICS code, legal organization and business size by gross receipts). The deadline for the initial tax incidence report has been extended from February 15, 2018 to February 5, 2020.⁹⁶

35. Tax Expenditure Analysis

The OPM Secretary, in consultation with the Commissioners of the DRS and DECD, has been directed to examine all existing “state tax expenditures” (i.e., tax credits, deductions and exemptions). The examination is to include an identification of: (i) priorities for such expenditures; and (ii) alternative revenue sources that may be available to the state for the payment of state expenditures. On or before February 1, 2018, the Secretary was to submit a report on his findings and recommendations to the Finance, Revenue and Bonding Committee.⁹⁷

36. Mileage Tax Study

The General Assembly has expressly prohibited the Department of Transportation from expending any state funds for any studies, plans, programs, materials or activities regarding a mileage-based user fee on motor vehicles operated on state highways unless the expenditure is approved by the General Assembly.⁹⁸

37. Dry Cleaning Drop Stores

Effective October 1, 2017, dry cleaning drop stores (i.e., businesses that accept clothing or fabrics to be cleaned by another dry cleaning establishment) will no longer be subject to the 1% dry cleaning surcharge.⁹⁹

⁹⁶ CONN. GEN. STAT. § 12-7c, as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 108 (effective October 31, 2017).

⁹⁷ Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 658 (effective October 31, 2017).

⁹⁸ Conn. Pub. Act No. 17-174, § 1 (effective July 11, 2017).

⁹⁹ CONN. GEN. STAT. § 12-263m, as amended by Conn. Pub. Act No. 17-147, § 26 (effective October 1, 2017, and applicable to calendar quarters commencing on or after October 1, 2017). See DRS Special Notice 2017(4), *Obligation of Dry Cleaners for the Dry Cleaning Establishment Surcharge and Business Use Tax*.

38. Transportation Network Company Fee

Effective January 1, 2018, a new twenty-five-cent fee is imposed on a transportation network company (e.g., Uber and Lyft) for each prearranged ride that originates in Connecticut. A transportation network company must file electronically a return for each calendar quarter and remit the fees by electronic funds transfer to the Commissioner of Revenue Services. The administrative provisions governing the admissions and dues tax are made applicable to the new transportation network company fee.¹⁰⁰

39. Fantasy Sports Contests

Subject first to the amendment of the State's agreements with each of the Mashantucket Pequot Tribe and the Mohegan Tribe of Indians of Connecticut, the federal and state approvals of those amendments, and the adoption of regulations by the Commissioner of Consumer Protection, the General Assembly authorizes the conduct of fantasy sport contests in Connecticut. Each fantasy contest operator must register with the Commissioner and pay an annual registration fee. Effective July 1, 2019, the operator also must pay a tax on its gross receipts at the rate of 10.5%. "Gross receipts" are defined as an amount equal to the total of all entry fees that the operator collects from all fantasy contest players, less the total of all sums paid out as prizes to all fantasy contest players, multiplied by a "location percentage." The location percentage is the percentage of the total entry fees collected by the operator from players located in Connecticut. The administrative rules governing the admissions and dues taxes will apply to this new gross receipts tax.¹⁰¹

B. *Administrative Pronouncements*

1. Admissions Tax/Charitable SMLLC

In Ruling No. 2017-2, the DRS considered the application

¹⁰⁰ Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 654 (effective January 1, 2018).
¹⁰¹ Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 649 (effective October 31, 2017); CONN. GEN. STAT. §§ 53-278a(2) and 53-278a(4), as amended by Conn. Pub. Act No. 17-2 (June Spec. Sess.), §§ 650-651 (effective October 31, 2017); Conn. Pub. Act No. 17-2 (June Spec. Sess.), § 652 (effective July 1, 2019, and applicable to income and taxable years commencing on or after July 1, 2019).

of the admissions tax to the daily greens fees and seasonal greens fees charged by a golf course owned by a limited liability company, the sole member of which is a tax-exempt 501(c)(3) organization. The DRS ruled that the daily greens fees are exempt from the admissions tax pursuant to General Statutes Section 12-541(2). With regard to the seasonal greens fees, however, the single member limited liability company (SMLLC) could not take advantage of the exemption under General Statutes Section 12-541(a)(3) that would have been available to its tax-exempt organization parent if it owned the golf course.