# APPENDICES

# APPENDIX A

# ISAIAH 61:1, INC. *v.* CITY OF BRIDGEPORT (SC 17036)

Borden, Norcott, Palmer, Vertefeuille and Zarella, Js.

*Syllabus*

The plaintiff nonprofit corporation, which owned certain real property in the city of Bridgeport, appealed from the decision of the defendant city's board of assessment appeals denying the plaintiff's appeal from the assessment of taxes on its property. The plaintiff used the building on the property to house, to rehabilitate and to counsel inmates of the state department of correction who were completing the final months of their sentences. The department of correction paid the plaintiff on the basis of the level of occupancy. The funding provided by the department of correction constituted about 90 percent of the plaintiff's funding. As part of the rehabilitation process, the plaintiff required its inmate residents to seek employment, and, although participation in the plaintiff's program was not contingent upon obtaining employment, employed residents contributed weekly "rent," which was determined on the basis of the amount of income that the resident earned. The plaintiff appealed to the Superior Court from the decision of the board of assessment appeals, and that court reversed the board's decision, concluding the that plaintiff's property was exempt from taxation under the statute (§ 12-81 [7]) granting a tax exemption to properties of corporations organized exclusively for charitable purposes and used exclusively for carrying out such purposes. The trial court thereupon rendered judgment sustaining the plaintiff's appeal, from which the defendant appealed. *Held* that the trial court properly determined that the plaintiff's property was tax exempt under § 12-81 (7); the plaintiff's purposes of offering inmates counseling and rehabilitative services, providing inmates with

shelter, and reacclimating inmates to societal demands in preparation of their release constituted charitable purposes, and the plaintiff's receipt of rental payments from some of the inmates and funds from the department of correction did not negate the plaintiff's use of the property exclusively for charitable purposes, those payments and funds having been used by the plaintiff exclusively in furtherance of its charitable purposes.

Argued January 15—officially released July 13, 2004

*Procedural History*

Appeal from the decision of the defendant's board of assessment appeals denying the plaintiff's application for a charitable exemption on certain of its real and personal property, brought to the Superior Court in the judicial district of Fairfield and referred to *Hon. Arnold W. Aronson*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment sustaining the plaintiff's appeal, from which the defendant appealed. *Affirmed.*

*Russell D. Liskov*, associate city attorney, for the appellant (defendant).

*Margaret J. Slez*, for the appellee (plaintiff).

*Opinion*

ZARELLA, J. The sole issue presented in this appeal is whether certain property owned by the plaintiff, Isaiah 61:1, Inc., qualifies for tax exempt status under General Statutes § 12-81 (7).[1] We conclude that it does and, therefore, affirm the judgment of the trial court.

[1] General Statutes § 12-81 provides in relevant part: "The following-described property shall be exempt from taxation:

* * *

"(7) Property used for . . . charitable purposes. . . . Subject to the provisions of sections 12-87 and 12-88, the real property of . . . a corporation organized exclusively for . . . charitable purposes . . . and used exclusively for carrying out . . . such purposes . . . . On or after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under this section . . . ."

We note that § 12-81 (7) was amended in 2000; see Public Acts 2000, No. 00-215, § 3; and again in 2003. See Public Acts 2003, No. 03-270, § 1. Those amendments, however, have no bearing on the merits of this appeal. See

We briefly set forth the following relevant facts. In April, 1982, the plaintiff incorporated in the state of Connecticut as a nonprofit corporation, which the Internal Revenue Service recognizes as a tax exempt organization under 26 U.S.C. § 501 (c) (3). The plaintiff's certificate of incorporation provides that the plaintiff's purposes are: "1. To establish and maintain, in the inner city of Bridgeport, Connecticut, a center of hospitality, whose services are offered to all in need, regardless of race, color, creed, faith, sex or social status, as a witness of concern for the impoverished, the oppressed, the addicted, the confused, the alienated, lonely and unloved in our midst; to provide shelter, companionship, and place of sharing and caring, meals, clothing referrals and all other feasible services for ex-offenders and others who seek the aid of [the plaintiff] . . . . 2. To cooperate with local agencies, churches and civic groups to provide support and service to meet the needs of ex-offenders. 3. To introduce ex-offenders coming out of penal institutions to a caring community which will aid them spiritually and physically in the difficult process of re-entry into society by bearing witness to faith, hope, and love in place of doubt, despair and indifference." The plaintiff's bylaws elaborate on these goals and set forth a mission statement declaring that "[t]he purpose of the [plaintiff] is to identify and assist men and women leaving correctional facilities who want to change their lives, within the context of their community, in order to successfully re-enter society. To accomplish these goals, [the plaintiff] will offer substance abuse counseling, vocational counseling and family therapy since reintegration with family is an imperative dimension for one's wholeness."

On June 28, 1995, the plaintiff acquired the subject property, which is located at 120 Clinton Avenue in

footnote 6 of this opinion. For ease of reference, we refer to the current revision of § 12-81 (7).

Bridgeport, by special warranty deed. After substantial renovations to the building, the building opened in 1998 as a licensed rooming house capable of housing fourteen occupants.

The plaintiff entered into a two year contract with the state department of correction (department), commencing July 1, 1996, which the parties renewed in 1998 and again in 2000. In exchange for the exclusive use of the plaintiff's 120 Clinton Avenue facility to house, to rehabilitate and to counsel male inmates completing the final months of their sentences, the department agreed to pay the plaintiff on the basis of the level of occupancy. The payments constituted approximately 90 percent of the plaintiff's funding.

As part of the rehabilitation process, the plaintiff requires its inmate residents to seek employment, although their participation in the program is not contingent upon whether they actually are employed. Employed residents pay weekly "rent," the amount of which the plaintiff determines from a sliding scale based upon the individual's income. These weekly payments range from $10 to $80 and constitute approximately 9 percent of the plaintiff's funding.[2] Residents who are unemployed remain in the program but are not required to pay weekly "rent." In previous years, the residents have contributed as much as $33,516 in "rent" annually.

The defendant city of Bridgeport (city) assessed taxes on the subject property in 1999, and the plaintiff appealed to the board of assessment appeals, which denied the appeal. Thereafter, the plaintiff appealed to the trial court, which reversed the decision of the board of assessment appeals and determined that the property qualified for tax exempt status under § 12-81 (7). The city appealed to the Appellate Court, and we transferred

[2] The plaintiff receives an additional 1 percent of its funding from private donations.

the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

It is well settled that "[w]e review the trial court's conclusion in a tax appeal pursuant to the well established clearly erroneous standard of review. Under this deferential standard, [w]e do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. Rather, we focus on the conclusion of the trial court, as well as the method by which it arrived at that conclusion, to determine whether it is legally correct and factually supported." (Internal quotation marks omitted.) *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, 262 Conn. 213, 219–20, 811 A.2d 1277 (2002). "A finding of fact is clearly erroneous when there is no evidence to support it . . . or when although there is evidence in the record to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *United Technologies Corp.* v. *East Windsor*, 262 Conn. 11, 23, 807 A.2d 955 (2002).

It is equally well established that "in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption," who bears the burden of proving entitlement to it. (Internal quotation marks omitted.) *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 220. "Exemptions, no matter how meritorious, are of grace . . . . [Therefore] [t]hey embrace only what is strictly within their terms. . . . We strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others." (Citation omitted; internal quotation marks omitted.) Id. "[I]t is also true, however, that such strict construction neither requires nor permits the

contravention of the true intent and purpose of the statute as expressed in the language used." (Internal quotation marks omitted.) *Hartford Hospital* v. *Hartford*, 160 Conn. 370, 375, 279 A.2d 561 (1971).

The city claims that the plaintiff's property does not qualify for tax exempt status under § 12-81 (7), and is not otherwise tax exempt under General Statutes § 12-88, because: (1) the premises are rented to department inmates; (2) the inmates occupying the premises pay "rent" to the plaintiff; (3) the plaintiff's bylaws and certificate of incorporation are silent with respect to the provision of housing;[3] and (4) the inmates who reside at the facility are low income wage earners whose "rent" is subsidized by the department. The city thus claims that our decision in *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 213, controls the present case.

The plaintiff responds that its property qualifies for tax exempt status under §§ 12-81 (7) and 12-88. Specifically, the plaintiff asserts that "the subject property is used exclusively for the charitable purpose set forth in its certificate of incorporation and that such property does not constitute state subsidized housing or housing for persons or families of low and moderate income as those exceptions are intended under . . . § 12-81 (7)."

[3] The city claims in its brief, without any explanation or citation to authority, that the plaintiff "has nothing in its charter or by-laws that allow[s] for it to provide housing." The city's brief contains no discussion as to the significance of this contention, and we can only infer that the city is claiming that the plaintiff's provision of housing is ultra vires. We disagree. As we previously have observed, we look to a corporation's charter to determine the corporation's purpose. See, e.g., *Waterbury First Church Housing, Inc.* v. *Brown*, 170 Conn. 556, 561, 367 A.2d 1386 (1976); *Camp Isabella Freedman of Connecticut, Inc.* v. *Canaan*, 147 Conn. 510, 514, 162 A.2d 700 (1960). A review of the plaintiff's certificate of incorporation reveals that one of the plaintiff's express purposes is "to provide *shelter* . . . and all other feasible services for ex-offenders . . . ." (Emphasis added.) The facts establish that the plaintiff provides shelter to its clients.

(Internal quotation marks omitted.) Moreover, the plaintiff contends that, under our holding in *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 378, the plaintiff's receipt of "rent" from the resident inmates does not undermine the exclusive use of the property for charitable purposes. We agree with the plaintiff.

Section 12-81 sets forth a description of property that is deemed tax exempt if certain requirements are satisfied. General Statutes § 12-81 provides in relevant part: "The following-described property shall be exempt from taxation . . . (7) . . . Subject to the provisions of sections 12-87[4] and 12-88,[5] the real property of, or held in trust for, a corporation organized exclusively for . . . charitable purposes . . . and used exclusively for carrying out . . . such purposes . . . ." Subdivision (7) of § 12-81 provides, however, that, "[o]n and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall

[4] General Statutes § 12-87 provides: "During any year for which a report is not required by subdivisions (7), (10) and (11) of section 12-81, a report shall be filed during the time prescribed by law for the filing of assessment lists next succeeding the acquiring of property not theretofore made exempt by said subdivisions. Property otherwise exempt under any of said subdivisions and this section shall be subject to taxation until the requirements of said subdivisions and of this section have been complied with."

[5] General Statutes § 12-88 provides in relevant part: "Real property belonging to, or held in trust for, any organization mentioned in subdivision (7) . . . of section 12-81, which real property is so held for . . . the purposes stated in the applicable subdivision, and from which real property no rents, profits or income are derived, shall be exempt from taxation though not in actual use therefor by reason of the absence of suitable buildings and improvements thereon, if the construction of such buildings or improvements is in progress. The real property belonging to, or held in trust for, any such organization, not used exclusively for carrying out one or more of such purposes but leased, rented or otherwise used for other purposes, shall not be exempt. If a portion only of any lot or building belonging to, or held in trust for, any such organization is used exclusively for carrying out one or more of such purposes, such lot or building shall be so exempt only to the extent of the portion so used and the remaining portion shall be subject to taxation."

not constitute a charitable purpose under this section . . . ."[6] General Statutes § 12-81 (7). In construing this statute, we have embraced a broad definition of the term "charitable purpose," which, includes, inter alia, "activities . . . which are intended to improve the physical, mental and moral condition of the recipients and make it less likely that they will become burdens on society and more likely that they will become useful citizens. . . . Charity embraces anything that tends to promote the well-doing and the well-being of social man." (Citation omitted; internal quotation marks omitted.) *United Church of Christ* v. *West Hartford*, 206 Conn. 711, 719, 539 A.2d 573 (1988).

Property otherwise exempt from taxation under § 12-81 (7) also must satisfy the conditions set forth in General Statutes § 12-88, which provides in relevant part: "Real property belonging to, or held in trust for, any organization mentioned in subdivision (7) . . . of section 12-81, which real property is so held for . . . the purposes stated in the applicable subdivision . . . shall be exempt from taxation . . . . The real property belonging to . . . any such organization . . . not used *exclusively* for carrying out . . . such purposes but leased, rented or otherwise used for *other purposes*, shall not be exempt. . . ." (Emphasis added.) Thus, in order for real property used for charitable purposes to

[6] We recognize that, on July 9, 2003, the legislature amended § 12-81 (7) through its enactment of Public Acts 2003, No. 03-270, § 1 (P.A. 03-270). Public Act 03-270, § 1, added the following relevant language to § 12-81 (7): "As used in this subdivision, *'housing' shall not include* real property used for *temporary housing* belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is . . .

"(iv) *Housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction* . . . ." (Emphasis added.) P.A. 03-270, § 1.

We need not address the applicability of P.A. 03-270, § 1, to the present case because our application of precedent is consistent with the language contained in P.A. 03-270, § 1.

qualify for tax exemption under §§ 12-81 (7) and 12-88, the property must: (1) belong to or be held in trust for a corporation organized exclusively for charitable purposes; (2) be used exclusively for carrying out such charitable purposes; (3) not be leased, rented or otherwise used for a purpose other than the furtherance of its charitable purposes; (4) not be housing subsidized by the government; and (5) not constitute low or moderate income housing. See General Statutes §§ 12-81 (7) and 12-88; see also *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 376–77.

In the present case, we begin with a review of our precedent in which we have construed the provisions of §§ 12-81 and 12-88. Specifically, we must determine the applicability of our holdings in *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 370, *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 711, and *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 213. We examine each of these cases in turn.

In *Hartford Hospital*, the defendant city of Hartford appealed from the judgment of the Court of Common Pleas directing it to remit to the plaintiff hospital (hospital) property taxes that the hospital had paid on an apartment building.[7] *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 371. Located adjacent to the hospital, the building was used exclusively to house hospital staff, including interns, residents and one janitor, all of whom paid rent to the hospital. Id., 371–72. At trial, the parties stipulated that "[i]t [was] necessary for the

[7] We note that, although the subject property in *Hartford Hospital*, having been the property of a hospital, was governed by § 12-81 (16), and not § 12-81 (7), our discussion in *Hartford Hospital* of cases governed by § 12-81 (7) informs us that we have treated those two subdivisions similarly. Moreover, we note that our conclusions in *Hartford Hospital* that were based on § 12-88 equally apply to the present case, as both subdivisions (7) and (16) of § 12-81 subject properties of charitable organizations and hospitals, respectively, to the provisions of § 12-88. See General Statutes § 12-81 (7) and (16).

[hospital] to provide housing for a large number of its house staff in close proximity to those buildings which [were] used for the care of patients in order properly to perform its services as a hospital." Id., 372. On the basis of these facts, the Court of Common Pleas determined "that the property in question [was] used exclusively for hospital purposes; that the exclusiveness of the use [was] not impaired by the fact that the [hospital] charge[d] rent for occupancy; and that the property [was] tax exempt." Id.

On appeal to this court, the defendant claimed that the use of the subject property to house hospital staff, in combination with its collection of rent, rendered the property taxable in accordance with the provisions of §§ 12-81 (16)[8] and 12-88. See id. We first undertook a review of three cases, namely, *New Canaan Country School, Inc.* v. *New Canaan*, 138 Conn. 347, 84 A.2d 691 (1951), *Yale University* v. *New Haven*, 71 Conn. 316, 42 A. 87 (1899), and *Arnold College for Hygiene & Physical Education* v. *Milford*, 144 Conn. 206, 128 A.2d 537 (1957) (*Arnold College*). *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 373–75. We observed that the subject property in *New Canaan Country School, Inc.*, which consisted of two houses owned by the school and used by faculty members and their families due to a housing shortage that had made it difficult to hire

[8] General Statutes § 12-81 provides in relevant part: "The following-described property shall be exempt from taxation:

* * *

"(16) Hospitals and sanatoriums. Subject to the provisions of section 12-88, all property of, or held in trust for, any Connecticut hospital society or corporation or sanatorium, provided (A) no officer, member or employee thereof receives or, at any future time, shall receive any pecuniary profit from the operations thereof, except reasonable compensation for services in the conduct of its affairs, and (B) in 1967, and quadrennially thereafter, a statement shall be filed by such hospital society, corporation or sanatorium on or before the first day of November with the assessor or board of assessors of any town, consolidated town and city or consolidated town and borough, in which any of its property claimed to be exempt is situated. . . ."

teachers, did not qualify for tax exemption. Id., 373; see *New Canaan Country School, Inc.* v. *New Canaan*, supra, 352. We noted our conclusion that "the houses were not used for any educational purposes whatever . . . that the existence of a housing shortage was irrelevant to the test of the [property tax exemption] statute and that the houses were convenient residences for the teachers and were used as such . . . ." *Hartford Hospital* v. *Hartford*, supra, 373; see *New Canaan Country School, Inc.* v. *New Canaan*, supra, 352.

In contrast, we observed that the subject property in *Yale University*, which included, inter alia, observatory buildings, two houses in which the officers of the observatory resided, and adjoining land, and the property in *Arnold College*, which included, inter alia, dormitory space, part of which was occupied by a faculty member, and a caretaker's cottage, were tax exempt. *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 374; see *Arnold College for Hygiene & Physical Education* v. *Milford*, supra, 144 Conn. 208, 211; *Yale University* v. *New Haven*, supra, 71 Conn. 334. We noted that "[i]t is well established that the exemption granted is not limited to the buildings used for educational purposes in the limited and restricted sense. It extends to all of the property the use of which is incidental to education, including campuses and playing fields." (Internal quotation marks omitted.) *Hartford Hospital* v. *Hartford*, supra, 375. We determined that the conclusions in *Yale University* and *Arnold College* were necessarily governed by the specific facts of each case and that the facts of those cases were "clearly distinguishable" from the facts of *New Canaan Country School, Inc.* Id.

With this backdrop, we then examined the apparent legislative intent of § 12-88, as reflected in the language of the statute. See id., 375–76. We noted that the second sentence of General Statutes § 12-88, which provides that an organization's property that is not used exclu-

sively for carrying out the organization's purposes but that is "leased, rented or otherwise used for other purposes, shall not be exempt," was "the key sentence of [the statute] . . . and state[d] the basic premise upon which an exemption may be denied." *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 376. We determined that, under § 12-88, "property belonging to or held in trust for a hospital which is used exclusively for carrying out hospital purposes shall be exempt. If the property is leased, rented or used for anything other than hospital purposes [however] it shall not be exempt. The 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. The third sentence of § 12-88 exempts from taxation any portion of a lot or building used exclusively for hospital purposes even though the remaining portion shall be subject to taxation. This serves to emphasize our construction of the second sentence that the basic question is whether the use was exclusively for hospital purposes or for some other purpose. As this court said in *Yale University* v. *New Haven*, [supra, 71 Conn. 328], '[t]he fact that certain sums are paid for use of the rooms occupied . . . does not alter the character of the occupation.'

"The parties [in *Hartford Hospital*] . . . stipulated that it is necessary for the [hospital] to provide housing for a large number of its house staff in close proximity to those buildings which are used for the care of its patients in order properly to perform its services as a hospital. We take judicial notice that members of a hospital house staff may be on call at all hours of the day or night. A number of decisions in states with comparable statutes have granted tax exemptions to hospitals in similar factual situations." *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 376–77. Our holding in *Hartford Hospital* therefore instructs that property can

be tax exempt under § 12-81 (7), notwithstanding its rental, as long as it is used exclusively for the organization's charitable purposes. See id., 377–78.

We examined the issue again in *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 711, in which the plaintiff church appealed[9] from the judgment of the trial court upholding the decision of the local board of tax review to deny it a property tax exemption pursuant to § 12-88. Id., 712–13. The church, a nonstock corporation, had acquired six acres of land, two of which were used for the construction of a church building. Id., 714. On the remaining four acres, the church sought to build an elderly housing complex. Id. The housing complex was to consist of sixteen residential units,[10] with such amenities as grounds maintenance, on-site parking, recreational and health services, pastoral counseling and use of church facilities for cultural and recreational affairs. Id., 714–15. Approximately 90 percent of the funding for the development of the housing complex would come from "gifts"; id., 715; consisting of a one-time payment of $73,000 by individuals, each of whom would receive the privilege of occupying a single housing unit for as long as he or she could live there independently. Id. In addition to an age requirement, under which at least one of a unit's occupants would have to be at least sixty-two years old, the residents were required to pay a monthly maintenance fee of $350 per unit. Id.

On appeal to this court, the church claimed that it had sustained its burden of proving that its housing

[9] The church initially appealed to the Appellate Court, which affirmed the trial court's judgment. See *United Church of Christ* v. *West Hartford*, 9 Conn. App. 448, 459, 519 A.2d 1217 (1987). On the granting of certification, the church appealed to this court. See *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 713.

[10] At the time of trial, the church had constructed six of the sixteen units. See *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 715.

complex was being used exclusively for charitable purposes. Id., 717–18. In rejecting this claim and affirming the judgment of the Appellate Court, we noted that the church was "under no legal obligation to provide any services that would impose any significant financial burden on it. The monthly fee cover[ed] virtually all the . . . expenses [for the housing complex]. The incidental auxiliary services (i.e., weeding and landscaping) offered by the [church did] not raise the entire project to an exclusive charitable use entitled to a tax exemption." Id., 721. We highlighted the fact that, "[u]nlike other projects that provide 'lifetime' health care . . . [the church] ha[d] merely volunteered to negotiate with a doctor to provide care, presumably for a fee charged directly to the residents who receive such services." (Citations omitted.) Id.

We also noted that "all initial residents [were required to] pay $73,000," that there were "no income or wealth restrictions on applicants," and that "[t]he project was open only to residents who [were] able to take care of themselves and live independently." Id., 722. We observed that the record did not demonstrate "[h]ow th[e] project [kept the] elderly [residents] from becoming burdens on society . . . ." Id. Moreover, we recognized that the housing complex was "inaccessible for those elderly who have no capital, no steady income and are unable to take care of themselves"; id.; and that it was "[t]hese low-income elderly . . . [who were] much more likely to become burdens on society absent governmental or charitable intervention [rather] than those who qualify for [the housing complex]."[11] Id., 723. "The

[11] In *United Church of Christ*, we reviewed cases from other jurisdictions, which revealed that "the majority den[ies] a property tax exemption under similar circumstances. . . . The fact that inability to pay precluded the most needy from being members was a key reason for the denial of a tax exemption. . . . Another key factor in denying tax exemption was the lack of a legal commitment to provide care for those residents who subsequently were unable to pay the fees." (Citations omitted.) *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 724.

[church was] unable to claim that [the] government would have [had] to intervene in the public interest had the [church] not provided the [housing complex]." Id. Thus, we affirmed the judgment of the Appellate Court denying the housing complex tax-exempt status under § 12-81 (7). See id., 727.

Our interpretation of § 12-81 (7) in *United Church of Christ* prevented the tax exemption of a housing complex occupied by any age-eligible individual who was capable of living independently. Implicit in our holding was our recognition that a charitable organization's mere involvement in a project, such as the establishment of an elderly housing complex, does not, per se, render the property exempt from taxation. See id., 721–23.

Finally, in *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 213, the plaintiff, a charitable organization, appealed from the judgment of the trial court dismissing its appeal from the decision of the local board of tax review that the organization's property did not qualify for tax exemption under § 12-81 (7) because the organization provided housing for persons of low and moderate income. Id., 214–16. The organization had purchased the subject property to provide housing for the elderly. Id., 216. As reflected in its articles of association, the organization's purpose was "[t]o provide for aged men and women, whether married or single, a comfortable, happy residence in Bridgeport . . . where they may pass their declining years among congenial companions and have necessary care . . . to receive and administer or expend legacies, gifts, endowments, trusts or other funds bequeathed, subscribed or given for the purpose of establishing, equipping, maintaining, renewing or replacing said home . . . ." (Internal quotation marks omitted.) Id. The organization's bylaws further provided that the organization "shall receive the rent from paying guests . . . ." (Internal

quotation marks omitted.) Id., 217. Upon these facts, the trial court concluded that the organization's property did not qualify for tax exemption under § 12-81 (7) because the organization received rent from some of the occupants and because § 12-81 (7) expressly excludes from tax exemption low and moderate income housing. Id., 219.

On appeal, the organization claimed that the trial court improperly determined that the exclusion from tax-exempt status of housing for persons of low or moderate income applied to its facility. Id. In upholding the trial court's determination that the subject property was not tax exempt, we emphasized that, "in order for an organization to be granted tax-exempt status [it] must be exclusively charitable, not only in the purposes for which it is formed and to which its property is dedicated, but also in the manner and means it adopts for the accomplishment of those purposes. . . . Thus, [w]hether the property for which exemption is claimed is actually and exclusively used for . . . [charitable] purposes must be determined from the facts of the case. . . . The extent to which an organization uses its property for purposes *not directly related to its charitable purpose*, therefore, is relevant to the determination of whether the organization's property is entitled to tax-exempt status under § 12-81 (7)." (Emphasis added; internal quotation marks omitted.) Id., 221. We noted that "[§] 12-81 (7) clearly provides that housing for persons or families of low and moderate income shall not constitute a charitable purpose"; (internal quotation marks omitted) id., 222; and that, "[b]ecause a property must be used *exclusively* for a charitable purpose in order for it to qualify as tax-exempt . . . the [organization's] operation of elderly housing disqualifie[d] it from tax-exempt status." (Citations omitted; emphasis in original.) Id. We therefore affirmed the judgment of the trial court. Id.

We glean from the foregoing cases a number of principles to apply in determining whether property is exempt from taxation under § 12-81 (7). First, the rental of property does not necessarily prevent the property from qualifying for tax exemption, as long as the property is used exclusively for carrying out the charitable purposes of the organization to which the property belongs. See General Statutes §§ 12-81 (7) and 12-88; *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 378. Second, when a charitable organization does nothing to "make it less likely that [the individuals it services] will become burdens on society and more likely that they will become useful citizens," the subject property cannot qualify for a tax exemption. (Internal quotation marks omitted.) *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 719. Finally, housing provided for low or moderate income individuals is not tax-exempt. General Statutes § 12-81 (7); see *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 221–22.

On the basis of these principles, as well as our repeated observation that the determination of "whether a property is tax-exempt is a fact intensive inquiry"; *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 220; accord *H.O.R.S.E. of Connecticut, Inc.* v. *Washington*, 258 Conn. 553, 563, 783 A.2d 993 (2001); see also *Camp Isabella Freedman of Connecticut, Inc.* v. *Canaan*, 147 Conn. 510, 514, 162 A.2d 700 (1960) ("[w]hether the property for which exemption is claimed is actually and exclusively used for [charitable] purposes must be determined from the facts of the case"); we conclude that the trial court properly determined that the plaintiff's property is entitled to tax-exempt status under § 12-81 (7). The plaintiff's sole purposes are to offer counseling and rehabilitation services, and to provide shelter for and to reacclimate department inmates to societal demands in preparation of their release. Such a function constitutes a charitable

purpose within our broad definition of that term because it encompasses "activities . . . which are intended to improve the physical, mental and moral condition of the recipients and make it less likely that they will become burdens on society and more likely that they will become useful citizens." *United Church of Christ* v. *West Hartford*, supra, 206 Conn. 719. We find that the plaintiff uses the subject property exclusively for charitable purposes, even though it receives "rent" from some of the resident inmates. Cf. *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 377. Like the rented apartments in *Hartford Hospital*, the plaintiff's property is "used exclusively for carrying out [the plaintiff's charitable] purposes . . . ." General Statutes § 12-81 (7). In accordance with our holding in *Hartford Hospital*, an organization's use of its property exclusively for charitable purposes is not negated by the organization's "renting" of the property to its occupants as long as "the use [is] exclusively for [charitable] purposes [and not] for some other purpose." *Hartford Hospital* v. *Hartford*, supra, 377.

Furthermore, as we previously have noted in this opinion; see footnote 3 of this opinion; a corporation's charter reveals its purpose. See, e.g., *Waterbury First Church Housing, Inc.* v. *Brown*, 170 Conn. 556, 561, 367 A.2d 1386 (1976); *Camp Isabella Freedman of Connecticut, Inc.* v. *Canaan*, supra, 147 Conn. 514. The plaintiff's certificate of incorporation does not call for the collection of rent—as did the bylaws of the plaintiff organization in *Fanny J. Crosby Memorial, Inc.* v. *Bridgeport*, supra, 262 Conn. 217—despite the fact that one of the plaintiff's purposes, as expressed in its certificate of incorporation, is to provide "shelter." In the context of the plaintiff's other stated purposes, namely, "to provide support and service to [meet] the needs of ex-offenders" and "[t]o introduce ex-offenders coming out of penal institutions to a caring community which

will aid them spiritually and physically in the difficult process of re-entry into society," it is apparent that the plaintiff's collection of "rent" from department inmates occurs solely in furtherance of, and in direct relation to, its charitable function of facilitating the inmates' transition back into society. The fact that the plaintiff's certificate of incorporation calls for the plaintiff to provide shelter in conjunction with other support services, without requiring the collection of rent, is further evidence that the plaintiff uses its property exclusively for charitable purposes, and for no other purpose. Cf. *Hartford Hospital* v. *Hartford*, supra, 160 Conn. 377–78.

We further conclude that the provisions of § 12-88 are of no avail to the city. As we observed in *Hartford Hospital*, "[t]he distinction is not between nonrental and rental but between use exclusively for [charitable] purposes and [noncharitable] use. The third sentence of § 12-88 exempts from taxation *any portion of a lot or building used exclusively for* [*charitable*] *purposes* even though the remaining portion shall be subject to taxation. This serves to emphasize our construction of the second sentence [of § 12-88] that the basic question is whether the use was *exclusively* for [charitable] purposes or for *some other* purpose." (Emphasis added.) Id., 377. Thus, the mere fact that the plaintiff receives "rent" from employed resident inmates does not, in itself, indicate that the property is used "for some other purpose" within the meaning of § 12-88. See id., 377–78; see also *Boardman* v. *Burlingame*, 123 Conn. 646, 653–54, 197 A. 761 (1938) ("The question of tax exemption is not in issue . . . and the testimony is uncontradicted that the [Hartford] Retreat [an institution for those with mental illness] is organized and operated for the public welfare without profit to itself or any individual. The mere fact that some patients pay for part or all of their care does not destroy its charitable character."). The "rent" that the plaintiff receives from the employed

resident inmates serves to further the plaintiff's charitable purpose of rehabilitating the inmates by requiring them to assume responsibilities that they will be faced with upon their release. Therefore, the plaintiff's property does not fall within the exception to tax exemption contained in the second sentence of § 12-88.

The city contends that the funds that the plaintiff receives from its contract with the department constitute "rent," thereby rendering the plaintiff's property taxable in accordance with the second sentence of § 12-88. We do not agree. The funds that the plaintiff receives from the department do not constitute "rent" but, instead, qualify as a contractual payment for various rehabilitative services that the plaintiff provides to resident inmates in an effort to transition them back into society, including work-release programs, alcohol and drug treatment, counseling, and housing of inmates. Moreover, even if we assume that the department's payment to the plaintiff constitutes "rent," we already have determined that rental income that is used exclusively in furtherance of an organization's charitable purposes does not remove the organization's property from the category of properties that are exempt from taxation under § 12-81 (7).

The city lastly claims that the department inmates "are low income wage earners and that [the inmates'] rents are subsidized by the [department]," thereby disqualifying the plaintiff's property from tax exemption. See General Statutes § 12-81 (7) ("housing subsidized, in whole or in part, by . . . state . . . government and housing for persons . . . of low and moderate income shall not constitute a charitable purpose under this section"). At trial, however, the parties introduced limited evidence regarding these issues,[12] and the city, in

[12] With respect to the issue of whether the department inmates are low income wage earners, both the plaintiff and the city asked limited questions of Edward Davies, who testified for the plaintiff as its executive director.

"[Plaintiff's Counsel]: Has [the plaintiff] ever been described in printed

its posttrial brief, did not pursue this claim, but, instead, elected to present its claim that the plaintiff rents or leases the facility and that the plaintiff's bylaws and mission statement do not provide for such use. The trial court, therefore, did not make any findings of fact or conclusions of law pertaining to the low income or subsidization issues in its memorandum of decision.

documents, in forms, in applications, by any of the staff members, by you, as affordable housing?

"[Davies]: No. It has not.

* * *

"[City Counsel]: [The inmates are] . . . lower, moderate income earning people, aren't they?

