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## in this issue

Corporation Business Tax	P. 2
Personal Income Tax	P. 2
Sales Tax	P. 3
Tax Credits	P. 4
Estate and Gift Tax	P. 4
Property Tax	P. 5
Miscellaneous Taxes	P. 9
Administrative Pronouncements	P. 14

## State and Local Tax Practice Group

**Alan E. Lieberman**  
alieberman@goodwin.com  
(860) 251-5801

**Louis B. Schatz**  
lschatz@goodwin.com  
(860) 251-5838

**Raymond J. Casella**  
rcasella@goodwin.com  
(860) 251-5808

**David O. Bigger**  
dbigger@goodwin.com  
(860) 251-5203

**Robert L. Day III**  
rday@goodwin.com  
(860) 251-5602

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

## 2016 Legislative Session: The New Economic Reality

In his February 2016 State of the State address, Governor Malloy announced that his administration would be adopting a new approach to state budgeting in light of what he characterized as “the new economic reality” facing Connecticut and the nation. The Governor’s proposed changes to the biennial budget, including significant rescissions, funding reductions and state employee layoffs, touched off a firestorm. Each of the Governor, the Democratic legislative leadership and the Republican legislative leadership submitted one or more budget proposals, and the 2016 legislative year eventually required two special sessions before a revised budget, budget implementation bill and bond authorization legislation could be enacted. Although the Governor largely remained true to his pledge not to increase state taxes, the reduction in state grants, PILOT payments and other financial support for municipalities likely will result in increased municipal property taxes.

The 2016 legislative session did witness the passage of significant tax legislation that, in particular, should be of assistance to Connecticut-based businesses which provide services and/or sell goods to out-of-state customers. After last year adopting a general single-factor apportionment formula for the Connecticut corporation business tax, the General Assembly this session enacted market-based rules for the sourcing of business income, retroactively effective for income years commencing on or after January 1, 2016. For businesses operated as Subchapter S corporations, limited liability companies, partnerships and other pass-through entities, the Legislature adopted a general single-factor apportionment formula and market-based sourcing effective for income years commencing on or after January 1, 2017. Unfortunately, the austerity budget did result in a partial roll back of the limitation on the property tax mill rate for motor vehicles, but a number of new property tax relief provisions were enacted, including one for homeowners who are suffering from defective concrete foundations. Finally, the General Assembly established the Connecticut Retirement Security Exchange, a new state-administered retirement savings program that, commencing in 2018, generally will be available to for-profit and non-profit employers in Connecticut.

Despite its attempt to address “the new economic reality,” Connecticut will continue to face significant budgetary challenges. Sizeable deficits are projected for future fiscal years, and the state’s bond rating was cut from “AA” to “AA-” by two ratings agencies in May, thus increasing the cost of state borrowing. A new study released in June, 2016 for the Mercatus Center at George Mason University ranked the state’s fiscal condition, based on short- and long-term debt and other key fiscal obligations, as the worst in the country. The Pew Charitable Trusts ranked the state’s debt, as a share of its personal income, as the fifth worst in the nation, and a new data survey from LERETA, a national real estate tax and flood service provider, characterized Connecticut’s property taxes as the second highest in the country. Put simply, there is a growing recognition that much more work will need to be done during next year’s legislative session for the state to respond adequately to “the new economic reality”.

This alert summarizes Connecticut tax legislation enacted, court decisions rendered and administrative guidance published by the Connecticut Department of Revenue Services (“DRS”) during the first half of 2016. Please contact any member of our State and Local Tax Practice Group if you have any questions regarding the new tax law changes or how they may affect you and your business.

## CORPORATION BUSINESS TAX

### I. Legislation

**Market-Based Sourcing.** After last year adopting single-factor apportionment formula and market-based sourcing for gross receipts from the sales of tangible property, the General Assembly has enacted a broader market-based sourcing rule for purposes of the Connecticut corporation business tax. Gross receipts from the following are assignable to Connecticut: (i) sales of tangible property if the property is delivered or shipped to a purchaser within the state (other than a DISC); (ii) services to the extent the services are used at a location in this state; (iii) the rental, lease or license of real or tangible personal property to the extent such property is situated within the state; (iv) the rental, lease or license of intangible property to the extent it is used within the state; and (v) interest managed or controlled within the state. Gross receipts from the sale or other disposition of real, tangible or intangible property are excluded from the calculation of the apportionment fraction if the property is not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Gross receipts other than those described above are assignable to Connecticut to the extent the taxpayer's market for the sales is in Connecticut. A taxpayer may petition the Commissioner if the taxpayer cannot reasonably determine the proper assignment of its income. Conn. Gen. Stat. §12-218(b), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §199 (*effective June 2, 2016, and applicable to income years commencing on or after January 1, 2016*). [Ed. note. Corporations should evaluate whether and to what extent the new market-based sourcing rules will impact their Connecticut tax liability. If, as a result of the rules, a corporation's estimated tax payments to date are understated, the corporation should consider both a catch-up payment and an approach to the Department of Revenue Services ("DRS") to obtain interest penalty relief.]

### II. Administrative Pronouncements

**Combined Unitary Reporting.** In DRS Special Notice 2016(1), *Combined Unitary Legislation -- Corporation Business Tax*, the DRS provides extensive and helpful guidance on the new combined unitary reporting requirement effective for income years commencing on or after January 1, 2016, including: (i) the determination of a combined group; (ii) the calculation of a combined group's net income; (iii) the apportionment of a combined group's net income; (iv) the application of net operating losses; (v) the capital base tax; (vi) the application of credits; (vii) the net deferred tax liability deduction; and (viii) the maximum tax calculation.

**Net Deferred Tax Liability Deduction.** In DRS Office of Counsel Guidance OCG-2, the DRS provides guidance on the calculation of the net deferred tax liability deduction available to publicly traded companies under the new combined unitary reporting regime. On or before July 1, 2017, a combined group must file with the DRS a statement and supporting calculations that specify the amount of any net deferred tax liability deduction the group intends to claim.

