2004 Connecticut Property Tax Update

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INTRODUCTION: ADMINISTRATION OF THE PROPERTY TAX SYSTEM

Each of the 169 towns in the State of Connecticut is empowered to assess and collect property taxes. The powers of the towns are defined and limited by State statutes, specifically, Sections 12-40 through 12-195h of the Connecticut General Statutes.[1] Pursuant to the provisions of Section 12-122, a town must levy such property taxes as are needed to pay all of the current expenses of the town after taking into account all other revenue sources. The Secretary of the Office of Policy and Management ("OPM") has been delegated all functions, powers and duties previously held by the Commissioner of Revenue Services that relate to municipal finance, the assessment or taxation of property, and state grants to municipalities. Section 12-1c. (Among its many functions, OPM publishes annual summaries of legislation impacting municipal property taxes; the 2003 and 2004 summaries are included as Appendix D and Appendix I.)

I. OVERVIEW OF THE ASSESSMENT PROCESS

A. Property Subject to Tax

Real property, motor vehicles, and certain other tangible personal property are subject to property tax. With respect to tangible personal property, Section 12-71 provides that "[a]ll goods, chattels and effects or any interest therein, including any interest in a leasehold improvement classified as other than real property" is subject to taxation, except that certain computer software and aircraft are not taxable. As a practical matter, the taxation of tangible personal property is limited to business property, with the exception of motor vehicles, snowmobiles and horses. Sections 12-81(31), (32), (33), (34) and (35) provide explicit exemptions from property tax for a variety of household furniture, furnishings, books, musical instruments, jewelry and wearing apparel of individuals. In addition, boats are exempt from personal property taxation under Section 12-81(64). This section exempts "vessels," broadly defined under Section 15-127 as "every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water." While not subject to personal property taxation, pursuant to Section 15-144 owners of vessels pay an annual registration fee with the Department of Motor Vehicles, the proceeds of which are allocated to a boating fund that is distributed annually to municipalities. This annual fee ranges from $7.50 to $525 depending on the length of the vessel and subject to certain exceptions.

Each town assessor maintains current records of the ownership of all real property in the town and the Commissioner of Motor Vehicles provides a list of motor vehicles registered in Connecticut and certain other information to each town assessor. Recently, Section 3 of P.A. 04-228, a copy of which is included as Appendix K, amended Section 14-163, pursuant to which the Department of Motor Vehicles must compile and furnish information to assessors twice a year, to require, *inter alia*, that

[1] All section references refer to the Connecticut General Statutes, unless otherwise specified.

motor vehicle or snowmobile owners provide the Department with the name of the town in which the owner's motor vehicle or snowmobile is subject to property tax in accordance with Section 12-71, as amended by P.A. 04-228 (discussed below). However, while information regarding real property and registered motor vehicles is compiled by or for assessors, taxpayers must disclose to their towns the other personal property owned by them that is subject to taxation in the declarations described below.

1. Assessment Rate

Under Section 12-62a(b), each municipality is required to assess all property at a uniform rate of 70% of its present true and actual value, which generally means fair market value. Section 12-63. Motor vehicles are assessed at 70% of their average retail value. Section 12-71d.

2. Declaration of Personal Property

A taxpayer must file an annual declaration of the tangible personal property owned by it as of the October 1 assessment date. Section 12-41 provides that the declaration must include, but is not limited to, the following types of property: machinery used in mills and factories, cables, wires, poles, underground mains, conduits, pipes and other fixtures of water, gas, electric and heating companies, leasehold improvements classified as other than real property and furniture and fixtures of stores, offices, hotels, restaurants, taverns, halls, factories and manufacturers. Such declarations shall not include registered motor vehicles. Section 12-41(b). Accordingly, as indicated above, individuals without business property do not generally file declarations, except that, for example, unregistered motor vehicles must also be declared and assessed in accordance with Section 12-71d.

The declaration must be filed before the first of November immediately following the October 1 assessment date. An assessor may grant a filing extension of up to 45 days for "good cause." OPM has prescribed a declaration form for the listing of personal property, and this form is mailed to taxpayers with instructions for completion. In most towns a "confidential report" will accompany the declaration on which the taxpayer is required to report the cost of all taxable personal property and the value thereof after certain rates of depreciation specified in the form. Municipalities may adopt multiple depreciation schedules for different types of property as provided in Section 12-63(b). The valuations produced by these depreciation schedules are not binding on the taxpayer or the assessor — *i.e.*, either may assert that the schedules do not reflect the fair market value of the property. Furthermore, it is important to note that the depreciation values for the property used for federal income tax purposes are relevant but not controlling evidence of the value of personal property for municipal property tax purposes. <u>Fondachelli Inc. v. Bridgeport</u>, 2002 WL 31234979 (August 30, 2002). Commercial or financial information contained in a declaration is not open for public inspection.

3. Situs

If tangible personal property is located in a town different from its owner's residence for more than three months during an assessment year (October 1 through

September 30), then Section 12-43 specifies which town taxes the property. If property is located in a town on October 1 and has been in that town for at least three months during the assessment year just ended, then it is taxed by such town; if not, the property is taxed by the town in which it was located for the three months closest to such October 1. If Section 12-43 does not apply to the tangible personal property (*i.e.*, the property is not located in any town other than its owner's residence for three months or more during an assessment year), then it is taxed by the municipality where the owner resides. Section 12-40.

The question of the tax situs of motor vehicles has recently been the source of considerable controversy, resolved first by the courts and then differently by the legislature. The issue in <u>Paul Dinto Electrical Contractors, Inc. v. Waterbury</u>, 266 Conn. 706 (2003), was the appropriate town to tax vehicles owned by an employer located in Waterbury but used exclusively by its employees and garaged in their towns of residence. The Supreme Court held that the vehicles were properly assessed in the town where the employer maintained its principal place of business, not the towns where the vehicles were regularly parked or garaged by the employees. Relying on statutory distinctions between motor vehicles and other personal property, the Court so held even though the vehicles were located in towns other than Waterbury for more than three months of the year.

In the 2004 Session, the General Assembly passed legislation to override the Supreme Court's ruling in <u>Paul Dinto</u>. Under Sections 1 and 2 of P.A. 04-228 (*An Act Concerning the Situs of Motor Vehicles for Property Tax Purposes)*, a copy of which is included as <u>Appendix K</u>, the General Assembly amended Sections 12-41(b) and 12-71 to provide, among other things, that owners of motor vehicles and snowmobiles registered in Connecticut must pay property taxes to the town that, in the normal course of operation, the vehicle or snowmobile most frequently leaves from, returns to or remains in. Section 12-71(f)(2) includes a presumption that this is the town where its owner resides, unless an exception in Section 12-71(f)(4) applies. These exceptions to the presumption include:

- Where a vehicle is assigned to an employee of the vehicle's owner for that employee's exclusive use (in which case it may be appropriate for the employee's town of residence to tax the vehicle if it most frequently leaves from, returns to, or remains in that town);

- Where a vehicle is operated pursuant to a lease (in which case the lessee's town of residence will tax the vehicle);

- Where a motor vehicle is designed or used for recreational purposes, *e.g.*, camp trailers, campers and motor homes (in which case it is subject to tax by the Connecticut town where it most frequently leaves from, returns to, or remains for camping, travel or recreational purposes; provided that if the vehicle is located outside the state in the normal course of operation for such purposes, it is subject to tax by the owner's Connecticut town of residence); and

- Where a vehicle is used or intended for use for the purposes of construction, building, grading, paving or similar projects, or to facilitate any such project (in which case it is subject to tax by the town in which the construction project is situated if it is located in that town for three or more months preceding the assessment date in any year; or if it is located on a construction site in more than one town for three or more months, then it is taxable in the town where it was located in the three months closest to the assessment date; or if it is not located in any Connecticut town for three or more months preceding the assessment date, then it is taxable by the town in which it is located on the assessment date).

In addition, no such presumption of taxation in the town of the owner's residence applies with regard to motor vehicles owned by non-Connecticut residents. Section 12-71(f)(3) provides that if a nonresident's motor vehicle is located in more than one Connecticut town, it will be taxed where it was located for the three or more months closest to the assessment date, or if it was not located in any Connecticut town for three or more months preceding an assessment date, in the town where the vehicle is located on this date.

Section 12-71(f)(5) and (6) allow the owner of any vehicle subject to taxation by a town other than the town in which the owner resides (*e.g*., a vehicle to which one the four exceptions discussed above applies) to register the vehicle in the town in which it is subject to tax. Also, this subsection and Section 12-41(b) (as amended by Section 1 of the Act) allow the owner to include information regarding such vehicle on any personal property declaration or lessee's report so that the assessors can obtain information about a vehicle's situs for tax purposes. Further, the assessor of the town in which a vehicle is subject to tax but not registered must notify the assessor of the town in which the vehicle is registered that the vehicle is being taxed pursuant to Section 12-71(f)(4). These new provisions regarding the situs of motor vehicles are effective June 8, 2004 and applicable to any assessment year.

In System Freight, Inc. v. Montville, 2004 WL 870657 (March 29, 2004), the Superior Court held that an assessor may not assess a tax on motor vehicles used by an interstate transportation business based upon the average number of vehicles from its fleet that come into and go out of the state on a regular basis but do not stay long enough to establish situs.

4. Assessor's Right to Audit

As discussed above, the assessor must rely on the taxpayer to disclose its personal property subject to taxation. Because this system creates the opportunity for abuse by the taxpayer, municipalities have developed the practice of conducting random audits on taxpayers to ascertain whether there is omitted and/or undervalued property. Section 12-53 provides that in relation to such an audit the assessor can go back up to three years and modify an assessment in order to tax property that was incorrectly omitted from the taxpayer's declaration. Under Section 12-53(a)(1), "omitted property" is defined expansively to mean "property for which complete information is not included in the declaration required to be filed by law with respect to either the total number and type of all items subject to taxation or the true original cost and year acquired of all such items." Specifically, where the assessor has reason to believe that property has been omitted from the taxpayer's list of taxable property or undervalued, he can pursue one of two courses:

- Under Section 12-53(b), the assessor may add omitted property to the declaration of taxable property at any time prior to January 31 following the assessment date. In addition, although the statute does not specifically allow the assessor to modify the assessment with regard to undervalued property, in United Illuminating Company v. City of New Haven, 240 Conn. 422 (1997), the Supreme Court interpreted this provision to give assessors the power to revalue personal property previously declared and included in a filed grand list. Note that this holding was modified to some extent by the enactment of 12-53(c), which provides that the methodologies used to determine the value of property under audit must be consistent with the methodologies requested by the assessor to determine the value of the property for the grand list year that relates to the audit. (See Section IIIG below regarding the use of outside firms to conduct audits and the problems that may ensue.)

- If the assessor for any reason does not or cannot act within such time, he may under Section 12-53(c) give notice of an audit to the taxpayer within three years of the assessment date for which the declaration of personal property was required. Such notice directs the taxpayer to appear before the assessor or the board of assessors with his records for examination under oath relating to any omitted property or the valuation thereof. If the assessor discovers at the hearing that property has been omitted or undervalued, he may add the property to the declaration or change its valuation. The statute expressly provides immunity from criminal prosecution on account of testimony or documentary evidence produced at such a hearing and states that the taxpayer shall not be excused from giving testimony or producing documents on the grounds of self-incrimination. The statute further provides that the methodologies used to determine the value of such property during the audit shall remain consistent with the methodologies requested by the assessor to determine the value of such property for the grand list year to which such audit or audits relate.