"[Davies]: Most often. There are rare exceptions."

With respect to the issue of subsidization, the city questioned Davies as follows:

"[City Counsel]: Is it fair to say that the state . . . is subsidizing [the plaintiff] so that the inmates can live in that facility?

"[Davies]: I think that simplifies the relationship, but 80 percent of our costs are staff salaries and supervision.

"[City Counsel]: [If] [t]he state . . . didn't pay [the plaintiff] for these people who live there, where would they be? Would [the plaintiff] be able to do it without the state . . . paying for them?

"[Davies]: No, not without that contract.

"[City Counsel]: And . . . your main underwriter of your entire project is better than 90 percent, correct?

"[Davies]: Yes.

"[City Counsel]: And you wouldn't call that subsidizing the housing of these people for [the plaintiff]?

"[Davies]: Clearly they're a portion of it, yes. A portion of that is housing."

Additionally, Ted Gwartney, the city's tax assessor at the time of trial, testified that, in his opinion, the state subsidizes the plaintiff:

"[City Counsel]: And is it your opinion, as the assessor of Bridgeport, that housing for—the housing that is subsidized by state and government and houses low income or moderate income people is not exempt under § 12-81 (7)?

"[Gwartney]: That's my understanding, yes.

* * *

"[Plaintiff's Counsel]: And just hypothetically speaking, if I'm correct, if the provision of housing were, in fact, included in the bylaws, the charter, the admissions statement, it would be your opinion then that [the plaintiff] was acting in accordance with its charter?

"[Gwartney]: No, because [§ 12-81 (7)] specifically states that housing that is subsidized by the state is not exempt."

The city could have, and should have, sought clarification or further elaboration by the trial court with respect to these issues by filing a motion for articulation. See Practice Book § 66-5. The city's failure to do so "leaves this court without the ability to engage in a meaningful review." *Alliance Partners, Inc.* v. *Oxford Health Plans, Inc.*, 263 Conn. 191, 204, 819 A.2d 227 (2003).

The judgment is affirmed.

In this opinion the other justices concurred.

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JUDY SANDVIG ET AL. *v.* A. DUBREUIL AND SONS, INC., ET AL.
(SC 16781)

Sullivan, C. J., and Norcott, Katz, Vertefeuille and Zarella, Js.

Argued May 19—officially released July 13, 2004

*Procedural History*

Action to recover damages for, inter alia, personal injuries sustained by the named plaintiff as a result of the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of New London at Norwich, where the board of education of the town of New London intervened as a plaintiff; thereafter, the court, *Teller, J.*, granted the named defendant's motion to implead Colonial Carpet and Tile Company, as a third party defendant and to file a third party complaint for indemnification, and granted the plaintiffs' motion to amend their complaint by citing in or substituting Colonial Carpet and Tile Company as a defendant; subsequently, the court, *Parker, J.*, granted the motion for summary judgment filed by the defendant Colonial Carpet and Tile Company, and the plaintiffs filed a notice of intention to appeal; the court, *Parker, J.*, granted the named defendant's motion for summary judgment and rendered judgment thereon in

# APPENDIX B

# FULL TEXT OF OPINIONS

## Yankee Gas Co. v. City of Meriden

Superior Court at Rockville
No. X07-CV96 0072560S
Memorandum Filed April 20, 2001

**Taxation – Personal Property Tax – Appraisal – Statutory Requirement that Private Appraisal Services Retained by Municipal Tax Assessors Be Certified Is Mandatory.** The statutory requirement that any company retained by a municipal tax assessor to perform valuations for tax assessment purposes be certified by the Office of Policy and Management, CGS §12-2c, is mandatory. Therefore any assessment based on assistance provided by an uncertified company is invalid.

**Taxation – Personal Property Tax – Appraisal – Property Value for Taxation Purposes Cannot Be Established Solely by an Outside Appraisal Service; the Tax Assessor Must Make the Ultimate Decision as to Valuation for Tax Purposes.** An appraisal for tax assessment purposes conducted by an outside appraisal service and accepted by the tax assessor without review and independent judgment is invalid. Although a tax assessor may rely on outside services for information and advice, the ultimate judgment as to valuation must be made by the assessor alone.

**Taxation – Personal Property Tax – Appraisal – Statute Prohibiting Tax Assessors from Using a Different Valuation Methodology During an Audit Than Was Used for the Original Assessment Is Retroactive.** The 1999 public act prohibiting municipal tax assessors from using during a property tax audit an appraisal methodology different from the methodology used for the original assessment, P.A. 99-189 amending CGS §12-53(c), was intended as a clarifying amendment rather than a substantive change of law and therefore should be applied retroactively. Therefore it was statutorily improper for the Meriden tax assessor to recalculate the value of a public utility's distribution facilities located in the City based on the higher "Current Reproduction Cost New Less Depreciation" appraisal methodology rather than on the lower "Original Cost Less Depreciation" methodology utilized by the assessor to impose the original assessment.

**Taxation – Personal Property Tax – Appraisal – Use of a Valuation Methodology for One Taxpayer that Varies from the Methodology Used for All Other Taxpayers Violates Equal Protection and Due Process Rights.** It is a violation of the Equal Protection and Due Process Clauses for a municipal tax assessor to value one taxpayer's property for tax purposes by using an appraisal methodology different than the methodology used for all other taxpayers.

**Taxation – Personal Property – Appraisal – Contract Between a Municipal Assessor and an Outside Appraisal Service for Conducting Tax Audits with an Incentive Compensation Based on the Amount of Additional Collected Taxes Is Improper.** A contract between a municipal tax assessor and a private tax appraisal company to conduct tax audits and to provide an incentive compensation based on the amount of additional collected taxes is improper for two reasons: (1) basing a tax on such a procedure violates a taxpayer's due process right to have taxes assessed impartially and (2) such a contract violates public policy.

**Taxation – Property Tax – Procedural Matters – Prepayment of an Assessed Tax Does Not Defeat a Taxpayer's Right to Appeal Under Section 12-119.** Although CGS §12-119, which authorizes a tax appeal based on allegations that the tax is manifestly excessive, refers to appeals filed "prior to the payment" of the imposed tax, there is no requirement that a §12-119 appeal be filed before the tax is paid. Therefore partial payment of a tax before filing an appeal does not deprive the taxpayer of the right to take a §12-119 appeal.

**Taxation – Property Tax – Appraisal – Proper Methodology for Assessing Property of a Public Utility Is the "Original Cost Less Depreciation" Method.** The proper appraisal method for determining the fair market value for tax assessment purposes of a public utility's facilities within a particular municipality is the "Original Cost Less Depreciation." The opinion specifically rejects reliance on either the "Comparable Sales," "Current Reproduction Cost Less Depreciation," "Income" or "Stock Value Less Debt" methods.

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BISHOP, J. In 1819, Chief Justice John Marshall opined: ". . . the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it." *McCulloch v. Maryland*, 17 U.S. 316 (1819). In like vein, Justice Stephen Field later stated: "A municipality without the power of taxation would be a body without life, incapable of acting, and serving no useful purpose." *United States v. New Orleans*, 98 U.S. 381, 25 L.Ed 225 (1878). But if the life-blood of government is its ability to impose taxes, that power when run amuck also constitutes the power to destroy. So said Chief Justice Marshall in *McCulloch*. Similar words were used contemporaneously by Justice Jeremiah Brainard of the Connecticut Supreme Court. In *Atwater v. Woodbridge*, Justice Brainard opined: "Taxation may be a worm at the root, which, in its consequences, may destroy both root and branch." 6 Conn. 223, 230 (1826). Unlike either *McCulloch* or *Atwater*, this case is not about the right of government to tax but rather it is about the reasonable exercise of government's power to tax its citizens. Like both *McCulloch* and *Atwater*, this case implicates the destructive potency of government when it misuses its taxing authority. While comprising several lawsuits raising multiple

issues, this case, in sum, is an appeal by the plaintiffs from personal property assessments and consequential taxes imposed on them by the defendant municipality for the tax years 1991 through 1999.

The plaintiffs are public utility companies subject to state and federal regulation. In Connecticut, they are regulated by the Department of Public Utilities Control (DPUC). Within the state, the plaintiff Yankee Gas Services Company (Yankee) serves approximately 200,000 customers in 60 cities and towns and the plaintiff Connecticut Light & Power Company (CL&P) provides electric service to approximately 1.7 million customers in 160 municipalities. There are approximately 57,000 residents of the city of Meriden, including approximately 1,600 business property owners. Both plaintiffs provide services to Meriden and maintain taxable personal property within the City.

While the DPUC regulatory reach over the plaintiffs is broad, pertinent to this case is the DPUC's rate-making authority. In the regulatory sense, the term "rate" is used to define, as a percentage, the rate of return a utility company is permitted to earn on its rate base. In determining this rate, the DPUC considers the need for a utility to recover its reasonable operating expenses and its capital costs, and a reasonable opportunity to earn a fair return on investment. In regulatory parlance, rate base is comprised, in large part, of the utility's net cost of plant in service. Therefore, in order to fix a maximum allowable rate of return, the DPUC must first determine the net costs of a utility's regulated assets, based on the assets' original costs less accumulated depreciation. In conjunction with this process, the DPUC requires the utility company to submit a description of its regulated assets, which includes information regarding original costs, dates of service, deferred taxes, and data regarding retirement. In conjunction with this process, the DPUC determines the allowable depreciation. In order to calculate allowable depreciation by category, the DPUC periodically conducts depreciation studies to determine the actual life history and reasonable life expectancy of regulated assets. It is on the basis of these studies and not on Internal Revenue schedules that the DPUC determines the amount of depreciation, by asset category, it will allow in setting a utility's rate base. Once a rate base is calculated, the DPUC then sets a maximum allowable rate of return. This process involves a consideration of the cost of debt to the utility as well as a reasonable return on investment required to have funds to purchase and maintain assets in service.

As property owners in Meriden, the plaintiffs are required by the terms of C.G.S. §12-43 annually to submit a listing of their tangible personal property located in Meriden.

Procedurally, each year Meriden sends each business property owner a form on which the business is asked to report its personal property. Although municipalities have the authority, subject to approval, to utilize a specialized assessment form, Meriden has traditionally used the personal property reporting form prescribed by the Office of Policy and Management pursuant to its statutory authority relating to municipal taxation.[1] While the specific language of the form has changed from time to time, for each of the years in dispute, the Meriden form required personal property owners to indicate the costs of acquisition and the amount of claimed depreciation for taxable personal property. Although the form includes depreciation schedules for various categories of property as allowed by the Internal Revenue Service, for its regulated assets the plaintiffs have historically claimed only the depreciation as determined by the DPUC and the plaintiffs do not claim depreciation of regulated assets below thirty percent (30%) of original costs.[2]

For the grand lists of 1991-1994, the plaintiffs filed personal property declarations as required by C.G.S. §12-43. The assessor assessed the listed property and signed and recorded the grand list. The tax collector issued tax bills on the assessments and the plaintiffs timely paid the bills for each year. On August 3, 1994, Meriden notified the plaintiffs that they were being audited pursuant to C.G.S. §12-53 for the tax years 1991 through 1994. Audit hearings were held on November 29, 1994 and August 30, 1995. Meriden sent the plaintiffs a notice dated September 28, 1995 with an attached summary of audit adjustments to the 1991-1994 grand lists. Meriden issued new tax bills resulting from the audit dated November 16, 1995. The plaintiffs appealed to the Board of Assessment Appeals for the City of Meriden pursuant to C.G.S. §12-111. The Board denied the plaintiffs' appeals.

For the tax years 1995-1999, the plaintiffs filed their declarations as required. The assessor increased the assessment each year pursuant to §12-55 and signed and recorded the grand list. The plaintiffs appealed to the Board each year pursuant to §12-111. The Board elected not to hold hearings and denied the plaintiffs' appeals.[3]

The plaintiffs paid seventy-five percent of the assessed taxes under protest in accordance with §12-117a. As discussed *infra*, the taxpayers are aggrieved, and they have appealed to this court for relief.

The plaintiffs brought eight tax appeals, pursuant to C.G.S. §12-117a, following the Meriden Board of Tax Review's denial of the plaintiffs' appeals from the City's reassessment of its personal property for the tax years 1991 through 1999. The plaintiffs have also filed an action for wrongful assessment, pursuant to C.G.S. §12-119, for the tax years 1991 through 1998, claiming that the taxes assessed against the plaintiffs were manifestly excessive and imposed in disregard of the statutes regarding the valuation of such property. The plaintiffs further claim that a valuation agreement between Northeast Financial Management Associates (NFMA) and the city of Meriden violates public policy,

that their due process and equal protection rights were violated and that the City's conduct amounts to a civil conspiracy. Meriden filed six special defenses to the §12-119 claim. The first five special defenses are based upon Meriden's assertion that the plaintiffs' payment of taxes under protest, which was required to preserve their rights under §12-117, bars the §12-119 claim which allows application for relief to the superior court "prior to the payment of such tax." The sixth special defense asserts the doctrine of unclean hands. Meriden also filed counterclaims against the plaintiffs for failing to pay the taxes as assessed under §12-53 and §12-55. The nine cases were consolidated and tried to the court on December 19, 2000 and subsequent dates.

C.G.S. §12-119 allows a taxpayer to bring a claim that the tax was imposed by a town that had no authority to tax the subject property, or that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of property. "Our case law makes clear that a claim that an assessment is 'excessive' is not enough to support an action under this statute. Instead, §12-119 requires an allegation that something more than mere valuation is at issue. *Second Stone Ridge Cooperative Corp. v. Bridgeport*, 220 Conn. 335, 339-40 (1991); accord *Connecticut Light & Power Co. v. Oxford*, 101 Conn. 383, 392 (1924)." (Internal quotation marks omitted.) *Pauker v. Roig*, 232 Conn. 335, 339 (1995).

The first category in §12-119 "embraces situations where a tax has been laid on a property not taxable in the municipality where it is situated." *E. Ingraham Co. v. Bristol*, 146 Conn. 403, 408, 151 A.2d 700, cert. denied, 361 U.S. 929, 80 S.Ct. 367, 4 L.Ed.2d 352 (1959). This category is not applicable to the facts of this case.

"The second category consists of claims that assessments are (a) manifestly excessive and (b) . . . could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property. *E. Ingraham Co.*, 146 Conn. at 409. Cases in this category must contain allegations beyond the mere claim that the assessor overvalued the property. [The] plaintiff . . . must satisfy the trier that [a] far more exacting test has been met: either there was misfeasance or nonfeasance by the taxing authorities, or the assessment was arbitrary or so excessive or discriminatory as in itself to show a disregard of duty on their part. *Mead v. Greenwich*, 131 Conn. 273, 275 (1944). Only if the plaintiff is able to meet this exacting test by establishing that the action of the assessors would result in illegality can the plaintiff prevail in an action under §12-119. The focus of §12-119 is whether the assessment is illegal. *Cohn v. Hartford*, 130 Conn. 699, 703, 37 A.2d 237 (1944). The statute applies only to an assessment that establishes a disregard of duty by the assessors. *L.G. DeFelice & Son, Inc. v. Wethersfield*, 167 Conn. 509, 513, 356 A.2d 144 (1975)." (Citations omitted; internal quotation marks omitted.) *Second Stone Ridge Cooperative Corp.*, 220 Conn. at 341-42.

On July 1, 1994, the defendant Meriden entered into a valuation audit contract with NFMA for services in conjunction with an audit of personal property belonging to businesses in Meriden. The agreement provided for Meriden to select a minimum of four hundred business accounts to be audited. According to the (then) tax assessor, Steven Hodgetts, there were approximately sixteen hundred businesses with taxable personal property located in Meriden. Hodgetts identified the upper half in terms of value of personal property, and from this group he randomly selected a percentage of the businesses for audit. Both plaintiffs were chosen. This manner of selection is consistent with Meriden's avowed aim in this audit initiative to increase its tax revenues. The second paragraph of the valuation audit agreement commences with the following sentence: "The background of this Agreement is that the City is seeking to maximize its revenues from the taxation of personal property owned by businesses located within the City."

The contract between NFMA and Meriden called for NFMA to provide audit services for which NFMA was to be compensated through a contingency fee arrangement based upon a percentage of the additional tax revenues, including interest and penalties, actually collected by the City as a result of the contemplated audit.[4] Additionally, the contract contained a provision preventing the City from compromising any claim for the payment of increased taxes with any audited business without first giving NFMA a "meaningful opportunity to participate in discussions between the City and such Account with respect to such matters."

At the time Meriden and NFMA entered into this agreement, neither NFMA nor any of its employees was certified as a "revaluation company" pursuant to C.G.S. §12-2c. That statute provides, in pertinent part: "On and after June 25, 1991, no revaluation company shall perform any valuation for a municipality for assessment purposes unless such company is certified by the Secretary of the Office of Policy and Management." James Crozier, who is a principal of NFMA, testified that he is not an appraiser and has had no personal experience in valuing utility property. Similarly, Jeffrey Coulson, another NFMA principal at the time, was not certified to conduct revaluations and was not a licensed appraiser. At a later point, in 1998, Mr. Coulson obtained certification pursuant to §12-2c. The defendant's retention of NFMA for the §12-53 audit violated the proscription of the statute. The taxing authority of a municipality must be exercised in strict conformity to the terms in which the authority is given to a municipality. *Pepin v. Danbury*, 171 Conn. 74 (1976). While exact conformity with every statutory procedure for assessment is not necessarily a condi-

tion precedent to a valid tax, where a statute's requirements are found to be mandatory and not merely directory, strict adherence to the statute is required. Cf. McQuillan, Municipal Corporations, 3rd Ed. (Clark, Boardman & Callahan, New York, 1994) at 44:106. In the court's view, the unambiguous language of §12-2c is proscriptive, mandatory, and it is intended for the protection of the public. Meriden's violation of this statute is one basis for a finding that the audit process was unlawful.

In order to perform NFMA's obligations under this contract, Crozier contacted Donald Swanton and John Parker whom he viewed as utility experts. On January 24, 1995, NFMA and Swanton and Parker executed a document entitled, "Master Consulting Agreement" which set forth the general terms of their anticipated business relationship and which stated that Swanton and Parker would receive as compensation thirty-three percent of NFMA's earnings from the audit. This agreement also contemplated, by its own terms, that the parties would later execute individual contracts related to specific audits. Also on January 24, 1995, NFMA, Swanton and Parker entered into a supplemental agreement relating specifically to the audit of Northeast Utilities, Yankee Gas, and CL&P. This later agreement states, in part:

NFMA has entered into an Agreement ("the Audit Agreement") dated July 1, 1994 with the City of Meriden, Connecticut (the "City"), pursuant to which NFMA is to provide certain personal property tax audit services. NFMA hereby engages Consultant, and Consultant hereby agrees, to perform audit services on behalf of the City as specified in the Master Consulting Agreement.

In spite of the language of the contract obligating them to provide audit services, neither Parker nor Swanton was, in fact, asked to do an audit. Rather, they were asked to perform a specific task, namely, a reproduction cost new less depreciation (RCNLD) study of the plaintiffs' properties. In short, neither Swanton nor Parker was asked to find omitted property or value or to determine the fair market value of the plaintiffs' properties for any of the audit years. Both Parker and Swanton testified that neither of them performed an audit of the plaintiffs' personal property for any of the tax years involved, and that neither of them appraised the plaintiffs' property to determine its fair market value. Swanton characterized his work as a very rough estimate and not an appraisal. He also acknowledged that he had never in his career done a property tax valuation involving utility property. He reported that he did not consider the fact that the property was regulated by the DPUC because such an analysis was beyond the scope of their work. He and Parker were simply directed to prepare a study based on one valuation methodology.

Pursuant to the request of Meriden's then assessor, Hodgetts, the plaintiffs provided substantial documentation to Parker and Swanton from which they prepared their RCNLD study. The results of this study were forwarded to NFMA. Without conducting any further examination or independent analysis, Crozier prepared executive summaries of Parker and Swanton's work and forwarded the summaries to the assessor as NFMA's work product pursuant to its valuation audit agreement. Thinking erroneously that NFMA had hired utility experts to determine the fair market value of the plaintiffs' properties, Hodgetts accepted the NFMA product without independent analysis on his part. Based on the executive summaries prepared by Crozier, Hodgetts prepared and sent revised tax bills to the plaintiffs for the audit years 1991, 1992, 1993, and 1994.

The tax bill for 1991 was based on the RCNLD study conducted by Swanton and Parker. For 1991, the original Yankee Gas assessment was $8,664,610. As a consequence of the NFMA report, the City increased the assessment to $25,330,230, approximately 2.92 times the original amount. For CL&P while the original assessment for 1991 was $13,439,680, the increased assessment was $25,811,860, approximately 1.92 times the original amount. Without asking for additional information from either plaintiff for any of the audit years 1992 through 1994, the assessor simply multiplied the amount reported by each plaintiff for each of these subsequent years by the factors noted to arrive at his determination of the value of the plaintiffs' personal property in Meriden for the tax years 1992, 1993, and 1994. Thus, for 1992, while Yankee Gas reported a value of $10,768,280, the assessor simply multiplied that amount by 2.92 to arrive at a new assessment of $31,480,120. Similarly, for the audit year 1993, while Yankee's initial assessment was $14,661,670, the tax assessor raised it to $42,862,100 by simply multiplying the reported valuation by the constant factor of 2.92. In 1994, the original assessment of $14,879,720 became $43,499,550.[5] The assessor went through a similar calculation for CL&P for 1992, 1993, and 1994, and then issued a tax bills for higher amounts based solely on multiplying each year's previous assessment by a factor of 1.92. Thus, while CL&P's initial assessment for 1992 had been $14,796,060, it became $28,416,880 and for 1993 the original assessment of $14,812,190 became $28,447,860. In 1994, the original assessment of $13,933,990 became $26,781,210. In formulating new assessments, the assessor made no determination whether either plaintiff had added or subtracted assets from their business property in Meriden in 1992, 1993 or 1994. No information in this regard was requested from either plaintiff. Indeed, it is evident that beyond the initial information requested by NFMA pertaining to the 1991 filing, no further information was requested from either plaintiff by either the City or NFMA in any of the subsequent tax years in dispute. The defendant's argument that the plaintiffs are not entitled to complain of their

assessments because they failed to provide required information to the defendant is without merit not only because the plaintiffs did, in fact, provide substantial information in support of their filings but because it is evident that the defendant had no interest in backup data for any of the tax years subsequent to 1991.

From the trial, it is evident that Crozier advised Hodgetts to use a factor for each plaintiff for audit years 1992, 1993 and 1994 without considering any additions or retirements in the plaintiffs' personal property after 1991, and Crozier's advice was based on a conversation with Swanton. Swanton had suggested to Crozier that NFMA utilize a trending factor for years subsequent to 1991 since doing a complete analysis of the actual asset inventory for each of the audit years would, in his view, have been too repetitive. Although Swanton suggested to Crozier that he use a trending factor for subsequent years, he did not recommend using an identical factor for each year. According to Swanton, the use of a constant factor in each of the subsequent years must have been Crozier's idea. Although the use of trending factors to determine the reproduction or replacement cost of property is an acceptable methodology when using the RCNLD approach to valuation, trending assumes that the property, its acquisition costs, and its age, have all been identified. NFMA's use of a constant factor for 1992, 1993, and 1994 based solely on the 1991 profile of assets without regard to any changes for the later years was an unreasonable shortcut.

For the tax years 1991 through 1994, the Meriden tax assessor abdicated his responsibility to conduct an audit pursuant to C.G.S. §12-53. He was unaware that NFMA had no expertise in valuing utility property, and that its outside experts had been directed not to conduct an audit or appraisal but simply to prepare a RCNLD study. He relied on the results forwarded by NFMA on the basis of ignorance and his failure to make independent inquiry of the scope and results of the NFMA work. NFMA conducted neither an audit nor an appraisal of the plaintiffs' property in any of the audit years. The assessor's unquestioned reliance on NFMA's work amounted, in this case, to an abdication of his responsibilities to audit and value the plaintiffs' properties for the tax years 1991 through 1994. While an assessor has the authority to retain outside experts to assist in the assessment of property, and he need not personally inspect all the assessed property, he or she retains the responsibility to exercise the final judgment in determining the amount of the assessment. *McQuillan* at 44:102; *Conzelman v. City of Bristol*, 122 Conn. 218 (1936).

The plaintiffs additionally claim that the assessments for the tax years 1991 through 1994 were unlawful because the assessor changed the valuation methodology. For the tax years 1991-1994, the assessor sent to the taxpayers of Meriden, including the plaintiffs, a declaration requesting the taxpayer to report its property based on original cost less depreciation (OCLD). The assessor used OCLD in initially assessing file plaintiffs' property, signed the grand lists and issued tax bills accordingly. In the audit, Meriden changed the valuation methodology to RCNLD.

C.G.S. §12-53 gives assessors the authority to add property that the taxpayer omitted or to revalue property already listed. *United Illuminating Co. v. New Haven*, 240 Conn. 422 (1997). As the statute existed throughout the tax years involved in this case, it made no mention of valuation methodologies. In 1999, the following language was added to §12-53(c): "The methodologies used to determine the value of such property during such audit shall remain consistent with the methodologies requested by the assessor to determine the value of such property for the grand list year which such audit or audits relate." The plaintiffs contend that this language should be applied retrospectively. Meriden disagrees.

"In determining the intended effect of a later enactment on earlier legislation, two questions must be asked. 'First, was the act intended to clarify existing law or to change it? Second, if the act was intended to make a change, was the change intended to operate retroactively?' . . . *Circle Lanes of Fairfield, Inc. v. Fay*, 195 Conn. 534, 540, (1985)." *Anderson Consulting, LLP v. Gavin*, 255 Conn. 498, 517 (2001).

"Whether to apply a statute retroactively or prospectively depends upon the intent of the legislature in enacting the statute. In order to determine the legislative intent, we utilize well-established rules of statutory construction. Our point of departure is C.G.S. §55-3, which states: "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retroactive effect. The obligations referred to in the statute are those of substantive law . . . Thus, we have uniformly interpreted §55-3 as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. *Coley v. Camden Associates, Inc.*, 243 Conn. 311, 316, 702 A.2d 1180 (1997). This presumption in favor of prospective applicability, however, may be rebutted when the legislature clearly and unequivocally expresses its intent that the legislation shall apply retrospectively. *In re Daniel H.*, 237 Conn. 364, 372, 678 A.2d 462 (1996); accord *Bayusik Nationwide Mutual Ins. Co.*, 233 Conn. 474, 483-84, 659 A.2d 1188 (1995); *Miano v Thorne*, 218 Conn. 170, 175, 588 A.2d 189 (1991). Where an amendment is intended to clarify the original intent of an earlier statute, it necessarily has retroactive effect . . . *Toise v. Rowe*, 243 Conn. 623, 628, 707 A.2d 25 (1998). We generally look to the statutory language and the pertinent legislative history to ascertain whether the legislature intended that the amendment

be given retrospective effect." *Colonial Penn Ins. Co. v. Bryant*, 245 Conn. 710, 717-19, 714 A.2d 1209 (1998).

The language contained in the legislative history of P.A. 99-189 provides a strong indication that the legislature intended to clarify rather than to change the law governing municipal tax audits. The title of P.A. 99-189 was "An Act Concerning Technical Changes and Clarifications to the Assessment of Personal Property." The stated purpose of the act was "To clarify provisions related to the assessment of personal property for purposes of municipal taxation, to change statutory references so as to reflect the distinction between the total net assessment of all taxable property and the gross fair market value of personal property and to clarify the duties of boards of assessment appeals with respect to supplemental additions to a grand list."

A reading of the transcripts of the public hearings also suggests that P.A. 99-189 was a mere clarification of the law which was already in practice prior to its enactment and that P.A. 99-189 represented the existing practice and understanding of those involved in municipal taxation. Hodgetts, speaking as the president of the CAAO, states that the bill "clarifies a lot of the gray areas of the statutes." Conn. Joint Standing Committee Hearings, Finance Revenue and Bonding, Pt. 224, 1999 Sess., p. 382. Steven Kosofsky, the Legislative Committee Co-Chair of the CAAO characterized the changes as "primarily technical in nature." *Id.* at 549. The Connecticut Conference of Municipalities characterized the bill as a clarification and standardization of the assessment of personal property, including declaration procedures, audit procedures and appeals procedures. *Id.* at 539.[6]

Nowhere in the legislative history is it suggested that P.A. 99-189 represented a substantive change in the law. Accordingly, inferences by the legislators and the various speakers that the amendment clarifies existing law signify legislative intent regarding the retroactivity of the amendment. See, e.g., *Oxford Tire Supply v. Commissioner*, 253 Conn. 683, 692 (2000); *Connecticut National Bank v. Giacomi*, 242 Conn. 17, 40-41 (1997); *Edelstein v. Dept. of Public Health & Addiction Services*, 240 Conn. 658, 668 (1997). "[W]here it is clear that an amendment was intended to construe and clarify, rather than alter, a preexisting law, it will be treated as retroactive." *Thomas E. Golden Realty Co. v. Society for Savings*, 31 Conn.App. 575, 579 (1993), quoting *Aetna Casualty & Surety Co. v. Lighty*, 3 Conn.App. 697, 703 (1985). For the foregoing reasons, the court finds that the legislature intended P.A. 99-189 to be retroactive.

It was inappropriate for the defendant to have changed valuation methodology in conjunction with its C.G.S. §12-53 audit of the plaintiffs' personal property for the tax years 1991 through 1994.

For the tax years 1995 through 1998, the assessor increased the self-reported valuation of the plaintiffs' personal properties pursuant to his statutory authority under §12-55. His process was elegant and simple. It was also unique. For each of the tax years, without any review of the plaintiffs' personal property to determine whether there had been any additions or deletions, the assessor multiplied the amount reported by Yankee by a factor of 2.9 and the amount reported by CL&P by a factor of 1.9. He testified at trial that he utilized these factors for the sake of consistency and upon advice of counsel because of the pendency of tax appeals in court. Thus, for the tax years 1995 through 1998 the assessor arbitrarily increased the self-reported valuations of the plaintiffs' property by constant factors without regard to any increases or decreases to the plaintiffs' property profile in Meriden. Decisional law reveals that courts have accepted many valuation methodologies. Legal expedience, however, has not previously met with judicial approbation as one such method. In arbitrarily increasing the valuation of the plaintiffs' properties for the tax years 1995 through 1998 for reasons of legal expediency, and without regard to the property itself, the assessor abdicated his lawful responsibilities to determine the fair market value of the subject property.

The plaintiffs further claim that the assessments for the tax years 1991 through 1998 are unlawful because they were denied their state and federal constitutional rights to the equal protection of the law and to due process.

It is axiomatic that a just assessment process is one which is uniform and uniformity requires that similarly situated taxpayers be treated equally without discrimination. *Hanover Fire Insurance Company v. Harding*, 272 U.S. 494 (1926). That is not to say, however, that all classifications are barred by equal protection considerations. "Classification of persons or property, or both, for taxing purposes is sanctioned provided, of course, that such classification is fair, reasonable and not arbitrary or whimsical, and based on substantial distinctions." *Id.*

The application of those principles to this instance means that if the property of one or two taxpayers is to be valued according to a method employed for no other businesses, there should be a reason relating to the particularly affected taxpayers to justify their unique treatment. This is particularly true when the resulting assessment is substantially greater than it would have been if the property had been assessed in the same manner as all other business property. In Meriden, however, this did not occur. From the trial evidence it is clear that for the operative years, the only taxpayers whose property was taxed on the basis of RCNLD were the plaintiffs. There is no reasonable basis for Meriden to have taxed the plaintiffs, and no other taxpayers, on the basis of RCNLD. This view is held by the defendant's experts who supported the RCNLD method. In their view, this is the appropriate method to tax all personal property, regardless of

whether or not it is regulated, and there was no particular reason to use this methodology assessing the plaintiffs and not other businesses' property. The defendant offered no credible evidence to support its unique and uneven treatment of the plaintiffs. In its audit process for the tax years 1991 through 1994 no other taxpayers were assessed on the basis of RCNLD. Similarly, no Meriden taxpayers, other than the plaintiffs, were assessed according to this methodology for any of the tax years 1995 through 1998. By unreasonably singling out the plaintiffs for this unique treatment resulting in substantially greater taxes, the defendant discriminated against the plaintiffs, and in doing so, the defendants denied the plaintiffs the equal protection of the law in violation of both the state and federal constitutions.