## PERSONAL INCOME TAX

### I. Legislation

**Apportionment and Sourcing.** Effective for income years commencing on or after January 1, 2017, the General Assembly has changed the personal income tax apportionment formula and sourcing rules for S corporations, partnerships and limited liability companies taxed as partnerships. The current three-factor apportionment formula, based upon the average of the percentages of property, payroll and gross income in Connecticut, will be replaced with a single-factor apportionment formula based upon a gross income percentage (i.e., dividing the gross receipts from sales earned within Connecticut by the total gross receipts from sales everywhere). Gross receipts from the following are assignable

to Connecticut: (i) sales of tangible property if the property is delivered or shipped to a purchaser within the state (other than a DISC); (ii) services to the extent the services are used at a location in this state; (iii) the rental, lease or license of real or tangible personal property to the extent such property is situated within the state; (iv) the rental, lease or license of intangible property to the extent it is used within the state; and (v) interest managed or controlled within the state. Gross receipts from the sale or other disposition of real, tangible or intangible property are excluded from the calculation of the apportionment fraction if the property is not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Gross receipts other than those described above are assignable to Connecticut to the extent the taxpayer's market for the sales is in Connecticut. A taxpayer may petition the Commissioner if the taxpayer cannot reasonably determine the proper assignment of its income. Conn. Gen. Stat. §§12-711(c) and 12-712(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §§200-201 (*effective January 1, 2017, and applicable to income years commencing on or after January 1, 2017*).

## II. Administrative Pronouncement

**Status Letters.** In DRS Information Publication 2016(10), *Status Letters for Income Tax*, the DRS announced that a taxpayer may request a status letter that will include the following information as of the date the letter is issued: (i) the taxpayer's name and year of the last income tax return received and processed by the DRS; and (ii) any outstanding balance due or an attestation that the income tax liability has been paid.

## SALES TAX

### I. Legislation

**Federal, State and Local Parking Lots.** Reversing a legislative action taken last year, new legislation exempts from the sales and use tax non-metered motor vehicle parking in (i) seasonal lots with 30 or more spaces owned by the United States, the state of Connecticut or any of its political subdivisions, or any federal or state agency; and (ii) municipality-owned lots with 30 or more spaces. (Parking in metered lots or lots with fewer than 30 spaces is exempt from tax.) Conn. Gen. Stat. §12-407(a)(37)(N), as amended by Conn. Pub. Act No. 16-72, §1 (*effective May 27, 2016, and applicable to sales occurring on or after said date*), and by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §180 (*effective June 2, 2016, and applicable to sales occurring on or after said date*).

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

### II. Administrative Pronouncements

**Testing Services.** In DRS Ruling No. 2016-1, the DRS ruled that testing services used to determine the safety and potency of marijuana for use as a medical drug by humans were not subject to Connecticut sales and use tax because: (i) testing services are not taxable enumerated services; and (ii) Conn. Gen. Stat. §12-412(41) provides for an exemption for sales of services used to determine the probable consequences in relation to human health of the consumption or other use of any product, substance or element.

**Snacks and Concentrates.** In DRS Ruling No. 2016-2, the DRS ruled that the following are "food products for human consumption" pursuant to Conn. Gen. Stat. §12-412(13): (i) powdered nutritional shake mixes and nutrition bars that

contain the nutrients, protein and fibers of whole foods, which are marketed for sale as snacks or meal substitutes (“Snacks”); and (ii) chewable tablets and capsules that are made from fruits, vegetables and grains that have been juiced, dehydrated and powdered (“Concentrates”). The DRS noted that both the Snacks and the Concentrates bear the “Nutrition Box” as described in 21 CFR §101.9.

## TAX CREDITS

### I. Legislation

**Angel Investor Tax Credit.** The angel investor tax program, which was to sunset on June 30, 2016, is extended for three years to June 30, 2019, and the tax credits are made transferable, in whole or in part. The tax credits are available through Connecticut Innovations, Inc., may be applied by an accredited investor against the personal income tax and are equal to 25% of the amount that the taxpayer invests in qualified technology-based businesses, up to \$250,000. Conn. Gen. Stat. §12-704d, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §183 (*effective July 1, 2016, and applicable to taxable years commencing on or after January 1, 2016*).

**Manufacturing Apprenticeship Training Tax Credit.** Under current law, businesses can earn the manufacturing apprenticeship training tax credit, but it can only be applied against the corporation business tax. This forces pass-through entities, such as S corporations and limited liability companies taxed as partnerships, to sell or assign such credits. Effective July 1, 2017, however, individual owners of pass-through entities (including owners of single member limited liability companies) shall be able to claim the credit and apply it against their Connecticut personal income tax liability. Conn. Gen. Stat. §12-217g(a), as amended by Conn. Pub. Act No. 16-183, §1 (*effective July 1, 2017, and applicable to income or taxable years commencing on or after January 1, 2017*). [Ed. note. The Act had not been signed by the Governor as of June 3, 2016.]

**Rolling Research and Development Tax Credit Exchange Study.** The Commissioner of the Department of Economic and Community Development has been charged with developing legislative recommendations for the establishment of a program that will allow a business to exchange unused research and development tax credits under Conn. Gen. Stat. §12-217n for financial assistance in support of capital projects in Connecticut that propose to result in any of the following: (i) expansion of the scale or scope of that exchanging business; (ii) an increase or retention of employment at such business, or (iii) generation of a substantial return to the state economy. The Commissioner may consult with the Commissioner of Revenue Services, and the recommendations are to be submitted to the General Assembly no later than January 1, 2017. Conn. Spec. Act No. 16-21, §1 (*effective June 7, 2016*).

## ESTATE AND GIFT TAX

### I. Legislation

**Probate Estate Settlement Fees.** After receiving criticism for last year’s dramatic increase in the probate estate settlement fees imposed on larger estates, the General Assembly enacted a cap on probate fees of \$40,000 for estates valued at \$8.877 million or more, effective for the estates of decedents who die on or after July 1, 2016. Conn. Gen. Stat. §45a-107, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §193 (*effective June 2, 2016*); and Conn. Gen. Stat. §45a-107b, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §194 (*effective July 1, 2016*).