When a taxpayer contests the addition of property to his declaration of taxable property, he may appeal in the same manner as if the assessed value were involved, and if the Board of Assessment Appeals is not in session, the matter may be taken before the next session of the Board. Pursuant to Section 12-53(e), a taxpayer may pay "under protest" any tax resulting from addition of property to the tax list, and no interest will be assessed if at least 75% of the tax is paid and the taxpayer is successful.

5. Penalty for Omission of Property from List

When the taxpayer fails to file a declaration pursuant to Section 12-41 or property is added by the assessor under either subparagraph (b) or subparagraph (c) of Section 12-53, the assessor is required to assess a penalty of 25% of the amount of the added assessment. Recently, in Tilcon Connecticut, Inc. v. North Branford, 2004 WL 2095127 (August 19, 2004), the Superior Court held that the language of Section 12-41(d)(1), which assesses a penalty for the late filing of a declaration, is mandatory, not directory, so that the penalty may not be waived (the assessment in this case was increased by more than $2 million because the declaration was filed twenty days late). Further, a tax assessor's valuation is not excessive solely because of the mandatory penalty imposed under this provision.

6. Increase in Assessment and Notice Thereof

The assessor is given the power under Section 12-55 to increase the valuation of property reported by a taxpayer in its personal property declaration for the current year, or the value reflected on the last preceding grand list. In the event of any such increase, the assessor is required to give notice under Section 12-55(b), which must be mailed to the taxpayer by the 10th day immediately following the date on which the grand list abstract is signed and attested to by the assessor, which is ordinarily on or before the 31st day of January following the assessment date. Failure to give a taxpayer notice of an assessment increase delays the effective date of the increase until the next succeeding grand list, but does not invalidate the increase.

In addition, the Appellate Court has interpreted Section 12-55 to give assessors broad powers "not restricted to changes 'omitted by mistake' or 'required by law.' Rather, '[t]he power to equalize the lists, if necessary, imports a watchtower role for the assessor to correct inequalities, whether too high or too low'." Matzul v. Montville, 70 Conn. App. 442, 451 (2002) (*quoting* 84 Century Ltd Partnership v. Rocky Hill, 207 Conn. 250, 262 (1988)); see Wee Burn Country Club v. Norwalk, 2004 WL 1098437 (April 26, 2004) (finding that the assessor's action in changing an incorrect code number to properly classify the property as waterfront property, which increased the assessment for the property, was pursuant to the assessor's watchtower authority under Section 12-55).

7. Correction of the Grand List

Under Section 12-57, when tangible personal property has been incorrectly included in the list of property of any person, it may be removed and a certificate of correction issued by the assessor. Such an error may be corrected within three years from the tax due date. The remedy is available whether the error resulted from information supplied by the taxpayer or otherwise.

In addition, "clerical errors" may be corrected under Section 12-60 not later than three years following the tax due date. Use of Section 12-60 is sharply circumscribed in that it is limited to unintended, clerical errors only and does not permit correction of errors of substance, such as adding property to the grand list. Notwithstanding, Section 12-60 has been interpreted to allow an assessor retroactively to assess as separate parcels land which he had previously assessed as a single parcel at a lower valuation. Cov-Mill Estates v. Coventry Board of Tax Review, 3 Conn. Ops. 1225 (Superior Court 1997); but see Wee Burn Country Club v. Norwalk, 2004 WL 1098437 (April 26, 2004) (changes made to an assessment after revaluation were not pursuant to a "clerical error" under Section 12-60, but rather pursuant to the assessor's authority under Section 12-55).

8. Payment of Taxes

Under Section 12-142, the legislative body of each municipality shall determine whether the tax is to be due and payable in one payment, two semi-annual installments or four quarterly installments. With few exceptions, towns provide for semi-annual installments due on the July 1 and January 1 following an October 1 assessment date (*i.e.*, the beginning and midpoint of the next fiscal year).

B. Consequences of Nonpayment of Taxes

1. Interest

Interest on delinquent taxes is provided under Section 12-146 at the rate of 18% per annum from the time the tax becomes due and payable.

2. Municipal Tax Liens

Lien on Real Property. A lien is created by operation of law under Section 12-172 on taxable real estate from the first of October (the commencement of an assessment year) until one year after the tax or first installment becomes due. Section 12-172 expressly provides that the lien "shall take precedence of all transfers and encumbrances in any manner affecting such interest in such item, or any part of it." If the lien is to be continued for a period after the year following the due date of the first installment, the tax collector must file in the land records a certificate containing the name of the taxpayer, a description of the real estate and certain other information required by Section 12-173. This certificate must be filed no later than two years after the first installment of the tax is due.

Lien on Personal Property. Personal property liens are provided for by Sections 12-195a et seq. Section 12-195b provides that if any personal property tax is not paid by the due date, the municipality may obtain a lien upon "the goods situated in this state and owned by the taxpayer upon the date of perfection, or upon the goods thereafter acquired by the taxpayer." The lien shall attach and become perfected at the time when notice of the lien is filed pursuant to the filing provisions of the Connecticut Uniform Commercial Code. Once perfected, the lien has priority over all subsequently perfected liens and security interests and, if filed after July 1, 1999, over all previously perfected lines and security interests except for those described in Section 12-195f, but shall not attach to proceeds. However, Section 12-195f protects certain security interests by providing that municipal tax liens will not be valid against them, subject to requirements specified in the statute. Protected security interests include those arising from commercial transactions financing agreements or disbursements made before the 46th day after the date of tax lien filing, and purchase money security interests; this provision also protects retail buyers in the ordinary course.

3. Collection of Taxes

The collector of taxes of a Connecticut municipality has a wide range of weapons at his disposal. Among them are the following:

- A tax warrant may issue under Section 12-135 authorizing the collector of taxes or any state marshal or constable to demand and collect taxes and seize property of a taxpayer. Pursuant to Section 12-162, marshals and constables are entitled to a fee of 10% of the taxes collected for executing property tax warrants. In 2003, the General Assembly increased from 10% to 15% the fees allowed for levy of execution of a debt (Section 52-261, as amended by P.A. 03-224); however, the fee for executing a property tax warrant remains 10% (Section 12-162). Last month, on October 5, 2004, Attorney General Richard Blumenthal issued a press release highlighting instances of marshals and constables erroneously applying the 15% rate to all tax debt collections, including property tax warrants. The Attorney General has urged the State Marshal Commission to audit the records of all marshals who executed property tax warrants from 2003 to the present, urged municipal leaders to establish accountability procedures, and demanded that state marshals and constables reimburse taxpayers hundreds of thousands of dollars for overcharged debt.

- A tax collector may either proceed under Section 12-157 to sell real estate on which he has levied a tax warrant, or the tax collector may proceed to foreclose a tax lien on the real property under Section 12-181.

- In addition to all other remedies, Section 12-161 provides that all taxes properly assessed shall become a debt due from the person or corporation against which they are assessed and may be recovered by an action in the name of the municipality in whose favor they are assessed.

a) Use of Collection Agencies

Many municipalities hire outside collection agencies to assist with collecting delinquent taxes, which is an allowable practice. In the 2003 Session, under P.A. 03-262, the General Assembly amended Sections 36a-800, 36a-802, and 36-805 to make clear that a "consumer collection agency" may actually receive payment for property taxes from a property tax debtor on behalf of a municipality, provided that the agency maintains at least $2 million in insurance coverage and, if required by the municipality, files a bond with the municipality in an amount not exceeding the total amount of property tax to be collected.

One particularly contentious aspect of municipalities' use of collection agencies is the imposition of collection fees. The fees charged by the collection agency, which may be as high as 15% of the delinquent taxes, are automatically added by some tax collectors to the total amount due from the taxpayer upon transfer of the taxpayer's file to the collection agency. The collection agency fee is charged to the taxpayer in addition to any penalty or interest assessed by the municipality. Recently, in New Haven v. Bonner, 2003 WL 22792241 (November 10, 2003), the Superior Court disallowed such a fee. The case involved a 9% consumer collection agency fee, which was automatically charged to a taxpayer upon referral of its delinquent tax file to the agency. Exercising its equitable powers in this real estate tax foreclosure proceeding, the court held that while collection fees are not invalid per se, these fees must be "reasonable." That is, the fee must be reasonable compensation for collection activities actually performed by the collection agency. The 9% collection fee was not reasonable where the agency could not demonstrate what it did in furtherance of collection of the delinquent taxes. New Haven v. Bonner is on appeal to the Supreme Court, which recently heard oral arguments in the case. There are other cases challenging the imposition of collection agency fees currently pending. See, *e.g.*, Lawrence Mall of New Haven v. West Haven, 2004 WL 237926 (January 20, 2004) (granting taxpayer's motion for class certification to challenge imposition of a 15% collection fee on delinquent taxes); but see Lawrence Mall of New Haven v. West Haven, 2004 WL 2284310 (September 22, 2004) (denying plaintiffs' request for a temporary injunction). In the latter decision, the court disagreed with the reasoning in New Haven v. Bonner, finding that the court in that case "cited no authority and provided no analysis for its view that the reasonableness of such fees must be [governed by the amount of work performed on each individual account]." Id. at 7.

b) Recent Legislation Regarding Collection

(1) Taxes on Motor Vehicles

- Section 1 of P.A. 04-126 amends Section 12-146 to eliminate the $5.00 fee that a taxpayer who is delinquent with regard to property taxes for a motor vehicle or snowmobile may have been required to pay a tax collector. This requirement was established under Section 58 of P.A. 03-6 (June special session).

- Section 2 of P.A. 04-126 amends Section 14-33 to eliminate the $0.50 fee that a tax collector was required to pay to the Department of Motor Vehicles for each motor vehicle or snowmobile reported as a property tax delinquency. This requirement was established under Section 5 of P.A. 03-264 and Section 102 of P.A. 03-1 (June special session). Instead, effective July 1, 2004, Section 14-33 requires that each town pay an annual fee to the Department of Motor Vehicles in order to participate in the property tax collection enforcement program, under which a person's motor vehicle registration will not be renewed if the person is delinquent in property tax payments for a motor vehicle or snowmobile.

(2) Taxes Due By Members of the Armed Forces

- A municipality may not charge or collect interest on any property tax or property tax installment, for a period of one year, owed by a taxpayer who is a member of the U.S. military forces or a member of a Connecticut National Guard unit called into active duty service, provided that such taxpayers are serving in the Middle East when their property tax bills or installments become due. P.A. 03-6 (Section 42).

C. Appeals From Assessments

1. Appeal to Board of Assessment Appeals

If a taxpayer desires to contest the assessed value of his property, normally he must first take an appeal to the Board of Assessment Appeals of the town under Section 12-111. Appeals to the Board of Assessment Appeals must be taken in writing on or before February 20 (unless an extension has been granted for filing the grand list pursuant to Section 12-111, as amended by P.A. 03-269, in which case the date is extended to March 20). The written appeal (on forms supplied by the town) must include the following information: (a) name of property owner; (b) position of signer; (c) description of the property; (d) name and mailing address of person to be sent all correspondence by the Board; (e) reason for the appeal; (f) appellant's estimate of value; (g) signature of property's authorized agent; and (h) date of signature.