The plaintiffs claim that the assessment process denied them due process. The power to tax is quasi-judicial. *Hagar v. Reclamation District No. 108*, 111 U.S. 701 (1993). There can be no dispute that a taxpayer has a property interest in his or her money. Therefore, the municipal taxing process implicates due process considerations, and when a municipal officer conducts a property assessment, due process requires that the assessor act impartially and without bias. *Simard v. Board of Education of the Town of Groton*, 473 F.2d 988 (2nd Cir. 1973); *Transportation General Inc. v. Insurance Department*, 36 Conn.App. 587 (1995). When government acts to take property from a citizen due process requires a fair hearing. *Sekor v. Board of Education*, 240 Conn. 119 (1997). As noted by our Appellate Court: "Due process for those with protected property rights requires an impartial administrative adjudicator." *Petrowski v. Norwich Free Academy*, 2 Conn.App. 551 (1984). Accordingly, the individual assessing taxes must be free from any pecuniary interest in the resulting taxes paid. It is clear to this court that the risk of a due process violation is inherent in paying those involved in the property tax assessment process based on the amount of taxes assessed or collected. A contract that gives a party engaged in determining the tax liability a direct financial interest in the amount of tax assessed gives that party an incentive to recommend the highest possible property values. This bias deprives the taxpayer of his constitutional right to an impartial adjudicator and his right to due process. This right has long been recognized. See *Tumey v. Ohio*, 273 U.S. 510 (1927).

In this case, the fairness and impartiality of the process was fatally compromised by the terms of the contract between Meriden and NFMA and the consequent behavior of the parties to it. By awarding NFMA a contract which rewarded NFMA for any increased tax collections, the defendant created at least the appearance of bias in favor of increased assessments. By yielding to NFMA the right to participate in hearings and to be consulted by Meriden before the resolution of any tax dispute, the tax assessor lost his claim to impartiality. Rather, because of his admitted ignorance regarding the proper method to tax regulated utility assets, he looked to NFMA for direction and, in fact, relied entirely on their report. The lack of due process for the plaintiffs was compounded for the tax years 1991-1994 by the refusal of Meriden to afford the plaintiffs meaningful hearings without the participation of NFMA, and, in all of the tax years, by the failure of the assessor to independently exercise his statutory responsibility to assess the properties. As a consequence, the plaintiffs were, in fact, denied due process.

The defendant argues by way of special defense that the plaintiffs' payment under protest of seventy-five percent of the assessed tax bars them from bringing a claim under §12-119. This argument is without merit. While §12-119 permits a taxpayer to bring suit without paying a disputed tax, nowhere does the statute prevent a compliant taxpayer from paying a disputed tax, or a portion of it, in order to preserve a claim that the tax is unlawful or manifestly excessive. A fair reading of the statute leads the court to the belief that its language permits a taxpayer to appeal an unlawful tax without making any payment, such as, for example, in a situation in which the taxpayer claims the property is not located within the taxing jurisdiction, but the refusal to pay any taxes is not a prerequisite to the availability of §12-119 relief. The view urged by the defendant, if proper, could result in the failure of a taxpayer seeking §12-119 relief to pay any taxes even where the property is properly subject to taxation. Such a construction would serve no public policy known to the court.

For the reasons stated, the assessments of the plaintiffs' personal property for the tax years 1991 through 1998 were unlawful and manifestly excessive. Having concluded that the assessments are unlawful, the court may provide relief as it believes just and equitable pursuant to §12-119. The plaintiffs have also filed claims pursuant to §12-117a which allows the court to value the property de novo. The court finds this to be the appropriate relief. Accordingly, in this instance the principal relief under the two statutes is the same.

In a §12-117a appeal, the court performs a two-step function. The court must first determine whether the plaintiffs are aggrieved. *Sibley v. Middlefield*, 143 Conn. 100, 105, 120 A.2d 77 (1956). Whether a specific action that the assessor takes in his valuation has aggrieved a taxpayer is a question of law. *Nader v. Altermatt*, 166 Conn. 43, 55, 347 A.2d 89 (1974). "Valuation of property in excess of fair market value is not the only ground upon which a taxpayer may be entitled to relief. Any circumstances indicating that a disproportionate share of the tax burden is being thrust upon a taxpayer would warrant judicial intervention." *Chamber of Commerce of Greater Waterbury*,

*Inc. v. Waterbury*, 184 Conn. 333, 336, 439 A.2d 1047 (1981). A demonstration that the plaintiffs have been treated unfairly or that the assessment or the methodology employed by the assessor was wrongful is sufficient to establish aggrievement. See *Davis v. Westport*, 61 Conn.App. 834 (2001). Based upon the foregoing findings of fact, the assessor's abdication of his responsibilities and the unorthodox valuation methodology employed, the court finds that the plaintiffs have been aggrieved for the years 1991-1998.

For the tax year 1999, Meriden retained the valuation firm of RW Beck to value the plaintiffs' property. Nancy Hughes, a senior director of RW Beck, did a fair market value analysis of the plaintiffs' properties in Meriden for 1999. With respect to Yankee Gas, while she reviewed data concerning original and reproduction costs of property, comparable sales, and the income of Yankee, she determined the most accurate measure of the value of Yankee's property in Meriden could be determined by the stock and debt approach. Her report was provided to the tax assessor, Mordarski, on the same day as he was required to sign the grand list. The court disagrees with the propriety of this approach in valuing tangible personal property in this instance. The stock and debt approach is a variant of the income method of valuation, based, in large part, on the value of the company's stock. Since Yankee was involved in a stock transaction at the time of valuation, Hughes believed it appropriate to utilize the stock share value as a beginning point in her estimate of market value. Her ultimate estimate of value was derived by a formula which did not take into consideration that a portion of the stock price reflects the value of a going business including its intangible assets such as good will and its work force. Therefore, by utilizing stock value as a factor in valuation, Hughes impermissibly included the value of intangible assets in determining the fair market value of Yankee's personal property for tax purposes. The court rejects her analysis as flawed.

For CL&P, she utilized four methodologies in her study: OCLD, RCNLD, comparable sales, and income. Her study resulted in an uncertain fair market value ranging from approximately $23,000,000 to $72,000,000. Without conducting any independent analysis or selecting any particular valuation methodology, the assessor took the average of the four values to posit the fair market value of CL&P's property for the tax year 1999. Mordarski was unable to provide the court with any authority, either in the law or in assessment normalcy, for this unusual mathematical approach to assessing the personal property of Meriden taxpayers. The plaintiffs are aggrieved for the tax year 1999.

Once aggrievement is established, the court may proceed to the next step in a §12-117a appeal to determine de novo the true and actual value of the taxpayer's property. *Konover v. Town of West Hartford*, 242 Conn. 727, 699 A.2d 158 (1997). "The trier arrives at his own conclusions as to the value of land 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 including his own view of the property." *O'Brien v. Board of Tax Review*, 169 Conn. 129, 136, 362 A.2d 914 (1975).

In assessing property for tax purposes, a municipal tax assessor is charged to determine the present true and actual value of the property which is statutorily defined as the fair market value of the property and not its value at a forced or auction sale. Cf. C.G.S. §12-63. "Fair market value" in this context is defined as the value that would be fixed in fair negotiations between a desirous buyer and a willing seller, neither under any undue compulsion to make a deal. *Uniroyal, Inc., v. Middlebury Board of Tax Review*, 174 Conn. 380 (1978). If a tax assessor is unable to determine the fair market value of property because there is no apparent market for the property, then the assessor may resort to other methods for the determination of the property's value. Typically, these methods can include a consideration of the replacement or reproduction cost of the property with adjustments for depreciation (RCNLD), its original cost less accumulated depreciation (OCLD), and a capitalization of income. In reviewing the methods for determining the fair market value of property, the court is not bound to view one approach as controlling, but rather should consider all methods utilized in arriving at the value of the property. *New Haven Water Co. v. Board of Tax Review*, 166 Conn. 232 (1974).

In assessing the plaintiffs' personal property, the Meriden tax assessor does not appear to have consistently adopted any one method for all the tax years involved. As noted, in conjunction with the 1994 audit of the tax year 1991, Meriden utilized the NFMA report, which was based on the RCNLD methodology for the 1991 tax year. For subsequent tax years through 1998, the tax assessor simply multiplied the amounts reported by the plaintiffs by constant factors without regard to any additions or subtractions to the plaintiffs' property in those subsequent years. For 1999, the assessor accepted RW Beck's valuation of the Yankee property based on a stock and debt analysis, and the assessor averaged the figures provided by RW Beck relating to CL&P.

Though the plaintiffs initially reported their personal property on the basis of OCLD, for trial purposes, they presented expert testimony through John Goodman that the valuation of the plaintiffs' property should be on the income basis, supported by a variant of RCNLD methodology. For trial purposes, RW Beck, utilizing data provided by Goodman, also valued the plaintiffs' property for the 1991 tax year on the basis of RCNLD. However, the RCNLD approach of the experts and NFMA were no more than nominally similar.

As noted *supra*, NFMA did not, in fact, determine a valuation of the plaintiffs' property for the tax year 1991. But experts retained by NFMA did perform an RCNLD study for 1991, which became the work product of NFMA and the basis of the assessor's audit valuation for 1991 through 1994. In order to conduct this study, Swanton and Parker reviewed the personal property tax filings and backup data supplied by the plaintiffs. By utilizing a reference guide known as the Handy Whitman Index, Swanton and Parker determined the current costs of each category of the plaintiffs' personal property and then applied depreciation schedules to arrive at the present value of each asset category. They entitled this method the "Current Depreciated Replacement Cost Method." Through this process they determined that the current depreciated replacement costs of the CL&P personal property in 1991 in Meriden was $36,874,088, approximately 192% of the value reported by CL&P. With respect to Yankee Gas, employing the same methodology, Swanton and Parker determined the RCNLD of its 1991 assets in Meriden to be $36,186,036, or approximately 292% greater than reported by Yankee in its 1991 filing.

In its review of this matter, RW Beck utilized RCNLD for the 1991 tax year. Notwithstanding the nominal identity of its methodology, RW Beck's conclusions for 1991 vary from the determinations made by Swanton and Parker. For 1991, RW Beck determined the fair market value of CL&P's Meriden personal property to be $40,985,000 and Yankee's property to be $33,371,000. Applying a similarly named method, the plaintiffs' expert, Goodman, arrived at significantly different valuations for the plaintiffs' property for the 1991 tax year. For CL&P, Goodman determined the fair market value of its Meriden personal property to be $20,566,035, and for Yankee his 1991 value was $13,248,446. Goodman's approach includes deducting economic or external obsolescence in order to arrive at an estimated fair market value of regulated assets. While a significant amount of the differences in results among Goodman and RW Beck's and Swanton and Parker's work efforts can be attributed to Goodman's inclusion of external obsolescence as a component of depreciation, when this factor is omitted from Goodman's analysis, the results remain significantly different. Goodman's figures for 1991, not taking external obsolescence into consideration, were $49,722,491 for CL&P and $42,462,284 for Yankee. Applying the nominally identical method of RCNLD, the three efforts reaped significantly different results with a variance of nearly $24,000,000 for the CL&P valuations and a slightly more than $17,000,000 variance between the high and low valuations for Yankee. Utilizing essentially the same original cost figures, the varying outcomes were due, in large part, to differences in how each calculated depreciation. Additionally, Goodman's figures were further lowered by his inclusion of external obsolescence as a factor. These significant differences reveal the considerable subjectivity of this approach due to the disparate treatment of depreciation.

In order to understand Goodman's viewpoint that external obsolescence should be considered as a factor in valuation, one must consider the nature of depreciation. Depreciation may be considered as either an accounting or an economic concept. As an accounting concept, depreciation relates to the recovery of costs. Thus, the owner of property used in business is permitted to depreciate that property over its useful life as a means to recover its acquisition cost. To effectuate this tax policy, the IRS has created depreciation schedules for different classes of property, allowing business property owners to depreciate property in accordance with the appropriate schedule by classification notwithstanding the actual economic utility of the asset. When considered as an economic concept, however, depreciation relates to any factor that reduces the value of business property. Thus, from an economic perspective, depreciation may include such considerations as physical deterioration, functional obsolescence caused by technological change, and external factors which negatively impact on the economic utility of business assets. It is this last factor, sometimes known as economic obsolescence, which is controversial. Goodman argues that the factor of regulation operates to reduce the value of the plaintiffs' property. His argument has received some professional approbation. In the text *The Appraisal of Real Estate*,[7] the author notes: "Depreciation is a loss in property value from any cause. It may also be defined as any difference between reproduction cost or replacement cost and market value. Deterioration, or physical depreciation, is evidenced by wear and tear, decay, dry rot, cracks, encrustations, or structural defects in a building. Other types of depreciation are caused by obsolescence, which may be either functional or external. Functional obsolescence may be caused by the inadequacy or superadequacy of a building site, style or mechanical equipment. Physical deterioration and functional obsolescence can usually be observed in the improvement. External obsolescence is caused by factors outside the property such as changes in demand, general property issues in the area, zoning, financing, and government regulation." p. 376. While this text is a discussion of real estate valuation, the point that external obsolescence may be considered as affecting value is no less germane to personal property than to realty.

Goodman posited that the government regulation of the plaintiffs' property is a cause of external or economic obsolescence which must properly be considered in determining value, and he calculated this factor by measuring the difference between the rate of return on assets allowed by the DPUC and the rate of return a prudent investor would expect to realize on the same assets. Goodman then capitalized this differ-

ence and subtracted the resulting sum from the RCNLD calculation to arrive at his estimate of fair market value. This approach is sound. If value is seen as the property's contribution in the marketplace, or its contribution to revenue, it is reasonable to deduct from the reproduction or replacement cost of an asset an amount which takes into consideration the difference between what the asset would generate in a free economy from what it is able to contribute as result of regulation. In his treatise, *Valuation of Railroad and Utility Property*, Arlo Woolery suggests that one way to measure economic depreciation, or external obsolescence is to capitalize the income loss resulting from the condition or negative influence. Woolery, Arlo, *Valuation of Railroad and Utility Property* (Published in cooperation with The Lincoln Institute of Land Policy and The Wichita Public Utility and Railroad Workshop) at 61. This is the methodology utilized by Goodman and it accounts for the greatest difference between his RCNLD outcomes and those derived by NFMA and Beck, neither of whom considered the fact of regulation in their valuations.

While a reduction in the value of an asset due to government regulation may appear to be an income concept not properly applied when using cost methodology, on closer scrutiny, the approach provides a useful analysis. As a starting point, it can fairly be said that the original cost of an asset, standing alone, is not a measure of its present worth. But when the economic value of that asset to the business is directly tied to its original cost, then original cost becomes a relevant valuation factor. Such is the case with DPUC regulation, which, as stated previously, uses original cost as the base-point in determining an allowed rate of return. The cost of reproducing or replacing an asset has no such correlation to its economic worth to its business owner. Woolery notes: "Reproduction cost new has been widely used as evidence of value for property in unregulated industries. This estimate of cost spans the time period between original construction and the present. It is the cost of constructing a replica of the original property using current prices for labor and materials. The very concept is often criticized on both ideological and procedural grounds. There is no assurance that any property is worth what it would cost to reproduce it new using current prices." *Id.* at 42.

"In valuing non regulated properties, reproduction cost has a wide range of useful applications if used with skill and understanding. However, making this type of cost estimate is expensive and time consuming. Regulatory authorities and courts are inclined to give it little consideration in determining the base for earnings, so tax administrators have little reason to use it as the basis for ad valorem taxation." *Id.* at 42-43. Similarly, with respect to replacement cost methodology, Woolery comments: "Replacement cost, even though it is a useful and reliable tool for valuing properties in a free economy, may have limited utility for valuing transportation and utility property for ad valorem tax purposes. It is expensive, time consuming, and technically demanding. To use this tool effectively, the transportation or utility property would have to be hypothetically redesigned and reengineered to specifications imposed by the current state of the art and current market demand." *Id.* at 42.

While the RCNLD method was once the prevalent methodology, utilized to value personal property, it is no longer in general use in Connecticut because its formulations are complicated and involve substantial subjectivity in determining appropriate depreciation, and because technological change has made reproduction and replacement costs less reliable indicators of value.[8] Regarding valuation methodology, the *Handbook for Connecticut Assessors*, published by the Connecticut Association of Assessment Officers in concert with the Office of Policy and Management, recommends the use of the modified cost approach (OCLD) and not RCNLD. "The cost approach to value involves a determination as to the current depreciated cost of personal property. In appraisal theory, the replacement cost new of an item of personal property is adjusted to reflect its condition and utility in order to arrive at an estimate of market value. As a point of departure in this approach to value, Connecticut assessors seldom utilize the replacement cost new other than for items that are new, due to a lack of data sources." *Handbook for Connecticut Appraisers*, (2000 Ed) 10-8.

The *Handbook* goes on to state, "It is not recommended that an assessor use trending factors applied against acquisition costs to arrive at an estimate of fair market value. Given the multitude of personal property items to be valued, and the fact that many of them are subject to significant technological obsolescence, these items may actually be replaced with more technologically advanced and, more likely, less expensive equipment. Therefore, the assessor must exercise caution when considering the use of trending factors, in that the amount of total depreciation applied is extremely critical in the determination of a final estimate of fair market value." *Id.*

"Most assessors use a modified cost approach to value wherein the acquisition cost of personal property items is adjusted to reflect accrued depreciation. In the mass appraisal process, this adjustment is accomplished via use of depreciation schedules." *Id.* While the *Handbook for Connecticut Assessors* has no coercive effect on assessors, our courts have looked to the Handbook for guidance and clarification. *United Illuminating Co. v. New Haven*, 240 Conn. 422 (1997). It is also reflective of practice norms.[9]

In her utilization of trending factors and the RCNLD approach, Hughes of RW Beck was influenced by her perception of the status of Connecticut law. In support of her utilization of the RCNLD method for valuation, Hughes concluded in her report, "Based on the relative merits of the indicators of value developed using the cost, income and market approaches to valuation, and taking into consideration the legal precedent for determining

the present true and actual value of utility property as determined by the Supreme Court of Connecticut, we believe that the fair market value of the property for tax assessment purposes is equal to the RCNLD value." The reference to the Connecticut Supreme Court was to its 1974 decision in *New Haven Water Company v. Board of Tax Review*, 166 Conn. 232. At first impression, reliance on *New Haven Water Company* appears justified. But it is its underlying principles in addition to its contextual factual determinations which make *New Haven Water Company* pertinent today.

In *New Haven Water Company*, the plaintiff water company had appealed the refusal of the Board of Tax Review to reduce its personal property assessment. The trial court had referred the matter to a committee, Judge P.B. O'Sullivan, who filed a report affirming the Board's action. On appeal, the water company had argued that the assessor was required, as a matter of law, to value the property using the OCLD method of valuation. The Board had confirmed the assessor's valuation on the basis of the RCNLD approach. In affirming the trial court's adoption of the committee report, the Supreme Court noted: "The committee found that the replacement cost less depreciation method is widely used throughout the state, and is used to assess the taxable property of other public service companies." *Id.* at 237. Additionally, a review of the record and briefs pertaining to this case indicates that at trial there was testimony from the tax assessor, Harry J. Cohen that: "The figures supplied by the plaintiff used by the assessor was replacement cost less depreciation. For the grand list of June 1, 1966, the assessor could not have used historical cost less depreciation as a method to arrive at fair market value, because the figures were not supplied to him, and, in fact, the figures supplied to him by the plaintiff were replacement cost less depreciation." *Connecticut Supreme Court Records and Briefs. January Term, 1974*, Appendix 3a, Testimony of Harry J. Cohen, tax assessor. Additionally, there was testimony from Cohen that, "The plaintiff receives the same treatment on personal property assessment as does every other company in New Haven and the same as he did for the U.I. and the Southern Connecticut Gas Company." *Id.* at 4a. Thus, while in its decision the Supreme Court appeared to support the RCNLD method of valuation as a preferred approach, the decision must be read in light of then prevailing conditions and understood in light of present norms. It must also be understood for its precise holding that the tax assessor was not required, as a matter of law, to value property on the basis of OCLD.

The court finds it meaningful that at the time of the *New Haven Water Company* decision, self reporting by business property owners was on the basis of RCNLD and this was the generally accepted method for valuing personal property. Today, the circumstances are significantly different. Now, the general practice by municipal tax assessors in Connecticut is to request businesses to report their business property on the basis of OCLD and to assess on that basis. Indeed, this was the manner in which Meriden requested information from the plaintiffs. Requesting historical information concerning the date and cost of acquisition is in accord with the guidelines set forth in the *Handbook for Connecticut Assessors*. In pertinent part, the *Handbook* states: "The assessment of personal property must be based on its fair market value. Establishing value on the basis of market sales is very difficult due to the lack of bona fide sales data. Historic cost data is likely to be the best economic information that is available to the assessor. The property owner enters the total cost of the personal property by assessment year of acquisition in the schedules on the declaration. This allows the assessor to determine personal property values by use of the modified cost approach." *Handbook*, 10-6. As noted *supra*, in addition to embracing the modified cost approach to valuation, the *Handbook* discourages assessors from utilizing the replacement cost approach.

Thus, appraisal practice has markedly changed from 1974 when RCNLD was the normative valuation method. Now it is the exception. Indeed, from trial evidence it is apparent that in all Connecticut municipalities business owners are asked to report their property in terms of acquisition costs less depreciation. In short, tax assessment on the basis of OCLD is now the norm.

In the court's view, there is good reason for the common practice of assessors to tax personal property on the basis of OCLD, otherwise known as the modified cost approach. It is substantially less subjective than the RCNLD approach, and can more readily be applied to all taxpayers without undue burden on assessors. On the other hand, the RCNLD approach requires the assessor to trend original cost to their current replacement costs. This entails not only an estimate of current costs, but a determination of the present useful life of an asset, a determination fraught with the risk of subjectivity. This approach does not adequately take into consideration external factors such as technological changes, which would make actual replacement of an asset impractical. And, importantly, the RCNLD approach results in an assessment bearing no reasonable relationship to economic value. If the value of an asset can be measured by its economic contribution, there should be some correlation between the earnings that can be generated by an asset and its value. However, if one were to accept the valuations determined through NFMA or RW Beck and apply a reasonable rate of return to those values, one would project earnings vastly in excess of those realized by either plaintiff. It is significant to the court that the DPUC utilizes, as its rate base, the original costs of assets. If the DPUC were to utilize the replacement or reproduction costs of assets as the basis for determining a reasonable rate of return, the resulting increased costs to utility users would be significant.

In addition, with respect to regulated assets, the plaintiffs submit their personal property declarations to

municipalities utilizing the schedules of depreciation approved by the DPUC and not the shorter depreciation schedules suggested on the forms provided by municipal assessors. The form utilized by the Meriden assessor, and in general use in the state, contains depreciation schedules as allowed by the Internal Revenue Service. The depreciation claimed by the plaintiffs in their tax filings, however, is in accordance with depreciation schedules established by the DPUC.[10] Periodically, the DPUC and regulated utilities conduct depreciation studies to determine the actual useful life of regulated assets by categories and, following these studies, the DPUC sets allowable depreciation schedules. These schedules are based on the actual longevity of regulated assets by category which are invariably longer than would normally be allowed by the IRS for tax filing purposes. As a consequence, the net values reported by the plaintiffs to Meriden are higher than they would be if the plaintiffs had simply followed the schedules suggested in the City's declaration forms. And, since the depreciation schedules adopted by the DPUC are based on studies of the actual longevity of assets, the resulting values reported are more realistic than those which are simply subjected to an IRS approved depreciation schedule. Additionally, it is the plaintiffs' practice not to depreciate any regulated assets lower than 30% of original cost, no matter how aged, in spite of the fact that the asset could be completely written off for IRS purposes. This practice inures to the benefit of municipal taxing authorities and operates as a hedge against inflation.

The modified cost method, which is based on OCLD, has been criticized as merely an accounting expedient unrelated to true value. When depreciation is based solely on IRS schedules, this criticism may be valid. But in the case of regulated assets, such as those of the plaintiffs,' the depreciation schedules are derived by the DPUC on the basis of the actual economic life of asset groups. And, as noted *supra*, when determining the rate of return the plaintiffs may be allowed to earn on their assets, the DPUC considers the original and not the replacement cost of these assets.

In the court's view, the methodology employed by the vast number of assessors in Connecticut, the methodology recommended by the Connecticut Association of Assessment Officers, and the methodology generally applied to all other personal property subject to taxation in Meriden is the appropriate methodology to determine the fair market value of the plaintiffs' personal property. And that is the methodology, known as the modified cost approach, requested by the assessor and provided to the assessor by the plaintiffs in all the tax years in question.

In reaching this conclusion the court has also considered the income and comparable sales approaches to valuation. To value property by the income approach one must calculate the present value of anticipated future earnings. To make this computation, one must determine the earnings and then discount them to a present valuation. Thus, the present value of an asset is derived by determining the earnings one may realize from the asset and then discounting those earnings to their present value. As pointed out by Nancy Hughes of RW Beck, "the income value for a regulated utility should equal its rate base value, since this is the value of the utility's investment on which it is allowed to earn its authorized rate of return or profit." Defendant's Exhibit 1112, RW Beck Report, 4-3. The court agrees. Hughes also correctly notes that the income approach is based on a return on all the plaintiffs' assets, then prorated to Meriden, and some of these assets may have been more profitable than others. For example, she commented that in certain of the tax years in question, CL&P maintained unprofitable generation facilities which, when taken into consideration as part of a system-wide income analysis, artificially deflated income. Therefore, she argued, it would be inappropriate to value CL&P's assets in Meriden using its proportionate income based on its proportionate share of assets, if it contained none of the non-income producing generation facilities. The court agrees. The lack of profitability of assets located outside of Meriden should not be a factor in determining the income reasonably derived from assets situated in Meriden. For these reasons, the court believes that the income approach is not a reasonable sole indicator of value. It is useful to consider in conjunction with cost methodology and, in this regard, it generally correlates to the values established using OCLD methodology.

The court also considered the comparable sales method of valuation and found it to be the least reliable indicator of value because of the absence of comparable sales of regulated utility property alone. In its report, RW Beck detailed several utility company sales to demonstrate that utility distribution facilities sold at an average sales price 1.8 times greater than book value. Hughes urges the point that because utility companies sell at more than book value, the modified cost approach is not a reliable indicator of value. The court disagrees. The assessment of personal property is limited to tangible property. A stock sale of a utility business, however, typically involves the sale of a going business with attendant good will with a work force in place. Understandably, no witness was able to report a comparable sale of tangible personal property only. And yet, to include, as a comparable, the unidentified worth of intangible assets, makes the comparison of little use. For the same reasons, reference to the pending merger between Con Edison and Northeast Utilities and to the sale of Yankee Gas are unhelpful. In both these stock ventures, the sales price is not solely a function of the value of taxable personal property, but more generally of the anticipated revenues and profitability of companies, a determination flowing from many considerations which include but are not limited to the companies' tangible assets.

The plaintiffs' filings for their regulated personal property for the tax years 1991 through 1999 were based on OCLD as allowed by the DPUC.[11] As noted, the court believes that this manner of reporting was appropriate and the most reflective of the value of the plaintiffs' regulated assets. The defendant has failed to meet the burden of proving any of its special defenses. Similarly, the defendant's counterclaims fail for want of proof. Accordingly, the court finds the fair market value of the plaintiffs' personal property was as filed by the plaintiffs in their self-reporting,[12] as follows:

| Yankee Gas | | CL&P | |
|---|---|---|---|
| Year | FMV | Year | FMV |
| 1991 | 12,378,015 | 1991 | 19,199,547 |
| 1992 | 15,383,266 | 1992 | 21,137,228 |
| 1993 | 20,945,241 | 1993 | 21,160,273 |
| 1994 | 21,256,736 | 1994 | 19,905,721 |
| 1995 | 23,872,393 | 1995 | 20,729,322 |
| 1996 | 21,862,963 | 1996 | 21,269,365 |
| 1997 | 22,590,375 | 1997 | 25,597,325 |
| 1998 | 20,775,836 | 1998 | 27,261,492 |
| 1999 | 25,354,745 | 1999 | 27,529,829 |

Pursuant to both §12-117a and §12-119, the court has the discretionary authority to award pre-judgment interest to a taxpayer whose property has been overassessed. *Sears, Roebuck and Company v. Board of Tax Review*, 241 Conn. 749 (1997). In their prayers for relief the plaintiffs seek interest. During the course of the trial, they submitted exhibits setting forth their respective interest claims. In light of the factual determinations *supra*, the court finds that an award of interest is equitable in this case.

In determining what rate of interest should apply, which is also discretionary, the court looks to C.G.S. §37-3a for guidance. *Sears* at 764. C.G.S. §37-3a provides, in relevant part, that "interest at a rate of ten per cent, and no more, may be recovered and allowed in civil actions." In exercising its equitable authority, a trial court may consider all relevant information. Given the conduct of the defendant and the time period of overassessment, the court finds that an interest rate of eight percent is appropriate. Accordingly, judgment may enter for the plaintiffs on those counts relating to C.G.S. §12-117a and §12-119 as noted in the following charts.

| CL&P AUDIT YEARS 1991-1994 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| LIST YEAR | TAXES BASED ON SELF-REPORTING | INCREASE BASED ON §12-53 AUDIT | AMOUNT OF INCREASE PAID | DATE PAID | REFUND DUE | 8% PER DIEM RATE | INTEREST THROUGH 4/20/01 | TOTAL REFUND DUE |
| 1991 | 868,859 | 798,006 | 598,504 | 12/15/95 | 598,504 | 131.18 | 255,938 | 854,442 |
| INTEREST | 0 | 442,893 | 332,170 | 12/15/95 | 332,170 | 72.81 | 142,046 | 474,216 |
| 1992 | 667,302 | 614,299 | 460,724 | 12/15/95 | 460,724 | 100.98 | 197,019 | 657,743 |
| INTEREST | 0 | 230,362 | 172,772 | 12/15/95 | 172,772 | 37.86 | 73,882 | 246,654 |
| 1993 | 530,276 | 488,157 | 366,118 | 12/15/95 | 366,118 | 80.25 | 156,564 | 522,682 |
| 1994 | 498,837 | 459,214 | 172,205 | 12/15/95 | 344,411 | 37.74 | 141,352 | 485,763 |
| | | | 172,206 | 1/31/96 | | | | |
| | | | | | | TOTAL REFUND DUE $3,241,500 | | |

| YANKEE GAS AUDIT YEARS 1991-1994 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| LIST YEAR | TAXES BASED ON SELF-REPORTING | INCREASE BASED ON §12-53 AUDIT | AMOUNT OF INCREASE PAID | DATE PAID | REFUND DUE | 8% PER DIEM RATE | INTEREST THROUGH 4/20/01 | TOTAL REFUND DUE |
| 1991 | 558,867 | 1,074,933 | 806,200 | 12/15/95 | 806,200 | 176.70 | 344,820 | 1,151,020 |
| INTEREST | 0 | 596,588 | 447,441 | 12/15/95 | 447,441 | 98.07 | 191,375 | 638,816 |
| 1992 | 485,649 | 934,104 | 700,578 | 12/15/95 | 700,578 | 153.55 | 299,645 | 1,000,223 |
| INTEREST | 0 | 350,289 | 262,717 | 12/15/95 | 262,717 | 57.58 | 112,367 | 375,084 |
| 1993 | 524,888 | 1,009,575 | 757,181 | 12/15/95 | 757,181 | 165.96 | 323,854 | 1,081,035 |
| 1994 | 532,694 | 1,024,590 | 384,221 | 12/15/95 | 768,442 | 168.42 | 324,828 | 1,093,270 |
| | | | 384,221 | 1/31/96 | | | | |
| | | | | | | TOTAL REFUND DUE $5,339,448 | | |

Therefore, for the audit years 1991-1994, Meriden is ordered to pay to CL&P $3,241,500 principal and interest. Meriden is ordered to pay to Yankee Gas, for the same years, $5,339,448 principal and interest.

| CL&P REVALUATION YEARS 1995-1999 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | (A) | (B) | (C)=75%B | (D) | (E)=(C)–(A) | (F) | (G) | (G)+(E) |
| LIST YEAR | TAXES BASED ON SELF-REPORTING | TAX IMPOSED BY §12-55 REVALUATION | TOTAL TAX PAID | DATE PAID | REFUND DUE | 8% PER DIEM RATE | INTEREST THROUGH 4/20/01 | TOTAL REFUND DUE |
| 1995 | 519,477 | 997,077 | 373,903 | 7/31/96 | 228,330 | 50.05 | 81,622 | 309,952 |
| | | | 373,904 | 1/31/97 | | | | |
| 1996 | 533,010 | 1,023,053 | 383,645 | 7/31/97 | 234,280 | 51.34 | 65,005 | 299,285 |
| | | | 383,645 | 1/31/98 | | | | |
| 1997 | 641,469 | 1,231,216 | 461,706 | 7/31/98 | 281,943 | 61.79 | 55,675 | 337,618 |
| | | | 461,706 | 1/31/99 | | | | |
| 1998 | 683,173 | 1,311,272 | 983,454 | 1/31/00 | 300,281 | 65.82 | 29,220 | 329,501 |
| 1999 | 778 544 | 1,171,082 | 439,156[13] | 7/31/00 | 49,884 | 10.94 | 2,875 | 52,759 |
| | | | | | | TOTAL REFUND DUE | | $1,329,115 |

| YANKEE GAS REVALUATION YEARS 1995-1999 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | (A) | (B) | (C)=75%B | (D) | (E)=(C)–(A) | (F) | (G) | (G)+(E) |
| LIST YEAR | TAXES BASED ON SELF-REPORTING | TAX IMPOSED BY §12-55 REVALUATION | TOTAL TAX PAID | DATE PAID | REFUND DUE | 8% PER DIEM RATE | INTEREST THROUGH 4/20/01 | TOTAL REFUND DUE |
| 1995 | 598,242 | 1,748,909 | 655,481 | 7/31/96 | 713,440 | 156.37 | 255,203 | 968,643 |
| | | | 655,481 | 1/31/97 | | | | |
| 1996 | 547,886 | 1,602,005 | 600,752 | 7/31/97 | 653,618 | 143.26 | 181,516 | 835,134 |
| | | | 600,752 | 1/31/98 | | | | |
| 1997 | 566,115 | 1,655,304 | 620,739 | 7/31/98 | 675,36 | 148.02 | 133,526 | 808,889 |
| | | | 620,739 | 1/31/99 | | | | |
| 1998 | 520,642 | 1,522,344 | 1,141,758 | 1/31/00 | 621,116 | 136.13 | 60,689 | 681,805 |
| 1999 | 717,032 | 1,477,036 | 1,477,036 | 7/31/00 | 195,384 | 42.82 | 11,228 | 206,612 |
| | | | | | | TOTAL REFUND DUE | | $3,501,083 |

Therefore, for the revaluation years 1995-1999, Meriden is ordered to pay to CL&P $1,329,115 principal and interest. Meriden is ordered to pay to Yankee Gas, for the same years, $3,501,083 principal and interest.