**CI Investment Tax Reduction.** A reduction in the Connecticut estate tax has been established for decedents who made qualifying investments through a Connecticut Innovations (“CI”) investment program for state residents. Under a separate provision in the same legislation, CI is authorized to create a program to solicit investments from state residents and invest funds in venture capital firms with offices in Connecticut. The estate tax reduction is equal to one-half of the amount the decedent invested through the CI program in a private investment fund or fund of funds, provided that: (i) the reduction in tax cannot exceed \$5 million for any one decedent; (ii) the investment was made in such fund or fund of funds for at least 10 years; and (iii) the aggregate amount of all taxes reduced cannot exceed \$30 million. Conn. Gen. Stat. §12-391(i), as added by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §35 (*effective October 1, 2016, and applicable to estates of decedents dying on or after January 1, 2021*).

## PROPERTY TAX

### I. Legislation

**Motor Vehicle Mill Rates.** Amending legislation enacted last year, the cap on the mill rate for motor vehicles is increased from (i) 32 mills to 37 mills for the assessment year commencing on October 1, 2015, and (ii) 29.36 mills to 32 mills for the assessment years commencing on or after October 1, 2016. For municipalities that set the mill rate for the 2015 assessment year at 32 mills prior to the 2016 legislative amendment, their motor vehicle mill rate (or combined rate with any borough or district) is set at the lesser of: (i) the mill rate previously set for real and personal property other than motor vehicles for the 2015 assessment year; (ii) a rate they set after the 2016 legislation’s passage that is less than 37 mills; or (iii) 37 mills. Conn. Gen. Stat. §12-71e, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §187 (*effective June 2, 2016, and applicable to assessment years commencing on or after October 1, 2015*).

**PILOT Payments.** The statute that provides for the making of PILOT payments to municipalities to reimburse them for a portion of the revenue loss from certain tax-exempt property until the fiscal year commencing July 1, 2016 is amended to allow municipalities to receive PILOT payments for airports owned by the Connecticut Airport Authority (other than Bradley Airport). Conn. Gen. Stat. §12-19a(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §83 (*effective January 1, 2015*). New legislation also delays from the 2018 fiscal year to the 2020 fiscal year the implementation of a mechanism for increasing PILOT grants to municipalities with mill rates of at least 25 and a relatively high percentage of tax-exempt property on their grand lists. Conn. Gen. Stat. §§12-18b and 12-18c, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §§190-191 (*effective July 1, 2016*).

**Net Profit Valuation Pilot Program.** Under 2014 legislation, the Secretary of the Office of Policy and Management (“OPM”) is authorized to establish a pilot program for not more than five municipalities to assess up to three commercial properties based upon the net profits of the business or businesses occupying such properties. Municipalities have to apply to OPM to participate in the pilot program, and the owner(s) of the properties and the business or businesses occupying such properties must agree to the use of the alternative assessment approach. New legislation amends the statute creating the pilot program to eliminate the three-property limit on the use of net-profit valuation approach, allowing a municipality to assess all commercial property using the approach (with the consent of the property owners and their tenants). Conn. Gen. Stat. §12-63i, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §31 (*effective October 1, 2016*). [Ed. note. Currently, no municipalities have applied to participate in the program that was launched in 2014.]

**Land Value Taxation Pilot Program.** The General Assembly has extended to December 31, 2020 the time period during which the Secretary of the Office of Policy and Management is to select up to three municipalities to participate in a land value taxation pilot program and for those municipalities to prepare and submit a plan for implementation to the General Assembly. Such a plan is to (i) classify real estate included in the grand list as (A) land or land exclusive of buildings, or

(B) buildings on land; and (ii) establish a different mill rate for property tax purposes for each class, provided the higher mill rate shall apply to land or land exclusive of buildings. Conn. Gen. Stat. §12-63h(c), as amended by Conn. Pub. Act No. 16-80, §1 (*effective July 1, 2016*).

**Concrete Foundation Tax Relief.** Any owner of a residential building who has obtained a written evaluation from a licensed professional engineer indicating that the foundation of the building was made with defective concrete may provide a copy of such evaluation to the local tax assessor and request a reassessment of the building by the assessor. Not later than 90 days after receipt of a copy of such an evaluation or prior to the commencement of the next assessment year, whichever is earlier, the property must be inspected and its assessment must be adjusted to reflect its current value. The property owner may appeal any reassessment pursuant to Conn. Gen. Stat. §12-111. The reassessment shall apply for five assessment years notwithstanding Conn. Gen. Stat. §12-62; however, if the concrete foundation is repaired or replaced during that five-year reassessment period, the property owner must provide notice to the assessor within 30 days of the repair or replacement. The assessor then has the earlier of 90 days after receipt of such notification or the commencement of the next assessment year to inspect the building and adjust its assessment to reflect its current value. Conn. Pub. Act No. 16-45, §2 (*effective May 25, 2016, and applicable to assessment years commencing on or after October 1, 2016*).

**Local Economic Development Property Tax Incentive.** Current law authorizes a municipality to exempt some or all of the increase in the fair market value of a property that is to be developed or improved for certain uses. New legislation gives more latitude to a municipality to set the terms and conditions for fixing an assessment on such property by eliminating all statutory criteria other than limiting the maximum period the benefit can be extended to ten years. The legislation does limit, however, the ability to grant such a benefit for improvements for permanent or transient residential use to a property consisting of four or more dwelling units. Conn. Gen. Stat. §12-65b, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §32 (*effective October 1, 2016, and applicable to assessment years commencing on or after October 1, 2016*).