The Board is required to notify each appealing taxpayer not later than March 1 and not less than 7 days prior to the hearing date, of the date and time of a hearing. However, the Board may elect not to hold a hearing, and thus, in effect, deny the appeal, where the property is commercial, industrial, utility or apartment property having an assessed value greater than $500,000. A timely appeal is important, because Section 12-112 expressly provides that no relief from the doings of assessors is available unless there has been a proper appeal to the Board of Assessment Appeals; and Section 12-113 provides that the Board of Assessment Appeals has no power to reduce an assessment except through the appeal process. See P.A. 03-269 (Section 3) (allowing hearing requests to the Board of Assessment Appeals to be extended until March 20 under Section 12-111 when an assessor receives a one-month extension to file a grand list, which provision was previously contained in Section 12-117); P.A. 03-269 (Section 4) (deleting the extended grievance period provision now contained in Section 12-111 and removing a provision that allowed an additional three-month extension where a town subject to Section 7-344 failed to adopt its budget in the time prescribed).

a) The Board Hearing

The procedure before the Board of Assessment Appeals is informal. However, the Board will accept and may consider a taxpayer's appraisal. Members of the Board are laymen, most of whom have limited knowledge of valuation methods. Relief is rare for substantial properties or when sophisticated valuation analysis is required.

b) Addition of Omitted Property

If property is added to the list of a taxpayer by the assessor or revalued under Section 12-53 (which as previously indicated, might be as long as three years after the day on which the list is required to be filed), an appeal may be taken to the next session of the Board of Assessment Appeals.

2. Appeals from the Board of Assessment Appeals to the Superior Court

a) Jurisdiction and Venue

Under Section 12-117a, a taxpayer aggrieved by the action of the Board of Assessment Appeals may take an appeal to the Superior Court for the Judicial District where the property is located. In addition, under P.A. 93-225 (and subsequent acts) codified as Section 12-39l, the General Assembly established the Tax Court as a special session of the Superior Court. The Tax Court (which is located at the New Britain Superior Court in New Britain) has jurisdiction to hear, *inter alia*, any appeal from an order, decision, determination or disallowance of the Commissioner of Revenue Services. It also hears property tax appeals filed with the New Britain Superior Court and appeals that are transferred to it from the Hartford district. Other districts may transfer property tax appeals to the Tax Court because of its special expertise.

b) Time for Appeal

The appeal must be taken within two months from the date the Board of Assessment Appeals mails notice of its action on the appeal to the taxpayer. However, the limitation period for filing the appeal does not begin if the Board fails to send notice to the taxpayer's agent, as specified by the taxpayer. Trapp Falls Realty Holding Company v. City of Shelton, 29 Conn. App. 97 (1992), cert. denied, 224 Conn. 911 (1992). That case was cited with approval in Mary Catherine Development Co. v. Town of Glastonbury, 42 Conn. App. 318 (July 1996). Thus it would appear that the Board must give written notice to the person and at the address specified by the taxpayer in its written appeal to the Board in order to start the appeal time.

c) Certain Procedural Issues on Appeal

- Form 204.4 of the Connecticut Practice Book provides the suggested form of application, citation and recognizance.

- The municipality making the assessment is a necessary party. An appeal naming only the board of tax review (as the Board of Assessment Appeals was formerly known) as defendant may be amended to name the municipality as defendant under the liberal interpretation of Section 52-123 by the Supreme Court in Andover Limited Partnership I v. Board of Tax Review, 232 Conn. 392 (1995).

- Appeals by taxpayers owning separate pieces of property may not be joined in a single appeal. Purple v. Town of East Hampton, 7 CSCR 743 (June 1992). However, a taxpayer may join in a single appeal several pieces of property on the same tax list. Mueller v. Board of Tax Review, 5 Conn. L. Rptr. 204 (Oct. 1991).

- A condominium association may not bring an appeal on behalf of all unit owners. Candlewood Landing Condominium Association v. Town of New Milford, 1 Conn. Ops. 1233 (Superior Court 1995). Similarly, the court has held that individual unit owners were not estopped from bringing a property tax appeal by virtue of their condominium association's approval of the town's revaluation method. Humiston v. Southbury, 2003 WL 22206239 (September 11, 2003). Also, an association representing a planned development community does not have standing to bring a property tax appeal on behalf of individual unit owners. Whitehawk Ranch Association v. Bristol, 2003 WL 21404599 (June 9, 2003).

- If, during the pendency of the appeal, a new assessment year begins, as is commonly the case, the applicant may amend his appeal as of right to include the new tax year without appearing again before the Board of Assessment Appeals. This is true even where there has been a revaluation during the pendency of the plaintiff's appeal. Buonauto v. Waterbury, 2003 WL 23177929 (December 22, 2003). Further, the right to amend is not lost when there is new construction or improvements in the property since the year of appeal. Arnold Foods Co. v. Town of Greenwich, 5 Conn. Ops. 79 (Oct. 4, 1999). Where a taxpayer fails to amend the complaint to include new tax years, res judicata does not prevent the town assessor from increasing the value of the subject property on grand lists for the years following the court's decision. Fedus v. Colchester, 2004 WL 1050553 (April 19, 2004).

- The Superior Court conducts a trial de novo; *i.e.*, the proceedings before the Board of Assessment Appeals are not considered. Yale University v. New H Haven, 169 Conn. 454 (1975). Further, the taxpayer's appeal is not limited to issues raised on the written appeal form requesting a hearing before the Board of Assessment Appeals.

Griswold Ashland Limited Partnership v. Griswold, 2002 WL 31045991 (August 7, 2002).

- Constitutional challenges are hard. Recently, the Superior Court held that where a taxpayer alleged that the town intentionally over-assessed his waterfront property and under-assessed property in other neighborhoods to shift the tax burden in violation of Section 12-63 and the state and federal constitutions, the court found that the plaintiff should have appealed under Section 12-117a instead and granted the defendant's motion to dismiss. Toner v. Hedwell, 2004 WL 1098832 (April 29, 2004).

- Section 12-117a gives the court the power to grant such relief "as to justice and equity appertains." If the assessment is reduced by the court, the applicants shall be entitled to be reimbursed or receive a tax credit for any overpayment of taxes, "together with interest and any costs awarded by the court." The amount to which the assessment is so reduced shall continue to be the assessed value of the property on the grand list for succeeding years until the tax assessor finds that the value has increased or decreased. Taxable costs do not include the cost to the taxpayer for his appraiser's report. M. DeMatteo Construction Co. v. City of New London, 236 Conn. 719 (1996). As to interest, the Supreme Court has held that Section 12-117a does not mandate an award of interest to a successful taxpayer who has overpaid. Sears Roebuck & Co. v. Board of Tax Review, 241 Conn. 749 (1997). Without mandated interest or the cost of an appraisal report facing a municipality, the leverage of a taxpayer in settlement discussions is somewhat limited.

- The taxpayer may not limit the issues to be addressed on appeal. The Appellate Court recently held that the trial court can consider the entire property tax assessment, not just the building valuation challenged by the taxpayer (who was happy with the assessor's undervaluation of the land). National Amusements, Inc. v. East Windsor, 84 Conn. App. 473 (2004). The court may not, however, increase the taxpayer's overall assessment. Id. at 480; Konover v. West Hartford, 242 Conn. 727, 743 (1997). Furthermore, a municipality may not maintain an action for an increase in assessed value. F.W. Woolworth v. Greenwich, 44 Conn. App. 494 (1997).

- The taxpayer bears the burden of establishing that the assessor has overassessed its property. Once the taxpayer has met that burden, the court then must arrive at its own conclusion of value "by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value." Xerox Corp. v.

Board of Tax Review, 240 Conn. 192 (1997). Under the circumstances, there is no presumption in favor of the assessor's valuation. Carol Management Corp. v. Board of Tax Review of Greenwich, 228 Conn. 23 (1993); Stamford Apartments v. Stamford, 203 Conn. 586 (1987). However, the Supreme Court has held that if the taxpayer has not met its initial burden, the town has no obligation to present evidence in support of its assessment, and the court may give "controlling weight to the assessor's valuation ...." Ireland v. Wethersfield, 242 Conn. 550 (1997).

- A taxpayer may seek property tax relief due to wetlands impact under Section 22a-45 or Section 12-117a. Ress v. Suffield, 80 Conn. App. 630 (2003), cert. denied, 267 Conn. 920 (2004).

- Section 52-592, the so-called "accidental failure of suit statute," does not apply to extend the time for filing an appeal under Section 12-117a. Wlodkowski v. Durham, 2003 WL 22962425 (December 2, 2003).

- Section 12-117a provides that the pendency of an appeal will not suspend an action by a municipality to collect up to 75% of the tax assessed or up to 90% of such tax with respect to any real property for which the assessed value is $500,000 or more. Taxpayers are not required to file a protest or pay the tax under protest after an appeal is taken under Section 12-117a. Gifford v. Madison, 2004 WL 1245812 (May 20, 2004). However, payment of tax without protest before filing an appeal may destroy the taxpayer's right to a refund. Services Development Corp. v. Willington, 2003 WL 22480418 (October 14, 2003).

- Notices sent by the assessor by first class mail may play a critical role in an appeal. It has been held that an assessor may establish a presumption that he sent a notice by introducing evidence of his established mailing process, but this presumption may be rebutted by the taxpayer. Annex Young Men's Association, Inc. v. City of New Haven, 2003 WL 717183 (Conn. Super Feb. 14, 2003) (given history of litigation between the parties, the taxpayer would have been awaiting revaluation notice).

- Under Section 52-192a a plaintiff may offer to settle the case at a specified amount. If the defendant refuses and the plaintiff is ultimately awarded at least that amount, then, in addition to other statutory interest, the plaintiff receives 12% on the entire reward from the date the offer is made or, if made within 18 months of filing the complaint, from that date. This tool may be used in a tax case and, if it is, it may induce a settlement if the municipality is maintaining an unreasonable position, or it may result in a substantial payout to the taxpayer. *See, e.g.*, Yankee Gas Co. v. Meriden, 29 Conn L. Rptr. 285 (April 20, 2001), discussed below at Section III.G.

3. Section 12-119 Appeals

Section 12-119 provides taxpayers a remedy when it is claimed that property is not taxable in the municipality or that the tax was computed on an assessment that is "manifestly excessive" and could not have been arrived at except in disregard of the law. Claims under Section 12-119 are not heard by the Board of Assessment Appeals but are filed directly with the Superior Court, within one year of the date the property was "last evaluated for purposes of taxation." That date has been held to mean the October 1 assessment date. Calabrese v. Waterbury, 2003 WL 22078932 (August, 13, 2003). An action under Section 12-119 is not an alternative to an appeal from a Board of Assessment Appeals where the claim is exclusively one of overvaluation. Second Stone Ridge Cooperative Corporation v. Bridgeport, 220 Conn. 335 (1991); Cohn v. Hartford, 130 Conn. 699 (1944). Instead, there must be a claim of an illegal tax. Typically this is found in an assessment which, because it is arbitrary, discriminatory or sufficiently excessive, reflects a "disregard of duty" by the assessor. Yankee Gas Co. v. Meriden, 29 Conn. L. Rptr. 285 (April 20, 2001). Claims under Section 12-119 may be joined in a single action with an appeal from a board of tax review (now the Board of Assessment Appeals) under Section 12-117a. Harvard College v. Town of Ledyard, 32 Conn. Supp. 139 (Court of Common Pleas 1975).