Pursuant to C.G.S. §52-192a, the plaintiffs filed offers of judgment for each of the tax years subject to this litigation. The defendant did not accept any of the offers. Since the offers of judgment were couched in terms of fair market value, and not in damages, the court awards offer of judgment interest only for those years in which the value posited in the offer of judgment is greater than the fair market value found by the court. Accordingly, the plaintiffs are entitled to interest at the statutory rate of twelve percent from the date of the filing of the offers as follows:

| CL&P | | | | | |
|---|---|---|---|---|---|
| YEAR | FMV | OFFER OF JUDGMENT | DATE FILED | 12% PER DIEM RATE[14] | INTEREST DUE |
| 1991 | 19,199,542 | 20,600,000 | 5/17/99 | 436.82 | 307,521 |
| 1992 | 21,137,228 | 22,200,000 | 5/17/99 | 297.34 | 209,327 |
| 1993 | 21,160,271 | 22,100,000 | 5/17/99 | 171.84 | 120,975 |
| 1994 | 19,905,700 | 18,600,000 | 5/17/99 | N/A | 0 |
| 1995 | 20,729,322 | 20,600,000 | 5/17/99 | N/A | 0 |
| 1996 | 21,269,365 | 20,500,000 | 5/17/99[15] | N/A | 0 |
| 1997 | 25,597,325 | 25,000,000 | 12/18/00 | N/A | 0 |
| 1998 | 27,261,491 | 28,300,000 | 12/18/00 | 108.33 | 13,325 |
| 1999 | 27,529,829 | 29,800,000 | 12/18/00 | 17.35 | 2,134 |

| YANKEE GAS | | | | | |
|---|---|---|---|---|---|
| YEAR | FMV | OFFER OF JUDGMENT | DATE FILED | 12% PER DIEM RATE | INTEREST DUE |
| 1991 | 12,378,015 | 13,300,000 | 5/17/99 | 588.44 | 414,261 |
| 1992 | 15,383,266 | 16,200,000 | 5/17/99 | 452.16 | 318,318 |
| 1993 | 20,945,242 | 23,400,000 | 5/17/99 | 355.41 | 250,209 |
| 1994 | 21,256,732 | 21,700,000 | 5/17/99 | 359.43 | 253,039 |
| 1995 | 23,872,392 | 26,900,000 | 5/17/99 | 318.46 | 224,196 |
| 1996 | 21,862,963 | 24,000,000 | 12/18/00 | 274.56 | 33,771 |
| 1997 | 22,590,375 | 23,400,000 | 12/18/00 | 265.94 | 32,711 |
| 1998 | 20,775,836 | 23,900,000 | 12/18/00 | 224.16 | 27,572 |
| 1999 | 25,354,745 | 26,400,000 | 12/18/00 | 67.93 | 8,355 |

Therefore, Meriden is ordered to pay $653,282 to CL&P and $1,562,432 to Yankee Gas as interest on the offers of judgment.

The fifth count constitutes a claim of civil conspiracy. The plaintiffs allege that the defendant conspired with NFMA to violate the taxpayers' constitutional rights and to engage in conduct by way of illegal and improper means in an attempt to illegally and improperly benefit from such activity. In order to prove a civil conspiracy, the plaintiffs must demonstrate that the defendant combined with NFMA to do a criminal or an unlawful act or a lawful act by criminal or unlawful means, that one of them acted pursuant to the scheme in furtherance of its purpose, and that the act caused harm to the plaintiffs. *Marshak v. Marshak*, 226 Conn. 652 (1993); *Williams v. Maislen*, 116 Conn. 433 (1933). While the court believes that the assessor did, in fact, abdicate his statutory responsibilities to value the plaintiffs' properties, and that the processes utilized by NFMA and Meriden did ultimately harm the plaintiffs, the plaintiffs' proof fails to establish that the offending acts were the products of a conspiracy between Meriden and NFMA, or between any of Meriden's employees and NFMA.

The plaintiffs seek a declaratory judgment that the contingent fee arrangement between Meriden and NFMA is void because it violates public policy. Pursuant to C.G.S. §52-29 and Practice Book §17-55, a declaratory judgment will be rendered only where a claimant:

> a) has a legal or equitable interest by reason of danger or loss or uncertainty as to his rights or there is an actual bona fide and substantial dispute or substantial uncertainty of legal relations which requires settlement between the parties, and
>
> b) all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof, and
>
> c) the court is not of the opinion that the parties should be left to seek redress by some other form of procedure.

In regard to this requested relief, the plaintiffs provided notice to NFMA. While other municipalities have not been given notice, the court believes that notice to NFMA is adequate to render declaratory judgment regarding the specific contract in question.

Public policy may be found in constitutional or statutory provisions or in judicially conceived notions. *Daley v. Aetna Life and Casualty Co.*, 249 Conn. 766, 798 (1999). Connecticut has not adopted legislation prohibiting the use of contingent fee arrangements in personal property tax audits.[16]

As discussed *supra*, the Office of Policy and Management (OPM), in conjunction with the Connecticut Association of Assessing Officers, publishes the *Handbook for Connecticut Assessors*. OPM's mission is "to provide information and analysis that the Governor uses to formulate public policy goals for the state of Connecticut and [to] assist . . . municipalities in implementing policy decisions on behalf of the people of Connecticut." *Handbook*, 1-3. While the Handbook does not speak to the propriety of contingent fee audits, it incorporates the regulations of the International Association of Assessing Officers (IAAO). The IAAO has adopted the ethical standards of USPAP, which restrict the use of contingent fee arrangements when an opinion of value will be rendered. The defendant's own experts, Hughes, Swanton and Parker, stated that they would not perform an appraisal or an audit on a contingent fee basis.

The power to tax is a uniquely governmental function and is vested in individuals who are directly accountable to the people through the political process. There exists a public policy in favor of fair and accurate taxation which has been recognized by our Supreme Court. *Robertson v. Stonington*, 253 Conn. 255 (2000). "The people's entitlement to fair and impartial tax assessments lies at the heart of our system, and, indeed, was a basic principle upon which this country was founded." *Sears, Roebuck & Co. v. Parsons*, 260 Ga. 824, 401 S.E.2d 4 (1991).

"Fairness and impartiality are threatened where a private organization has a financial stake in the amount of tax collected as a result of the assessment it recommends." *Id.* When an auditor is hired based on a contingent fee basis, there is an inherent and initially unfounded assumption that the original as-

sessment was wrong, and it creates an incentive to determine its inaccuracy and to increase the assessment.[17] Contingent fee arrangements may very well lead to unfair results, as in the instant case. NFMA, working on a contingent fee basis and aware that the valuation methodology which would produce the highest property values was RCNLD, ostensibly set out to do an audit but, in fact, did not look for omitted property or value and, most importantly, asked its retained experts only to conduct a RCNLD study and not to conduct an audit or valuation.

When a municipality enters into a contingent fee contract with a third party to determine the tax obligations of its citizenry, it is essentially entering into a partnership with a party who has a pecuniary interest in the amount of taxes assessed. Although, theoretically, when a municipality enters into a contingent fee arrangement with a firm to do a personal property valuation for tax assessment purposes the ultimate responsibility for assessment remains with the assessor, the cornerstone from which the assessor begins his statutory exercise of judgment and discretion is the value recommended by the contingent fee auditor. There is a high risk that the process may become tainted with the influence of the third party who maintains a direct financial interest in keeping that value high. There is an attendant likelihood that consequence of any resulting assessment will be skewed.

The contract between NFMA and Meriden goes further than just the audit. The agreement provides that the City shall not compromise any of the assessments without providing NFMA a meaningful opportunity to participate in the discussions and negotiations. This agreement belies the bedrock notion that the power to tax must lie solely with the assessor. Neither NFMA nor any other firm hired on a contingent fee basis is likely to have any interest in compromising the assessment value once determined. In entering into such an arrangement, the focus shifts from serving the public good to generating the highest revenue from the citizenry.

In this matter the plaintiffs ask for a determination not that all contingency fee contracts between a municipality and an outside audit or appraisal company be declared void but, more specifically, that this particular contract violates public policy. Though the court has found much to criticize in the contents and operation of the contract between NFMA and the defendant municipality, the contract, by its own terms, is not operative beyond the 1994 tax year. Therefore, its potential for harm is extinguished. Additionally, the court believes that the economic relief accorded the plaintiffs in this matter fully vindicates their legal rights. Finally, the court has made numerous factual findings consistent with the plaintiffs' requested declaratory relief. Accordingly, for the reasons stated, the court declines to enter a declaratory judgment.

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[1]Charles Feldman, who is a municipal assessment auditor for the city of West Haven, testified credibly that he led the development of this form as a member of the Connecticut Association of Assessment Officers (CAAO), and that a principal reason for creating this form under the aegis of the OPM was to achieve uniformity and equality throughout the state. Until a month before his testimony, Mr. Feldman was the president of CAAO.

[2]From the trial evidence, it is clear that if the plaintiffs utilized the depreciation schedules listed on the assessor's form, the reported value of their personal property, on a cost basis, would be several million dollars less. From the evidence, it is apparent that this manner of reporting was negotiated by the utilities informally with the CAAO.

[3]The court notes that in the months prior to the trial of this action, the defendant notified the plaintiffs of its intention to conduct another C.G.S. §12-53 audit of its personal property for some of the years involved in this appeal. Pursuant to his statutory authority the assessor issued a subpoena for certain of the plaintiffs' personal property records. The court quashed the subpoena, reasoning that if the court found that the plaintiffs were aggrieved, the court would be conducting a de novo valuation of the plaintiffs' property for the tax years involved, and that since the matter was pending in court, pretrial discovery could be judicially supervised, thus avoiding a duplication of effort and attendant confusion.

[4]From the trial evidence, it appears that NFMA would receive a fee of approximately 1.2 million from taxes actually collected from the plaintiffs for the audit years 1991 through 1994.

[5]There is no dispute that the assessor applied these factors to the assessment of the plaintiffs' regulated assets. The new assessments resulted from the application of the factors to the regulated assets in combination with the assessment of the plaintiffs' unregulated assets.

[6]It is noteworthy that Crozier stated to Senator Nickerson that he absolutely agreed with the proposition that the valuation methodology used in a §12-53 audit should be the same as that used in the original assessment. *Id.* at 364. In fact, Crozier explained to Senator Nickerson that adding omitted value pursuant to §12-53 was not a function of changing methodology. *Id.* at 360. Crozier stated to Representative Altobello that the methodology used in a §12-53 audit must be the methodology requested by the assessor. *Id.* at 365. This testimony is inconsistent with NFMA's work in this matter and does not bolster Crozier's credibility with this court.

At the same hearing, Crozier testified that the standard method for valuing personal property is the modified cost approach, or OCLD. *Id.* at 350-51, 360. The court notes that this avowed position contradicts the approach used by NFMA in this case.

[7]At trial, the plaintiffs submitted a portion of this treatise as exhibit 136. The exhibit does not identify the author.

[8]While it is not clear to the court precisely when the previously normal practice of assessors to ask property owners for information based on RCNLD changed to the present practice of requiring information based on OCLD, it appears that the change took place in the late 1980s and was the result of general agreement between the utility industry and the CAAO.

[9]It is noteworthy that in the 2000 legislative session, OPM proposed legislation to require all municipalities to value utilities on the basis of the modified cost approach. This unsuccessful effort was opposed by the Connecticut Association of Municipalities for reasons relating to municipal autonomy.

[10]The court credits trial testimony that this manner of reporting was negotiated by the utilities with the CAAO. Although not binding on municipalities, this history is further

evidence that the modified cost approach to tax assessment of personal property is generally accepted.

[11]There is evidence that the plaintiffs' filings for some non-regulated assets such as computers took advantage of the depreciation schedules provided on the defendants' self-reporting form. This was not inappropriate.

[12]At trial the defendant argued that the plaintiffs' filings were inaccurate with regard to some of the accounts. The better evidence supports the accuracy of the plaintiffs' filings.

[13]There is no evidence before the court as to when and if the plaintiffs paid the second installment of their 1999 tax obligation. If it was paid, any excess should be refunded at the appropriate interest rate.

[14]This is calculated using the refund due to the plaintiffs for each year, including prejudgment interest awarded and is calculated through 4/20/01.

[15]The plaintiff made this offer of judgment on two dates, neither of which was accepted by the defendant.

[16]H.B. No. 5755 (1996) included a proposal prohibiting the use of contingent fees in the tax audit process but the bill was never passed. It should be noted that restricting the use of contingent fee audits is supported by the Connecticut Association of Assessing Officers.

[17]Indeed, in its solicitation of Meriden, NFMA stated that "The results of Northeast's audit process have produced over $60 million in additional tax assessments for Connecticut municipalities in the last two years. Additional tax revenues from the audit process create an annuity value for future years in addition to current collections." Exh. 94, 3/25/94 Letter of Jeffrey Coulson to Brian Kogut, member of the Meriden City Council.

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## Emilia Cabanillas v. Gabrielle J. Vendetti

Superior Court at New Britain
No. CV-98-0487397-S
Memorandum Filed February 2, 2001

**Judgments – Summary Judgment – Misc. Cases – Pretrial Challenge of a Prayer for Relief Can Be Asserted Only Through a Motion to Strike, Not a Motion for Summary Judgment.**

**Pleadings – Complaint – Prayer for Relief – Pretrial Challenge to a Prayer for Relief Can Be Asserted Only Through a Motion to Strike, Not a Motion for Summary Judgment.** The only pretrial method for challenging a prayer for relief is a motion to strike; a motion for summary judgment may not be used. Although it is now clear that a motion for summary judgment can be used in lieu of a motion to strike to challenge whether a complaint states a cause of action, that rule does not apply to challenges solely to a prayer for relief. The court noted that the only recourse available to a defendant that has neglected to file a motion to strike as to a prayer for relief is (a) a pretrial motion in limine pursuant to P.B. §15-3, (b) a motion for a directed verdict at the close of the plaintiff's case or (c) appropriate jury instructions as to the types of damages which may be awarded.

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SHAPIRO, J. After reconsideration, the court issues this memorandum of decision to articulate its reasoning in denying the defendant's motion for permission to file a motion for summary judgment concerning the plaintiff's prayer for relief.

*BACKGROUND*

The present action arises out of a motor vehicle accident which allegedly occurred on November 25, 1997 in Hartford, Connecticut. Plaintiff claims, in a one-count complaint, dated April 6, 1998, that, at the time of the accident, she was the operator of a motor vehicle which was struck by a vehicle being driven by the defendant, after the defendant went through a red light. Complaint, ¶3. She contends that the collision occurred due to defendant's negligence and carelessness, in one or more of several ways. Complaint, ¶4. As a result, plaintiff claims she suffered various injuries and damages. Complaint, ¶¶5-7. In her prayer for relief, plaintiff seeks double damages, treble damages, attorneys fees, interest, and other relief.

No motion to strike was filed by the defendant. Instead, she filed an answer and special defenses, dated September 10, 1998, followed by an amended answer and special defenses, dated November 3, 1998. By notice dated August 4, 2000, the court advised the parties that the matter had been scheduled for jury selection on January 18, 2001.

On December 6, 2000, the defendant filed a motion for summary judgment, dated November 29, 2000, seeking summary judgment "with respect to the prayer for relief requesting double, treble damages, attorneys fees, and interest." In response, the plaintiff filed a memorandum of law in opposition to the motion, dated December 12, 2000, in which she noted that the defendant had not complied with §17-44 of the rules of practice, which provides that a "party must obtain the judicial authority's permission to file a motion for summary judgment after the case has been assigned for trial." The defendant then presented her motion for permission to file summary judgment, dated December 14, 2000, which was accompanied by a new motion for summary judgment of the same date. The second motion for summary judgment, and the memorandum of law submitted with it, appear to be identical in content to the papers filed in connection with the first motion for summary judgment. The plaintiff's objection to the motion for permission, dated December 19, 2000, then followed.

On January 8, 2001, only the original motion for summary judgment and the objection to the motion for permission were printed on the short calendar. On that date, by agreement of the parties, the court heard argument on both the motion for permission and concerning summary judgment. The court issued an order, dated January 9, 2001, in which it denied the motion for permission to file summary judgment.

In response to the court's order, on January 22, 2001, the defendant filed a notice of intent to appeal, a motion for articulation, and a motion for reconsideration. The court has granted the latter two motions

# APPENDIX C

Office of Policy and Management
Intergovernmental Policy Division

# GUIDELINES

## New Manufacturing Machinery and Equipment Exemption Program

as provided in Connecticut General Statutes §12-81(72)

### Effective for the October 1, 2003 Grand List

Introduction

Connecticut General Statutes §12-81(72) allows a five-year, 100% property tax exemption for eligible new and "newly-acquired" used manufacturing machinery and equipment acquired and installed on or after October 2, 1998. The State of Connecticut reimburses each municipality as a result of this exemption. In accordance with §12-94b, the Assessor of each municipality is required to certify the amount of exemption granted to the Office of Policy and Management, not later than the March fifteenth first following the assessment date on which the exemption was granted. The Form M-65a, *Assessors Certification of Assessed Value of Exemption...,* for the 2003 Grand List is required to be filed on or before March 15, 2004. Reimbursement calculated on such claims will be remitted by the State of Connecticut in December 2004.

Connecticut General Statutes §12-94b, grants the Office of Policy and Management until December 1, 2005 to audit 2003 Grand List claims. If an audit modification to the amount certified on the 2003 Grand List is made after December 2004, the modification will be reflected in the December 2005 payment.

Section 12-94c sets forth the method by which property eligible for this exemption is to be valued for assessment purposes. The value of such property (against which the 70% assessment ratio will be applied) is its depreciated acquisition cost. The following depreciation schedule must be used to establish the value of the exempt machinery and equipment:

| Assessment Year Following Acquisition/Installation | Depreciated Value as Percentage of Acquisition Cost Basis |
|---|---|
| 1st year | 90% |
| 2nd year | 80% |
| 3rd year | 70% |
| 4th year | 60% |
| 5th year | 50% |

Please note that the value of property eligible for this exemption as determined above will not necessarily be the fair market value. However, after the last assessment year in which the manufacturing machinery and equipment has enjoyed exempt status, it becomes fully taxable at 70% of its *fair market value*. Fair Market Value is determined by the Assessor.

The Guidelines are organized in two parts: 1) information pertinent to qualification of the machinery and equipment or qualification of the applicant for exemption; and 2) information concerning administration of the program.

## THE FOLLOWING INFORMATION IS INTENDED TO CLARIFY THE REQUIREMENTS AND PROCEDURES RELATIVE TO THE EXEMPTION PROVIDED IN CGS §12-81(72)

### *Information Pertinent to the Machinery and Equipment or Applicant*

1. **Are there changes to the 2003 Grand List M&E Exemption program?**

➨ ***New*** Yes.

Section 53 of House Bill 6806 (June 30, 2003 Special Session) amends §12-81(72) to eliminate the eligibility for the property tax exemption for manufacturing machinery and equipment for 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.

This legislation also redefines processing to mean "the physical application of the materials and labor in a manufacturing process".

2. **What criteria must be satisfied in order to receive the exemption for machinery and equipment provided in §12-81(72)?**

In order to qualify for exemption the ***property*** must be:
1) "new" or "newly acquired" on or after October 2, 1998;
2) "machinery" or "equipment" (as defined below);
3) installed in a "manufacturing facility";
4) either 5 or 7 year property as defined by the IRS; and
5) predominantly used for manufacturing purposes.

In order to qualify for exemption the ***applicant*** must:
1) include such property (and the purchase price thereof) in his Personal Property Declaration. Lessees are also required to file a Lessee's Report with the Assessor; and
2) annually file Form M-65 with the Assessor of the municipality in which the machinery or equipment is located by November 1, or get an extension of the filing date according to the provisions of CGS 12-81k.

3. **What is meant by "machinery" for the purposes of this exemption?**

"Machinery" means the basic machine itself, including all of its component parts and contrivances such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control, regulate or operate the machinery, including, without limitation, computers and data processing equipment, together with all replacement and repair parts therefor, whether purchased separately or in conjunction with a complete machine, and regardless of whether the machine or component parts thereof are assembled by the taxpayer or another party.

4. **What is meant by "equipment" for the purposes of this exemption?**

"Equipment" means any device separate from machinery but essential to a manufacturing, processing or fabricating process.

**5. What is the difference between "new" and "newly-acquired"?**

"New" means newly produced (for example, brand new) and does not include rebuilt or refurbished equipment.
"Newly-Acquired" means used or second-hand machinery or equipment, including rebuilt or refurbished machinery and equipment.

**6. How should the word "acquired" be interpreted?**

"Acquired" means that the taxpayer takes physical possession of the property for which exempt status is sought. For example, a milling machine for which a purchase order was issued on August 16, 2000 may have been delivered to and installed in a manufacturing facility on January 23, 2001. Since the date of possession is subsequent to October 1, 2000, the milling machine will qualify for this exemption on the 2001 List, provided all other criteria can be met.

**7. Is leased property eligible for this exemption?**

Yes, due to the fact that §12-81(72) uses the word "acquired" rather than purchased, a lessee of new manufacturing machinery/equipment may qualify for the exemption, provided he meets all other criteria.

**8. If a manufacturer acquires machinery and equipment through a lease and subsequently buys the machinery and equipment, is the machinery and equipment eligible for another 5-year exemption term as "newly acquired"?**

No. It is eligible for the balance of the five-year exemption period if it has not enjoyed the entire term of exemption since its acquisition through the leasing process and is purchased by the original lessee. Once the full five-year exemption term has expired, it becomes taxable at 70% of its fair market value as determined by the Assessor.

**9. Is property that has been sold to a financing institution and leased back to the (original lessee) manufacturer eligible for exemption?**

Yes, if there is any balance of the initial five-year exemption term for which the (original lessee) manufacturer qualified. Any assets acquired by the manufacturer prior to the current five-year term are not eligible for a new term of exemption if they are part of the purchase/lease-back package.

See question #46, Page 10, of these *Guidelines*.

**10. Can machinery/equipment be acquired by other than purchase or lease?**

Yes, such property may have been (1) constructed by the owner with brand new purchased parts or materials; or (2) developed and internally produced by the owner. Such property will be referred to as "self-constructed" for purposes of this exemption program.

**11. What is the purchase price for self-constructed property?**

The purchase price for self-constructed property is the "unit cost" which is determined as follows:

(a) if new parts or materials are purchased and used by an owner to construct a machine which is installed in his manufacturing facility, the cost of acquisition includes the price paid for the new parts/materials, the cost to transport the parts to the facility and the cost of the labor to effect construction and installation; (the name and address of the vendor or contractor should be provided on the M-65 Claim by the applicant), or

(b) if machinery or equipment is internally developed, produced and installed by a manufacturer, the cost of acquisition is the total cost of development, production and installation (including the cost of labor) for each such item of machinery/equipment (the vendor or contractor from whom components or services were purchased should be listed on the M-65 Claim).

**12. Is construction in progress, "CIP," eligible for the exemption under this program?**

No, the machinery/equipment must be installed "in a condition or state of readiness and availability for specifically assigned manufacturing functions." Please note that CGS Section 12-71(b). defines such machinery as nontaxable, adding construction in progress ("CIP") to the list of nontaxable personal property listed. The property is defined as

*"...machinery or equipment which would be eligible for exemption under subsection (72) of section 12-81 once installed and which can not or which has not begun manufacturing, processing or fabricating; being used for research or development, including experimental or laboratory research and development, design or engineering directly related to manufacturing; 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; measuring or testing or metal finishing; or being used in the production of motion pictures, video or sound recordings."*

If items are included in the M-65 Itemized List of Machinery and Equipment, and are subsequently determined to be ineligible for exemption, they may be taxable.

**13. Does the term "tangible personal property" encompass the definition used for federal income tax purposes, or that used for local property tax purposes?**

As this is a property tax exemption program, the Assessor's definition of tangible personal property is to be used. The IRS allows certain items, which the Assessor would classify as real property, to be depreciated as personal property, so there may be areas of conflict.

For example, a newspaper publisher purchases a large printing press that necessitates the installation of a reinforced concrete sub-floor. The manufacturer regards the cost of the sub-floor as part of the installation cost of the press, and may combine the two costs and depreciate both as personal property on the federal level. The cost of the sub-floor, however, would <u>not</u> be eligible for the exemption under §12-81(72), since it would be classified by the Assessor as a real property improvement.

**14. How should the word "installed" be interpreted?**

The word "installed" should be deemed to mean that the property has been placed in service in a manufacturing facility. A machine so installed is *in a condition or state of readiness and availability for specifically assigned manufacturing function(s).*

**15. What is meant by the term "manufacturing facility"?**

"Manufacturing facility" means that portion of a plant, building or other real property improvement used for any manufacturing purpose as delineated in §12-81(72).

**16. What is the definition of "manufacturing"?**

"Manufacturing" is the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail, or use in the manufacturing of a product to be ultimately sold at retail.

**17. What are allowed predominant uses for purposes of this exemption?**

The following are the manufacturing uses delineated in §12-81(72):
(1) manufacturing, processing or fabricating;
(2) research and development, including experimental or laboratory research and development, design or engineering *directly related to manufacturing*;
(3) the significant servicing, overhauling or rebuilding of machinery and equipment for industrial use;
(4) the significant overhauling or rebuilding of other products on a factory basis;
(5) measuring or testing ...in the furtherance of the manufacturing, processing or fabricating of tangible personal property;
(6) metal finishing;
(7) the production of motion pictures, video and sound recordings, and
(8) within the meaning of "biotechnology," the application of technologies,... using living 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, to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

**18. What is the definition of "predominant use"?**

"Predominant use" means that the personal property, for which the exemption is sought, is used for a manufacturing purpose more than fifty percent (50%) of the time that it is actually used.

**19. What is meant by "5 or 7 year property," as defined by the IRS?**

According to §168(e) of the IRS Code of 1986, property shall be classified under the following table:

| **Property shall be treated as:** | **If it has a class life (in years) of:** |
|---|---|
| 5 year property | more than 4 but less than 10 |
| 7 year property | 10 or more but less than 16 |

Note: Some assets used in qualified manufacturing activities have a short class life (and therefore different IRS Classification), and do not qualify for exemption under the statutory requirement for IRS Classification applied to all manufacturing assets. This

office will request IRS Filings with supporting detail in cases where eligibility for exemption is in question.

**20. What is the definition of "fabricating"?**

"Fabricating" means to make, build, create, produce or assemble components or tangible personal property work in a new or different manner.

**21. What is the definition of "processing"?**

"Processing" means the physical application of the materials and labor in a manufacturing process.

**22. What is the definition of "measuring or testing"?**

"Measuring and Testing" includes nondestructive and destructive measuring or testing and the alignment and calibration of machinery, equipment and tools, in the furtherance of the manufacturing, processing or fabricating of tangible personal property.

**23. What is meant by "biotechnology"?**

"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, to transform biological systems into useful processes and products or develop microorganisms for specific uses.

**24. Is pollution prevention related machinery and equipment eligible for exemption under the provisions of this program?**

No, machinery and equipment must be used *predominantly for manufacturing* in order to qualify for this program.

However, exemption from taxation is provided for eligible equipment under C.G.S. §12-81(51) and (52). The equipment must be certified by the Commissioner of Environmental Protection and such certification must be transmitted to the assessor on or before November 1, in the initial year of certification. *Contact the Department of Environmental Protection, Director of Engineering and Enforcement, Bureau of Air Management at (860) 424-3028, or Permitting, Enforcement and Remediation, Water Management Bureau at (860) 424-3848.*

**25. What is meant by the term "cost of acquisition"?**

"Cost of acquisition" is the price paid for the personal property eligible for this exemption (including the value of any 'trade-in'), together with all allowable costs related to its transportation and installation, *excluding sales/use tax.*

**26. When determining the cost of acquisition of a particular item of machinery or equipment, how should a trade-in be handled?**

The dollar value of the trade-in is to be added to the price paid for the particular item of machinery or equipment. Cost of acquisition includes value-in-exchange (cash or its equivalency) as well as value-in-kind (trade-in value).

**27. How should the cost of acquisition for leased property be determined?**

The cost of acquisition for leased property is the owner's cost of acquisition plus the lessee's cost of transportation and installation. Financing costs should not be included in the costs reported.

**28. If property title has been conveyed but the property is still eligible for exemption due to a continuing lease, what cost of acquisition is to be used in the following assessment year?**

The purchase price or unit cost will always be that paid by the original owner/lessor.

**29. If the lease contract cites a specific dollar amount for transportation and installation, but the lessee incurs additional costs related thereto, what amount should he report?**

The lessee should report his total cost of transportation and installation (i.e., his out-of-pocket cost plus the amount specified in his lease contract).

**30. Is computer software eligible for the exemption provided in § 12-81(72)?**

No. Software is considered intangible and is not subject to local property tax under the provisions of CGS §12-71(d)(1) as long as the cost of such software is separately stated in sales documents.

**31. What is meant by computer software?**

CGS §12-71(d)(1) defines computer software as "any program or routine used to cause a computer to perform a specific task or set of tasks, including, without limitation, operational and application programs and all documentation related thereto."

**32. Are consumable supplies (for example, paper, toner, film, fuel) eligible for exemption under the provisions of § 12-81(72)?**

No, consumable supplies are not eligible for exemption under the provisions of § 12-81(72).

**33. Is sales or use tax to be included in the cost of acquisition?**

No. The cost of acquisition is the price paid for an eligible machine or item of equipment plus shipping and installation, *excluding any applicable sales/use tax.*

**34. Will verification of the cost of acquisition be required to be furnished at the time a manufacturer files Form M-65?**

Not necessarily, under the provisions of §12-81(72), the person seeking this exemption *may* be required to furnish the following: (1) invoices; (2) bills of sale; (3) contracts for lease; (4) bills of lading; and (5) any other applicable supporting documentation.