**Elderly Property Tax Relief.** The rules governing the following three property tax relief programs have been amended: (i) the state-funded Tax Relief Program for Elderly and Totally Disabled Homeowners (i.e., the Circuit Breaker Program) (Conn. Gen. Stat. §12-170aa); (ii) the local option Elderly Property Tax Freeze Program (Conn. Gen. Stat. §12-170v); and (iii) the state-funded Elderly Property Tax Freeze Program, which has been closed to new applications since 1980 (Conn. Gen. Stat. §12-129b). The amendments: (i) push back the date when homeowners must file their biennial reapplication for property tax relief from March 15 to April 15; (ii) push back the deadline, from April 1 to April 30, by when assessors must notify taxpayers for whom they did not receive an application by the filing deadline; and (iii) provide that an assessor can provide such notice by regular mail evidenced by a certificate of mailing instead of by certified mail. Conn. Gen. Stat. §§12-129c(a), 12-170w(a) and 12-170aa(e), as amended by Conn. Pub. Act No. 16-143, §§1-3 (*effective October 1, 2016*).

**Tax Freeze Program.** Under the Tax Freeze Program, municipalities freeze at a specific year's level the amount of property taxes owed by certain qualified elderly homeowners, and OPM is to reimburse municipalities for the resulting lost tax revenue. The Program has been closed to applicants since 1979. Under new legislation, OPM is required to proportionately reduce reimbursements it issues to municipalities under the Program if appropriations for the Program are less than the amount required for the reimbursements. Conn. Gen. Stat. §12-129d(c), as added by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §81 (*effective July 1, 2016*).

**Renters' Rebate Program.** Pursuant to the Renters' Rebate Program, the state provides grants to qualified low-income renters who are elderly or totally disabled based upon their income and rent and utility expenses. The governing statute is amended to reduce Program grants on a proportionate percentage basis as necessary to keep within available

appropriations. Conn. Gen. Stat. §12-170f(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §82 (effective July 1, 2016).

**Property Tax Relief for Retired Volunteer Firefighters, Fire Police Officers and Emergency Medical Technicians.**

The optional municipal property tax exemption that a municipality can adopt for a nonsalaried local emergency management director and for volunteer firefighters, fire police officers, emergency medical technicians, paramedics, civil preparedness staff, active members of a volunteer canine search and rescue team, active members of a volunteer underwater search and rescue team or ambulance drivers is extended to any individuals who are retired volunteer firefighters, fire police officers or emergency medical technicians who have completed at least 25 years in such service in the municipality. The relief may take the form of a tax (i) abatement of up to \$1,000 in property taxes due in any fiscal year or (ii) exemption applicable to the assessed value of real or personal property up to \$1 million divided by the mill rate at the time of assessment. Conn. Gen. Stat. §12-81w, as amended by Conn. Pub. Act No. 16-99, §1 (effective July 1, 2016).

**Child Care Service Tax Abatements.** The statute allowing a municipality to provide an exemption from property tax for property of a business which offers child care services to residents of the municipality is amended. The exemption, which currently provides that the exemption is not available to a business that is regularly engaged in the construction or operation of child day care facilities, now provides further that it is not available to a business regularly engaged in the construction or operation of child care centers (a technical change from “child day care facilities”), group child care homes or family child care homes. The exemption is in the amount of (i) up to 100% of the assessed value of the property of the business used in providing the child care services; and (ii) up to 10% of the balance of the assessed value of the property of the business. Conn. Gen. Stat. §12-81n, as amended by Conn. Pub. Act No. 16-163, §5 (effective from passage). [Ed. note. The Act had not been signed by the Governor as of June 3, 2016.]

**Art and Culture Tax Abatements.** New legislation permits a municipality to abate up to 100% of the property taxes due for any property used for arts and culture, including art galleries, art studios, installation galleries, movie theatres, performance venues and retailers catering to or relating to the arts. Conn. Pub. Act No. 16-177, §1 (effective October 1, 2016, and applicable to assessment years commencing on or after October 1, 2016). [Ed. note. The Act had not been signed by the Governor as of June 3, 2016.]

**Current Additional Veterans Tax Abatement.** Conn. Gen. Stat. §12-81(19) provides generally for a mandatory property tax exemption for certain veterans. Conn. Gen. Stat. §12-81f allows a municipality to provide an additional property tax exemption to the veteran provided that the veteran’s income does not exceed: (i) an income limit set annually by the OPM (for 2015, the limit was \$35,200 for unmarried veterans and \$42,900 for married veterans) or (ii) an amount established by the municipality (that may not exceed the OPM limit by more than \$25,000). The limit on the permissive additional exemption, which may be an amount up to \$10,000 or 10% of the assessed value, has been increased to an amount up to \$20,000 or 10% of such assessed value. Conn. Gen. Stat. §12-81f, as amended by Conn. Pub. Act No. 16-191, §1 (effective October 1, 2016, and applicable to assessment years commencing on and after October 1, 2016).

**New Additional Disabled Veterans Tax Exemption.** Veterans having a disability are eligible for a larger state-mandated property tax exemption (Conn. Gen. Stat. §12-81(19)) than those available to wartime veterans (Conn. Gen. Stat. §12-81(20)). New law allows a municipality to provide an additional property tax exemption to those disabled veterans if their income does not exceed the income limits applicable to the additional property tax exemption for wartime veterans (see the preceding summary). The additional exemption must be at least \$3,000 and applied to the assessed value of the eligible veteran’s property. Conn. Gen. Stat. §12-81f(b), as added by Conn. Pub. Act No. 16-191, §1 (effective October 1, 2016, and applicable to assessment years commencing on or after October 1, 2016).

**Interest Waiver for Active Service Members.** New legislation changes from voluntary to mandatory municipal relief from interest on any property tax or installment that is payable by any resident of the state who (i) is a member of the armed forces of the United States or of any state or of any reserve component thereof, (ii) has been called to active service in the armed forces of the United States, and (iii)(A) is serving outside of the state on the final day that payment of such property tax or installment or part thereof is due, or (B) has been residing in the state for less than one year since returning from serving outside of the state. Any interest waived pursuant to the statute will be reinstated if the member of the armed forces fails to pay the amount of any such delinquent property tax after residing in the state for at least one year after returning from serving outside of the state. Conn. Gen. Stat. §12-146e, as amended by Conn. Pub. Act No. 16-191, §2 (effective October 1, 2016, and applicable to assessment years commencing on and after October 1, 2016); Conn. Gen. Stat. §§12-146c and 12-146d, as repealed by Conn. Pub. Act No. 16-191, §3 (*effective October 1, 2016*).