The statute provides that the pendency of an appeal will not suspend an action by the municipality to collect the tax owed. With regard to jurisdiction, the Superior Court has held that a taxpayer's payment of taxes owed, without protest, prior to the return date for the appeal does not deprive the court of jurisdiction to hear the appeal under Section 12-119, provided the other jurisdictional requirements are met. Byrne v. Madison, 2004 WL 1154085 (May 7, 2004). There is contrary authority, however, and the prudent course is always to pay a disputed tax under protest. See Lebrun v. Vernon, 2004 WL 944737 (April 14, 2004) (denying relief where taxpayer voluntarily paid property taxes due, failed to appeal assessments under Section 12-119, and years later sued for reimbursement of taxes); Services Development Corp. v. Willington, 2003 WL 22480418 (October 14, 2003); Wadsworth Atheneum v. Hartford, 16 Conn. L. Rptr. 25 (October 25, 1995); Pitt v. Stamford, 117 Conn. 388 (1933); Verran Co. v. Stamford, 108 Conn. 47 (1928).

4. When Appeal Situations Arise

Generally, when a town revalues its real property, as it is required to do periodically under Section 12-62, there is a flurry of activity before the Board of Assessment Appeals. These sessions are often attended by members of the staff of the revaluation company which was involved in the revaluation process and an opportunity is provided to review the data used by the revaluation company in arriving at the revised valuation. Section 12-62(c) requires that all data used by the assessors or revaluation company must be kept on file and made available to taxpayers. Because the methods used in a revaluation may not have considered the special characteristics of a taxpayer's property, appeal opportunities may be presented. For example, recently there were a series of appeals brought under Section 12-117a by owners of small parcels of land with modest buildings situated on them, which were located near the shore in an area of Guilford dominated by many larger and more elegant buildings on larger parcels of land. The owners of the smaller parcels complained that the assessments for their properties were comparable to the assessments for the larger properties in the area.[2]

In Jupiter Realty Company v. Town of Vernon, 242 Conn. 363 (1997), the Supreme Court reversed a Superior Court decision to the effect that failure to take an appeal in a revaluation year constituted a waiver of appeal rights for the period ensuing until the next periodic revaluation. It is now clear (as it appeared to be before the doubtful Superior Court decision) that an appeal may be taken in any year.

II. VALUATION OF PROPERTY

A. General Rule

The general rule of valuation is stated in Section 12-63: "The present true and actual value of all other property [other than farm, forest and open-space land] shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof and not its value at a forced or auction sale." It has been held that the best test for determination of value is ordinarily market sales. Burritt Mutual Savings Bank v. New Britain, 146 Conn. 674 (1959).

Further, similarly-situated taxpayers must be treated equally without discrimination, such that the use of a valuation methodology for one taxpayer that varies from that used for all other taxpayers, without a reasonable justification for such unique treatment, violates equal protection and due process rights. Yankee Gas Co. v. Meriden, 29 Conn. L. Rptr. 285 (April 20, 2001).

B. Uniform Valuation of Personal Property

Section 12-63(b)(2) and (3) provides for a uniform method of valuing and depreciating personal property. Specifically, valuation must be based on cost of acquisition, including transportation and installation, less depreciation determined in accordance with separate schedules for electronic data processing equipment, business and medical testing equipment, machinery and equipment and all other tangible personal property (except livestock). The methods apply, however, only if a municipality adopts the applicable provisions. Adoption of the schedules does not prevent the assessor from adjusting the values determined thereby if he deems it appropriate, or the taxpayer from appealing such values.

[2] Three of these cases have been settled but at least one is still pending and scheduled for trial in November 2004.

C. Special Valuation Situations

1. Rental Income Real Property

For rental real estate, the comparable sales approach is the preferred method of valuation. See Carol Management Corp. v. Board of Tax Review, 278 Conn. 23, 40 (1993). Where there is insufficient data on sales of comparable property, Section 12-63b(a) mandates consideration of three methods of appraisal, to the extent applicable: "(1) Replacement cost less depreciation, plus the market value of the land, (2) the gross income multiplier method as used for similar property, and (3) capitalization of net income based on market rent for similar property." In Newbury Commons Limited Partnership v. Stamford, 226 Conn. 92 (1993), the Supreme Court affirmed the trial court's rejection of the appraisal of the city assessor who, in violation of Section 12-63b(a), based valuation of rental real estate solely on a cost method. Section 12-63b only requires that the enumerated methods be considered by the assessor and, therefore, the Appellate Court validated the use of the reproduction cost approach, which is not listed in the statute, instead of the replacement cost approach to determine the fair market value of certain property. Aetna Life Insurance Company v. Middletown, 77 Conn. App. 21 (2003).[3]

For purposes of determining the method of valuation by capitalization of net income, there are express directions contained in Section 12-63b(b), providing that "market rent" shall be "the rental income that such property would most probably command on the open market as indicated by present rentals being paid for comparable space. In determining market rent the assessor shall consider the actual rental income applicable with respect to such property under the terms of an existing contract of lease at the time of such determination." Further, the fact that a lease is between related parties does not automatically disqualify it from being considered as contract rent in determining market rent. Parrotta v. Newington, 2004 WL 1784335 (July 8, 2004).

2. Low-Income Housing

Low-income housing, even if owned by a nonprofit organization, is not eligible for a charitable exemption pursuant to Section 12-81(7), which explicitly states that government-subsidized housing and housing for persons or families of low and moderate income do not constitute a "charitable purpose" under that Section. However, Section 12-81bb permits municipalities, at their option, to provide property tax credits to owners of residential property who place long-term, binding, affordable housing deed restrictions on such residential property. Likewise, Section 8-215 allows municipalities to provide by ordinance tax abatement on housing solely for low or moderate-income persons or families, which abatement may be subject to reimbursement by the state under Section 8-216. These tax abatement statutes are discretionary and require a vote

[3] Reproduction cost is the estimated current cost to duplicate the building, using similar materials, construction standards, design, etc. Replacement cost is the estimated current cost to construct a building with equivalent utility, using modern materials, standards, design, etc. Aetna Life Insurance Company, supra, at fn 11. Courts often favor reproduction cost appraisals with relatively new construction because it is less speculative.

of the municipality's legislative body. Therefore, for most low-income housing the critical question is not whether an exemption or abatement applies, but rather what the appropriate valuation is for the property.

Section 8-216a provides that the true and actual value of property classified as low or moderate income housing under Section 8-215 and subject to governmental rent regulation,

> shall be based upon and shall not exceed the capitalized value of the net rental income of the housing project. For purposes of Sections 8-215, 8-216 and this Section, such net rental income means the gross income of the project as limited by the schedule of rents or carrying charges, less reasonable operating expenses and property taxes.

Although Section 8-216a may be interpreted to apply to property without regard to the adoption of an ordinance under Section 8-215, recent litigation demonstrates that it may not necessarily result in a substantial reduction in a low-income housing project's assessment.

In Deerfield 95 Investor Associates, LLC. v. East Lyme, 1999 WL 301099 (May 26,1999), the Superior Court held that the value of low-income housing tax credits provided under Section 42 of the Internal Revenue Code as an incentive to investors should be taken into account in determining the fair market value of federal low-income housing. The court viewed the use of government subsidies as a benefit to the owners of multi-family real estate developments rather than a "governmental restriction as to use," which would reduce the valuation of property. Likening low-income housing tax credits to attributes of real property such as zoning and location, the court stated that these tax credits also enhance the value of real property. Hence, in valuing the property at issue the court capitalized the income stream from the property (which took into account the applicable rental restrictions) and then added to this figure the present value of the tax credits received by investors. Since tax credits are intangible personal property and not subject to taxation as a separate asset, the court's inclusion of the value of the tax credits by reasoning that they enhance the value of the real property (thereby effectively taxing the credits) is subject to question (and, as a Superior Court case, is not binding precedent). Other jurisdictions are split on the question, with some holding that tax credits should not be considered in property tax assessments of low-income housing tax credit properties. See Cottonwood Affordable Housing v. Yavapai County, 205 Ariz. 427, 72 P.3d 357 (Ariz. Tax 2003), Maryville Properties v. Nelson, 83 S.W.3d 608 (Missouri App. 2002), Cascade Court Ltd. Partnership v. Noble, 105 Wash. App. 563, 20 P.3d 997 (Wash. App. 2001); Bayridge Associates Ltd. Partnership v. Department of Revenue, 321 Or. 21, 892 P.2d 1002 (Oregon Supreme Ct. 1995).

The effectiveness of Section 8-216a in limiting property valuation hinges on the capitalization rate applied to the net rental income and whether that rate should reflect commercial rates of return or the lower returns that may be expected in a low-income project. This question was recently addressed by the Superior Court in Grace

Congregate Housing Corporation v. Waterbury, 2004 WL 1789515 (July 13, 2004). The case involved a senior low-income housing project financed by HUD and owned by a nonprofit corporation. The court held that the appropriate capitalization rate was somewhere between the 11.08% advocated by the taxpayer's appraiser and the 3.84% maintained by the City. Basing the capitalization rate on the tax rate plus 50% of the mortgage interest rate, the court determined a capitalization rate of 7.24%, noting incidentally that this would produce taxes per living unit close to those which, according to the taxpayer, are paid by similar properties.

3. Deed Restrictions

Deed restrictions requiring a farm to be sold only to people directly connected with farm operations (as the result of development rights having been deeded to the State) must be taken into account in valuing a farm house and its curtilage. Cecarelli v. North Branford, 2003 WL 22332973 (September 30, 2003).

4. Submission of Rental and Expense Information

Where the assessor determines that it would be appropriate to value rental property on the basis of capitalized net income, he may, under Section 12-63c, require that the owner of the property submit annually rental and expense information applicable to the property. If an owner fails to make available such information, the owner will be subject to a penalty equal to a 10% increase in the assessed value of the real property for the assessment year in question. The Superior Court has held that the statutory requirement that the form accompanying an assessor's request for rental income information be pre-approved by the Office of Policy and Management is directory, not mandatory, such that a taxpayer may not decline to furnish this information on the grounds that the form was not approved. Spicer v. Board of Assessment Appeals, Groton, 2002 WL 31888160 (December 6, 2002).

5. Demolished Buildings

Where buildings are damaged and required to be demolished, under Section 12-64a the assessed valuation of a parcel of real property may be made on the basis of the value of the land exclusive of the value of the buildings so demolished, effective on the date the demolition is completed or, if the demolition is completed within 120 days of fire or weather-related damage, then as of the date of the damage. In Lucifora v. Bridgeport, 2003 WL 21313406 (May 8, 2003), the Superior Court held that a taxpayer whose property was damaged by a storm but did not require complete demolition was not aggrieved by the assessor's failure to revalue of the property pursuant to this provision.

6. Pollution and Environmental Hazards on Property

Connecticut appears to recognize that an environmentally hazardous condition on property may affect value by the enactment of Section 12-63e, which in effect directs assessors not to reduce the value of any property due to an environmentally hazardous condition if (a) the condition was caused by the owner or (b) a successor to the owner acquired the property after notice of the condition was filed on the land records of the town where the property is located. Under the statute, an owner will be deemed to have caused the condition if the Connecticut Department of Environmental Protection, the U.S. Environmental Protection Agency or a court has so determined.