The Office of Policy and Management may require the verification documents at any time from the time the M-65 Form is filed with the Assessor until the end of the audit period.

**35. Is the cost of routine service or maintenance of machinery or equipment an item that is eligible for this program?**

No, it may be reportable for IRS purposes, but is not eligible under the provisions of this program.

**36. If a company moves from another state into Connecticut, does its manufacturing machinery and equipment qualify for benefits under CGS §12-81(72) as of the Connecticut installation date?**

Not automatically. If the machinery and equipment qualify under all criteria including *acquisition and installation dates*, then it would be eligible for the portion of the five-year exemption term remaining. If the machinery and equipment was acquired five years prior to the current assessment date, it is not eligible for exemption.

**37. If a company moves from one town to another within Connecticut, or from one location to another in the same Connecticut municipality, will a new five-year term for the exemption start?**

No, the machinery and equipment will only be eligible for the balance of its five-year term of exemption.

**38. Does the development of software or "research and development related to the manufacture of software" constitute "manufacturing," "research and development related to manufacturing", or "testing" for the purposes of qualifying for the exemption provided in CGS §12-81(72)?**

No, software is considered intangible and is not subject to local property tax in Connecticut (*Northeast Datacom, Inc. v. City of Wallingford*). Software constitutes intangible "intellectual works product" which is considered to be the product of artistic or intellectual effort covered by the Copyright Act. The creation of software is not a manufacturing process.

**39. Does the design and sale of customized computer systems which consist of components already produced by manufacturers and which are made available in the form most suitable to meet software customers' needs, constitute any of the accepted "predominant uses" listed in §12-81(72)?**

No, the process of customizing the computer systems does not change the "form, composition, quality or character" of the components or the purpose for which they were manufactured.

**40. Are public service companies eligible for the exemption provided in §12-81(72)?**

No. Connecticut General Statutes §12-81(72) states that public service companies, as defined in §16-1: "electric, gas, telephone, telegraph, pipeline, sewage, water, and community antenna television companies owning, leasing, maintaining, operating, managing or controlling plants or parts of plants or equipment and all express companies having special privileges on railroads within this state . . . " are not eligible for the manufacturing machinery and equipment exemption.

**41. Are utility companies eligible for the exemption provided in §12-81(72)?**

No. CGS §12-81(72) states that "any provider directly or indirectly, of electricity, oil, water or gas" shall not be eligible for exemption.

**42. Is entering "same as last year" or "see last year," or simply entering the amount previously claimed on the front of the M-65 Form acceptable for the purpose of qualifying for the exemption provided in CGS §12-81(72)?**

No, CGS §12-81(72) requires the applicant for exemption to file an annual list. It specifically excludes the right to file "same as last year," as allowed for listings of taxable items. Filings without itemized lists of all machinery and equipment for which exemption is sought will be unacceptable and may result in the loss of the exemption and additional tax liability to the applicant.

**43. What activities do not qualify for the exemption provided in §12-81(72)?**

Activities for which exemption has been denied include, but are not limited to: autobody shops, commercial laundries, dry cleaning establishments, electricity generating plants, re-packing and warehousing operations, services including, but not limited to: cleaning services, environmental testing, diagnostic medical testing, consultants, mailing/billing services; direct or indirect mail distribution services; and software development.

**44. What items which are commonly included on M-65 Forms are *not eligible* for exemption?**

The following items are not eligible for the exemption provided in §12-81(72):
Non-production items: office furniture and fixtures (files, desks, conference room furnishings, chairs, copiers, fax machines, administrative computers, postal scales, manifest systems, phone systems, etc.), pollution control equipment, (which may be exempted through the DEP, see Question 24); intangibles such as software, sales tax, software licenses, training, overhead costs, "cost of money" or financing costs; and service, maintenance or repair charges (substantial rebuilding of machinery and equipment or extensive overhaul "resulting in a significantly greater service life than such property would have had in the absence of such overhaul or with significantly greater functionality within the original service life of the property, beyond merely restoring the original functionality for the original service life" is allowable).

Also, improvements to real estate including: "leasehold improvements", HVAC systems, fire suppression systems or sprinkler systems, lighting systems, fencing, paving, foundations, floors, doors, windows, roofs, drainage ditches, catch basins, loading docks, utility hookups, sewer upgrades, in-ground fuel tanks, and landscaping.

**45. If an applicant has a facility in this state devoted to research and development, can an exemption be granted for machinery/equipment located in the Connecticut facility?**

Yes, there is no statutory provision which would prohibit the granting of an exemption under the circumstance described above, provided the machinery and equipment located in Connecticut is used for *research and development directly related to manufacturing*, and all other criteria can be met.

**46. Is exempt machinery and equipment, which has been sold, eligible for the exemption under §12-81(72) for the next assessment year?**

When **leased machinery or equipment** is sold to another lessor and additional years are left in the five-year exemption term, an exemption is granted in the following assessment year if the property continues to be used by the manufacturer who received the exemption in the preceding year. For example, if a lessor of machinery sells both the machinery and the lease to another entity, but the lessee who received the exemption is still using the machinery in his manufacturing operation, the exemption would continue for the *remainder* for the five-year exemption period at the original acquisition cost basis.

Machinery and equipment sold by a lessor to a lessee will be eligible for only the balance of the five-year exemption term (with proper annual application), if there is a balance left. The lessee will not start a new exemption term upon purchase of the machinery and equipment that has benefited from exemption as leased equipment.

Connecticut General Statutes § 12-81(72) provides that "machinery or equipment shall not be eligible for exemption upon transfer from a seller to a **related business** or from a lessor to a lessee except to the extent it would have been eligible for exemption by the seller or lessor, as the case may be."

Section 83 of PA 01-6 clarifies Section 12-81 (72) by adding the following language:

> *..."related business" means (i) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer; (ii) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; (iii) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; or (iv) a member of the same controlled group as the taxpayer. For the purposes of this subdivision, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, or a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the Internal Revenue Code of 1986, or any subsequent*

*corresponding internal revenue code of the United States, as from time to time amended, other than paragraph (3) of said Section 267(c).”*

If the purchaser is an **unrelated third party and the acquisition was an “arm’s length transaction”** (excluding acquisition through the purchase of stock), a new five-year term of exemption will be allowed, providing all qualifying criteria are met. All filing requirements must be met and documentation and verification of the terms of the acquisition/transfer of assets is usually required prior to granting of the exemption.

## THE FOLLOWING INFORMATION IS INTENDED TO CLARIFY THE REQUIREMENTS AND PROCEDURES RELATIVE TO THE EXEMPTION PROVIDED IN CGS §12-81(72)

### *Information Pertinent to the Administration of this Program*

**47. Are there changes in the program that the Assessor should be aware of?**

✒ ***New*** Yes.

Section 53 of House Bill 6806 (June 30, 2003 Special Session) amends §12-81(72) to eliminate the eligibility for the property tax exemption for manufacturing machinery and equipment for 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.

The legislation also redefines processing to mean "the physical application of the materials and labor in a manufacturing process.

**48. If property exempted under §12-81(72) is sold after the assessment date on which the exemption is granted, is the exemption to be prorated under the provisions of §12-81a?**

No, §12-81(72)(b) prohibits the proration of this exemption.

**49. Is the Assessor required to send Form M-65 to manufacturers?**

No, there is no statutory requirement to do so. If a manufacturer does not receive an exemption claim form on or about October 1, he should immediately request Form M-65 from either the Assessor or the Office of Policy and Management.

**50. Does the Assessor have the authority to add property listed on prior year claims that the manufacturer/lessor has excluded?**

No, if the Assessor feels that the manufacturer or lessor inadvertently omitted some items, then he/she should contact the applicant and get clarification, and when necessary, an amended claim from the applicant.

**51. Does the Assessor have the authority to deny the exemption provided by §12-81(72) if the claimant is delinquent in a property tax payment to the municipality?**

Yes, with the consent of the chief executive officer of the municipality, and after written notice is sent to the claimant. The notice must state that the claimant may pay the tax or enter into an agreement to pay the tax by a date set forth in the notice, which shall not be less than thirty days after the date of the notice. Failure to pay the tax or enter into an agreement to pay the tax by the date set forth in the agreement shall result in the denial of exemption.

***Note:*** If the due date for payment of the delinquent tax passes and the assessor makes the decision to deny the exemption, there is no mechanism to reinstate the exemption if the applicant pays the delinquent tax *after* the date set forth in the notice or agreement.

**52. Does the State or Municipality have a security interest in the exempt machinery and equipment?**

Yes, §12-81(72) provides that the State of Connecticut and the municipality in which the property is installed will hold a security interest in the exempt machinery or equipment, in an amount equal to the reimbursement granted or the tax loss sustained. The security interest is enforceable for a period of five years following the last assessment year in which the exemption is granted. Said security interest may be enforced if the manufacturer ceases all manufacturing operations or moves his manufacturing operation entirely out of the State of Connecticut.

Section 12-81(72) (c) facilitates the process to recover reimbursements made for manufacturing machinery and equipment. It allows OPM to file a lien under Section 12-35a (state lien statute). Assessor must notify OPM if a company ceases manufacturing or moves operations entirely out of the state. Assessor must notify OPM any time after October 1st of the last assessment year for which exemption is granted and before the September 30th that is five years after the conclusion of that assessment year. State loss can be recovered through civil court action.

**53. Is the information contained on the M-65 Form open for public inspection?**

No, commercial or financial information in any application or list filed under § 12-81(72) shall not be open for public inspection, provided such information is given in confidence, and is not available to the public from any other source.

**54. How will the 'three month rule' impact this exemption program?**

The "three month rule" will serve to complicate matters. This is due to the fact that under the "three month rule," property is not necessarily taxed in the town where it is located on the October 1 assessment date. Instead, it is taxed in the town where the property's situs has been established in accordance with §12-43 and §12-59.

For example, FAX, Inc. (whose corporate headquarters is in Stamford) purchases a new manufacturing machine on July 15, 1997. On August 1, 1999, the machine is leased to the PDQ Company and installed in its manufacturing facility located in Hartford. On October 1, 1999 FAX, Inc. will include the machine in a Personal Property Declaration filed in Stamford. (As the machine was not located in any town for three or more of the twelve months preceding October 1, 1999, it is taxable in the town where the corporation has its principal place of business.) However, PDQ Company will file an exemption claim (Form M-65) in Hartford (the city in which its manufacturing facility is located). The 1999 Grand List exemption can only be applied in the municipality in which the machinery/equipment is taxed (that is, Stamford). Therefore, Form M-65 as filed in Hartford will have to be forwarded upon request to the Stamford Assessor.

**55. If a manufacturer's facility is located in an Enterprise Zone in a municipality that has adopted the provisions of §32-71(e), is his new manufacturing machinery and equipment to be exempted in accordance with the local ordinance or with §12-81(72)?**

Local option abatements (as well as non-reimbursed State mandated exemptions) are to be applied before any State reimbursable exemptions. An agreement to abate taxes on personal property located in an Enterprise Zone is essentially a tax incentive offered by a

municipality seeking to encourage various types of business expansion. Therefore, any new machinery and equipment owned by a manufacturer should be abated in accordance with the ordinance adopted pursuant to §32-71(e).

**56. Can a manufacturer who has been issued an Eligibility Certificate under the Distressed Municipality Program, apply for the exemption for new machinery and equipment under §12-81(72)?**

Yes, it may be to a manufacturer's advantage to apply for the 100% exemption under subdivision (72) of §12-81, rather than the exemption under subdivision (60) or (70) of said section. Only one exemption can be applied to new manufacturing machinery/equipment in any assessment year (i.e., only one of the above mentioned subdivisions will be applicable). A timely-filed M-65 Claim form must be submitted and all information provided in the format prescribed. Claim forms, documents, and certifications utilized for the Distressed Municipality Program are not acceptable substitutes for the correctly completed M-65 Claim Form.

**57. If a manufacturer acquires new machinery and equipment, files an M-65 in the first year and fails to file an exemption claim for the property in the subsequent year, can he apply for an exemption for the balance of the five years following the year of acquisition?**

Yes, however, an exemption under §12-81(72) can only be granted during the five assessment years following the assessment year in which the property is acquired and installed. If a manufacturer acquires property between October 2, 1999, and October 1, 2000, files an M-65 for 2000, but failed to file an exemption claim for the 2001 assessment year, a property tax exemption cannot be granted for the 2001 List but with timely filings in the subsequent years, exemption can be granted for four assessment years. Acquisitions can be included in subsequent years' M-65 Forms, but can be exempted for the five years following acquisition and installation only. The missed year cannot be appended to the end of the term if it exceeds the five-year period from the date of acquisition and installation.

**58. What happens if a manufacturer does not file Form M-65 with the Assessor on or before November 1st?**

§12-81(72) provides that failure to timely file Form M-65 constitutes a waiver of the right to claim the exemption for the assessment year commencing October 1. However, an extension of the filing period *may* be granted by the Municipal Assessor, under the provisions of § 12-81k. The Assessor *may* grant an extension of the time to file Form M-65 until December 15, there is a late filing fee (see chart below), and the Assessor has the authority to waive the late filing fee.

**59. Is there a penalty for late filing of Form M-65?**

Yes. If a Form M-65 filing extension is granted, the applicant is required to pay a fee to the municipality before the exemption may be applied by the Assessor. The fee ranges from $50 to $500, depending on the assessment of the property for which the exemption is sought. The Assessor has the authority to waive the late filing fee. The following chart is to be used to determine the amount of a late filing fee under the provisions of §12-81k:

| Assessment | Late Filing Fee | |
|---|---|---|
| 100,000.00 or less | Fifty dollars | ($ 50) |
| 100,000.01 to 249,999.99 | One hundred fifty dollars | ($150) |
| 250,000.00 to 499,999.99 | Two hundred fifty dollars | ($250) |
| 500,000.00 or more | Five hundred dollars | ($500) |

**60. Is it necessary to request an M-65 filing extension if the assessor has granted an extension of the time to file the Personal Property Declaration?**

No. If an extension to file the Personal Property Declaration is granted by the Assessor, an extension of the filing period is *automatically* granted for the filing of Form M-65, the Manufacturer's New Machinery and Equipment Exemption Claim Form. The Assessor should be contacted to confirm the due date of the filings.

**61. To whom is the late filing fee payable?**

The fee is payable to the municipality in which the property for which the exemption is sought, is located. Applicants should be instructed to make out a check to the municipality.

**62. If a manufacturer requests an extension of the filing date for, and upon review by the assessor an adjustment is made to the claim, is the fee amount adjusted?**

No, in the event that a manufacturer requests an extension of the November 1 filing deadline, the fee is based on the assessed value of the claim and is not adjusted for any changes made to the claim by the Assessor or OPM. If an extension is requested to enable an applicant to increase their exemption claim amount, the late filing fee is based on the *amount of increase* in the assessed value of the original timely filing.

**63. Does the granting of an extension of the time to file the M-65 Form mean that the Assessor has approved the applicant or activity for exemption?**

No, it means that the applicant has met all requirements of §12-81k, and has received an extension of the time to file the M-65 Form.

**Note:** *If an applicant needs an extension of time to file an amended M-65 Claim which results in an increase of assessed value in the claim, the applicant must receive an extension of time to file the claim from the Assessor and the claim must be filed no later than the 15th of December (or whatever date is determined by the Assessor if it is earlier). In no case does the Assessor have the authority to accept an amended M-65 Claim that results in an increase in the assessed amount in the Claim after December 15.*

*If a Claim is amended to provide factual information that does not result in an increase in the claim, the information can be accepted and forwarded to OPM any time prior to the close of the audit period for that claim.*

*Proof of timely filing and a copy of the original M-65 Claim must be provided to OPM upon request.*

**64. What Abstract Code should be utilized to reflect the property tax exemption for new manufacturing machinery/equipment?**

'N' has been designated as the code for this personal property exemption.

**65. If an Assessor denies an exemption for property listed on Form M-65, what is the manufacturer's recourse?**

The manufacturer may file an appeal with the Board of Assessment Appeals; if aggrieved by the actions of said Board, he may file an appeal as provided in §12-117a.

**66. Is this exemption applicable only in towns and cities?**

No, this exemption is applicable in any town, city, borough, consolidated town and city, consolidated town and borough, as well as any special taxing district as defined in Connecticut General Statutes § 7-324.

**67. If a 25% penalty is applied by the Assessor for the failure of an owner to list property in accordance with the provisions of §12-41 of the Connecticut General Statutes, should the penalty assessment be included in the claim for reimbursement of revenue loss for this exemption?**

No, if an owner receives a penalty for failure to file a timely itemized listing of his personal property, he is responsible for the payment of that portion of tax liability, which the penalty represents. The figure to be submitted for reimbursement purposes is the eligible assessment from line 13 of the Personal Property Declaration.

**68. What information is the Assessor required to provide on his/her "*Certification of Assessed Value...*" to the Office of Policy and Management?**

The name of the property owner, the assessed value of the exempt property, and the total amount of the exemption granted should be entered on Form M-65a, *"Assessor's Certification of Exemptions Granted For Manufacturing Machinery and Equipment."* **If more than one mill rate is applicable to the exemptions granted, the different districts must be identified and separate totals provided.** In substantiation of the claim, the Assessor should also forward the original Form M-65 with any attachments, as filed by each applicant/manufacturer. The Assessor should retain a copy of the claim. A copy of any M-65 claim that was denied by the municipality should also be included with the claim for reimbursement.

**69. Who is responsible for filing Form M-65a for a special taxing district that does not have an Assessor?**

Either the Treasurer or Chief Executive Office of the district may file the Certification. Copies of Form M-65 need not be included; the Assessor will forward those with the Certification for the Town or City.

**70. How should an Assessor amend a Certification, which has been filed with the Office of Policy and Management?**

A single line should be drawn through the amount of assessment *originally reported on the copy of the claim retained by the Assessor. The correct amount and the notation "Amended" should then be entered in red. The corrected claim should be forwarded to the Office of Policy and Management along with a brief explanation concerning the reason for the change and the M-65 Claim(s), if appropriate.*

**71. If any person is aggrieved by the decision of the Secretary of the Office of Policy and Management concerning the disposition of their appeal or denial of an appeal hearing, what is their recourse?**

Such person may, within thirty business days of receiving final notice related thereto from the Secretary, appeal to the Superior Court for the judicial district in which the manufacturing facility is subject to property taxation (see §12-94b CGS).

**72. To whom should questions regarding the new manufacturing machinery and equipment exemption be addressed?**

Shirley Corona, Grants & Contracts Manager, is the Office of Policy and Management's contact for this program. She may be reached at (860) 418-6221 or e-mail at: shirley .corona@po.state.ct.us.

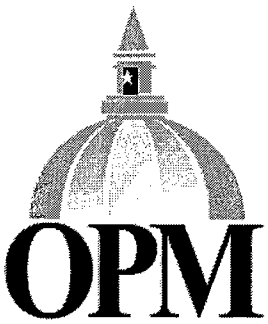
# APPENDIX D

# STATE LEGISLATION IMPACTING MUNICIPAL ASSESSMENT AND TAXATION


## STATE OF CONNECTICUT

## OFFICE OF POLICY AND MANAGEMENT
## INTERGOVERNMENTAL POLICY DIVISION

## OCTOBER 2003




The Office of Policy and Management publishes an annual summary of public and special acts affecting the local assessment and taxation of property. The October 2003 edition of *State Legislation Impacting Municipal Assessment and Taxation* is a companion piece to *Statutes Concerning the Assessment and Taxation of Property*, a compendium of laws that the Office of Policy and Management also publishes, which is available on this agency's website. It includes summaries of legislation enacted during the General Assembly's January 3003 Regular Session and the June 30, 2003 Special Session.

The Secretary of the State provides each town or city clerk with a copy of the 2003 Public and Special Acts that these summaries describe. These acts are also available at the State Library.

As a reminder, the materials contained in this publication should be used only as a quick reference with respect to the content of these public and special acts. They should not be used as a substitute for the amended statutes, nor should they be construed as containing any legal or binding opinions about the legislation cited.

Several of this year's public acts affect the eligibility of veterans and active duty service members for property tax benefits. Coupled with the fact that many Connecticut residents are currently serving our country as members of the United States Armed Forces, there will be a greater number of inquiries from them regarding property tax exemption issues in the coming assessment year.

Public Act 03-85 revised the dates in §27-103 that are used to qualify veterans for benefits, including the property tax exemption under §12-81(19). These dates, which are effective October 1, 2003, are summarized on the last page of this publication.

Additionally, Sections 5 and 6 of Public Act 03-269 serve to extend the benefit of veterans' and active duty service members' exemptions to leased vehicles. In order to assist you in understanding the provisions of these sections, we have prepared a series of Questions and Answers that appear beginning on page 14.

Please direct any comments regarding the enclosed summaries to Legislative Program Manager Kathleen Rubenbauer at (860) 418-6383, or e-mail her at Kathleen.Rubenbauer@po.state.ct.us.

W. David LeVasseur, Under Secretary
Intergovernmental Policy Division

## January 2003 Regular Session

## Public Acts



## January 2003 Regular Session

## Special Acts

## June 30 Special Session



## Supplemental Information

**PA 03-2 (HB 6495)** **An Act Concerning Modifications To Current And Future State Expenditures And Revenues**

**Sec. 53 (NEW)**

Allows municipalities to recoup a portion of their revenue losses based on 2001 Grand List exemptions provided under §12-81(72) and (74) for manufacturing machinery and equipment and commercial vehicles. A municipality's legislative body must enact a resolution or ordinance in order to levy a tax for the amount that can be recovered with respect to such exempt property, and tax bills can be sent only during the fiscal year commencing July 1, 2003.

The amount a municipality can recapture under the provisions of Public Act 03-2 is not more than the difference between the reimbursement payable for such property under §12-94b reflecting the rescission pursuant to Section 52 of Public Act 02-1 (May Special Session), and the amount of the reimbursement actually paid based on the final appropriation for the 2002-2003 fiscal year.

The total state cost to reimburse municipalities for their tax losses due to exemptions granted under §12-81(72) and (74) on the 2001 grand list, was determined to be $75,551,113. This amount does not reflect adjustments that would have been made to payments issued during Fiscal Year 2002-2003 based on the state's audit of 2000 grand list claims.

However, the provisions of Section 52 of Public Act 02-1 (May Special Session) allowed the Governor to order a rescission of up to 5% of the amount to be distributed for this reimbursement program. The amount municipalities would have received for the 2001 grand list after this rescission was $68,138,750. In February of 2003, this program's Fiscal Year 2002-2003 budget appropriation was further reduced to $56,138,750.

The difference between these amounts is $12,000,000 ($68,138,750 minus $56,138,750). By dividing the difference by the amount that the state would have paid if there had not been a rescission ($12,000,000 divided by $75,551,113), a percentage equal to that which municipalities are allowed to recapture from exemption claimants is determined (15.88%, rounded to 16%).

As a result, the amount of a 2001 grand list exemption under §12-81(72) or (74), multiplied by the Fiscal Year 2002-2003 mill rate and multiplied by 16%, is the maximum amount that a municipality can recoup from an exemption recipient, as of July 1, 2003.

The state's audit of exemptions for which reimbursement was claimed on the 2001 grand list for exemptions under §12-81(72) or (74) may not be completed before a municipality issues a bill for the amount that can be recovered under the provisions of this act. Such amounts may be incorrect based on the result of an audit.

For example, if the state determines that property was not eligible for an exemption that a claimant received, there should be no charge for the 16% exemption revenue loss.

The claimant may be required to pay a tax, pursuant to §12-120b(d)(1), for property deemed ineligible for an exemption, but would be eligible for a refund under §12-129 for the amount that was overpaid in terms of the 16% levy.

**Effective: February 28, 2003**

**PA 03-44 (HB 5264) An Act Concerning An Optional Increase In The Veterans' Property Tax Exemption**

**Sec. 1 amends §12-81f**

Makes changes to the local-option additional veterans' exemption program, under which an income-eligible veteran or surviving spouse of a veteran who is eligible for an exemption under §12-81(19) or (22) can qualify for a benefit in a town that offers the program.

Adds a provision that allows towns to exempt up to 10% of a qualified claimant's property assessment, commencing with the October 1, 2003 assessment year. Since the current provisions of this statute remain in effect, towns have a choice: they can opt to exempt up to 10% of a claimant's assessment or provide an additional exemption of up to $10,000.

It is important to note that §12-62g still requires all veterans' exemption amounts, including those provided under this local-option additional exemption program, to increase after a revaluation in the event there is a net taxable grand list increase in the revaluation year as compared to the year before.

This amendment also allows a municipality's legislative body to increase the income limits for this additional exemption program by up to $25,000. Pursuant to §12-81l, the income limits for this program are the same as those used for the state-reimbursed additional veterans' exemption program and the state subsidized tax relief program for elderly homeowners and renters. These income limits are subject to annual change to reflect the amount of the federal Social Security cost of living adjustment.

For exemption claims filed in 2003 (based on 2002 calendar year income), the maximum income limits for these programs are $31,900 for married persons (who must report joint income of both husband and wife) and $26,100 for unmarried individuals. These amounts reflect all Social Security cost of living adjustments made to date.

As of October 1, 2003, if a municipality chooses to increase these limits by the maximum $25,000 the amendment allows, the income criteria for the local-option additional veterans' exemption program would be $56,900 for married couples and $51,100 for single persons.

A town's legislative body must approve any increase in these income limits and must approve allowance of an exemption of up to 10% of a claimant's assessment.

**Effective: July 1, 2003, and applicable to assessment years commencing on and after October 1, 2003**

**PA 03-85 (HB 5663) An Act Concerning Eligibility For Benefits To Veterans**

**Sec. 1 amends §27-103**

Revises §27-103 to reflect Connecticut's adoption of the federal definition of periods of war, commencing October 1, 2003. Service during these war periods is used to determine a person's eligibility for the property tax exemption under §12-81(19).

Certain exceptions to the federal definition are included in the revision §27-103. For example, since Connecticut's ending date for the Vietnam Era exceeds the federal date by three months, the state's definition for the Vietnam Era has been retained.

The most recent period under the federal definition is the Persian Gulf War, which began

August 2, 1990. There is currently no ending date for this war period.

Although referred to in Title 38, Section 101 of the United States Code (38 USC 101) as the Persian Gulf War, §27-103 does not require a person to have served in the Persian Gulf, nor does it require service involving a combat or a combat support role during the period beginning August 2, 1990. As a result, anyone who served anywhere for at least 90 days after August 2, 1990 and who meets the other criteria of §12-81(19), is eligible for an exemption commencing October 1, 2003.

For those no longer serving, such other criteria include provision for receipt of an honorable discharge from the service and its filing on the land records prior to the assessment date. For those who are currently serving in the military, the provisions of §12-93 are applicable with respect to documentation that must be provided to the assessor or town clerk.

The revised war dates no longer include specific references to Somalia or Bosnia. However, based on the fact that service after August 2, 1990 anywhere qualifies a person for an exemption, service in these countries or in Afghanistan, Iraq and Kuwait for at least 90 days after the beginning date of the Persian Gulf War, qualifies one for an exemption under §12-81(19).

The amendment to §27-103 also removes certain war dates. Eliminated under the new definition are the Berlin Airlift (August 14, 1961 to June 1, 1962) and the specific reference to active duty service in the Demilitarized Zone in South Korea after February 1, 1955. A veteran of one of these conflicts who filed the necessary documentation and qualified for an exemption under §12-81(19) prior to October 1, 2002 remains eligible for an exemption for future assessment years.

With respect to the Berlin Airlift, eligibility could have been established for the October 1, 1999, 2000, 2001 or 2002 assessment years. Eligibility for active duty service in the South Korean Demilitarized Zone after February 1, 1955, could have been established for the October 1, 2000, 2001 or 2002 assessment years. If a veteran of one of these conflicts did not file and receive exemption approval for one of these assessment years, he or she is no longer able to qualify.

However, since an exemption based on serving anywhere for 90 or more days after August 2, 1990 is allowed under the revised war dates, service in South Korea for at least three months after said date (or within any period of war included in the revision to §27-103) entitles one to an exemption, as of the October 1, 2003 assessment year.

Service in combat or in a combat support role is still specifically required for service in Lebanon (July 1, 1958, to November 1, 1958 or September 29, 1982, to March 30, 1984), Grenada (October 25, 1983 to December 15, 1983), Operation Ernest Will, involving the escort of Kuwaiti oil tankers flying the United States flag in the Persian Gulf (February 1, 1987 to July 23, 1987) and Panama (December 20, 1989, to January 31, 1990). An Armed Forces Expeditionary Medal is awarded to individuals who served in a combat or combat support role.

There are approximately 10,000 Connecticut residents who are active members of one of the branches of the United States military. Many who previously were ineligible for an exemption will be able to qualify as of the October 1, 2003 assessment year, based on the revision to §27-103. As long as a member of the military served at least 90 days on active duty after August 2, 1990, he or she is eligible for an exemption under §12-81(19) upon filing the necessary documentation.

A member of a National Guard unit that is activated (i.e., released from the National Guard and inducted into a branch of the military) during a period of war becomes entitled to the same

benefits as any other veteran or active duty service member, provided he or she meets all other requirements of Connecticut law. Approximately 2,000 Connecticut National Guard members have been activated since September 11, 2001. Those who have since been released from active duty have received an honorable discharge issued by the Department of Defense (most commonly, a DD-214 Form) and are eligible for an exemption under §12-81(19) upon filing this documentation with the town clerk.

If a person is still serving in the military, the affidavit requirements of §12-93 are applicable, since the person has yet to receive a discharge. These requirements are also applicable to those activated members of the Connecticut National Guard who are still serving.

Under the provisions of §12-93, a person may appear "before the assessors for an examination under oath, supported by two affidavits of disinterested persons" substantiating the person's service. If the person is unable to appear due to such service, a written statement, signed by the commanding officer of the person's unit, ship or station or by some other appropriate officer, may be forwarded to the to the town clerk. Section 12-93 also provides that if a person is currently serving in an active theater of war or hostilities, a parent, guardian, spouse or legal representative can provide a notarized statement to the town clerk. The statement must indicate that the person "is serving and is unable to appear in person by reason of such service".

Documentation substantiating a person's eligibility for an exemption under §12-81(19) must be filed before the October first assessment date on which the exemption is to be effective.

**Effective: June 3, 2003**

**A revised listing of war dates effective October 1, 2003, appears on the final page of this publication.**

**PA 03-200 An Act Concerning An Address Confidentiality Program**
**(SB 853)**

**Sec. 1 through Sec. 16 (NEW)**

These sections create an address confidentially program administered by the Office of the Secretary of the State, under which a substitute mailing address is provided for persons who are victims of family violence, injury or risk of injury to a child, sexual assault or stalking, and who wish to keep their residential addresses confidential because of safety concerns.

A person who is a program participant is issued a certification card, which includes the participant's name and signature, a certification code, the program address and the certification expiration date. The program address is the post office box number the Secretary of the State maintains for the exclusive use of the program and a fictitious street address.

A program participant may request that a public agency (the definition of which includes municipalities) use the program address as the participant's residential, work or school address for all purposes for which the agency requires or requests such address information. The program participant must present the certification card to a public agency official upon making such a request. The agency official may make a photocopy of the certification card for the agency's records and must immediately return the certification card to the program participant.

A public agency must use the program address that appears on the certification card in the agency's records, in lieu of the participant's confidential address, unless the agency requests and receives an exemption from doing so from the Secretary of the State.
For program participants, the Secretary of the State is the agent upon whom any summons, writ, notice, demand or process in any action, proceeding or other matter is served. Any proper

officer or other lawfully empowered person may serve a program participant by leaving two true and attested copies, together with the required fee, at the Secretary of the State's Office, or by mailing them by registered or certified mail to the Secretary of the State, and marking them "Address Confidentiality Program.

The Secretary of the State must record the date and hour of receipt and forward, by registered or certified mail, one copy to the program participant at the participant's confidential address not later than two business days after such receipt. The Secretary of the State must retain the other copy.

**Sec. 17 amends subsection (b) of §1-210**

Exempts from public disclosure, under the Freedom of Information Act, the residential, work or school address of any participant in the address confidentiality program the Secretary of the State administers.