**For Sale or Lease Signs.** New legislation exempts from the municipal tax on tangible personal property any sign placed on a property indicating that the property is for sale or lease. Conn. Gen. Stat. §12-41(c), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §203 (*effective July 1, 2016*).

## **II. Case Law**

**Standing and Jurisdiction.** In Fairfield Merrittview Limited Partnership v. Norwalk, 320 Conn. 535 (2016), the Connecticut Supreme Court reversed the decision of the Appellate Court holding that the trial court lacked subject matter jurisdiction to hear the plaintiffs' appeal of a property tax assessment pursuant to Conn. Gen. Stat. §12-117a. The case involved real property that had been transferred by a partnership to a limited liability company ("LLC") with similar owners. A year after the transfer, the property was revalued as part of a city-wide revaluation, and the revaluation card listed the partnership as the owner. The LLC took an appeal to the Board of Assessment Appeals, which was denied, and the denial letter was addressed to the partnership. The partnership took an appeal pursuant to section 12-117a, but filed a motion to amend the appeal to add the LLC within thirty days. The motion was granted without objection by the City. The Supreme Court held that the motion to amend constituted a motion to substitute or addition a party plaintiff and, pursuant to Conn. Gen. Stat. §52-109, is effective retroactively to cure any deficit. The Court further held that it was irrelevant that the trial record did not clearly establish that the LLC filed the Appeal to the Board of Assessment Appeals; section 12-117a only requires that the property owner appeal an adverse decision of a board of assessment appeals.

**Waste-to-Energy Facility.** In Wheelabrator Bridgeport, L.P. v. Bridgeport, 320 Conn. 332 (2016), the Connecticut Supreme Court considered two appeals taken from the assessment of both real and personal property taken by the lessee of real property and operator of a waste-to-energy facility. The Court ruled that: (i) Conn. Gen. Stat. §22a-270b provides that a lessee of such a facility and its personalty is to be deemed the owner of the property and has standing to appeal from both real and personal property tax assessments; (ii) the trial court had improperly rejected the discounted cash flow approach to the valuation of the property as a matter of law (noting that the expert witnesses for both sides testified that the approach was the best method for valuing the property); (iii) the trial court may properly consider evidence that a municipality engaged in wrongdoing for purposes of determining whether a taxpayer is entitled to interest on overpayments to the municipality; (iv) a person who otherwise would be qualified as an expert witness to testify regarding the value of real property is not disqualified merely because the person is not a licensed real estate appraiser in Connecticut; and (v) the trial court properly excluded the addition of a "developer's profit" in the City appraiser's valuation because there was no evidence that the trial court erred in determining that the historical cost of the facility did not already include a developer's profit. The Court remanded the appeals to the trial court to reconsider the appropriate valuation method and valuation for the property and, in doing so, to confirm whether the personal property was valued as part of the valuation of the facility and realty.



**Forest Land Classification.** In *Imperial Development, LLC v. Coventry*, 2016 Conn. Super. LEXIS 684 (Apr. 1, 2016), the plaintiff had owned 58 lots on two sections of property that had been classified as forest land. The owner subsequently posted a performance bond, built four roads through the property and sold approximately 40 of the lots for development, leaving the remaining 18 lots covered with trees. The trial court held that the Town had improperly removed the forest land classification from the remaining lots as their use had not changed, regardless of whether they were being marketed for development.

## MISCELLANEOUS

### I. Legislation

**Outstanding Returns and Licenses/Permits.** Prior to issuing or renewing a (i) cigarette dealer, distributor or manufacturer license, (ii) tobacco product distributor or unclassified importer license, or (iii) sales tax seller's permit, the Commissioner of Revenue Services may determine whether the applicant has failed to file any state tax returns and, if it is determined that the applicant has failed to file any return, the Commissioner is prohibited from issuing or renewing such license or permit until the applicant files all outstanding returns or makes some other arrangement satisfactory to the Commissioner. Conn. Gen. Stat. §12-39o, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §198 (*effective January 1, 2017*).

**Connecticut Retirement Security Exchange.** New legislation establishes the Connecticut Retirement Security Authority (the "Authority"), a quasi-public agency of the State of Connecticut, and the Connecticut Retirement Security Exchange (the "Program"), the purpose of which is to promote and enhance retirement savings for private sector employees in Connecticut. The Authority is to establish criteria and guidelines for qualified retirement investment choices that will be offered pursuant to the Program by multiple vendors selected by the Authority. The criteria and guidelines will establish a cap on annual fees and require the provision of historical investment performance. The legislation mandates that qualified employers that do not otherwise offer an employer-sponsored retirement plan must automatically enroll eligible covered employees in the Program and setup payroll deductions for such covered employees in order to facilitate participation in the Program. The new legislation applies to "qualified" employers, which generally are for-profit and non-profit entities that employ five (5) or more individuals who made more than \$5,000 in the preceding calendar year (but smaller employers may voluntarily participate as well but cannot require any employee to enroll in the Program). Governmental entities are not covered by this new legislation. Qualified employers are required to disseminate to covered employees materials prepared by the Authority regarding enrollment and participation in the Program no later than January 1, 2018 and annually thereafter. The employer must then automatically enroll covered employees at a contribution rate of 3% of the participant's taxable wages within sixty (60) days of the distribution of the materials. Covered employees may select a different contribution rate or may opt out of the Program completely by electing a contribution level of \$0. Employer contributions are prohibited in the Program. The new law also provides for the establishment of a Roth IRA for each participant in the program in order to hold the contributions made into the Program. If a participant does not affirmatively select a specific vendor or investment option in the Program, the participant's contribution will be invested in an age-appropriate target date fund rotationally assigned by the Program. "Covered employees" include those individuals (i) who have been employed by a "qualified employer" for at least one hundred and twenty (120) days, (ii) are at least nineteen (19) years old, and (iii) perform certain enumerated services within Connecticut. All contributions in the Program will be held in trust or custodial accounts as required by the Internal Revenue Code. The Authority will be controlled by a Board of Directors (the "Board"), which will consist of fifteen voting members. The members are to include the State Treasurer, the State Comptroller, the Secretary of OPM, the Banking Commissioner, the Labor Commissioner, and legislators from both parties, among others. All appointments to the Board will be made no later than January 1, 2017. The Board is the entity responsible for administering and managing the Program, which includes establishing procedures for the Program,