7. Public Utility Facilities

The appropriate appraisal method to use in determining the fair market value of a public utility's facilities for tax assessment purposes is the original cost less depreciation. Yankee Gas Co. v. Meriden, 29 Conn. L. Rptr. 285 (April 20, 2001), a copy of which is included as Appendix B. This conclusion was reached after consideration of the relationship between such value and the rates that regulated utilities are allowed to charge.

8. New Construction and Improvements

Assessors may add to valuations on account of new construction or major improvements or alterations to property under Section 12-53a. A taxpayer should be advised carefully to examine the method by which the assessor has made his valuation so as to determine whether a basis for appeal exists.

9. Battle of the Appraisers

A couple of recent cases demonstrate how equally-talented appraisers, utilizing similar appraisal principles and techniques, can come up with wildly different valuations. In both Aetna Life Insurance Company v. Middletown, 77 Conn. App. 21 (2003), and United Technologies Corporation v. Town of East Windsor, 262 Conn. 11 (2002), two valuation principles were at issue. The first was how to define the highest and best use of the properties, the answer to which would determine the comparable market sales to be considered in the appraisals. Aetna claimed that its enormous corporate headquarters in Middletown should be considered a typical office building, for which it was poorly designed and would suffer in resale value. The assessor (and the court) in Aetna Life Insurance defined the use as that of a corporate headquarters, for which it was well—and expensively—suited, but for which there were no market comparables. In United Technologies Corporation, the trial court found that the highest and best use of the property was its present use by the taxpayer as a special purpose manufacturing facility. The town's appraiser found that such a limited market property had no comparable sales near the valuation date and, therefore, did not utilize the market sales approach in estimating value. Based on the income capitalization and cost approaches, this appraiser estimated the building's value at about $26 million. The taxpayer's expert appraiser, on the other hand, defined the property's highest and best use as that of "an industrial manufacturing-repair-office facility with a single user-occupant;" Id. at 25; and determined a fair market value of about $14 million under each of the market sales, income capitalization and cost approaches.

The second common principle was that divergent valuations are produced by the cost approach when, in both cases, the taxpayers' appraisers employed a replacement cost methodology and the town's experts utilized reproduction cost. In Aetna Life Insurance, the different methods produced values, respectively, of about $167 million versus $228 million. In United Technologies the values were, respectively, about $14 million versus $26 million.

In both cases the trial courts substantially sided with the towns and the Supreme Court affirmed.

III. REVALUATION OF PROPERTY

A. Purpose of Revaluation

Periodic revaluation represents an effort to provide fairness in the tax process by changing assessments to reflect current values. Were all properties to increase or decrease in valuation at the same rate, no revaluation would be necessary. Revaluation is intended to address the reality that properties appreciate or depreciate at different rates. If there are dislocations between periodic revaluation dates caused by different rates of appreciation or depreciation, there appears to be no remedy based on use of the average ratio approach. Uniroyal, Inc. v. Board of Tax Review, 182 Conn. 619 (1981). However, where a taxpayer claims to be aggrieved by a failure of a town to have revaluation performed within the prescribed period, he may seek the remedy of mandamus by which a court will direct the town to proceed with revaluation. Chamber of Commerce of Greater Waterbury, Inc. v. Murphy, 179 Conn. 712 (1980).

B. Schedule of Revaluations

Formerly Section 12-62 required that all real estate in a town be revalued for assessment purposes no later than ten years following the immediate prior revaluation. Public Act 96-218 amended Section 12-62 to require each municipality to implement a revaluation every four years and a physical inspection every twelve years. In the 2004 Session, under Section 33 of P.A. 04-2 (May special session), a copy of which is included as Appendix L, the General Assembly amended Section 12-62(a)(3) and (b), applicable to assessment years commencing on or after October 1, 2003, to require that revaluations now be conducted every 5 years and physical inspections be made at any time from June 27, 1997 to October 1, 2009 and thereafter every ten years. In so providing, the amendment removes the schedule of revaluations for each town previously set forth under Section 12-62(b). Further, the amendment requires a town that last effected revaluation by statistical means (*i.e.,* using a statistical update of assessments) to effect its next revaluation by physical inspection, provided that in no case will physical inspection be required more than once every ten years. Any town that last effected revaluation by physical inspection may effect its next revaluation by statistical means.

In addition, Section 32 of P.A. 04-2 (May special session) allows towns that are required to conduct revaluations for 2003, 2004 or 2005 to delay the revaluation until October 1, 2006 if the delay is approved by the town's legislative body and certain additional requirements are met. Approximately 77% of towns may be eligible to defer revaluations under this provision.

C. Assessment Between Revaluation Dates

When real estate first becomes subject to tax between revaluation dates, the assessed value of the property as of the immediate prior revaluation date is the basis for the current assessment. In Newbury Commons Limited Partnership v. Stamford, 226 Conn. 92 (1993), the Connecticut Supreme Court affirmed a decision in favor of the taxpayer whose appraiser had trended back a valuation of the property in 1991 (the year of the trial) to 1981 (the year of the last prior revaluation) by means of sales/assessment ratios, records of which are maintained by OPM. Courts have interpreted the broad powers of the assessor under Section 12-55 to include the right to increase or decrease real property assessments between revaluation dates, although taxpayers enjoy no right to demand such revaluations. DeSena v. Waterbury, 249 Conn. 63 (1999); Matzul v. Montville, 70 Conn. App. 442 (2002), cert. denied, 261 Conn. 923 (2002); Fedus v. Colchester, 2004 WL 1050553 (April 19, 2004); Wee Burn Country Club v. Norwalk, 2004 WL 1098437 (April 26, 2004). However, by the provisions of Section 12-63d (added by Public Act 88-321), the assessor may not make a change in the assessed value of a parcel of real property as compared to the immediate preceding assessment list "solely on the basis of the sale price of such parcel in any sale or transfer of such parcel."

D. Phase-in of Increase in Real Estate Assessments

In rising real estate markets, such as those experienced during the 1980s, there was pressure on the General Assembly to provide some relief from sudden increases in property taxes which might result from increases in valuation. The response was an Act that provided for graduated increases in assessed values of real property, if the legislative body of the town so voted. The phase-in statute was held not to violate the equal protection clauses of the U.S. and Connecticut Constitutions. United Illuminating Co. v. New Haven, 179 Connecticut 627 (1980). The phase-in authority is now contained in Sections 12-62a(e) and 12-62c.

E. Residential Property Tax Credits

Under Section 12-62d, commencing October 1, 1989, where there has been a general revaluation for assessment years a municipality may adopt a program for residential property tax relief under a formula spelled out in the statute. However, the same municipality may not also elect phase-in of assessment increases under Section 12-62c.

F. Personal Property Revaluation

Under Section 12-55, an assessor may (but is not required to) revalue personal property in any year between real estate revaluations. Stop & Shop Companies, Inc. v. East Haven, 210 Conn. 233 (1989). In fact, in most towns there are annual revaluations to reflect additions and depreciation. This produces an anomalous situation: real property having a value of $100,000 added to the grand list of 2004 would have its value "rolled back" to the last year of revaluation, say 1999, when its value was $60,000, whereas personal property having a value of $100,000 added to the 2004 list would be valued at $100,000.

G. Use of Outside Audit and Appraisal Services

In many instances municipalities contract with audit and appraisal firms to conduct tax audits and review personal property declaration forms to determine whether there is omitted or undervalued personal property. Courts have held that while the use of outside appraisal services to provide information and advice regarding property valuation is allowable, the ultimate judgment as to valuation must be made by the assessor. Yankee Gas Co. v. Meriden, 29 Conn L. Rptr. 285 (April 20, 2001), a copy of which is included as Appendix B; see also Fondachelli Inc. v. Bridgeport, 2002 WL 31234979 (August 30, 2002) (upholding the city's use of appraisal services where the assessor made an independent analysis of data supplied to the appraisal service).

One troubling aspect of municipalities' use of outside appraisal services has been the practice of providing incentive compensation based on the amount of additional tax revenue generated by the audits. Yankee Gas represents an extreme example of this problem. The basis for this case was the retention by the Meriden assessor of an outside company to audit a number of city taxpayers, including the Yankee Gas Company and the Connecticut Light and Power Company ("CL&P"). The city's contract with the audit firm provided that its compensation would be a percentage of the additional tax revenues, including interest and penalties, collected by the city as the result of its audits. Further, the city could not compromise any claim for increased taxes without permitting the auditor to participate in the negotiations. The firm then hired a consultant with expertise in the utilities business to value the taxpayers' property on a reproduction cost basis—not to identify omitted property or to determine fair market value. As a result, the 1991 assessment of the personal property of Yankee Gas increased from $8,664,610 to $25,330,230; CL&P's assessment went from $13,439,680 to $25,811,860. The assessor accepted the auditor's valuations without independent analysis and, for succeeding years, merely multiplied the taxpayers' reported valuations each year by the 1991 differential factors.

The court found every possible violation with the assessor's approach. The valuation company was not certified as a revaluation company under Section 12-2c and, therefore, its retention was unlawful. The assessor's unquestioned reliance on the auditor's work amounted to an abdication of his responsibilities to audit and value the taxpayers' properties. The assessor changed the methodology of valuing the taxpayers' properties from the methods originally used by the assessor, in violation of the provisions of Section 12-53(c) as amended in 1999, which the court concluded should have retroactive effect. The assessor's use of a valuation methodology not applied to other taxpayers violated their constitutional rights to equal protection of the law, and the lack of impartiality in the assessment process violated their due process rights. Although the court strongly suggested that the contingent fee arrangement with the auditor in this case violated public policy, it declined to enter a declaratory ruling because the contract was no longer in effect.

The court ultimately threw out these appraisals and accepted the taxpayers reported figures. The court also rejected the city's 1999 appraisals by a different valuation firm. For Yankee Gas, this firm valued its property by the stock and debt approach, which was fatally flawed because it took into account "the value of a going business including its intangible assets such as good will and its work force." Yankee Gas at 292. For CL&P, the firm employed four valuation methodologies, obtained values ranging from $23,000,000 to $72,000,000, and averaged them. Since the appraiser could not provide the court with any authority "either in the law or in assessment normalcy, for this unusual mathematical approach [to assessment]," it rejected this conclusion also. Id. at 292. Meriden was ordered to pay an aggregate amount of about $13,400,000 in tax refunds and interest (at 8%) for the period 1991 through 1999; it was also ordered to pay an additional $2,200,000 in offer of judgment interest.

H. Recent Legislation and Proposed Regulations Regarding Revaluation

1. Report on Revaluation Policy

Public Act 04-2 (May special session) requires OPM to examine the policies and regulations relating to revaluation of property under Section 12-62 (as amended by this Act) and to submit a report to the General Assembly's Finance, Revenue and Bonding Committee on or before January 1, 2005.