**Effective: January 1, 2004**

***Please Note:*** While Public Act 03-200 provides for a substitute address to be used in lieu of the one that is confidential for victims of victims of family violence, injury or risk of injury to a child, sexual assault or stalking, there is no similar requirement with respect to the residential addresses of certain public safety and law enforcement officials who request confidentiality under the provisions of §1-217(a)(2). As a result, a public agency must redact (or permanently block out in some manner) from records to which the public have access the confidential residential address of a public safety or law enforcement official, at the person's request, and cannot provide them to anyone requesting such information.

**PA 03-234 An Act Concerning A Property Tax Exemption For Certain Farm Buildings (HB 5663)**

**Sec. 1 amends §12-91**

Allows any municipality, upon approval of its legislative body, to provide a property tax exemption of up to $100,000 for a farm building other than a residence. The building on which such an exemption is applied must be used actually and exclusively in farming, as defined in §1-1.

In order to qualify for this exemption in a municipality in which it is available, a farmer must be approved for a farm machinery exemption. Pursuant to subsection (a) of §12-91, farmers must annually apply for an exemption for farm machinery (and for horses or ponies exclusively used in farming) within thirty days after the October first assessment date. Application is made on a claim form prescribed by the Commissioner of Agriculture.

**Effective: July 1, 2003**

**PA 03-246 An Act Concerning Application Of The Property Tax to Quasi-Public (HB 6169) Agencies**

**Sec. 1 (NEW)**

Allows municipalities to tax real property owned by quasi-public agencies, under certain circumstances.

Quasi-public agencies are defined in §1-120, as follows: the Connecticut Development Authority, Connecticut Innovations, Incorporated, Connecticut Health and Educational Facilities

Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Connecticut Port Authority, Capital City Economic Development Authority and Connecticut Lottery Corporation.

This property taxation provision affects any real property acquired by a quasi-public agency for future use that, during an assessment year, is not held or used in furtherance of the agency's purpose or for any other public purpose. Each of the following conditions must be satisfied in order for a municipality to tax such a property:

(1) The quasi-public agency must be the record owner of the property for a period of at least one year prior to and including the assessment date for the assessment year in which the property will be taxed;

(2) The property must be used for an income producing purpose during such assessment year;

(3) The property would be subject to real property taxation under Chapter 203 of the Connecticut General Statutes, if it were not owned by the quasi-public agency; and

(4) No grant or payment in lieu of property taxes is being issued for such property.

**Sec. 2 (NEW)**

Allows Bridgeport's legislative body to approve a filing date extension for a Distressed Municipality exemption, under the provisions of subdivision (59) or (60) of §12-81, for the 2000 or 2001 grand list, for a person who failed to file a claim with the assessor by the filing date and further failed to apply for an extension of time under §12-81k.

Upon receipt of a request from such person, Bridgeport's legislative body may grant such exemption under criteria the city establishes. Such criteria can include, but need not be limited to (1) allowing for any hardship the claimant experienced which may account for the failure to claim the exemption by the statutory filing date or to file for an extension to do so, and (2) whether the exemption would provide a net benefit to economic development in Bridgeport.

If Bridgeport grants such an exemption(s), the claimant must apply, on behalf of the city, to the Secretary of the Office of Policy and Management for a grant payment in lieu of the exempt tax. Bridgeport may require that receipt of such grant be a condition precedent to granting the exemption. There is no requirement that the state issue a payment in lieu of the exempt tax.

**Effective: Section 1 is effective October 1, 2003, and applicable to assessment years commencing on or after October 1, 2003; Section 2 is July 9, 2003**

**PA 03-262 (SB 934) An Act Concerning Use Of Consumer Collection Agencies For Municipal Property Tax Collection And The Property Tax Assessments Lists For The 2002 Assessment Year In The Towns Of Warren And Hartland.**

**Sec. 1 amends §36a-800**

Redefines "consumer collection agency" to clarify that such an agency may receive payment for property taxes from a property tax debtor on behalf of a municipality.

**Sec. 2 amends §36a-802**

Makes technical changes related to persons who may be damaged by the wrongful conversion of property tax debtor funds received by a consumer collection agency.

**Sec. 3 amends subsection (c) of §36a-805**

Provides that a consumer collection agency cannot receive property taxes on behalf of a municipality, unless the agency has procured an insurance policy providing coverage against loss of money, securities or other property (including losses arising from fraudulent or dishonest acts of an agency employee, officer or director), with limits of at least $2 million. Any municipality entering into a contract for property tax collection with such an agency must ensure that it has obtained the required insurance.

Allows a municipality that enters into a property tax collection contract with a consumer collection agency, to require such agency to file a bond with the municipality in an amount not exceeding the total amount of the property tax to be collected. The bond must require the agency to "well, truly and faithfully account for all funds collected and received for the municipality". The municipality approves the form of the bond, which must contain a provision requiring the surety to provide the municipality with written notice of bond cancellation, by certified mail, at least 30 days prior to the date of cancellation.

Also, provides that a municipality may proceed on such bond against the principal or the surety on the bond, or both, to recover damages due to the consumer collection agency's wrongful conversion of any property tax debtor funds it receives.

Specifies that the proceeds of such a bond, even if commingled with other assets of the consumer collection agency, be held in trust for the benefit of the municipality in the event of the consumer collection agency's bankruptcy. Such proceeds are, therefore, immune from attachment by creditors and judgment creditors.

**Sec. 4 (NEW)**

Validates the October 1, 2002 grand lists for the towns of Warren and Hartland, neither of which were signed by an assessor certified pursuant to §12-40a. Also, validates the certifications of compliance these towns filed pursuant to regulations adopted under §12-62i (Performance-Based Testing Standards for Revaluation), which were not signed by a certified assessor.

**Effective: Effective July 9, 2003**

**PA 03-269 (SB 1098) An Act Concerning Municipal Grand Lists And Assessment Appeals, A Property Tax Exemption For Certain Leased Motor Vehicles, Review Of Certain Municipal Certifications Relating To Property Revaluation And A Municipal Option To Extend Certain Previously Waived Property Tax Exemptions And Validation Of The Assessments Lists, Abstracts And Determinations Of The Boards Of Assessment Appeals In The Towns Of Warren And Hartland.**

**Sec. 1 amends §12-55**

Rearranges the statute governing grand list preparation and filing in a more logical manner and makes various technical corrections. Also, removes the $5 fine for the failure of a non-certified assessor to sign a grand list.

**Sec. 2 amends §12-64**

Clarifies provisions related to state-owned real property that is leased for non-governmental purposes. Municipalities in which such leased property is located are to tax such property in the name of the lessee, as of the assessment day next following the date the property is leased pursuant to §4b-38.

Also, prohibits tax collectors from filing a lien on such property in the event the lessee fails to pay the property tax for which he or she is liable. All other legal means of collecting such delinquent property taxes remain available to tax collectors, but a lien cannot be filed on any property owned by the State of Connecticut or one of its agencies.

**Sec. 3 amends §12-111**

Adds provisions related to an extended grievance date for hearing requests to a board of assessment appeals, when a town's assessor or board of assessors receives an extension to file a grand list. These provisions, which were previously contained in §12-117, allow a written request for an assessment appeal to be filed by March 20, in any year in which the town's chief executive officer grants a one-month extension for filing the grand list.

In any year in which the extended grievance date is applicable, the board of assessment appeals must conduct hearings during the month of April, and must notify an appellant of the time and date of a hearing at least seven calendar days preceding the date it is held, but no later than the first day of April.

**Sec. 4 amends §12-117**

Deletes provisions related to an extended grievance date for board of assessment appeals hearing requests, since such provisions have been moved into §12-111. As a result, both the regular and extended grievance date provisions for assessment appeals are now contained in one statute.

Also, removes the provision allowing an additional three-month extension that may be granted, in a town subject to the provisions of §7-344 that fails to adopt its budget in the time prescribed, to an assessor, board of assessors or board assessment appeals.

**Sec. 5 amends subdivision (53) of §12-81**

Affects the motor vehicle exemption for Connecticut residents on active duty service in a branch of the United States military, whose vehicles are garaged outside of the state due to the service member's military orders.

Removes the word "passenger" in the description of motor vehicle, making any such vehicle (e.g., automobile, motorcycle, truck, etc.), eligible for a 100% exemption.

Also, extends exemption eligibility to motor vehicles leased by active duty service personnel, by providing for a refund to the service member of the tax paid for the leased vehicle.

**Sec. 6 amends §12-93a**

Adds a new subsection (b) to §12-93a, the provisions of which extend eligibility for the benefit of veterans' exemptions under subdivisions (19), (20), (21), (22), (23), (24), (25) or (26) of §12-81, to motor vehicles leased by exemption claimants. An exemption benefit is provided to an eligible claimant in the form of a refund of the tax paid for the leased vehicle.

***The Questions and Answers beginning on page 14 provide more details concerning the provisions of Sections 5 and 6 of Public Act 03-269 and the administration of the refund procedure these sections create.***

**Sec. 7, 8 and 9 amend §12-62k**

Makes various changes that are technical and clarifying to the statute that governs the duties of the Revaluation Exemption Review Committee. Allows the committee to review any additional

data it deems necessary in order to determine whether or not a town's certification of exemption from the requirement to conduct a revaluation complies with the statutory criteria.

Removes the requirement that the committee review documentation concerning a property for which the sales price is equal to or less than $2,000. Also, allows (rather than requires) the committee to determine if the assessor did not make necessary and appropriate adjustments to the sales prices of real property included as market sales.

Provides that the committee is responsible for prescribing the form a town uses to certify its exemption, subject to the Office of Policy and Management's approval of the form. Also, specifies that failure to complete and submit the form and required documentation in a timely manner is a waiver of the right to this exemption.

Revises provisions related to the penalty that a town might be subject to if the Secretary of the Office of Policy and Management rescinds the town's exemption. The Office of Policy and Management can impose such a penalty if a town disregards the provisions of §12-62 (which sets forth the exemption criteria) or if a town does not make timely and good faith efforts toward implementing a revaluation on the assessment date for which the exemption certification is rescinded.

Specifies that if a town submits a certification of revaluation exemption containing calculations that do not satisfy the criteria for such exemption, or if the data upon which a town bases such a certification do not support the calculations, the town has disregarded the provisions of §12-62.

**Sec. 10 (NEW)**

Allows a municipality's legislative body to vote to grant a filing date extension to a person claiming a property tax exemption under subdivision (59), (60), (70), (72) or (74) of §12-81, who has failed to file an exemption claim with the assessor or board of assessors by November first and has further failed to apply for a 45-day extension under §12-81k.

The exemptions these subdivisions provide are for real and personal property in a Distressed Municipality, manufacturing machinery and equipment, and commercial vehicles.

Any municipality may grant a filing extension to a person claiming one of these exemptions, upon receipt of a request, and under criteria the municipality establishes. Such criteria can include, but need not be limited to (1) allowing for any hardship the claimant experienced which may account for the persons' failure to claim the exemption by November first or to file for an extension under §12-81k, and (2) whether the exemption would provide a net benefit to economic development in the municipality.

If a municipality grants such an extension, it forgoes any tax revenue that would otherwise have been due. The State of Connecticut cannot make a payment in lieu of tax with regard to any property exempted when a municipality extends the filing date under the provisions of this section.

**Sec. 11 (NEW)**

Contains the same provisions validating the October 1, 2002 grand lists and certifications of regulatory compliance for the towns of Warren and Hartland, as those contained in Section 4 of Public Act 03-262.

**Effective:** **Sections 1, 3 and 4 are effective July 1, 2003; Section 2 is effective July 9, 2003; Sections 5 and 6 are effective October 1, 2003 and are applicable to assessment years commencing on or after October 1, 2003; Sections 7, 8**

**and 9 are effective July 9, 2003 and applicable to certifications of exemption from the requirement to implement a revaluation made on or after April 1, 2003; and Sections 10 and 11 are effective July 9, 2003**

**PA 03-370 (SB 1099) An Act Concerning A Property Tax Exemption For Charitable Housing**

**Sec. 1 amends §12-81(7)**

Extends the exemption under subdivision (7) of §12-81 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. This exemption is applicable regardless of 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.

The primary use of such property must be one or more of the following:

(i) An orphanage;

(ii) A drug or alcohol treatment or rehabilitation facility;

(iii) Housing for homeless, retarded or mentally or physically handicapped individuals, or for battered or abused women and children;

(iv) Housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and

(v) Short-term housing operated by a charitable organization where the average length of stay is less than six months.

All other provisions of §12-81(7) remain in effect with respect to this exemption. An eligible corporation is one that is organized exclusively for charitable purposes, and the corporation must file a quadrennial report in accordance with §12-87 or §12-87a. Additionally, no officer, member or employee of the corporation can receive any pecuniary profit from the corporation's operations, other than reasonable compensation for services or as proper beneficiary of its charitable purpose.

**Effective: Effective July 9, 2003 and applicable to assessment years commencing on or after October 1, 2002**

**SA 03-18 (HB 5174) An Act Authorizing Derrick Betton To Bring A Civil Action Against The Commissioner Of Transportation And Concerning Revaluation In The Town Of Somers And Issuance Of Bonds In The Town Of Rocky Hill**

**Sec. 2 (NEW)**

Provides that the October 1, 2002 revaluation the town of Somers conducted is null and void based on a town meeting vote to that effect. If a town meeting vote nullifies the 2002 revaluation, real property in Somers must continue to be assessed at the level of assessment existing prior to October 1, 2002, until a new revaluation is completed for the October 1, 2004 assessment year. The 2004 revaluation must include the physical inspection of all real property in the town. No delay of subsequent revaluations in Somers is allowed, so the town must also implement a revaluation for the October 1, 2006 assessment year.

**Effective: Effective July 20, 2003**

**PA 03-1 (HB 6802) An Act Concerning Expenditures And Revenue For The Biennium Ending June 30, 2005**

**Sec. 102 amends subsection (a) of §14-33**

Imposes a fee of 50 cents for each motor vehicle or snowmobile included on a form a tax collector submits to the Commissioner of the Department of Motor Vehicles, as notification of a motor vehicle property tax delinquency.

Tax collectors submit such forms to enable the Department of Motor Vehicles to deny the registration of motor vehicles owned by persons who are delinquent in the payment of motor vehicle property taxes, until they provide proof that their tax delinquencies have been satisfied.

***Please Note:*** See next page for an explanation of Sec. 58 of PA 03-6 (June 30 Special Session), which allows a fee of $5 to be charged to a delinquent motor vehicle taxpayer, upon approval of a municipality's legislative body, if a tax collector files a form with the Department of Motor Vehicles reporting a motor vehicle or snow mobile belonging to the taxpayer as delinquent in property tax payments.

**Effective: August 20, 2003**

**PA 03-6 HB 6806 An Act Concerning General Budget And Revenue Implementation Provisions**

**Sec. 40 amends §12-81(55)**

Suspends the $1,000 property tax exemption for totally disabled persons for the October 1, October 1, 2003 assessment year. Since the exemption cannot be granted for the October 1, 2003 grand list, municipal tax bills issued in Fiscal Year 2004-2005 will not reflect exemptions under §12-81(55).

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 41 amends §12-94a**

Provides that the state does not reimburse municipalities for their tax losses due to the exemption granted to totally disabled persons on the October 1, 2002 or October 1, 2003 grand lists.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 42 (NEW)**

Provides that a municipality cannot 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 United States military forces or a member of a Connecticut National Guard unit that has been called into active duty service, provided such taxpayers are serving in the Middle East when their property tax bills or installments become due.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 53 amends §12-81(72)**

Eliminates eligibility for the property tax exemption for manufacturing machinery and equipment

for 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.

Also redefines processing to mean "the physical application of the materials and labor in a manufacturing process".

There is no provision allowing municipalities to issue tax bills to recover revenue losses for the October 1, 2002 grand list due to this legislation, and the state will not reimburse towns for their tax losses due to exemptions granted for machinery and equipment used in direct or indirect mail distribution services.

Since the exemption for machinery and equipment used in such services cannot be granted for the October 1, 2003 grand list, municipal tax bills issued in Fiscal Year 2004-2005 will not reflect exemptions under §12-81(72) for such property.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 57 (NEW)**

Allows the Bristol Historical Society to file a quadrennial statement claiming an exemption from property tax under the provisions of §12-81(7), not later than September 20, 2003, and requires the payment of the late filing fee of $35 as specified in §12-87a.

**Effective: August 20, 2003**

**Sec. 58 amends §12-146**

Allows a tax collector to charge a taxpayer a $5 fee, if the tax collector has reported a snow mobile or motor vehicle owned by the taxpayer as being delinquent in motor vehicle tax payments to the Department of Motor Vehicles, pursuant to §14-33.

A municipality's legislative body must vote to allow the tax collector to charge this $5 fee to delinquent motor vehicle taxpayers.

**Effective: August 20, 2003**

**Sec. 59 amends subsection (c) of §12-81g**

Removes the requirement that the state reimburse municipalities for the revenue loss they sustain as a result of additional exemptions granted under §12-81g to those veterans who do not meet the program's income parameters.

Exemptions under this statute are not affected. Municipalities must still provide additional exemptions to eligible veterans and their survivors, in accordance with subsections (a) and (b) of §12-81g, but they will only be reimbursed for the exemptions they provide under subsection (a).

Accordingly, municipalities will be reimbursed only for the tax loss they sustain for persons who receive an additional exemption equal to 200% of their exemptions under §12-81 (19) through (26), inclusive. Municipalities will not be reimbursed for the tax loss resulting form the additional exemption granted to persons who are not income-eligible (i.e., those who receive a 50% increase of the amount of their exemptions under said subdivisions of §12-81).

Also, allows the state to proportionately reduce the amount of reimbursement to each municipality, in the event the total amount payable to all municipalities for this reimbursement

program exceeds the amount appropriated in any year.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 183 amends subsection (g) of §12-170aa**

Allows the state to proportionately reduce the amount of reimbursement to each municipality under the Property Tax Credit Program for Elderly and Totally Disabled Homeowners (also known as the Circuit Breaker Program), in the event the total amount payable to all municipalities exceeds the amount appropriated in any year.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 184 amends subsection §12-94c**

Allows the state to proportionately reduce the amount of reimbursement to each municipality under the Manufacturing Machinery and Equipment and Commercial Vehicles' Exemption Program, in the event the total amount payable to all municipalities exceeds the amount appropriated in any year.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

**Sec. 187 amends subsection §12-20b**

Requires the state to issue an annual payment-in-lieu of taxes (PILOT) of $100,000 to the Town of Branford, for the Connecticut Hospice, from the appropriation for the Private Colleges and General Hospitals PILOT.

**Effective: August 20, 2003, and applicable to assessment years commencing on or after October 1, 2002**

## Questions and Answers – Property Tax Benefit for Vehicles Leased By Veterans, Certain Survivors Of Veterans And Active Duty Service Personnel

Sections 5 and 6 of Public Act 03-269 amend §12-81(53) and §12-93a, respectively. These amendments, which are effective as of the October 1, 2003 assessment year, extend the benefit of veterans' and active duty service members' exemptions to leased motor vehicles, by providing for a refund of taxes paid for such vehicles.

The Office of Policy and Management has prepared the following Questions and Answers to assist municipalities in administering the provisions of this act, and to provide claimants with an understanding of the application requirements.

**1. Do the provisions of §12-81(53) and §12-93a, as amended, provide an additional exemption for active duty service personnel, veterans or their survivors?**

No. The amended provisions of §12-81(53) and §12-93a merely extend the type of property to which a claimant receives a benefit based on his or her exemption eligibility. These legislative amendments do not increase the amount of an exemption to which a claimant is entitled.

In order for a member of the United State Armed Forces to receive a benefit for a leased vehicle, he or she must satisfy the criteria of §12-81(53). And under §12-93a, as amended, a person must be eligible for exemption under §12-81(19) through (26), inclusive, in order to receive a benefit of the exemption for a leased vehicle.

Pursuant to §12-95, the right to the exemptions provided by §12-81(19) through (26), inclusive, must be established before the assessment date on which they are to be effective (i.e., by September 30th). There is an exception in §12-95 for the exemption under §12-81(20), for which a person may submit proof of eligibility at any time "before the expiration of the time limited by law for the board of assessment appeals of the town wherein the exemption is claimed to complete its duties."

**2. Can a person receive a benefit for a leased vehicle on a grand list that already reflects an exemption on other property owned by the person or the person's spouse?**

Yes, but only if the exemption was not the full amount to which the claimant was entitled. Since exemptions under §12-81(19) through (26), inclusive, are generally applied to real property assessments, there will be situations in which claimants receive the full amount of their benefits with respect to their real property.

For example, if a person is eligible for a $3,000 exemption as a disabled veteran under §12-81(20), and that amount is applied to his or her real property assessment, the veteran receives the full amount of his or her exemption benefit with respect to a lower real property tax, and is not eligible for a benefit with respect to a leased vehicle.

The only situations in which the new provisions of §12-93a will be applicable are when a claimant owns no real property to which an exemption can be applied, or when there is a remaining balance after a claimant's exemption is applied to other property.

If the disabled veteran eligible for a $3,000 exemption is a renter who owns a vehicle assessed for $1,200, no tax on that vehicle would be due: it would be totally exempt due application of the disabled veteran's exemption. However, an exemption balance of $1,800 would remain.

The provisions of §12-81(20) allow a disabled veteran's exemption to be applied to property owned or held in trust for the veteran's spouse, with whom the veteran is domiciled, if the

veteran lacks a sufficient amount of property in his or her own name. By extension, the benefit of the disabled veteran's exemption or exemption balance is available with respect to a vehicle leased by a claimant's spouse.

Based on the above example, the benefit of the $1,800 exemption balance to which the disabled renter is entitled could be applied to a vehicle his or her spouse leases.

See Question 10 for other examples of exemption benefits that may be applied to a vehicle leased by a claimant's spouse.

**3. Is an application required?**

Yes. Assessors can ascertain whether a person is entitled to a property tax exemption, but do not have knowledge concerning motor vehicles those persons may be leasing. As a result, a person seeking a refund under the amended provisions of §12-81(53) or §12-93a must file an application.

At times, more than one application may be required. (See Question 22.)

**4. Who prescribes the form of an application?**

Assessors are responsible for prescribing the form of applications used.

**5. What information should be required on an application?**

Although the amendments to §12-81(53) and §12-93a do not specify the information that assessors should require, certain information is implicitly needed.

Such information includes the name of the claimant, the name of the vehicle owner (lessor), the make, model and year of the leased vehicle, information as to whether or not the lease is effective as of the assessment date corresponding to the year for which the tax is paid, and the address to which a refund check should be mailed. Assessors may wish to request a copy of a claimant's lease agreement or other documentation regarding the vehicle lease. Additionally, information concerning a change in the vehicle leased between the assessment date and the date of the application may be needed.

For active duty service personnel seeking a refund under §12-81(53), the date on which the claimant's active duty status began, and the signature of the claimant's commanding officer must also be obtained.

**6. When must an application be filed?**

A veteran or veteran's survivor who is eligible for an exemption under §12-81(19) through (26), inclusive, must file an application with the assessor "not later than the thirty-first day of December next following the assessment year during which the tax for such leased vehicle has been paid".

For the 2003 grand list, taxes are paid in the fiscal year commencing July 1, 2004. The assessment year during which such taxes are paid can be either the 2003 assessment year (if the tax is paid in one installment) or the 2005 assessment year (if the tax is paid in more than one installment). The application filing date will depend on the assessment year during which such taxes are paid.

For example, if a motor vehicle tax for the 2003 grand list is paid in one installment on July 1, 2004, a claimant must file an application for a refund by December 31, 2004. If motor vehicle

taxes for the 2003 grand list are due in two installments (July 1, 2004 and January 1, 2005), the claimant must file an application for a refund by December 31, 2005, because the assessment year during which the last installment of the tax is paid is the 2004 assessment year.

An active duty service member must file an application for a refund with the assessor "not later than the thirty-first day of December next following the date on which property tax is due in such assessment year".

For the 2003 grand list, the date during the assessment year when taxes are due is generally July 1, 2004; the December 31st next following is December 31, 2004. But if taxes are due in more than one installment, another assessment year may commence and the filing deadline should be based on the last day of December of the assessment year during which the final installment of the tax is due.

**7. What happens if an application is not filed by the date due?**

No refund can be issued. The amended provisions of §12-81(53) and §12-93a state: "Failure to file an application by the date prescribed constitutes a waiver of the right to claim a refund for the applicable assessment year".

**8. What is the amount of the refund for which a claimant qualifies?**

Active duty service personnel are entitled to the exemption of one motor vehicle that is garaged outside of Connecticut on the assessment date. Under §12-81(53), as amended, an active duty service member's refund is determined as follows:

- Multiply the leased vehicle's assessment by the mill rate for the year the vehicle is assessed.

As the amount of a refund for a claimant eligible for an exemption under §12-81(19) through (26), inclusive, cannot be greater than the tax paid on a leased vehicle, the refund under §12-93a(b) is determined as follows:

- Multiply the amount of the exemption to which the claimant is entitled (which may be a remaining exemption balance, as explained in Question 2) by the mill rate in effect for the assessment list for which the leased vehicle is taxed.

- Determine the tax on the leased vehicle by multiplying its assessment by the mill rate.

- The claimant is entitled to receive the lesser of the amounts resulting from these two calculations.

**9. If the town in which a claimant resides does not tax the leased vehicle, must the town issue a refund to the claimant?**

No. Since the town in which the claimant resides has not received a tax payment for the leased vehicle, it cannot provide a refund to the claimant. Only the town in which the tax is paid can provide such a refund.

Section 12-94 provides that exemptions under §12-81 "shall first be made in the town in which the person entitled thereto resides". However, this section also provides that "any person asking such exemption in any other town shall annually make oath before, or forward his or her affidavit to, the assessors of such town, deposing that such exemptions...if allowed, will not, together with any other exemptions granted under said sections, exceed the amount of

exemption thereby allowed to such person. Such affidavit shall be filed with the assessors within the period the assessors have to complete their duties in the town where the exemption is claimed."

Therefore, if a person resides in a town other than the one in which his or her leased vehicle is registered, the only way a refund of the tax paid for such vehicle could be obtained is for the claimant to file the required nonresident affidavit with the assessor of the town in which the vehicle is registered.

For the 2003 grand list, a claimant will have to file a nonresident affidavit with the assessors of the town in which the vehicle is registered by January 31, 2004 (or February 28, 2004, if the assessor of that town has received a one-month extension to complete the grand list). Under the amended provisions of §12-81(53) or §12-93a, the claimant would the file a refund application with the assessor of that town subsequent to the date the tax on the vehicle is paid, but before the end of the filing period.

Claimants should be encouraged to make sure their leased vehicles are registered and taxed in the town in which they reside, so that the need for filing a nonresident affidavit in addition to an application for a refund can be avoided.

**10. Can a claimant's benefit be provided with respect to a vehicle being leased by the claimants' spouse?**

Yes, but only if the claimant is eligible for an exemption under §12-81(19), (20), (21) or (26) and does not have a sufficient amount of property in his or her own name.

Each of these subdivisions of §12-81 allows an exemption to be applied to property of a claimant's spouse. Since the exemption to which a veteran, a disabled veteran or a veteran's surviving parent is entitled under these subdivisions can be applied to property owned or held in trust for a spouse with whom the claimant is domiciled, it is reasonable to conclude that the exemption benefit can also be extended to a vehicle leased by a spouse who resides with the claimant.

The exemption under subdivision (21) of §12-81 must be applied to a person's residence. As a result, it is unlikely that an exemption balance would remain and that the veteran would be eligible for a refund of tax paid on a leased vehicle. However, if there is an exemption balance under this subdivision, it is possible that the amount could be applied to a vehicle leased by the veteran's spouse.

Since the exemptions provided under §12-81(22), (23), (24) and (25) require a person to remain a widow or widower in order to receive an exemption, a claimant cannot have a spouse. And while there is provision in §12-81(22) and (24) for a minor child to receive an exemption, minors cannot lease property.

Subdivision (53) of §12-81, as amended, addresses a motor vehicle owned or leased by an active duty service member, which is garaged at a military duty station outside of Connecticut. Therefore, a vehicle leased by the service member's spouse could not be eligible.

**11. If a claimant does not lease a vehicle for an entire assessment year, is the claimant's exemption benefit prorated?**

No. There is no statutory provision allowing a claimant's personal property tax exemption to be prorated when the claimant does not own the personal property for an entire assessment year. Similarly, there is no provision to prorate an exemption benefit due to a claimant who is not

leasing a motor vehicle for an entire assessment year.

While §12-81a requires the purchaser of a property exempt under §12-81 to pay a tax based on a proration of an exemption from the date the conveyance is placed on a town's land records, this provision is applicable only to real property since personal property conveyances are not required to be recorded on the land records.

However, motor vehicle assessments are prorated under certain circumstances and the resultant taxes are reduced. Claimants are only entitled to a refund of taxes paid, which in some cases will be reduced because of the proration of a motor vehicle assessment.

See Questions 21 through 23 relative to motor vehicle assessment credits and prorated assessments.

**12. Is a claimant's estate eligible for a refund of taxes on a motor vehicle the claimant leased when alive?**

Yes, just as an estate is eligible for any other moneys to which a deceased person is entitled at the time of death. The application may be filed by the person authorized to do so on behalf of the estate, and the refund check should be made payable to the estate.

Because §12-81(53) and §12-93a(b) address refunds based on a claimant's exemption eligibility, which does not cease at the moment of death with respect to personal property (as it does for real estate), an estate is eligible.

At the moment of a person's death, his or her real property is transferred to an estate. Exemptions cannot be applied to real property listed in the name of an estate.

The transfer of title to personal property does not occur at the time of a person's death, as it does with real estate. Title to personal property transfers only upon the disposition of the deceased person's estate (generally, within one year of the date of death). Since personal property title transfer is not immediate, an exemption may be applied to personal property subsequent to a person's death.

It is logical to conclude, therefore, that the benefit of the person's exemption can be provided with respect to a leased vehicle subsequent to the person's death.

**13. What happens after an application is filed with an assessor?**

Upon approving an application, the assessor must certify the amount of the refund for which the claimant is eligible and notify the tax collector of such amount. The tax collector must ensure the tax on the vehicle has been paid and refer the certification to a town's board of selectmen or to the corresponding authority in any other municipality (e.g., mayor, board of aldermen, city council, etc.). That authority must draw an order on the treasurer who must issue a refund check to the claimant for the amount certified.

**14. Can a refund be issued if the tax on the leased vehicle has not been paid?**

No. Refunds are only available with respect to a leased vehicle for which property taxes have been paid, and only from the municipality that received the payment.

**15. Does it matter who pays the tax?**

No. The amended provisions of §12-81(53) and §12-93a allow claimants to receive refunds for taxes paid on leased vehicles, regardless of whether the claimant pays the tax or the leasing

company that owns the vehicle pays it.

In most lease situations, the leasing company pays the tax when it becomes due. The lease payment a claimant makes includes an amount for taxes or the leasing company bills the lessee for the tax amount, after it has been paid. Some leases require the lessee to pay the tax directly.

Regardless of the type of lease agreement, the claimant is the ultimate payer of the tax.

**16. How do tax collectors account for such refunds?**

Tax collectors should adhere to the provisions of §12-129 with respect to the issuance of such refunds. Section 12-129 requires tax collectors to make a notation in their rate books, concerning the identity, date and description of property tax refunds, including those made to a person who pays a tax from which the payer is by statute exempt. (Although leasing companies may actually be paying the tax on these vehicles, the amount needed for tax payments is obtained from the lessee per the terms of the lease. The refund recipient is, therefore, the person who ultimately pays the tax.)

The notation in the rate bill should be made under the name of the lessor to whom the tax bill was issued, but should include the name of the exemption claimant who is issued the refund, as well as the date and description.

At the end of each fiscal year, the tax collector must include in the statement that is published in the municipality's annual report or filed in the town clerk's office, the name of each refund recipient, the amount of the refund and the reason it was made.

Notations in the rate bill will also assist in identifying situations in which the amount of a refund issued may be impacted by information received at a later date. (See Question 23.)

**17. Is a claimant eligible for a refund of taxes paid to a lesser taxing district (e.g., a borough or fire district) for a leased vehicle?**

Yes. A qualified claimant is entitled to a refund of taxes paid to a lesser taxing district for a leased vehicle in addition to the refund of such taxes paid to a town.