selecting vendors, providing account statements, investment options and fee information and other communications regarding the program to enrolled participants. Conn. Pub. Act No. 16-29, §§1-2 (*effective May 27, 2016*), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §§95-96 (*effective June 2, 2016*); Conn. Pub. Act No. 16-29, §§3-12 (*effective May 27, 2016*), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.) §§97-105 (*effective January 1, 2017*) and §207 (*effective June 2, 2016*); Conn. Pub. Act No. 16-3 (May Spec. Sess.) §106 (*effective January 1, 2018*); Conn. Gen. Stat. §§1-79(12), 1-120(1), 1-124, and 1-125, as amended by Conn. Pub. Act No. 16-29, §§14-17 and 21 (*effective July 1, 2016*), as further amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §207 (*effective June 2, 2016*); Conn. Gen. Stat. §§31-71e and 31-71j, as amended by Conn. Pub. Act No. 16-29, §§18-19 (*effective January 1, 2016*), as further amended by Conn. Pub. Act No. 16-3, (May Spec. Sess.), §108 (*effective January 1, 2017*), §109 (*effective July 1, 2016*) and §207 (*effective June 2, 2016*); and Conn. Pub. Act No. 16-29, §20 (*effective May 27, 2016*), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §207 (*effective June 2, 2016*).

**Commission on Economic Competiveness.** In 2015, the General Assembly established a 13-member Commission on Economic Competiveness to assess how the state's tax policies affect business and industry and develop policies to promote economic growth. New legislation expands the Commission's membership to 23, including the chairs and ranking members of each of the Finance, Revenue and Bonding Committee, and the Commerce Committee (or their designees), an appointee of the Governor and the CTNext chair or designee. Conn. Gen. Stat. §2-124(b), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §21 (*effective June 2, 2016*).

**Triennial Evaluation of Tax Incentive Programs.** Responsibility for the preparation of the triennial report that is to evaluate state tax credit or abatement programs that were enacted to recruit or retain businesses has been shifted from the Department of Economic and Community Development ("DECD") to the Legislative Program Review and Investigations Committee ("PRI"). PRI is to prepare the report in consultation with the Commissioner of Revenue Services and the Commissioner of Economic and Community Development, and DECD is to provide any data, data analysis or economic modeling necessary for the completion of the report. For each tax credit or abatement program, PRI is to provide: (i) a description of the program, its beneficiaries and its intended statutory and programmatic goals; (ii) an analysis of the fiscal imprint of the program and whether the cost thereof is likely to increase or decrease in future years; (iii) an analysis of the economic impact of the program and whether the statutory and programmatic goals are being met, with obstacles to such goals identified, if possible; (iv) an analysis of whether the program is being administered efficiently and effectively, and the ease or difficulty for taxpayers to comply with the requirements for the program; (v) a recommendation as to whether the program should be continued, modified or repealed, together with the basis for the recommendation; and (vi) any recommendations for improving the administrative efficiency or effectiveness of the program. On or before March 1, 2018, and every three years thereafter, the Appropriations Committee and the Finance, Revenue and Bonding Committees are to hold one or more public hearings on the PRI report. Conn. Gen. Stat. §32-1r, as amended by Conn. Pub. Act No. 16-183, §2 (*effective from passage*). [Ed. note. The Act had not been signed by the Governor as of June 3, 2016.]

**Tax Incidence Study.** By law, the DRS must submit to the Finance, Revenue and Bonding Committee, and post on the DRS website, biennial reports on the overall incidence of the income tax, sales and excise taxes, the corporation business tax and property tax. The due date of the report currently due on or before February 15, 2017, is extended to February 15, 2018. Conn. Gen. Stat. §12-7c(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §192 (*effective June 2, 2016*).

**First Five Plus Program Extended.** The First Five Plus Program provides substantial financial assistance and tax incentives to eligible business development programs that create jobs and make capital investments within the law's timeframes. Projects qualify if they can (i) create at least 200 new jobs within 24 months after the assistance is approved or (ii) invest at least \$25 million and create at least 200 new jobs within five years after the assistance is approved. Under

new legislation, the Program has been extended three years, from June 20, 2016 to June 30, 2019, and the maximum number of business development projects that can be funded under the Program increased from 15 to 20. The 2016 legislation also expands those business development projects that are to be given a preference to include those that are: (i) located in one of the state's distressed municipalities (as defined in Conn. Gen. Stat. §32-9p) or (ii) part of an industry that the state's strategic economic plan targets for assistance. (The state's 2015 plan targets for priority investment health care, bioscience, insurance and financial services, advanced manufacturing, digital media, tourism and green technologies industries.) Finally, the preference that involves the relocation of jobs to Connecticut is restated such that those jobs do not have to be relocated from outside of the United States, but now must involve research, invention or innovation. Conn. Gen. Stat. §32-4I, as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §18 (*effective July 1, 2016*).

**Hospitals Tax.** In 2015, the Connecticut Hospitals Association filed applications with each of the Commissioner of Revenue Services and the Commissioner of Social Services seeking a declaratory ruling finding the hospitals tax to be violative of both certain state statutes and provisions of the United States Constitution. In response to the filings, the General Assembly adopted legislation that purports to clarify the 2011 legislation that established the hospitals tax, including the role of the General Assembly in the setting of the tax and the definition of "net patient revenue." The governing statute also is amended to provide that the hospital tax rate conform with the state budget and that, when determining the tax assessment base year, the DSS Commissioner ensure that it conforms with the adopted budget. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §121 (*effective June 2, 2016*) and §123 (*effective July 1, 2016*). Conn. Gen. Stat. §12-263b(a), as amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §120 (*effective June 2, 2016, and applicable to calendar quarters commencing on or after July 1, 2011*).