2. Revaluation Testing Standards

A notice of intent to amend regulations was published in the Connecticut Law Journal on August 24, 2004 (erratum published on August 31, 2004) with respect to Section 12-62i-3(b) of the Regulations of Connecticut State Agencies. This regulation relates to OPM's establishment of performance-based revaluation testing standards and certification of revaluations performed by towns. The proposed amendment removes the requirement that assessors perform the unsold property test (a statistical test of assessment uniformity) for all real property, but still requires that the calculation be performed for each real property class in which there are 15 or more market sales. Currently, the unsold property test is one of five tests that assessors are required to perform regarding their assessments prior to implementing a revaluation.

3. Section 12-55 Rearranged

Section 1 of P.A. 03-269, a copy of which is included as Appendix E, rearranges Section 12-55 to present information in a more logical manner, remove the $5.00 fine on assessors for failure to comply with the section, and make certain technical corrections.

4. Revaluation Exemption Review Committee

Various changes have been made to Section 12-62k, which governs the duties of the Revaluation Exemption Review Committee in determining whether a town's certification of exemption from the requirement to conduct a revaluation complies with statutory criteria. P.A. 03-269 (Sections 7, 8 and 9).

IV. Property Tax Relief and Abatement

A. Agreements to Fix Assessments

With the approval of its legislative body, a municipality may enter into agreements to fix assessments for real property taxes.

- Pursuant to Section 12-65, a housing project of more than three units located in a redevelopment area, community development area or neighborhood strategy area may have its assessment fixed by agreement at not less than the assessment immediately prior to improvements for a period not to exceed 15 years from the date of completion of the project or 16 years from the date of the agreement, whichever is less. A State Referee must approve the agreement as "fair and reasonable" under Section 12-65a.

- Other types of real estate development may also be the subject of assessment-fixing agreements under Section 12-65b. The period of time for which the assessment may be fixed depends on the cost of the project. The maximum period for fixing an assessment is seven years for projects where the cost of improvements is not less that $3 million. A project is eligible if the improvements are for (i) office use; (ii) retail use; (iii) permanent residential use; (iv) transient residential use; (v) manufacturing use; (vi) warehouse, storage or distribution use; (vii) structured multilevel parking use necessary in connection with a mass transit system; (viii) information technology; (ix) recreation facilities; or (x) transportation facilities.

B. Agreements to Defer Assessment Increases

Under Section 12-65d a municipality may designate the municipality, or a part thereof, as a "rehabilitation area" where increased assessments attributable to rehabilitation or new construction may be deferred. Under Section 12-65e the assessment may be fixed by agreement during the period of construction (but not to exceed seven years) and then the increase in assessment attributable to the construction may be phased-in over a period not to exceed eleven years at the rate of 10% per year after the first year following completion.

C. Exempt or Partially Exempt "Development Property"

"Development Property" may be wholly exempt under Section 7-498 for a period up to 20 years. Under this statute, a municipality may enter into an agreement with a developer for payments in lieu of taxes or for payment of a part of taxes otherwise due. Section 7-498 is part of the City and Town Development Act (Ch. 114 of the General Statutes) which generally allows municipalities to acquire property, real or personal, and sell it to developers for improvement.

D. Agreements in Regard to Personal Property

Under Section 12-65h a municipality may enter into an agreement with the owner or lessee of a "manufacturing facility" to fix the assessment of personal property located in the facility for a maximum period of seven years when the increase in assessed value of the personal property is not less than $3 million.

E. Municipalities' Authority to Abate Taxes

- Low Income Housing. Section 12-81bb permits municipalities to provide property tax credits to owners of residential property who place long-term, binding affordable housing deed restrictions on such residential property. Likewise, Section 8-215 allows municipalities to provide, by ordinance, tax abatement of property taxes, in whole or in part, on any housing solely for low or moderate-income persons or families, which abatement shall be used for one of the purposes enumerated in the statute.

- Poverty. Section 12-124 allows the selectmen of towns, the mayor and aldermen of cities, the warden and burgesses of boroughs and the committees of other communities to abate taxes and/or interest assessed on delinquent taxes for "persons as are poor and unable to pay the same or upon railroad companies in bankruptcy reorganization." The determination as to what constitutes inability to pay is a matter of local discretion.

- Primary Residence Taxed in Excess of 8% of Owner's Income. Section 12-124a allows municipalities to abate real property taxes with regard to any residential dwelling occupied as the owner's primary residence, to the extent that the property taxes exceed 8% of the occupant's total income. A town's legislative body or board of selectmen must approve the abatement. Application for this abatement must be made no later than 30 days preceding the property tax due date. Where an abatement is granted under this section, the owner must deliver an agreement to reimburse the municipality in the amount of the taxes abated, with interest at 6% per annum, which will constitute a lien on the real property that will be valid until paid. This lien will become due and payable in full upon the sale or transfer of such real property or upon the death of the owner.

- Corporation. Section 12-125 allows real or personal property tax abatement for a corporation carrying on business in this state that is poor and unable to pay the taxes, if the "corporation has applied for a working-capital loan from one or more agencies of the United States and if the amount of taxes due to such municipality constitutes a bar or a handicap to the granting of such loan." The abatement under this section must be granted by selectmen of a town not consolidated with a city or borough, the common council or mayor and board of aldermen if a city, the warden and burgesses if a borough, or the governing board of any other municipality, and must be approved by OPM.

- Waiver of Interest. Under Section 12-145, a tax collector may waive the interest from a property tax delinquency if the tax collector and assessor jointly agree that the delinquency is attributable to an error made by either of them and is not the result of any failure on the taxpayer's part. Also, a municipality's legislative body may waive all or a portion of the interest payable by a taxpayer who has received compensation as a crime victim (under Chapter 968 of the Connecticut General Statutes), pursuant to Section 12-146.

- Miscellaneous. Sections 12-81m through 12-81bb give municipalities the option of providing varying degrees of tax abatement to certain entities and individuals, ranging from dairy farms to surviving spouses of police officers. For example, Section 12-81t permits a municipality to grant up to 100% tax abatements for information technology personal property and Section 12-81u allows a municipality to grant up to 100% tax abatements for real or personal property of any communications establishment.

V. Property Exempt from Taxation

There are 75 subsections naming specific property tax exemptions under Section 12-81, ranging from property belonging to agricultural or horticultural societies to airport improvements. Recent case law and legislative developments relating to certain of these exemptions are summarized below.

A. Exemption for New Machinery and Equipment Used For Manufacturing and Biotechnology

1. Eligibility and Procedural Requirements

Section 12-81(72) provides a 100% exemption for new and newly-acquired machinery and equipment. (Under Section 12-94b, the State of Connecticut reimburses the municipality for 80% of the taxes lost.) The exemption applies to the five full assessment years following the assessment year in which such machinery or equipment is acquired. "Machinery" and "equipment" mean tangible personal property which is installed in a manufacturing facility, claimed either as five-year property or seven-year property on the owner's federal income tax return, and the predominant use of which is for manufacturing, processing or fabricating; for research and development, including experimental or laboratory research and development, design or engineering directly related to manufacturing; for the significant servicing, overhauling or rebuilding of machinery and equipment for industrial use or the significant overhauling or rebuilding of other products on a factory basis; for measuring or testing or for metal finishing; or used in the production of motion pictures, video and sound recordings.

The statute explicitly states that machinery and equipment acquired on or after July 1, 1996 and used in connection with biotechnology qualify for the exemption. For purposes of this section, "biotechnology" means the application of technologies, including recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics and genetic engineering, biological cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products. Section 12-81(72)(A).

Pursuant to Section 12-81(72)(B), to claim this exemption a person owning qualifying machinery and equipment as of October 1 of any year must file annually by November 1 a list of such machinery or equipment together with written application claiming such exemption on a Form M-65 with the assessor or board of assessors in the municipality where the property is located. Failure to file the form is deemed to constitute a waiver of the right to exemption unless an extension of time is allowed under Section 12-81k, pursuant to which the assessor or board of assessors may allow an extension of time to file the claim until December 15 upon payment of a required late filing fee.

In addition, Section 10 of P.A. 03-269, a copy of which is included as Appendix F, adds a new provision allowing a municipality's legislative body to grant a filing date extension to a person claiming a property tax exemption under Sections 12-81(59), (60), (70), (72), or (74), who has failed to file an exemption claim with the assessor or board of assessors by November 1 and has further failed to apply for a 45-day extension under Section 12-81k. The municipality may grant a filing extension to a person claiming one of these exemptions upon request and under criteria established by the municipality, which may include: allowing for any hardship experienced by the claimant accounting for the failure to file the claim for exemption or extension, and whether the exemption would provide a net benefit to the economic development of the municipality. In granting an extension under this provision, the municipality foregoes any payment in lieu of tax that might otherwise have been made under Chapter 203 of the General Statutes (Property Tax Assessment). This new provision was effective from passage and is applicable to any assessment year.

It is important to note that a person claiming exemption under Section 12-81(72) is not eligible to claim exemption under 12-81(60) or (70) for the same machinery or equipment. Also, the claim for exemption may be denied if the claimant is delinquent with respect to payment of property tax or corporation business tax. The Section 12-81(72) exemption may not be claimed for machinery or equipment transferred to a related business, or from a lessor to a lessee, except to the extent that the transferor could have continued to claim the exemption.

Finally, the taxpayer claiming the exemption must remain in business and not move out of state for at least five years after the last assessment year in which the exemption was received, or it must pay the taxes saved. This result is accomplished in a curiously circuitous fashion. Pursuant to Section 12-81(72)(C), the state, municipality, and district hold a security interest in any machinery or equipment exempt from taxation pursuant to this subsection, in an amount equal to the tax revenue reimbursed or lost as a result of the exemption. The security interest is subordinate to any purchase money security interest and shall be enforceable against the claimant for five years after the last assessment year in which the exemption was received in any case in which such person ceases all manufacturing or biotechnology operations or moves such manufacturing or biotechnology operations outside of the state. Upon receiving notice that the taxpayer's operations have ceased or moved out of the state, the state shall have a lien upon all (presumably) the machinery or equipment situated in this state and owned by the taxpayer. In addition to the right to foreclose on the taxpayer's property to recover the tax, OPM may request the Attorney General to bring a civil action for the sum due.

For additional information about this exemption, refer to the OPM publication entitled *Guidelines for New Manufacturing Machinery and Equipment Exemption Program* (effective for the October 1, 2003 grand list), a copy of which is included as Appendix C.

2. Recent Developments Related to the Exemption for New Machinery and Equipment

- Machinery and equipment purchased from an affiliate of a corporate taxpayer (*i.e.*, a majority shareholder of the taxpayer, who owned 100% of seller) have been held by the Supreme Court to be ineligible for the property tax exemption for newly acquired property. Lombardo's Ravioli Kitchen, Inc. v. Ryan, 268 Conn. 222 (2004).

- The exemption for manufacturing machinery and equipment does not apply to property used in "the presorting, sorting, coding, folding, stuffing or delivery of direct or indirect mail distribution services," effective as of the October 1, 2002 assessment year. P.A. 03-6 (Section 53), a copy of which is included as Appendix H. In addition, "processing" is redefined to mean "the physical application of the materials and labor in a manufacturing process."

- Sections 1 and 2 of P. A. 04-72, a copy of which is included as Appendix J, amend Sections 12-81(72)(A) and (B), effective May 10, 2004, to clarify that machinery and equipment must actually be claimed on a federal income tax return as five-year or seven-year property to be eligible for property tax exemption and, upon a request from OPM, the person claiming the exemption for such property must submit a copy of the applicable tax return and its accompanying schedules to OPM.