This is due to the fact that grand list of a lesser taxing district reflects exemptions to which claimants are entitled and the refund provisions of §12-81(53) and §12-93a, as amended, are based on exemption eligibility.

**18. How will lesser taxing districts administer such refunds?**

Assessors of those towns in which lesser taxing districts are located should forward a copy of the claimant's application to the district clerk after certifying the amount of the refund to which the claimant is entitled for the vehicle being leased. The clerk must verify that the property tax on the leased vehicle has been paid and refer the certification to the authority in the district that is similar to a town's board of selectmen (e.g., president, board of commissioners or warden). That authority must draw an order on the district's treasurer who must issue a refund check to the claimant for the amount certified.

**19. How will lesser taxing districts account for such refunds?**

Given that §7-328 provides that "a district and the treasurer thereof shall have the same powers as towns and collectors of taxes to collect and enforce payment of such taxes", it must be assumed that the officers of such districts have the same responsibilities as a town's tax

collector with respect to such refunds.

District treasurers should follow the tenets of §12-129 with respect to making a notation in their rate books, concerning the identity, date and description of property tax refunds.

Additionally, the annual report that includes financial status information that district clerks must file pursuant to §7-325(c), should include information concerning the name of each refund recipient, the amount of the refund and the reason it was made.

**20. When there is an outstanding tax bill, may the amount of the refund be applied to the outstanding balance?**

No. The provisions §12-81(53) and §12-93a, as amended, require refunds to be issued to qualified claimants, but do not allow municipalities to apply refund amounts to outstanding tax bills.

Section 12-144b requires tax collectors to apply each tax payment received toward payment of the oldest outstanding tax levied for a specific property. Taxes for a motor vehicle leased by a claimant could remain delinquent after a tax collector has applied a payment received to the oldest outstanding obligation on that specific vehicle. If this is the case, however, no refund could be issued to the claimant since the tax on the leased vehicle remains unpaid.

A claimant may be delinquent in other property tax payments, but there is no provision for withholding a refund pursuant to the amended provisions of §12-81(53) and §12-93a, due to such a delinquency.

The only possible exception is contained in §12-146b, which would be applicable if the person requesting the refund is also a business with which a municipality has a contract for services.

This section states, in pertinent part: "Any municipality...may withhold any payment, or portion thereof, due to any business enterprise pursuant to any contract entered into on or after October 1, 1991, if any taxes levied by such municipality against any property owned by such business enterprise are delinquent and have been so delinquent for a period of not less than one year, provided no such amount withheld shall exceed the amount of tax, plus penalty and interest, outstanding at the time of withholding."

**21. Are refunds available with respect to a vehicle assessed on a Supplemental Motor Vehicle List?**

Yes, since §12-95 allows a veteran's exemption to be applied to a motor vehicle appearing on the supplemental motor vehicle list.

The pertinent provisions of §12-95 state: "For purposes of any tax payable in accordance with the provisions of section 12-71b, any such exemption referred to in this section shall take effect on the first day of January next following the date on which the right to such exemption has been proved."

**22. How are refunds for replacement vehicles handled?**

If a motor vehicle on a supplemental motor vehicle list replaces one that appears on the regular grand list, assessors will have to determine whether or not a claimant received the full amount of the refund to which he or she is entitled with respect to the vehicle on the regular grand list. If so, the claimant is not entitled to a refund for the supplemental grand list.

But if the tax paid for a leased vehicle on the regular grand list was less than the total amount of

the claimant's exemption multiplied by the mill rate, a refund for the tax (or a portion of the tax) on the replacement vehicle may be issued. Since claimants can only receive refunds after a vehicle's tax is paid, data concerning any refund issued to a claimant for a leased vehicle's tax based on the regular grand list will be available prior to when the supplemental grand list bill is paid.

Because the vehicle for which a credit is requested on the supplemental motor vehicle list will differ from that on the regular grand list, claimants should file two applications: one for the regular grand list and one for the supplemental motor vehicle list.

**23. How are motor vehicle credit situations handled?**

If a leasing company requests a credit under §12-71c due to the fact it sells and does not replace a vehicle, or if a vehicle is totally damaged or stolen and not recovered, the tax bill may reflect the proration of the vehicle's assessment, but only if the credit is requested prior to the date the tax bill is sent. If this occurs, the claimant's refund is determined on the basis of the reduced tax due to the credit.

If, however, the leasing company does not request a credit prior to paying the tax, a claimant may receive a refund greater than that to which he or she is entitled. As it must be assumed that this is an unintentional consequence of the amendment to §12-93a, it is reasonable to conclude that a municipality can determine the difference between the amount of the refund issued and the refund amount to which the claimant was actually entitled, and send the claimant a request for the payment of the difference.

Legislative clarification of this issue may be needed, however.

**24. Does the state reimburse municipalities for the amount of these refunds?**

No. The refund procedure created by the amended provisions of §12-81(53) and §12-94a is applicable to municipalities only. The state-reimbursed additional veterans' exemption program pursuant to §12-81g is not impacted by this legislation.

**25. Must a municipality issue a 1099 Form to a refund recipient?**

No. The refund provisions of §12-81(53) and §12-93a(b) are based on a claimant's exemption eligibility. This differs from the abatement provisions of §12-81w, pursuant to which some municipalities issue checks to volunteer firefighters, emergency and civil preparedness staff. A municipality that provides abatements under §12-81w (rather than exemptions) must issue 1099 Forms to recipients. (This is based on a ruling from the Internal Revenue Service obtained by the Town of Hanover, Massachusetts regarding its Senior Tax Rebate Program, under which it was determined that recipients were performing municipal services and that an employee/employer relationship existed.)

There is no employee/employer relationship between an active duty service member, a veteran or a veteran's survivor and the municipality in which he or she resides. Therefore, the requirement to provide a 1099 Form is not applicable with respect to those issued refund checks under §12-81(53) or §12-93a, as amended.

# DATES OF WARS AND OTHER RECOGNIZED MILITARY CAMPAIGNS AND OPERATIONS UNDER §27-103, AS AMENDED BY PUBLIC ACT 03-85

## FOR PROPERTY TAX EXEMPTION ELIGIBILITY UNDER §12-81(19) AS OF OCTOBER 1, 2003

| | |
|---|---|
| **Spanish-American War** | **April 21, 1898 to July 4, 1902** |
| **Spanish-American War – Moro Province** | **April 21, 1898 to July 15, 1903** [1] |
| **Mexican Border Period** | **March 10, 1916 to April 6, 1917** |
| **World War I** | **April 6, 1917 to November 11, 1918** |
| **World War I - Russia** | **April 6, 1917 to April 1, 1920** [2] |
| **World War II** | **December 7, 1941 to December 31, 1946** [3] |
| **Korean Conflict** | **June 27, 1950 to January 31, 1955** |
| **Vietnam Era** | **February 28, 1961 to July 1, 1975** |
| **Lebanon** | **July 1, 1958 to November 1, 1958 or September 29, 1982 to March 30, 1984** [4] |
| **Invasion of Grenada** | **October 25, 1983 to December 15, 1983** [4] |
| **Operation Earnest Will** | **February 1, 1987 to July 23, 1987** [4] |
| **Invasion of Panama** | **December 20, 1989 to January 31, 1990** [4] |
| **Persian Gulf War** | **After August 2, 1990** [5] |

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[1] The Spanish American War includes the Philippine Insurrection, the Boxer Rebellion and service in the Moro Province, for which the ending date is eleven days later than the ending date for the Spanish American War.

[2] The ending date for service in Russia by a person serving with the United State military forces during World War I differs from the ending date for all service during that war in all other arenas

[3] Pursuant to §12-86, twelve o'clock midnight on December 31, 1947 is the World War II termination date for purposes of granting a property tax exemption.

[4] A person must have served in a combat or combat support role for the duration of a campaign lasting less than 90 days (i.e., the Invasions of Grenada and Panama) in order to qualify for a property tax exemption. A person must also have served in a combat or combat support role in Lebanon or in Operation Earnest Will, during the specified dates, in order to qualify for an exemption. An Armed Forces Expeditionary Medal is awarded to such individuals.

[5] Although referred to as the Persian Gulf War, service in the Persian Gulf is not required, nor is service in a combat or combat support role.

# APPENDIX E

***Substitute Senate Bill No. 1098***

## *Public Act No. 03-269*

***AN ACT CONCERNING MUNICIPAL GRAND LISTS AND ASSESSMENT APPEALS, A PROPERTY TAX EXEMPTION FOR CERTAIN LEASED MOTOR VEHICLES, REVIEW OF CERTAIN MUNICIPAL CERTIFICATIONS RELATING TO PROPERTY REVALUATION AND A MUNICIPAL OPTION TO EXTEND CERTAIN PREVIOUSLY WAIVED PROPERTY TAX EXEMPTIONS AND VALIDATION OF THE ASSESSMENTS LISTS, ABSTRACTS AND DETERMINATIONS OF THE BOARDS OF ASSESSMENT APPEALS IN THE TOWNS OF WARREN AND HARTLAND.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 12-55 of the general statutes is repealed and the following is substituted in lieu thereof *(Effective July 1, 2003)*:

[(a) When the declarations of any town have been so received or made by the assessor or board of assessors, they shall equalize the same, if necessary, and make any assessment omitted by mistake or required by law. The assessor or board of assessors may increase or decrease the valuation of property as named in any of such declarations or in the last-preceding grand list, but, in each case of any increase in valuation of such property above the valuation, if any, stated by the person filing such declaration or in each case of any increase of valuation above the valuation of such property in the last-preceding grand list, except with respect to the valuation of any motor vehicle, they shall send written notice by mail of such increase in accordance with subsection (b) of this section, or in accordance with subsection (f) of section 12-62 in the year of a revaluation, including in such notice the valuation prior to and after such increase with respect to each parcel of real property, the valuation of which has been increased, to the last-known address of the person whose valuation is so changed. If the methodology used to determine the value of personal property for which a notice of increase is required differs from that previously used to determine the value of such property by the assessor or assessors of such town, said notice shall include a statement concerning such change, which shall indicate the current methodology and that previously used. Such notice shall also include information describing the manner in which an appeal may be filed with the board of assessment appeals. When the review of such declarations has been completed, the assessor or board of assessors shall determine the assessed valuations resulting therefrom, including, where applicable, the twenty-five per cent assessment penalty added in accordance with section 12-41. The assessor shall publish all such assessed values, together with the assessed value of all other property in the town in the grand list abstract for the assessment year commencing on the October first immediately preceding completion of such grand list. Such grand list shall also reflect the statutory exemption or exemptions to which each taxpayer is entitled. The assessor or board of assessors shall lodge the same, except as otherwise specially provided by law, in the office of the assessor, on or before the thirty-first day of January following the commencement of such assessment year, for public inspection. Such assessor or board of assessors shall take and subscribe the oath

provided by law, which shall be certified by the officer administering the same and endorsed upon or attached to such grand list abstract. For the grand list of October 1, 2000, and each grand list thereafter, each assessor who signs the grand list of the town shall be certified in accordance with the provisions of section 12-40a. Any assessor or board of assessors of any town who fails to comply with any provision of this section shall be fined five dollars.

(b) The written notice of assessment increase as required in subsection (a) of this section shall be mailed no earlier than the assessment date and no later than the tenth calendar day immediately following the date on which the grand list abstract is signed and attested to by the assessor or board of assessors. If such assessment increase notice is sent later than the time period herein prescribed, such increase shall become effective on the next succeeding grand list. ]

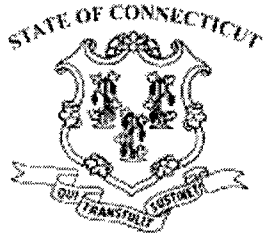
(a) On or before the thirty-first day of January of each year, except as otherwise specifically provided by law, the assessors or board of assessors shall publish the grand list for their respective towns. Each such grand list shall contain the assessed values of all property in the town, reflecting the statutory exemption or exemptions to which each property or property owner is entitled, and including, where applicable, any assessment penalty added in accordance with section 12-41 or 12-57a for the assessment year commencing on the October first immediately preceding. The assessor or board of assessors shall lodge the grand list for public inspection, in the office of the assessor on or before said thirty-first day of January, or on or before the day otherwise specifically provided by law for the completion of such grand list. The town's assessor or board of assessors shall take and subscribe to the oath, pursuant to section 1-25, which shall be certified by the officer administering the same and endorsed upon or attached to such grand list. For the grand list of October 1, 2000, and each grand list thereafter, each assessor or member of a board of assessors who signs the grand list shall be certified in accordance with the provisions of section 12-40a.

(b) Prior to taking and subscribing to the oath upon the grand list, the assessor or board of assessors shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law. The assessor or board of assessors may increase or decrease the valuation of any property as reflected in the last-preceding grand list, or the valuation as stated in any personal property declaration or report received pursuant to this chapter. In each case of any increase in valuation of a property above the valuation of such property in the last-preceding grand list, or the valuation, if any, stated by the person filing such declaration or report, the assessor or board of assessors shall mail a written notice of assessment increase to the last-known address of the owner of the property the valuation of which has increased. All such notices shall be subject to the provisions of subsection (c) of this section. Notwithstanding the provisions of this section, a notice of increase shall not be required in any year with respect to a registered motor vehicle the valuation of which has increased. In the year of a revaluation, the notice of increase sent in accordance with subsection (f) of section 12-62 shall be in lieu of the notice required by this section.

(c) Each notice of assessment increase sent pursuant to this section shall include: (1) The valuation prior to and after such increase; and (2) information describing the manner in which an appeal may be filed with the board of assessment appeals. If a notice of assessment increase affects the value of personal property and the assessor or board of assessors used a methodology to determine such value that differs from the methodology previously used, such notice shall include a statement concerning such change in methodology, which shall indicate the current methodology and the one that the assessor or assessors used for the valuation prior to such increase. Each such notice shall be mailed not earlier than the assessment date and not later than the tenth calendar day immediately following the date on which the assessor or board of

assessors signs and attests to the grand list. If any such assessment increase notice is sent later than the time period prescribed in this subsection, such increase shall become effective on the next succeeding grand list.

# APPENDIX F




***Substitute Senate Bill No. 1098***

## *Public Act No. 03-269*

***AN ACT CONCERNING MUNICIPAL GRAND LISTS AND ASSESSMENT APPEALS, A PROPERTY TAX EXEMPTION FOR CERTAIN LEASED MOTOR VEHICLES, REVIEW OF CERTAIN MUNICIPAL CERTIFICATIONS RELATING TO PROPERTY REVALUATION AND A MUNICIPAL OPTION TO EXTEND CERTAIN PREVIOUSLY WAIVED PROPERTY TAX EXEMPTIONS AND VALIDATION OF THE ASSESSMENTS LISTS, ABSTRACTS AND DETERMINATIONS OF THE BOARDS OF ASSESSMENT APPEALS IN THE TOWNS OF WARREN AND HARTLAND.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

...

Sec. 10. (NEW) (*Effective from passage and applicable to any assessment year*) Whenever any person claiming the exemption from property tax under the provisions of subdivision (59), (60), (70), (72) or (74) of section 12-81 of the general statutes has failed to file a claim with the assessor or board of assessors as required in said subdivisions and has further failed to apply for an extension of time under section 12-81k of the general statutes, the municipality, upon receipt of a request from such person, may, by vote of its legislative body, grant such exemption according to criteria established by the municipality, including, but not limited to, allowing for any hardship experienced by the person which may account for the failure to claim the exemption or to file for an extension of time and whether the exemption would provide a net benefit to economic development in the municipality. No payment in lieu of tax under chapter 203 of the general statutes shall be made with regard to any property exempted from tax under this section.

# APPENDIX G

***Substitute Senate Bill No. 1099***

## *Public Act No. 03-270*

### *AN ACT CONCERNING A PROPERTY TAX EXEMPTION FOR CHARITABLE HOUSING.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (7) of section 12-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to assessment years commencing on or after October 1, 2002*):

(7) Subject to the provisions of sections 12-87 and 12-88, the 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, and [provided] (B) in 1965, and quadrennially thereafter, a statement shall be filed on or before the first day of November with the assessor or board of assessors of any town, consolidated town and city or consolidated town and borough, in which any of its property claimed to be exempt is situated. Such statement shall be filed on a form provided by such assessor or board of assessors. On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under this section. As used in this subdivision, "housing" shall not include real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following:

(i) An orphanage;

(ii) A drug or alcohol treatment or rehabilitation facility;

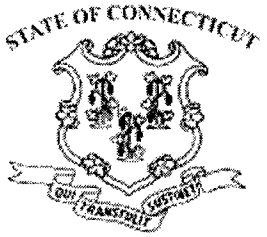
(iii) Housing for homeless, retarded or mentally or physically handicapped individuals, or for battered or abused women and children;

(iv) Housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and

(v) Short-term housing operated by a charitable organization where the average length of stay is less than six months.

Approved July 9, 2003

# APPENDIX H




***House Bill No. 6806***

## *June 30 Special Session, Public Act No. 03-6*

### *AN ACT CONCERNING GENERAL BUDGET AND REVENUE IMPLEMENTATION PROVISIONS.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

...

Sec. 53. Subparagraph (A) of subdivision (72) of section 12-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to assessment years commencing on or after October 1, 2002*):

(72) (A) **[**New**]** Effective for assessment years commencing on or after October 1, 2002, new machinery and equipment, as defined **[**herein**]** in this subdivision, acquired after October 1, 1990, and newly-acquired machinery and equipment, as defined **[**herein**]** in this subdivision, acquired on or after July 1, 1992, by the person claiming exemption under this subdivision, provided this exemption shall only be applicable in the five full assessment years following the assessment year in which such machinery or equipment is acquired, subject to the provisions of subparagraph (B) of this subdivision. Machinery and equipment acquired on or after July 1, 1996, and used in connection with biotechnology shall qualify for the exemption under this subsection. For the purposes of this subdivision: (i) "Machinery" and "equipment" mean tangible personal property which is installed in a manufacturing facility, either five-year property or seven-year property, as those terms are defined in Section 168(e) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, 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. "Machinery" means the

basic machine itself, including all of its component parts and contrivances such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control, regulate or operate the machinery, including, without limitation, computers and data processing equipment, together with all replacement and repair parts therefor, whether purchased separately or in conjunction with a complete machine, and regardless of whether the machine or component parts thereof are assembled by the taxpayer or another party. "Equipment" means any device separate from machinery but essential to a manufacturing , processing or fabricating process. (ii) "Manufacturing facility" means that portion of a plant, building or other real property improvement used 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. (iii) "Manufacturing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Changing the quality of property shall include any substantial overhaul of the property that results in a significantly greater service life than such property would have had in the absence of such overhaul or with significantly greater functionality within the original service life of the property, beyond merely restoring the original functionality for the balance of the original service life. (iv) "Fabricating" means to make, build, create, produce or assemble components or tangible personal property work in a new or different manner, but does not include the presorting, sorting, coding, folding, stuffing or delivery of direct or indirect mail distribution services. (v) "Processing" means the physical application of the materials and labor in a manufacturing process necessary to modify or change the characteristics of tangible personal property. (vi) "Measuring or testing" includes both nondestructive and destructive measuring or testing, and the alignment and calibration of machinery, equipment and tools, in the furtherance of the manufacturing, processing or fabricating of tangible personal property. (vii) "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. [or to develop microorganisms for specific uses; ]

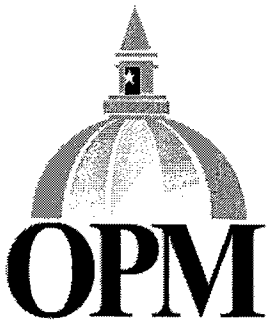
# APPENDIX I

# STATE LEGISLATION IMPACTING MUNICIPAL ASSESSMENT AND TAXATION


## STATE OF CONNECTICUT

## OFFICE OF POLICY AND MANAGEMENT
## INTERGOVERNMENTAL POLICY DIVISION

## JUNE 2004




The Office of Policy and Management publishes an annual summary of public and special acts affecting the local assessment and taxation of property and makes it available to municipal officials.

The July 2004 edition of *State Legislation Impacting Municipal Assessment and Taxation* is a companion piece to *Property Tax Statutes*, a compendium of laws that is available on the Office of Policy and Management's website. It contains summaries of pertinent legislation that the Connecticut General Assembly enacted during 2004 (in both the February Regular Session and the May 11 Special Session).

While we hope you find these materials helpful, reading these summaries is not a substitute for a complete review of the applicable public and special acts. The Secretary of the State provides each town or city clerk with a copy of the 2004 Public and Special Acts that these summaries describe. These acts are also available at the State Library.

The content of this publication does not constitute legal or binding opinions about the legislation cited. Such opinions, if needed, must be obtained from your municipality's legal counsel.

On April 29, 2003, Governor Rowland issued Executive Order Number 30, which requires all state agencies and employees to reduce printing costs by publishing information and documents electronically rather than in a written "hard copy" format.

Please note that in accordance with Executive Order Number 30, this agency will no longer print *Property Tax Statutes* in hard copy format. The statutes included in said publication will appear on the Office of Policy and Management's website early next year, updated to January 1, 2005. However, the printed materials assessor and tax collectors received in the past will no longer be available from this Office.

The professional organizations for assessors and tax collectors sponsor several educational programs that use the *Property Tax Statutes*. Once my staff updates this publication and places it on this agency's website next year, we will notify these organizations that the updated statutes are available electronically.

W. David LeVasseur, Under Secretary
Intergovernmental Policy Division

## February 2004 Regular Session

### Public Acts



## May 11 Special Session

### Public Acts

**PA 04-40 (SB 600)** **An Act Concerning Portability Of Property Tax Benefits For Veterans.**

**Sec. 1 (NEW)**

Provides that any person who has established his or her eligibility for an exemption under subdivision (19), (20), (22), (23), (24), (25), (26), (28) or (53) of §12-81 for a particular assessment year is to be issued a certificate of exemption entitlement by the assessor of the municipality in which the person has established such exemption eligibility.

Upon presenting the certificate to the assessor of another municipality, the person establishes his or her right to that exemption for the year the certificate references, provided the person would have been eligible if he or she had filed proof of eligibility for such exemption pursuant to statutory requirements.

Note: Based on the title of this act and the discussion of its provisions in the House of Representatives, it is intended to allow a person who moves from one town to another and fails to file exemption eligibility within the time period that §12-93 prescribes, to receive an exemption for one year. The act does not alleviate the requirement that such a person have a certified copy of an honorable discharge (or an original copy of such discharge of other acceptable proof of exemption eligibility) filed with the town clerk of the new town of residence for any subsequent year. Although the act does not require a person to request a certificate of exemption eligibility from an assessor, it would be administratively difficult for any assessor to comply with these requirements without receiving such a request.

**Effective: October 1, 2004, and applicable to assessment years commencing on or after October 1, 2004**

**PA 04-69 (HB 5411)** **An Act Concerning Consumer Credit Licensees And Creditors' Collection Practices.**

**Sec. 30 amends §36a-801**

Requires the Commissioner of the Department of Consumer Protection to suspend a consumer collection agency's license, upon receiving a check in payment of a license or license renewal fee that is dishonored.

**Sec. 31 amends §36a-802, as amended by Section 2 of Public Act 03-262**

Requires the Commissioner of the Department of Consumer Protection to suspend a consumer collection agency's license, upon the cancellation of its bond by a surety company.

A surety company can cancel such a bond at any time, as long as it notifies the Department of Consumer Protection at least 30 days prior to the effective date of cancellation. The surety company must also provide notice to the consumer collection agency by certified mail, at least 30 days prior to the effective date of the cancellation of a bond.

If the bond is replaced or renewed within the 30 day period after notification, the Department of Consumer Protection reinstates the consumer collection agency's license.

Note: Some municipalities have entered into contracts with consumer collection agencies for the collection of property taxes. If not already part of a contract provision, a

municipality may want to require a consumer collection agency to notify the town if its license is suspended by the Department of Consumer Protection.

**Effective: October 1, 2004**

**PA 04-72 (HB 5479) An Act Clarifying Provisions Related To The Property Tax Exemption For Manufacturing Machinery And Equipment.**

**Sec. 1 amends subparagraph (A) of subdivision (72) of §12-81**

Clarifies that machinery and equipment must not only be five-year or seven-year property for federal income tax purposes to be eligible for the property tax exemption under §12-81(72), but that it must actually be claimed on a federal income tax return.

**Sec. 2 amends subparagraph (B) of subdivision (72) of §12-81**

Clarifies that a person holding title to machinery or equipment for which an exemption has been claimed must, upon receiving a request from the Office of Policy and Management, submit to the agency a copy of an applicable federal income tax return and its accompanying schedules in substantiation of exemption eligibility.

The Office of Policy and Management may allow anyone who receives such a request to submit copies of applicable schedules accompanied by a sworn affidavit stating that such schedules were filed as part of a federal income tax return.

**Effective: May 10, 2004**

**PA 04-115 (HB 5588) An Act Concerning Forestry Management.**

**Sec. 2 amends §12-107b**

Changes the definition of the term forest land for purposes of the 490 Program (i.e., use value classification). Under the revised definition, forest land means:

> "Any tract or tracts of land aggregating twenty-five acres or more in area bearing tree growth that conforms to the forest stocking, distribution and condition standards established by the State Forester...and consisting of (A) one tract of land of twenty-five or more contiguous acres, which acres may be in contiguous municipalities, (B) two or more tracts of land aggregating twenty-five acres or more in which no single component tract shall consist of less than ten acres, or (C) any tract of land which is contiguous to a tract owned by the same owner and has been classified as forest land ..."

Also, adds a definition of certified forester to §12-107b (i.e., a practitioner that is certified as a forester pursuant to §23-65h). A person must have satisfactorily completed a prescribed training program before the State Forester can issue a certificate under §23-65h.

**Sec. 3 amends §12-107d**

Requires the Department of Environmental Protection to adopt regulations, by July 1, 2006, regarding forest stocking, distribution and condition standards, as well as procedures for evaluation by a certified forester of land proposed for classification as forest land.

These standards and procedures may be established and implemented by the State Forester before they are formally adopted as Regulations of Connecticut State Agencies. A Notice of Intent to Adopt Regulation must be published in the Connecticut Law Journal, within 20 days after the State Forester implements these standards and procedures, and they remain valid until the earlier of the date on which the regulations are formally adopted or June 1, 2006.

The amendment also changes the requirement that the State Forester designate land as forest land for classification purposes. Instead, as of July 1, 2004, a certified forester must evaluate and attest to the qualification of land proposed for classification as forest land. This requirement is effective with respect to all applications for classification for assessment years commencing on or after October 1, 2004.

The owner of land seeking classification as forest land must employ a certified forester to examine the land to determine if it conforms to the State Forester's established standards regarding forest stocking, distribution, etc.

A certified forester who determines that the land conforms to such standards issues a report to the landowner. The report is made on a form the State Forester prescribes and must contain a description of the land, a description of the forest growth upon the land, and recommendations concerning forest management activities. Additionally, the report must contain the certified forester's name, address and certificate number, as well as a "...signed, sworn statement that the certified forester has determined that the land proposed for classification conforms to the standards of forest stocking, distribution and condition established by the State Forester". The State Forester may also require other information to be included in the report.

A certified forester can charge the landowner a fee but a determination regarding the land cannot "be contingent upon or otherwise influenced by the classification of the land as forest land or the failure of such land to qualify for said classification".

Beginning with the October 1, 2004 assessment year, the *Application To The Assessor For Classification Of Land As Forest Land* (Form M-39) must be accompanied by a copy of a certified forester's report. Assessors still prescribe this application form, subject to the approval of the Department of Environmental Protection. Based on this amendment to §12-107d, said form must be revised for the October 1, 2004 assessment year, as it is required to contain information concerning "the date of the issuance of the certified forester's report".

A landowner or a municipality may appeal to the State Forester for a review of a certified forester's findings as contained in such a report, as long as the appeal is made not later than 30 business days after the certified forester's report is issued. The State Forester must review the certified forester's report and issue findings with regard to the appeal not later than 60 calendar days after it is filed.

Provides that assessors, rather than the State Forester, are responsible for canceling the classification of land as forest land on and after July 1, 2004. When terminating a forest land classification, the assessor must issue a cancellation notice and provide a copy of the notice to the owner of the land and to the assessor of any other municipality in which the owner's land is classified as forest land.

Lastly, the amendment to §12-107d imposes a new reporting requirement on certain assessors, by requiring those that have classified forest land in their towns to submit an annual report to the State Forester during the month of June of each year.

The State Forester prescribes this report which must include the following: "the total number of

owners of land classified as farm land, forest land or open space land as of the most recent grand list and a listing of the parcels of land so classified showing the acreage of each parcel, the total acreage of all such parcels, the number of acres of each parcel classified as farm land, forest land or open space land, and the total acreage for all such parcels".

Note: In addition to the Department of Environmental Protection's June 14, 2004 letter to assessors concerning these amended forest land classification provisions, that agency is preparing additional materials to assist assessors and certified foresters in understanding the provisions of this act. The department will also offer training for certified foresters at two locations (in the eastern and western parts of the state) in July of 2004. Assessors are welcome to attend these training sessions and will be notified of their dates and locations.

The Department of Environmental Protection's website contains a listing of certified foresters. Following successful completion of additional training being held for such foresters (including passing a written examination) the notation "490" will be placed next to a certified forester's name, indicating that he or she is qualified to examine land for forest land classification purposes.

The list of certified foresters is available by accessing the agency's website at www.dep.state.ct.us and entering "Certified Forester" in the search box. Alternatively, a Department of Environmental Protection representative can be contacted by telephone: (860) 426-3630.

**Effective: July 1, 2004**

**PA 04-126 (HB 5477) An Act Concerning Enforcement Of Motor Vehicle Property Tax Delinquencies.**

**Sec. 1 amends §12-146, as amended by Section 58 of Public Act 03-6 of the June 30 Special Session**

Removes the $5 fee that a person could have been required to pay to a tax collector, if the person had been delinquent in the payment of property taxes for a motor vehicle or snowmobile and the tax collector reported the delinquency to the Department of Motor Vehicles.

**Sec. 2 amends §14-33, as amended by Section 5 of Public Act 03-264 and Section 102 of Public Act 03-1 of the June 30 Special Session**

Removes the fee of 50 cents that a tax collector was required to pay to the Department of Motor Vehicles for each motor vehicle or snowmobile included on a form submitted to the department with respect to property tax delinquencies.

Instead, each town must pay a fee to the Department of Motor Vehicles on or before September 1, annually, in order to participate in the property tax collection enforcement program. (Under this program, a renewal of a person's motor vehicle registration is not issued if the person is delinquent in property tax payments for a motor vehicle or snowmobile.)

The Office of Policy and Management calculates the amount of each town's proportionate share of the enforcement program's administrative cost, based on the percentage of each town's population to the total population for all towns. On or before August 15, the Office of Policy and Management notifies the chief executive officer of each town of the amount that the town must pay to the Department of Motor Vehicles by September 1st.

If a town does not pay the fee, the Department of Motor Vehicles is not required to deny issuance of a registration to a person who owes outstanding tax payments to the town, or to a borough or other taxing district located in the town.

**Effective: July 1, 2004**

**PA 04-228 (HB 5475) An Act Concerning The Situs Of Motor Vehicles For Property Tax Purposes.**

**Sec. 1 amends subsection (b) of §12-41**

Allows the owner of a motor vehicle that is subject to taxation in a town other than the town in which the vehicle is registered, to include information concerning the vehicle in a Personal Property Declaration filed pursuant to §12-41 or §12-43, or in a Lessee's Report filed pursuant to §12-57a.

**Sec. 2 amends §12-71**

Provides that motor vehicles and snowmobiles are to be listed for purposes of the property tax in accordance with the provisions of the new subsection (f) that this legislation adds to §12-71. Essentially, these amendments provide for the taxation of motor vehicles and snowmobiles by the towns in which they are located, which may not always be the towns in which they are registered.

Subdivision (1) of subsection (f) of §12-71 provides that all registered and unregistered motor vehicles and snowmobiles are subject to taxation by a Connecticut town, if they most frequently leave from, return to or remain in a town in the state. (A motor vehicle is registered only if the Connecticut Department of Motor Vehicles has issued a valid registration for it.) This subdivision also provides that any registered or unregistered motor vehicle and snowmobile that is located in this state is subject to taxation, regardless of whether or not it is used or capable of being used.