**Ambulatory Surgical Centers Tax.** The Secretary of OPM, in consultation with the Commissioners of the DRS and DSS, is charged with the conduct of a study of the impact of the gross receipts on ambulatory surgical centers ("ASCs") enacted in 2015. The study is to include a review of, and recommendations concerning, (i) the rate of tax and the amount of any exemptions, (ii) the fairness of such tax as applied to ASCs of varying sizes and capacities, (iii) the relationship of the tax to the operating costs of ASCs, (iv) the impact of the tax on the ability of ASCs to make debt service payments or capital improvements, (v) the implications of the tax on the hours of operation of ASCs, and (vi) other possible tax structures. The report is due on or before February 1, 2017, to the Committees on Public Health and Finance, Revenue and Bonding. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §197 (*effective June 2, 2016*).

**Payment Settlement Entities.** New legislation directs the Commissioner of Revenue Services to make "reasonable efforts" to facilitate the issuance of tax warrants on "payment settlement entities" (i.e., credit card settlement entities such as VISA and American Express) for payments made by such entities to retailers in Connecticut. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §182 (*effective June 2, 2016*).

**Admissions Tax Municipal Surcharge.** New legislation authorizes any municipality, by ordinance, to impose a surcharge on the admission charge for any event that is held at a facility located within the municipality. The surcharge cannot: (i) exceed 5% of the amount of the admission (10% of the amount of the admission at the Dunkin' Donuts Park); and (ii) be imposed on (A) events from which all proceeds go to a tax-exempt organization (if the organization engages in and assumes the financial risk associated with the presentation of such event); or (B) any pari-mutual or off-track betting facilities already subject to a local admissions tax. A municipality also may, as part of the ordinance, exempt additional events or facilities from the surcharge. Conn. Pub. Act No. 16-3 (May Spec. Sess.), §186 (*effective June 2, 2016*).

**Admissions Tax Exemptions.** Two new exemptions from the admissions tax are adopted for (i) any event presented at the Dunkin' Donuts Park in Hartford, and (ii) on or after July 1, 2017, to any athletic event presented by a member team of the Atlantic League of Professional Baseball at the New Britain Stadium. Conn. Gen. Stat. §12-541(a), as amended by

Conn. Pub. Act No. 16-3 (May Spec. Sess.), §185 (*effective June 2, 2016*).

**Municipal Revenue Sharing.** Under legislation enacted in 2015, the Commissioner of Revenue Services was to direct to the Municipal Revenue Sharing Account (“MRSA”): (i) 4.7% of sales tax revenue from May 2016 through April 2017; (ii) 6.3% of sales tax revenue from May and June 2017; and (iii) 7.9% of sales tax revenue from July 2017 and thereafter. As part of its budget adjustment legislation, the General Assembly eliminated the sales tax diversion to MRSA for the 2017 fiscal year (July 1, 2016-June 30, 2017). Conn. Gen. Stat. §12-408(1), as amended by Conn. Pub. Act No. 16-2 (May Spec. Sess.), §40 (*effective June 2, 2016*). The Legislature also created a new Municipal Revenue Sharing Fund (“MRSF”), and appropriated \$185 million for the 2017 fiscal year for the Fund. Conn. Pub. Act No. 16-2 (May Spec. Sess.), §§41 (*effective June 2, 2016*), 42 (*effective July 1, 2016*) and 46 (*effective July 1, 2016*), as further amended by Conn. Pub. Act No. 16-3 (May Spec. Sess.), §190 (*effective July 1, 2016*). Although OPM was to use MRSA funds to distribute motor vehicle property grants and municipal revenue sharing grants to municipalities commencing in the 2017 fiscal year, the 2016 budget adjustment legislation eliminated the 2017 fiscal year motor vehicle property tax grants and modified the municipal revenue sharing grant amounts for that fiscal year (which shall be paid from the MRSF). The grants are to be available again in the 2018 fiscal year, but the motor vehicle property tax grant formula is modified so that a municipality’s grant is equal to the difference between (i) the amount of property taxes a municipality (and any district located therein) levied on motor vehicles for the October 1, 2013 assessment year, and (ii) the amount of such levy would have been if the mill rate on motor vehicles for said year was 32 mills. (The prior law’s formula used 29.36 mills for the 2018 and later fiscal years.) Conn. Gen. Stat. §4-66l, as amended by Conn. Pub. Act No. 16-2 (May Spec. Sess.), §42 (*effective July 1, 2016*).

**Deeds Pursuant to Judgment of Loss Mitigation.** New legislation creates a new process whereby a court may enter a judgment of loss mitigation which allows (i) certain “underwater mortgages” to be modified without a junior lienholder’s consent or (ii) the mortgagor (borrower) to satisfy his or her obligation by conveying the property using a transfer agreement. A deed made pursuant to a judgment of loss mitigation is exempted from the real estate conveyance tax. Conn. Gen. Stat. §12-498(a)(9), as amended by Conn. Pub. Act No. 16-65, §91 (*effective October 1, 2016*).

**ABLE Accounts.** New legislation requires the State Treasurer, in consultation with the DRS, to submit a report to the Banking Committee “concerning any mechanism for converting” a Section 529 education savings plan (such as a CHET account) into a state Achieving a Better Life Experience (ABLE) account, and any appropriations or revisions to the General Statutes the Treasurer deems necessary to ensure the successful operation of a federally qualified ABLE program. The ABLE program is intended to encourage and help eligible individuals and families save private funds to pay for qualifying expenses related to disability and blindness. ABLE accounts funds are to be held in the Connecticut ABLE Trust and to be exempt from federal, state and local taxation. Conn. Pub. Act No. 16-65, §72 (*effective May 26, 2016*).

**New State Tax Study.** Despite the conduct of multiple state tax studies during the last few years, and the work of the permanent Commission on Economic Competitiveness, the General Assembly has mandated that the Commissioner of Revenue Services “conduct a study concerning the state laws governing the sales and use tax, the personal income tax and the corporation business tax.” A report on the study is to be filed with the Finance, Revenue and Bonding Committee no later than January 1, 2017. Conn. Spec. Act No. 16-14, §1 (*effective October 1, 2016*).