B. Exemptions for Manufacturing and Service Facilities in a Distressed Municipality, and Certain Machinery and Equipment

Section 12-81(59) provides an exemption for a manufacturing facility (defined under Section 32-9p)[4] acquired, constructed, substantially renovated or expanded in a distressed municipality, targeted investment community or enterprise zone, for which an eligibility certificate has been issued by the Department of Economic and Community Development, and any manufacturing plant designated by the Commissioner of Economic Development. The statute allows an exemption of up to 80% of valuation for the five full assessment years following the assessment year in which the acquisition, construction, renovation or expansion of the manufacturing facility is completed. However, a manufacturing facility having a standard industrial classification code of 2833 or 2834 and having at least 1,000 full-time employees is eligible to have the assessment period extended for five additional years upon approval of the Commissioner and subject to certain requirements. In addition, the statute provides exemptions of 40% to 80% of valuation, depending on the amount of investment in the facility, for five full assessment years for certain service facilities (defined under Section 32-9p) for which an eligibility certificate has been issued by the Department of Economic and Community Development. This exemption for service facilities may be extended for an additional five years if certain conditions are met. To claim this exemption, the taxpayer must annually file a written application with the assessor or board of assessors in the distressed municipality, targeted investment community or enterprise zone in which the manufacturing facility or service facility is located on or before November 1. The consequences of late filing, availability of the 45-day extension and ability of the municipality to further extend the filing deadline noted in Section V(A)(1) above apply to this exemption as well.

Section 12-81(60) provides a similar exemption for certain machinery and equipment in a manufacturing facility or service facility that has qualified for an exemption under Section 12-81(59), provided that the machinery or equipment represents an addition to the grand list of the municipality. The 12-81(60) exemption is contingent on the manufacturing facility or service facility continuing to qualify for an exemption under Section 12-81(59), and it terminates for the assessment year following the end of a facility's qualification under 12-81(59). The same annual filing requirement noted above applies to this exemption.

The definition of the machinery and equipment eligible for this exemption is substantially broader than that applicable to Section 12-81(72), which may also apply. Since the latter is a 100% exemption, the taxpayer should list all qualifying machinery and equipment on its application under that Section and the balance on its Section 12-81(60) application.

[4] This definition is extremely broad and includes many different types of businesses, which vary with their locations. For example, a facility in a "designated entertainment district" qualifies if it is used for the provision of live entertainment for stage or broadcast, including support services such as stage and screen writers. Section 32-9p(d)(1)(c).

The State of Connecticut reimburses municipalities 50% of the taxes lost under Sections 12-81(59) and (60), pursuant to Section 32-9s.

C. Exemption for Machinery and Equipment Acquired in a Technological Upgrading of the Manufacturing Process

Section 12-81(70) allows an exemption for machinery and equipment acquired as part of a technological upgrading of a manufacturing process. This subsection provides an exemption of 50% of valuation in each of the five full assessment years following the assessment year in which such machinery and equipment is acquired. (Under Section 32-9s, the State of Connecticut reimburses municipalities 50% of the taxes lost). The exemption applies specifically to new machinery and equipment used directly in the manufacturing of goods or products and acquired through purchase by any business organization or any affiliate of such business organization as part of a technological upgrading of the manufacturing process at a location in a distressed municipality, targeted investment community, or enterprise zone, for which an eligibility certificate has been issued by the Department of Economic and Community Development. The business organization must: (i) be engaged in the manufacturing, processing or assembling of raw materials, parts or manufactured products, (ii) have been in continuous operation in the state for at least five years prior to claiming the exemption, (iii) have had gross receipts less than $20 million in the year prior to claiming the exemption, including receipts of any affiliates of the business organization, and (iv) have incurred costs in acquiring such machinery and equipment not less than the greater of $200,000 or 200% of the business organization's and affiliate's average expenditure for the acquisition of machinery and equipment used directly in the manufacturing of goods or products at the location in the distressed municipality, targeted investment community or enterprise zone during the three years prior to claiming the exemption. A taxpayer is not eligible to receive this exemption if it is currently receiving assistance under Sections 12-81(59) and (60), and no person may receive this exemption for eligible machinery or equipment at each location in a distressed municipality, targeted investment community or enterprise zone more than once in any continuous five-year period.

In order to claim this exemption, the taxpayer must annually file, on or before November 1, a written application with the assessor or board of assessors in the distressed municipality, targeted investment community or enterprise zone in which the business organization is located. The consequences of late filing, availability of the 45-day extension and ability of the municipality to further extend the filing deadline noted in Section V(A)(1) above apply to this exemption. Similar to the exemption under Section 12-81(72) discussed above, the state, municipality and district will hold a security interest in the machinery and equipment covered by this exemption in the amount of tax revenue reimbursed or lost, which will be enforceable in any case in which the business organization ceases all business operations or moves its business operations entirely out of the state within five years after the last assessment year for which the exemption was claimed.

D. Charitable Exemption

Although different statutes provide specific exemptions for certain types of charitable organizations, such as religious organizations, hospitals and certain colleges, the "generic" charitable exemption is found in Section 12-81(7). Section 12-81(7) provides property tax exemption for "...[t]he real property of, or held in trust for, a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes or for two or more such purposes and used exclusively for carrying out one or more of such purposes and the personal property of, or held in trust for, any such corporation, provided (A) any officer, member or employee thereof does not receive or at any future time shall not receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiary of its strictly charitable purposes, ..." This exemption explicitly excludes housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income.

The courts have indicated that federal tax-exempt status is a necessary but not sufficient condition for property tax exemption, and that a qualifying organization must have a substantial amount of public support (<u>but see</u> discussion of <u>Isaiah 61:1</u> below). Further, Section 12-81b allows a municipality to, by ordinance, make an exemption granted under Sections 12-81(7) through (16) effective as of the date of acquisition of the property to which the exemption applies. The Supreme Court recently held that where a town has enacted an ordinance pursuant to this section, an organization that receives a charitable exemption is responsible for paying property taxes which accrued during the assessment year (October 1 through September 30) prior to its acquisition of the property, despite the fact that payment of the tax was not due until after the acquisition date. (The Court found that the customary method of allocating taxes between buyer and seller in real estate transactions was irrelevant.) <u>Interlude, Inc. v. Skurat</u>, 266 Conn. 130 (2003).

Assessors have become extremely aggressive recently in challenging charitable exemptions, often on one of two theories: the claim that the property owned by the nonprofit organization is not used exclusively for charitable purposes and/or the claim that the receipt of rental income by the organization was fatal to the exemption.

1. Exclusive Use

Note that to be exempt under Section 12-81(7), the corporation in question must be organized "exclusively" for one of the exempt purposes and also the property in question must be "used exclusively" for carrying out one or more of such purposes. Problems may arise in this area when a charitable organization owns real property and uses or leases a portion of it for a non-exempt purpose. Section 12-88 expressly denies the exemption where any part of real property is "leased, rented or otherwise used" for non-exempt purposes. However, an organization may claim exemption for the portion of a lot or building actually used for exempt purposes.

Recently, in May 2004 the Appellate Court held that the residence of an organization's executive director on the premises of the organization's headquarters disqualified the property from the charitable exemption. The court determined that the executive director's residence on the premises facilitated a more efficient performance of her duties but was not essential to the organization's charitable purpose and, therefore, the property was not used *exclusively* for charitable purposes. Promoting Enduring Peace, Inc. v. Milford, 83 Conn. App. 124 (2004).

With respect to property used for educational purposes, it is not necessary that the real or personal property be used for instruction; the exemption extends to all property of the corporation, the use of which is incidental to education, such as campuses and playing fields. Arnold College v. Milford, 144 Conn. 206 (1957). Perhaps the broadest reach of that principle was applied to the Harvard boat house and related facilities in Red Top, Inc. v. Board of Tax Review, 181 Conn. 344 (1980).

Related to the exemption under Section 12-81(7) is the exemption under Section 12-81(58), for any real or personal property "leased to a charitable, religious or non-profit organization, exempt from taxation for federal income tax purposes." That section requires that such property be used exclusively for the purposes of such charitable, religious or non-profit organization, as in the case of property owned by such a corporation. However, the exemption is permitted only when authorized by ordinance of the municipality, which appears to be a rare event.

2. Receipt of Rent

In Fanny J. Crosby Memorial, Inc. v. Bridgeport, 262 Conn. 213 (2002), the Supreme Court held that a nonprofit organization's authorization in its bylaws to collect rent, and the actual collection of rent from a handful of elderly residents on its property, precluded tax-exempt status under the charitable exemption, notwithstanding the fact that the property was primarily used for a soup kitchen, a substance abuse treatment program, and sleeping quarters for the homeless. In another case, decided shortly before Fanny J. Crosby, the Superior Court held that caretaker services provided in lieu of rent by a resident caretaker living on a Girl Scout camp did not constitute "rental income" such as to cause a loss of the organization's charitable exemption. Girl Scouts, CT Trails Council, Inc. v. East Haven, 47 Conn. Supp. 550 (2002).

In Isaiah 61:1, Inc. v. Bridgeport, 270 Conn. 69 (2004), a copy of which is included as Appendix A, the Supreme Court put to rest a long-standing misconception among some assessors and trial courts that the receipt of rental income in connection with property owned by a tax-exempt organization destroys the tax exemption of such property. The Supreme Court is not without some responsibility for this view. Oft quoted are these words from United Church of Christ v. West Hartford, 206 Conn. 711 (1988), as appearing in Fanny J. Crosby, supra, at 220-221:

> Under our statutes, there are three requirements for a tax exemption. The property must belong to or be held in a trust for an organization exempt from taxation under the provisions of. . .Section 12-81; it must be held for one of the

purposes stated in that statute's list of exemptions; and *it must produce no rent, profits or income.* (Emphasis in original.)

Isaiah 61:1 carefully reviews the Supreme Court's most important decisions on this issue and appropriately reveals that they have consistently followed several principles, *not including* an absolute prohibition on tax exempt property producing no rent, profits or income. These principles are the following: (1) the rental of property does not necessarily defeat its tax exemption as long as it is used exclusively for carrying out the charitable purposes of its owner; (2) for the property to be exempt, the charitable organization must make it less likely that the individuals it services will become burdens on society and more likely that they will become useful citizens; and (3) housing for low or moderate income individuals is not tax-exempt.

Based on these principles the Supreme Court affirmed the lower court's decision and held that a halfway house that provided housing for ex-felons and was almost entirely subsidized by the state did not lose its charitable exemption by charging fees to occupants who had become employed. Although such fees, as well as funds provided by the State Department of Correction, paid for a great number of services in addition to housing, even if they were characterized as "rent" this would not affect the facility's exemption because the rent is used solely in furtherance of the organization's charitable purposes. Hence the Court reaffirmed the principle articulated in Hartford Hospital v. Hartford, 160 Conn. 370 (1971), that "[t]he determining factor is the exclusive use of the property for hospital purposes. The distinction is not between nonrental and rental but between use exclusively for hospital purposes and nonhospital use." Id. at 80.