## ***II. Administrative Pronouncements***

**FUTA Tax Reduction.** The Connecticut Department of Labor announced on March 31, 2016, that Connecticut employers should see a reduction in the FUTA tax rate from the 2.7% rate in 2015 to 0.6% in 2016 now that the state has repaid the federal loan that was needed to continue paying unemployment insurance benefits during the recession. The federal loan was paid off on March 24, 2016.

**Diesel Fuel Tax Rate.** The fuels tax rate on diesel fuel will be reduced from 50.3 cents per gallon to 41.7 cents per gallon for the twelve-month period commencing on July 1, 2016. DRS Announcement 2016(5).

**Connecticut Tax Panel Report.** On December 31, 2015, the State Tax Panel that was established in 2014 pursuant to Conn. Pub. Act No. 14-217, §137 issued its final report. The State Tax Panel was comprised of a panel of experts in tax law, tax accounting, tax policy, economics and state, local and business finance and was charged with reviewing the state's overall state and local tax structure. The members of the panel were appointed jointly by the Governor and the chairs and ranking members of the Committee. One of the appointees to the Panel was Louis B. Schatz of Shipman & Goodwin. The panel was charged with considering and evaluating options to modernize tax policy, structure and administration with respect to (i) efficiency, (ii) cost of administration, (iii) equity, (iv) reliability, (v) stability and volatility, (vi) sufficiency, (vii) simplicity, (viii) incidence, (ix) economic development and competitiveness, (x) employment, (xi) affordability and (xii) overall public policy. A link to the Panel's Final Report can be found here: [https://www.cga.ct.gov/fin/tfs/20140929\\_State%20Tax%20Panel/CT%20State%20Tax%20Panel%20Final%20Report.pdf?\\_cldee=bHNjaGF0ekBnb29kd2luLmNvbQ%3d%3d](https://www.cga.ct.gov/fin/tfs/20140929_State%20Tax%20Panel/CT%20State%20Tax%20Panel%20Final%20Report.pdf?_cldee=bHNjaGF0ekBnb29kd2luLmNvbQ%3d%3d).

### **III. Case Law**

**Interest on Appeal.** In *Dish Network, LLC v. Sullivan*, 2016 Conn. Super. LEXIS 750 (Apr. 11, 2016), the Tax Session of the Superior Court ruled on a motion for interest by the plaintiff taxpayer and satellite television provider. The Court previously had issued a decision on the taxability of certain services under the gross earnings tax and had approved a joint stipulation by the parties as to the amount of refund due to the taxpayer based upon the Court's taxability decision. The Court held that the applicable interest statute was not Conn. Gen. Stat. §12-268c(b)(1), which allows for interest to be paid on a refund due to an overpayment, but rather was Conn. Gen. Stat. §12-268l, which permits a court to grant such relief, including interest, as is equitable as part of a tax appeal. The Court then concludes that it "did not grant relief" as contemplated by section 12-268l, but merely approved a stipulation that was negotiated by the parties and, therefore, no claim for interest could be granted unless it was part of the stipulation.

## **ADMINISTRATIVE PRONOUNCEMENTS**

### **Announcements**

- AN 2016(1), Assessments Refunded by the Connecticut Insurance Guaranty Association
- AN 2016(2), 2016 Revisions of Forms TPM-1, TPM-2, and TPM-4
- AN 2016(3), Annual List of Distributors for Motor Vehicle Fuels Tax Purposes
- AN 2016(3.1), Quarterly List of Distributors for Motor Vehicle Fuels Tax Purposes
- AN 2016(5), Motor Vehicle Fuels Tax Rate on Diesel Fuel Decreased Effective July 1, 2016
- AN 2016(6), Revocation of Policy Statement 2001(2), Room Occupancy Tax and Sales and Use Tax on Campground and Cottage Rentals

### **Informational Publications**

- IP 2016(1), Connecticut Circular CT Employer's Tax Guide
- IP 2016(2), Topical Index to Rulings and Administrative Pronouncements Covering Income Tax
- IP 2016(3), Topical Index to Rulings and Administrative Pronouncements Covering Corporation Business Tax
- IP 2016(4) Numerical Index to Rulings and Administrative Pronouncements as Affected, If at All, by Later-Issued Rulings and Pronouncements
- IP 2016(5), Topical Index to Rulings and Administrative Pronouncements Covering Sales and Use Taxes



IP 2016(6), Topical Index to Rulings and Administrative Pronouncements Covering  
Miscellaneous Taxes and Administrative Topics  
IP 2016(7), Is My Connecticut Withholding Correct?  
IP 2016(10), Status Letters for Income Tax  
IP 2016(11), Q&A on Estimated Corporation Business Tax and Worksheet CT-1120AE

### **Special Notices**

SN 2016(1), Combined Unitary Legislation - Corporation Business Tax

### **Rulings**

Ruling No. 2016-1, Sales and Use Taxes, Testing Services

Ruling No. 2016-2, Sales and Use Taxes, Food Products, Nonprescription Drugs and Medicines

289 Greenwich Avenue  
Greenwich, CT 06830-6595  
203-869-5600

One Constitution Plaza  
Hartford, CT 06103-1919  
860-251-5000

265 Church Street - Suite 1207  
New Haven, CT 06510-7013  
203-836-2801

400 Park Avenue - Fifth Floor  
New York, NY 10022-4406  
212-376-3010

300 Atlantic Street  
Stamford, CT 06901-3522  
203-324-8100

1875 K St., NW - Suite 600  
Washington, DC 20006-1251  
202-469-7750

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

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

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

**Alan E. Lieberman**  
alieberman@goodwin.com  
(860) 251-5801

**Louis B. Schatz**  
lschatz@goodwin.com  
(860) 251-5838

**Raymond J. Casella**  
rcasella@goodwin.com  
(860) 251-5808

**David O. Bigger**  
dbigger@goodwin.com  
(860) 251-5203

**Robert L. Day III**  
rday@goodwin.com  
(860) 251-5602