One other important principle about this case is striking. Prior case law has suggested that receipt of substantial public support may be necessary to qualify for the charitable exemption (and some assessors have raised the question whether State-funded agencies should be entitled to exemption). The operations of Isaiah 61:1, however, were funded 90% by the Department of Corrections, 9% by the inmates, and 1% by private donations. (Lower court opinion at 47 Conn.Supp. 520, 522.) This paucity of private support was not addressed by the trial court or the Supreme Court suggesting, perhaps, that its importance to the charitable exemption has been eroded.

3. Amendment of Section 12-81(7)

As mentioned above, the last sentence of Section 12-81(7) has for decades barred from that exemption "housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income. . ." Because of assessor challenges such as those seen in Fanny J. Crosby and Isaiah 61:1, a number of nonprofit agencies became concerned that this limitation might be used to deny exemption for facilities that were not intended to be brought within its scope. Accordingly, legislation was introduced in the 2003 Session and the General Assembly amended Section 12-81(7), under Section 1 of P.A. 03-270, a copy of which is included as Appendix G, to extend the charitable exemption to real property used for temporary housing that belongs to, or is held in trust for, any corporation organized exclusively for charitable purposes that is exempt from federal income taxes, the primary usage of which is as one or more of the following: an orphanage, a drug or alcohol treatment or rehabilitation facility, housing for homeless, retarded or mentally or physically handicapped individuals, or for battered or abused women and children, housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or judicial branch, and short-term housing operated by a charitable organization where the average length of stay is less than six months. The exemption applies whether or not the temporary housing is subsidized in whole or in part by federal, state or local government and whether or not the corporation charges occupants rents or fees. This amendment is applicable to assessment years on or after October 1, 2002.

4. Nonprofit Nursing Homes and Residential Care Homes.

Subsection (75) was added to the list of exemptions under Section 12-81, effective with the October 1, 2000 Grand List. Under this subsection, the real and personal property of nursing homes and residential care homes licensed under Section 19a-490(c) and exempt from federal income tax under §501(c)(3) of the Internal Revenue Code is exempt from property tax, except for any such property that was taxable on the Grand List of October 1, 1999 or was, on June 1, 2000, subject to a time-limited written agreement with a municipality regarding taxes.

E. Forest Land and Farm Exemptions

In Carmel Hollow Associates Limited Partnership v. Bethlehem, 269 Conn. 120 (2004), the Supreme Court held that a municipal tax assessor does not have the authority to override the state forester's designation of property as forest land pursuant to Section 12-107d. See Williams v. Litchfield, 2004 WL 1558056 (2004) (applying Carmel Hollow to hold that plaintiff's land should have been assessed as forest land). However, in the 2004 Session, in Section 3 of P.A. 04-115, the General Assembly amended Section 12-107d to provide that assessors rather than state foresters are responsible for canceling the classification of land as forest land on and after July 1, 2004. When terminating such a classification, the assessor must issue a cancellation notice to the landowner and the assessor of any other municipality in which the land is classified as forest land. In addition, a new reporting requirement is imposed on assessors: they must submit a report to the state forester each June regarding land in their towns classified as forest land.

In addition to bolstering the assessor's authority, this Act makes significant structural changes to the process by which land may be classified as forest land. Sections 2 and 3 of P.A. 04-115 amend Sections 12-107b and 12-107d to eliminate the requirement that landowners apply to the state forester or that he render an opinion on the number and density of trees and their condition, and instead require certified foresters to evaluate and attest to the qualification of land proposed for classification as forest land, effective for assessment years on or after October 1, 2004. Now, a landowner seeking classification as forest land must employ a certified forester to examine the land, after which examination the certified forester will issue a report to the landowner if the property conforms to the standards established by the state forester, including the certified forester's signed, sworn statement to such effect. A landowner's application to the assessor for classification of land as forest land (Form M-39) must be accompanied by a copy of this report. A landowner or municipality may appeal to the state forester to review the certified forester's findings within 30 days after the report is issued, after which the state forester has 60 days to issue findings with regard to the appeal. The Act requires the Department of Environmental Protection to adopt accompanying regulations regarding forest stocking, distribution and condition standards, and procedures for certified foresters to evaluate land proposed for classification as forest land. A list of certified foresters is available on the Department of Environmental Protection's website.

Lastly, Section 12-91 has been amended to allow a municipality, pending the approval of its legislative body, to provide a property tax exemption of up to $100,000 for a farm building other than a residence, which is used "actually and exclusively" in farming. See P.A. 03-234 (Section 1), effective July 1, 2003. A farmer must be approved for a farm machinery exemption in order to qualify for this exemption.

F. Recent Developments Relating to Other Property Tax Exemptions

1. Totally Disabled Persons

- Section 76 of P.A. 04-2 (May special session) reinstates the $1,000 exemption for totally disabled persons under Section 12-81(55), as of the October 1, 2003 assessment date. This exemption had been suspended by Section 40 of P.A. 03-6 (June special session).

2. Veterans

- Section 1 of Public Act 04-40 introduces a new provision to allow a veteran who moves from one town to another but fails to file exemption eligibility in the new town within the time prescribed by Section 12-93 to still receive an exemption for the year. The new provision facilitates the portability of property tax benefits for veterans by requiring the assessor to issue certificates of exemption entitlement to veterans qualifying for exemption. Presentation of the certificate in another municipality establishes the taxpayer's right to the exemption, provided eligibility requirements are met. This provision is applicable to assessment years commencing on or after October 1, 2004.

- Under the local-option additional veterans' exemption program, effective for the October 1, 2003 assessment year, a town may choose to exempt up to 10% of a qualified claimant's property assessment pursuant to Section 12-81f, as amended by Section 1 of P.A. 03-44, if approved by the town's legislative body. In addition, this amendment allows a municipality's legislative body to increase the income limits for this additional exemption program by up to $25,000.

- Effective for the October 1, 2003 assessment year, Public Act 03-85 revises Section 27-103 to adopt (with certain exceptions) the federal definition of periods of war, service during which determines a person's eligibility for the property tax exemption for veterans under Section 12-81(19). A member of the military serving at least 90 days on active duty after August 2, 1990 is eligible for an exemption upon filing necessary documentation. Many Connecticut residents who were previously ineligible for an exemption now qualify.

- The motor vehicles owned by Connecticut residents on active duty in the U.S. military, whose vehicles are garaged outside of the state due to military orders, are now eligible for an exemption for any motor vehicle, and the word "passenger" has been removed from the description of motor vehicles eligible for exemption under Section 12-81(53). See P.A. 03-269 (Section 5). Also, the amendment provides a refund for taxes paid for vehicles leased by active duty service personnel.

- The benefit of certain veterans' exemptions has been extended to motor vehicles leased by exemption claimants pursuant to Section 12-93a(b). See P.A. 03-269 (Section 6).

3. Municipal Property

Water Supply Land. Property owned by the city of Meriden and used as part of the city's water supply but located in the town of Berlin was not exempt from taxation in Berlin under Section 12-76 because Berlin residents did not have the same rights as the city's residents to the water supply and, with one exception, Berlin residents did not use the water. Meriden v. Berlin, 48 Conn.Supp. 406 (2004).

Municipal Airports. The lease between the city of New Haven and Tweed-New Haven Airport Authority did not trigger a loss of tax exempt status under Section 12-74 for property owned by New Haven but located in East Haven. New Haven v. East Haven, 263 Conn. 108 (2003).

Quasi-Public Agencies. Municipalities may tax real property owned by quasi-public agencies (*e.g.*, Connecticut Development Authority, Connecticut Innovations, Connecticut Housing Finance Authority, and Capital City Economic Development Authority, among other agencies) under certain circumstances, effective October 1, 2003. P.A. 03-246 (Section 1). This provision affects real property acquired by a quasi-pubic agency for future use, which is not held or used in furtherance of the agency's purpose or any other public purpose during the relevant assessment year, but rather for an income-producing purpose.

Lease of State-Owned Property. Section 2 of P.A. 03-269 amends Section 12-64 to clarify that where state-owned real property is leased for non-governmental purposes, the property will be taxed in the name of the lessee and to prohibit tax collectors from filing a lien to collect delinquent taxes owed on such property.

4. State Reimbursement to Municipalities

Municipalities may receive reimbursement from the state for revenue losses that they sustain by implementing certain tax exemption programs. Recent legislation affecting state reimbursement for exemption programs is summarized below.

- Sections 24 and 77 of P.A. 04-2 (May special session) require OPM to prorate the reimbursements made for the tax loss due to the Distressed Municipalities exemption (pursuant to Sections 12-81(59), (60), and (70)) and total disability exemptions (pursuant to Section 12-94a), in any year in which there is an insufficient state budget appropriation.

- With regard to the period during which OPM may audit various exemption programs, Section 78 of P.A. 04-2 (May special session) amends Section 12-120b(d)(4) to clarify the dates by which a notice of final modification or denial of financial assistance must be sent by OPM. Also, Section 79 of this Act corrects provisions under Section 12-170aa regarding post-audit payment adjustment for the Circuit Breaker Program.

- Section 53 of P.A. 03-2 allows municipalities to recoup from exemption claimants a portion of the revenue losses based on the 2001 grand list exemptions for manufacturing machinery and equipment and commercial vehicles if the municipality's legislative body enacts a resolution or ordinance levying a tax for the amount to be recovered for the fiscal year commencing July 1, 2003 (which is the difference between the reimbursement payable for such property under Section 12-94b and the reimbursement actually paid based on the final appropriation for the 2002-2003 fiscal year, approximately 16% of the revenue losses).

- The state will not reimburse municipalities for their tax losses due to the exemption granted to totally disabled persons on the 2002 and 2003 grand lists, pursuant to Section 41 of P.A. 03-6.

- Section 12-81g(c) no longer contains the requirement that the state reimburse municipalities for the revenue loss they sustain as a result of exemptions granted to veterans who do not meet the income parameters of the program. Municipalities will only be reimbursed for exemptions they provide under subsection (a) of this Section (*i.e.*, the additional exemption equal to 200% of a veteran's exemptions under Section 12-81(19) through (26)). In addition, the state may proportionately reduce the amount of reimbursement to each municipality in the event the total amount of reimbursement payable to all municipalities for this program exceeds the amount appropriated for any year. P.A. 03-6 (June special session) (Section 59).

- The state may proportionately reduce the amount of reimbursement to each municipality under the Property Tax Credit Program for Elderly and Totally Disabled Homeowners and the Manufacturing Machinery and Equipment and Commercial Vehicles' Exemption Program in the event the total amount of reimbursement payable to all municipalities under the program exceeds the amount appropriated for any year. P.A. 03-6 (Sections 183 and 184).

VI. Additional Recent Legislative Developments Related to Property Taxes

- Section 23 of P.A. 04-2 (May special session) requires the assessors of Killingly and North Stonington to issue a single certificate of correction to remove property located in Rhode Island from their grand lists for 2002 and 2003, and provides that an assessor of a Connecticut town bordering Rhode Island shall not include real property that was subject to taxation in Rhode Island on or prior to October 1, 2002 on its 2004 or 2005 grand lists.

- Section 48 of P.A. 04-2 (May special session) changes the definition of "private, nonprofit institution of higher learning" under Section 12-20a to make clear that a Payment-In-Lieu-of-Tax (PILOT) is only provided with respect to a nonprofit accredited college or university, and includes a campus of the United States Department of Veterans Affairs Connecticut Healthcare Systems.

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