Subdivision (2) of subsection (f) of §12-71 addresses motor vehicles and snowmobiles that are registered in Connecticut. Any such vehicle is to be taxed by the town in which the vehicle "in the normal course of operation most frequently leaves from and returns to or in which it remains".

This subdivision also contains the following statement: "It shall be presumed that any such motor vehicle or snowmobile most frequently leaves from and returns to or remains in the town in which the owner of such vehicle resides, unless a provision of this subsection otherwise expressly provides".

These express exception provisions regarding the taxing of a vehicle by a town other than the one in which a vehicle's owner resides are listed in subdivision (4) of §12-71(f).

The amendment to §12-71(f)(2) adds definitions regarding the town in which the owner of a registered vehicle resides. If such a vehicle owner is an individual, the town of residence is defined as the town in which the individual "has established a legal residence consisting of a true, fixed and permanent home to which such individual intends to return after any absence".

The amendment also defines the town of residence for a " company, corporation, limited liability company, partnership, firm or any other type of public or private organization, association or society". If a registered vehicle's owner is any such entity, the town of residence is defined as

the town where the entity "has an established site for conducting the purposes for which it was created". If an entity has established a place for conducting its intended purposes in more than one town, its vehicles are to be taxed by each town in which it has established such a location.

Subdivision (3) of subsection (f) of §12-71 addresses motor vehicles owned by a non-Connecticut resident. A nonresident's motor vehicle is to be taxed by the Connecticut town where the vehicle most frequently leaves from and returns to or in which it remains. If a nonresident's vehicle is located in more than one town, it is to be taxed according to the three-month rule. That is to say, the vehicle is subject to taxation in that town where it is located for three or more of the months closest to the assessment date. And, if a nonresident's vehicle is not located in any Connecticut town for three or more months preceding an assessment date, it is subject to taxation by the town where the vehicle is located on that date.

Subdivision (4) of subsection (f) of §12-71 contains exceptions to the motor vehicle taxation situs rule for registered vehicles. There are four such exceptions.

The first exception affects a vehicle assigned to an employee of the vehicle's owner. If a vehicle is assigned to an employee for that person's exclusive use, and the vehicle most frequently leaves from, returns to or remains in the town in which the employee resides, the employee's town of residence (not the town where the employer resides) taxes the vehicle.

The second exception concerns leased vehicles. A vehicle that is being operated pursuant to a lease, by someone other than the vehicle's owner or the owner's employee, is taxed by the town where the lessee resides.

The third exception is for motor vehicles designed or used for recreational purposes, including, but not limited to, camp trailers, campers or motor homes. Such vehicles are subject to taxation by the Connecticut town where they most frequently leave from, return to or remain for camping, travel or recreational purposes. If located outside of the state in the normal course of operation for such purposes, the vehicle is subject to taxation by the owner's Connecticut town of residence.

The final exception is for a "vehicle that is used or intended for use for the purposes of construction, building, grading, paving or similar projects, or to facilitate any such project". Such vehicles are subject to taxation by the town in which the construction project is situated, if they are located in that town for three or more months preceding the assessment date in any year. If such a vehicle is located in more than one town for three or more of such months, the town where it was located on a construction site for the three or more months closest to the assessment date taxes the vehicle. And, if not located in any Connecticut town for three or more months preceding an assessment date, the vehicle is taxed by the town in which it is located on the assessment date.

Subdivision (5) of subsection (f) of §12-71 allows the owner of any vehicle that is subject to taxation by a town other than the town in which the vehicle owner resides (i.e., those vehicles covered by the fours exceptions explained above) to register the vehicle in the town in which it is subject to taxation.

Subdivision (6) reiterates that information "concerning any vehicle subject to taxation in a town other than the town in which it is registered" may be included on any personal property declaration or lessee's report. This provision allows assessors to obtain information regarding a motor vehicle's situs for tax purposes, when a vehicle is not registered in the town in which is to be taxed under one of the amended statute's four exceptions.

This subdivision also provides that the assessor of the town in which a vehicle is subject to taxation but not registered (again, pursuant to the four exceptions provided) must notify the assessor of the town in which the vehicle is registered, that the vehicle is being taxed in accordance with §12-71(f)(4).

The notification must contain the name and address of the owner of the motor vehicle or snowmobile, the vehicle identification number and the name of the town in which the vehicle is subject to taxation.

The assessor of the town in which such a vehicle is registered and the assessor of the town in which the vehicle is subject to taxation must cooperate in terms of administering these property tax situs provisions.

Note: This act does not make any changes to subsection (g) of §12-171b, which also addresses motor vehicles that are not registered in Connecticut.

**Sec. 3 amends §14-163**

Amends the statute that requires the Department of Motor Vehicles to compile information reported by owners of registered motor vehicles and snowmobiles and provide such information to assessors. This information includes the names and addresses of the owners of registered motor vehicles and snowmobiles, together with any available vehicle identification numbers. The amendment also repeals obsolete reporting requirements that do not affect assessors.

The amendment contained in this section of the act also requires motor vehicle or snowmobile owners to provide the Department of Motor Vehicles with the name of the town in which the owner's motor vehicle or snowmobile is subject to property tax in accordance with provisions of §12-71, as amended.

The Department of Motor Vehicles provides information to assessors twice in each calendar year. Assessors use the information they receive on or before December first to develop the regular motor vehicle grand list (i.e., those vehicles subject to taxation as of the October first assessment date).

By the following October first, the Department of Motor Vehicles provides information concerning vehicles registered subsequent to the previous assessment date but prior to the first day of August in the assessment year. Assessors use this data to compile the supplemental motor vehicle grand list.

Note: The amendment to §14-163 specifies that, in addition to any other information the Department of Motor Vehicle requires, a motor vehicle or snowmobile owner must provide the Department with the name of the town in which the vehicle or snowmobile is subject to taxation.

The Department of Motor Vehicles is not responsible for the accuracy of the information that is provided. Assessors should, therefore, use due diligence in verifying motor vehicle situs for property tax purposes.

**Effective: Section 1 is effective June 8, 2004; Section 2 is effective June 8, 2004 and applicable to <u>any</u> assessment year; and Section 3 is effective July 1, 2004**

**PA 04-248 (HB 5522)** **An Act Concerning The Board of Assessment Appeals For The Town Of Somers, The Time For Filing Certain Exemptions In East Hartford, Zoning Near Certain Lakes, Validation Of Executive Nominations And Submission Of The State Plan Of Conservation And Development.**

**Sec. 1 (NEW)**

Requires the Somers Board of Assessment Appeals to hold hearings during the month of August 2004, for the purposes of adjudicating certain assessment appeals related to the October 1, 2002 grand list.

Such appeals can be filed by certain property owners only. An owner whose real property value increased on the October 1, 2002 grand list, as revised by the town in accordance with Special Act 03-18, over the property's value on the October 1, 2001 grand list, can file a request for a hearing with respect to the property's valuation.

A hearing request must be submitted in writing by July 1, 2004. All provisions of §12-111 are applicable with respect to such appeals, except that the date by which the Somers Board of Assessment Appeals must notify taxpayers of the date and time of their appeal hearings is August 1, 2004.

Also provides that if the Somers Board of Assessment Appeals held hearings on such appeals during its regular 2004 session, the actions taken by said board are validated.

**Sec. 5 (NEW)**

Allows a manufacturer in East Hartford an extension of time to file for an exemption, under §12-81(72), for the October 1, 2003 assessment year.

Pursuant to this section of the act, a 2003 grand list *Application for Manufacturers' Machinery and Equipment Property Tax Exemption* (Form M-65) can be filed not later than July 3, 2004 with the East Hartford Assessor's Office. The late filing fee under §12-81k must be paid at the time an application is filed under this extended filing period.

The East Hartford assessor may submit the approved exemption application to the Office of Policy and Management together with a request for reimbursement of the resulting tax loss. Any reimbursement due to an exemption granted under this extended time period, will be reflected in the next payment made to East Hartford.

**Effective: June 3 , 2004**

**PA 04-2 An Act Concerning Budget Implementation.**
**(HB 5801)**

**Sec. 23 (NEW)**

Requires the assessors of the towns of Killingly and North Stonington to remove certain real property accounts from their October 1, 2002 and October 1, 2003 grand lists, by issuing a single certificate of correction and filing it on the appropriate grand list, not later than June 12, 2004.

Any real property that was subject to property taxation on or prior to October 1, 2002 by any town, village or similar taxing entity located in the State of Rhode Island must be removed from the Killingly and North Stonington grand lists for the applicable years.

This section of the act also abates the tax with respect to such properties for these assessment years. If the tax has been paid, the town that received the payment must refund the amount of that payment to the taxpayer (together with any interest for delinquent taxes that the payment may have included).

All refunds are to be issued not later than 30 days following the date on which the certificate of correction is filed on the appropriate grand list (i.e., by July 12, 2004). The provisions of §12-129 regarding refunds of tax overpayments do not apply to the refunds made under this section of the act.

The assessors of Killingly and North Stonington are also required to send a notice to the clerk of any lesser taxing district located in their respective towns, to whom they furnished a grand list for October 1, 2002 and October 1, 2003. The notice must identify the real property accounts removed from the town's grand lists for these assessment dates.

The district clerk must immediately file the notice received from the assessor on the appropriate year's grand list for the lesser taxing district. By virtue of the filing of this notice, the lesser taxing district's grand list is corrected to remove the properties identified for the applicable assessment year.

Any tax levied by the lesser taxing district with respect to such properties is also abated by this section of the act. If any such tax has been paid, the district must refund the amount of that payment to the taxpayer. If the payment included any interest for delinquent taxes, the refund must include such interest.

All refunds are to be issued not later than 30 days following the date on which the certificate of correction is filed on the appropriate grand list for the lesser taxing district. The provisions of §12-129 regarding refunds of tax overpayments do not apply to these refunds.

This legislation also provides that an assessor of a Connecticut town having a border that includes the boundary of the state of Rhode Island shall not include in such town's grand lists for October 1, 2004 and October 1, 2005, any real property that was subject to property taxation on or prior to October 1, 2002, by any town, village or similar taxing entity located in the State of Rhode Island.

This stipulation is effective notwithstanding the provisions of any general statute or any municipal charter to the contrary.

**Sec. 24 amends §32-9s**

Requires the Office of Policy and Management to prorate the reimbursements made for the tax loss due to Distressed Municipality exemptions granted under subdivisions (59), (60) and (70) of §12-81, in any year in which there is an insufficient budget appropriation.

**Sec. 27 (NEW)**

Requires the Office of Policy and Management to "examine the policies and regulations relative to revaluation of property" under §12-62, as amended by Section 33 of this act.

On or before January 1, 2005, the Secretary of the Office of Policy and Management must submit a report to the General Assembly's Finance, Revenue and Bonding Committee "regarding any findings or recommendations to clarify, or make more effective, such policies and regulations".

**Sec. 31 (NEW)**

Affects payments made under the State Real Property Payment-In-Lieu Of Tax (PILOT) program for a courthouse to be built in Torrington.

The PILOT for the courthouse property is to be divided between Torrington and Litchfield as follows: from the first year such PILOT is payable through the seventh year of such payment, 55% of the PILOT is to be remitted to Torrington and 45% of the PILOT is to be remitted to Litchfield.

From the eighth through the fourteenth payment years, 65% of the PILOT is to be remitted to Torrington and 35% of the PILOT is to be remitted to Litchfield.

**Sec. 32 (NEW)**

Allows certain towns to delay revaluation implementation. Under this legislation, revaluations required for October 1, 2003, October 1, 2004 or October 1, 2005 do not have to be implemented prior to October 1, 2006. A town's legislative body must approve any action to delay such a revaluation. If a town's legislative body is a town meeting, its board of selectmen may approve the deferral of a revaluation for one of these assessment dates.

For the revaluation that is implemented subsequent to the one delayed, updated real property values must be reflected. As an example, if a town scheduled for a 2004 revaluation chooses to delay implementation until 2005, real property assessments on the October 1, 2005 grand list must reflect 70% of the fair market values of such property as of that assessment date. Additionally, any revaluation that is implemented subsequent to the one delayed, must be effected in accordance with the provisions of §12-62, as amended by Section 33 of this act.

Also, requires the assessor of a town that chooses not to implement revaluation as of October 1, 2003, to prepare a revised October 1, 2003 real property grand list. The revised grand list must be based on the level of assessment in effect as of October 1, 2002. Assessment additions (for new construction) and reductions (for property demolitions) must be reflected on the revised grand list.

Increase notices must be sent to the owners of real property whose valuations increased on the October 1, 2003 grand list as revised, over their valuations on the October 1, 2002 grand list. The town's Board of Assessment Appeals may hold hearings related to any such property value increase at its next regular session at which real property appeals may be heard. That session

is the one that will be convened in either March or April of 2005. The increase notice that is sent must specify the procedure by which an appeal may be made concerning a real property valuation on the October 1, 2003 grand list as revised, and should specify that the Board of Assessment Appeals will hold hearings in 2005 regarding such matters.

If a mill rate has already been established in a town whose legislative body votes not to implement a 2003 revaluation, a new mill rate must be established based on the revised October 1, 2003 grand list.

The provisions related to a delay of implementing revaluation are effective notwithstanding any statute, municipal charter, special act or any home rule ordinance to the contrary.

> Note: Refer to the Office of Policy and Management's May 24, 2004 Memorandum concerning veterans' exemption amounts that must be recalculated and reports that must be revised or submitted based on the delay of an October 1, 2003 revaluation.

**Sec. 33 amends subsections (a) and (b) of §12-62**

Revises subdivision (3) of subsection (a) of §12-62 to provide that an assessor fulfills the requirement to view real property by physical inspection if this is done at any time between June 27, 1997 and October 1, 2009. After the inspection held during this timeframe, real property must be viewed by physical inspection no later than ten years following the preceding one.

Revises subsection (b) of §12-62 by removing the list of town names and the 'Year of Next Revaluation' and 'Year of Subsequent Revaluation'. In doing so, this amendment deletes subdivisions (1), (2) and (3) of that subsection.

More importantly, the amendment changes the frequency of revaluations in Connecticut, by providing that a town must implement a revaluation every five years. It also imposes conditions regarding the type of revaluation implemented.

As amended by this act, subsection (b) of §12-62 now reads:

> The assessor or board of assessors of each town shall revalue all of the real estate in their respective municipalities not later than five years after the last revaluation conducted in each municipality, except as provided in section 32 of this act. In carrying out the provisions of this subsection, any municipality which last effected revaluation by statistical means shall effect its next revaluation by physical inspection provided in no case shall a physical inspection be required more than once every ten years. In carrying out the provisions of this subsection, any municipality which last effected revaluation by physical inspection may effect its next revaluation by statistical means.

Essentially this amendment to §12-62(b) provides that if a town's most recently implemented revaluation was based on a statistical update of assessments that did not encompass physical inspections of real property the next revaluation must include such inspections. Conversely, if the last revaluation a town implemented included physical inspections of real property, the next revaluation may be effected by statistical means.

However, since the provisions of this subsection specify that "in no case shall a physical inspection be required more than once every ten years", this requirement may not be immediately operative. There will be instances wherein a town implements two statistical revaluations before implementing one that encompasses the physical inspection of property.

> Note: Refer to the Office of Policy and Management's May 24, 2004 Memorandum for a

more in depth explanation of these new revaluation requirements.

**Sec. 48 amends §12-20a**

Changes the definition of 'private, nonprofit institution of higher learning' to clarify that a Payment-In-Lieu-of Tax (PILOT) is provided only with respect to a nonprofit accredited college or university. The new definition is as follows:

> Any such institution, as defined in subsection (a) of section 10a-34, or any independent college or university, as defined in section 10a-37, that is engaged primarily in education beyond the high school level, and offers courses of instruction for which college or university-level credit may be given or may be received by transfer, the property of which is exempt from property tax under any of the subdivisions of section 12-81.

Also, adds PILOT eligibility for a "campus of the United States Department of Veterans Affairs Connecticut Healthcare Systems" (i.e., real property located in Newington and West Haven operated as veterans' hospitals by the federal government), as of the October 1, 2004 assessment year.

Reimbursement for such property will not begin to be issued until Fiscal Year 2006-2007 and the PILOT calculation will be phased-in, at 20% per year over five years, until it is calculated at the statutory 77%.

In other words, the PILOT for these United States Department of Veterans Affairs Connecticut Healthcare Systems properties will be calculated at the following percentages for the assessment years shown: 2004 assessment year – 15.4%; 2005 assessment year – 30.8%; 2006 assessment year – 46.2%; 2007 assessment year – 61.6%; and 2009 assessment year – 77%.

**Sec. 76 amends subdivision (55) of §12-81, as amended by Section 40 of Public Act 03-6 of the June 30 Special Session**

Reinstates the $1,000 exemption for totally disabled persons as of the October 1, 2003 assessment date. Requires each assessor to issue a certificate of correction with respect to the property of a person who would have been eligible to receive the exemption under §12-81(55) on the October 1, 2003 grand list, except for the suspension of the exemption for that grand list (per Section 40 of Public Act 03-6 of the June 30 Special Session). The certificate of correction must reduce the 2003 grand list assessment of each totally disabled person's property by the $1,000 exemption to which he or she is entitled.

**Sec. 77 amends §12-94a, as amended by Section 41 of Public Act 03-6 of the June 30 Special Session**

Requires the Office of Policy and Management to prorate reimbursements made for the tax loss due to total disability exemptions granted under subdivision (55) of §12-81, in any year in which there is an insufficient budget appropriation.

**Sec. 78 amends subdivision (4) of subsection (d) of §12-120b**

Corrects provisions regarding the period during which the Office of Policy and Management may audit various programs, by specifying that a notice of final modification or denial of the financial assistance that was claimed must be sent not later than one year after the date such claims for financial assistance are filed with the Office of Policy and Management.

The programs affected are: (1) Income-Eligible Additional Veterans' Exemptions pursuant to §12-81g; (2) Distressed Municipality Exemptions pursuant to §12-81(59), (60 and (70); (3) Total Disability Exemption pursuant to §12-81(55); (4) Elderly Homeowners' Tax Freeze Program pursuant to §12-129b; and (5) Elderly/Totally Disabled Homeowners' Property Tax Credits (AKA Circuit Breaker) Program pursuant to §12-170aa.

With respect to reimbursements for manufacturing machinery and equipment or commercial vehicles' property tax exemptions under subdivisions (72) and (74) of §12-81, notice must be sent not later than the date by which a final modification to the payment for such exemptions must be reflected in the Office of Policy and Management's certification of payment to the State Comptroller.

For the Elderly/Totally Disabled Renters' Rebate Program under §12-170d, notice must be sent prior to the date the Office of Policy and Management certifies an eligible renter's payment to the State Comptroller.

Since the Office of Policy and Management already complies with these audit notification periods for the programs described above, there is no substantive change due to this legislation.

**Sec. 79 amends §12-170aa, as amended by Section 183 of Public Act 03-6 of the June 30 Special Session, by adding a new subdivision (k)**

Corrects provisions regarding a post-audit payment adjustment with respect to the Circuit Breaker Program.

When the Office of Policy and Management completes auditing a Circuit Breaker reimbursement claim after having certified payment, any addition or reduction to the amount the municipality is due is already reflected in the next payment that is made. Therefore, there is no substantive change due to this legislation.

**Effective:** **Sections 23 and 24 are effective May 12, 2004 and applicable to assessment years commencing on and after October 1, 2002; Section 27 is effective May 12, 2004; Section 31 is effective May 12, 2004; Sections 32 and 33 are effective May 12, 2004 and applicable to assessment years commencing on and after October 1, 2003; Section 48 is effective October 1, 2004 and applicable to assessment years commencing on and after October 1, 2004; Sections 76 and 77 are effective May 12, 2004 and applicable to assessment years commencing on and after October 1, 2003; Section 78 is effective July 1, 2004, and applicable to certifications by the Secretary of the Office of Policy and Management on and after July 1, 2001; and Section 79 is effective July 1, 2004, and applicable to claims for reimbursement filed on and after July 1, 2001.**

# APPENDIX J

***House Bill No. 5479***

## *Public Act No. 04-72*

## *AN ACT CLARIFYING PROVISIONS RELATED TO THE PROPERTY TAX EXEMPTION FOR MANUFACTURING MACHINERY AND EQUIPMENT.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subparagraph (A) of subdivision (72) of section 12-81 of the general statutes, as amended by section 53 of public act 03-6 of the June 30 special session, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(A) Effective for assessment years commencing on or after October 1, 2002, new machinery and equipment, as defined in this subdivision, acquired after October 1, 1990, and newly-acquired machinery and equipment, as defined in this subdivision, acquired on or after July 1, 1992, by the person claiming exemption under this subdivision, provided this exemption shall only be applicable in the five full assessment years following the assessment year in which such machinery or equipment is acquired, subject to the provisions of subparagraph (B) of this subdivision. Machinery and equipment acquired on or after July 1, 1996, and used in connection with biotechnology shall qualify for the exemption under this subsection. For the purposes of this subdivision: (i) "Machinery" and "equipment" **[**mean**]** means tangible personal property which is installed in a manufacturing facility **[**,**]** and claimed on the owner's federal income tax return as either five-year property or seven-year property, as those terms are defined in Section 168(e) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, 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. "Machinery" means the basic machine itself, including all of its component parts and contrivances such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control, regulate or operate the machinery, including, without limitation, computers and data processing equipment, together with all replacement and repair parts therefor, whether purchased separately or in conjunction with a complete machine, and regardless of whether the machine or component parts thereof are assembled by the taxpayer or another party. "Equipment" means any device separate from machinery but essential to a manufacturing, processing or fabricating process. (ii) "Manufacturing facility" means that portion of a plant, building or other real property improvement used 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. (iii) "Manufacturing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Changing the quality of property shall include any substantial overhaul of the property that results in a significantly greater service life than such property would have had in the absence of such overhaul or with significantly greater functionality within the original service life of the property, beyond merely restoring the original functionality for the balance of the original service life. (iv) "Fabricating" means to make, build, create, produce or assemble components or tangible personal property work in a new or different manner, but does not include the presorting, sorting, coding, folding, stuffing or delivery of direct or indirect mail distribution services. (v) "Processing" means the physical application of the materials and labor in a manufacturing process necessary to modify or change the characteristics of tangible personal property. (vi) "Measuring or testing" includes both nondestructive and destructive measuring or testing, and the alignment and calibration of machinery, equipment and tools, in the furtherance of the manufacturing, processing or fabricating of tangible personal property. (vii) "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.

Sec. 2. Subparagraph (B) of subdivision (72) of section 12-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(B) Any person who on October first in any year holds title to machinery and equipment for which such person desires to claim the exemption provided in this subdivision shall file with the assessor or board of assessors in the municipality in which the machinery or equipment is located, on or before the first day of November in such year, a list of such machinery or equipment together with written application claiming such exemption on a form prescribed by the Secretary of the Office of Policy and Management. Such application shall include the taxpayer identification number assigned to the claimant by the Commissioner of Revenue Services and the federal employer identification number assigned to the claimant by the Secretary of the Treasury. If title to such equipment is held by a person other than the person claiming the exemption, the claimant shall include on such person's application information as to the portion of the total acquisition cost incurred by such person, and on or before the first day of November in such year, the person holding title to such machinery and equipment shall file a list of such machinery with the assessor of the municipality in which the manufacturing facility of the claimant is located. Such person shall include on the list information as to the portion of the total acquisition cost incurred by such person. Commercial or financial information in any application or list filed under this section shall not be open for public inspection, provided such information is given in confidence and is not available to the public from any other source. The provisions of this subdivision regarding the filing of lists and information shall not supersede the requirements to file tax lists under sections **[**12-42, 12-43, 12-57a and 12-59**]** 12-41, 12-42 and 12-57a. In substantiation of such claim, the claimant and the person holding title to machinery and equipment for which exemption is claimed shall present to the assessor or board of assessors such supporting documentation as said secretary may require, including, but not limited to, invoices, bills of sale, contracts for lease and bills of lading and shall, upon request, present to the secretary or the secretary's designee a copy of each applicable federal income tax return and accompanying schedules. In lieu of submitting each applicable federal income tax return and accompanying schedules, a claimant and person

holding title to machinery and equipment for which an exemption is claimed may, upon approval of said secretary, submit copies of applicable schedules accompanied by a sworn affidavit stating that such schedules were filed as part of such claimant's or person's federal income tax return. Failure to file such application in this manner and form within the time limit prescribed shall constitute a waiver of the right to such exemption for such assessment year, unless an extension of time is allowed pursuant to section 12-81k. If title to exempt machinery is conveyed subsequent to October first in any assessment year, entitlement to such exemption shall terminate for the next assessment year and there shall be no pro rata application of the exemption unless such machinery or equipment continues to be leased by the manufacturer who claimed and was approved for the exemption in the previous assessment year. Machinery or equipment shall not be eligible for exemption upon transfer from a seller to a related business or from a lessor to a lessee except to the extent it would have been eligible for exemption by the seller or the lessor, as the case may be. For the purposes of this subdivision, "related business" means: (i) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer; (ii) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; (iii) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; or (iv) a member of the same controlled group as the taxpayer. For purposes of this subdivision, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, other than paragraph (3) of said Section 267(c).

Approved May 10, 2004

# APPENDIX K

***Substitute House Bill No. 5475***

## *Public Act No. 04-228*

## *AN ACT CONCERNING THE SITUS OF MOTOR VEHICLES FOR PROPERTY TAX PURPOSES.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (b) of section 12-41 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) No person required by law to file an annual declaration of personal property shall include in such declaration motor vehicles which are registered in the office of the state Commissioner of Motor Vehicles. With respect to any vehicle subject to taxation in a town other than the town in which such vehicle is registered, pursuant to section 12-71, as amended by this act, information concerning such vehicle may be included in a declaration filed pursuant to this section or section 12-43, or on a report filed pursuant to section 12-57a.

Sec. 2. Section 12-71 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to any assessment year*):

(a) All goods, chattels and effects or any interest therein, including any interest in a leasehold improvement classified as other than real property, belonging to any person who is a resident in this state, shall be listed for purposes of property tax in the town where such person resides, subject to the provisions of sections [12-42] 12-41, as amended by this act, 12-43 and 12-59. Any such property belonging to any nonresident shall be listed for purposes of property tax as provided in section 12-43. Motor vehicles and snowmobiles shall be listed for purposes of the property tax in accordance with subsection (f) of this section.

(b) **[**All**]** Except as otherwise provided by the general statutes, property subject to this section shall be valued at the same percentage of its then actual valuation as the assessors have determined with respect to the listing of real estate for the same year, except that any motor vehicle for which number plates have been issued under section 14-20 **[**and any aircraft manufactured prior to January 1, 1946,**]** shall be assessed at a value of not more than five hundred dollars. **[**except when otherwise provided by law. **]** The provisions of this section shall not include money or property actually invested in merchandise or manufacturing carried on out of this state or machinery or equipment which would be eligible for exemption under subdivision (72) of section 12-81, as amended, once installed and which cannot begin or which has not begun manufacturing, processing or fabricating; or which is being used for research and development, including experimental or laboratory research and development, design or engineering directly related to manufacturing or being used 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

or being used for measuring or testing or metal finishing or in the production of motion pictures, video and sound recordings.

(c) Upon payment of the property tax assessed with respect to any property referred to in this section, owned by a resident or nonresident of this state, which is currently used or intended for use in relation to construction, building, grading, paving or similar projects, including, but not limited to, motor vehicles, bulldozers, tractors and any trailer-type vehicle, excluding any such equipment weighing less than five hundred pounds, and excluding any motor vehicle subject to registration pursuant to chapter 246 or exempt from such registration by section 14-34, the town in which such equipment is taxed shall issue, at the time of such payment, for display on a conspicuous surface of each such item of equipment for which such tax has been paid, a validation decal or sticker, identifiable as to the year of issue, which will be presumptive evidence that such tax has been paid in the appropriate town of the state.

(d) (1) Personal property subject to taxation under this chapter shall not include computer software, except when the cost thereof is included, without being separately stated, in the cost of computer hardware. "Computer software" shall include any program or routine used to cause a computer to perform a specific task or set of tasks, including without limitation, operational and applicational programs and all documentation related thereto.

(2) The provisions of subdivision (1) of this subsection shall be applicable (A) to the assessment year commencing October 1, 1988, and each assessment year thereafter, and (B) to any assessment of computer software made after September 30, 1988, for any assessment year commencing before October 1, 1988.

(3) Nothing contained in this subsection shall create any implication related to liability for property tax with respect to computer software prior to July 1, 1989.

(4) A certificate of correction in accordance with section 12-57 shall not be issued with respect to any property described in subdivision (1) of this subsection for any assessment year commencing prior to October 1, 1989.

(e) For assessment years commencing on or after October 1, 1992, each municipality shall exempt aircraft, as defined in section 15-34, from the provisions of this chapter.

(f) (1) Property subject to taxation under this chapter shall include each registered and unregistered motor vehicle and snowmobile that, in the normal course of operation, most frequently leaves from and returns to or remains in a town in this state, and any other motor vehicle or snowmobile located in a town in this state, which motor vehicle or snowmobile is not used or is not capable of being used.

(2) Any motor vehicle or snowmobile registered in this state subject to taxation in accordance with the provisions of this subsection shall be set in the list of the town where such vehicle in the normal course of operation most frequently leaves from and returns to or in which it remains. It shall be presumed that any such motor vehicle or snowmobile most frequently leaves from and returns to or remains in the town in which the owner of such vehicle resides, unless a provision of this subsection otherwise expressly provides. As used in this subsection, "the town in which the owner of such vehicle resides" means the town in this state where (A) the owner, if an individual, has established a legal residence consisting of a true, fixed and permanent home to which such individual intends to return after any absence, or (B) the owner, if a company, corporation, limited liability company, partnership, firm or any other type of public or private

organization, association or society, has an established site for conducting the purposes for which it was created. In the event such an entity resides in more than one town in this state, it shall be subject to taxation by each such town with respect to any registered or unregistered motor vehicle or snowmobile that most frequently leaves from and returns to or remains in such town.

(3) Any motor vehicle owned by a nonresident of this state shall be set in the list of the town where such vehicle in the normal course of operation most frequently leaves from and returns to or in which it remains. If such vehicle in the normal course of operation most frequently leaves from and returns to or remains in more than one town, it shall be set in the list of the town in which such vehicle is located for the three or more months preceding the assessment day in any year, except that, if such vehicle is located in more than one town for three or more months preceding the assessment day in any year, it shall be set in the list of the town where it is located for the three months or more in such year nearest to such assessment day. In the event a motor vehicle owned by a nonresident is not located in any town for three or more of the months preceding the assessment day in any year, such vehicle shall be set in the list of the town where such vehicle is located on such assessment day.

(4) Notwithstanding any provision of subdivision (2) of this subsection: (A) Any registered motor vehicle that is assigned to an employee of the owner of such vehicle for the exclusive use of such employee and which, in the normal course of operation most frequently leaves from and returns to or remains in such employee's town of residence, shall be set in the list of the town where such employee resides; (B) any registered motor vehicle that is being operated, pursuant to a lease, by a person other than the owner of such vehicle, or such owner's employee, shall be set in the list of the town where the person who is operating such vehicle pursuant to said lease resides; (C) any registered motor vehicle designed or used for recreational purposes, including, but not limited to, a camp trailer, camper or motor home, shall be set in the list of the town such vehicle, in the normal course of its operation for camping, travel or recreational purposes in this state, most frequently leaves from and returns to or the town in which it remains. If such a vehicle is not used in this state in its normal course of operation for camping, travel or recreational purposes, such vehicle shall be set in the list of the town in this state in which the owner of such vehicle resides; and (D) any registered motor vehicle that is used or intended for use for the purposes of construction, building, grading, paving or similar projects, or to facilitate any such project, shall be set in the list of the town in which such project is situated if such vehicle is located in said town for the three or more months preceding the assessment day in any year, provided (i) if such vehicle is located in more than one town in this state for three or more months preceding the assessment day in any year, such vehicle shall be set in the list of the town where it is located for the three months or more in such year nearest to such assessment day, and (ii) if such vehicle is not located in any town for three or more of the months preceding the assessment day in any year, such vehicle shall be set in the list of the town where such vehicle is located on such assessment day.

(5) The owner of a motor vehicle subject to taxation in accordance with the provisions of subdivision (4) of this subsection in a town other than the town in which such owner resides may register such vehicle in the town in which such vehicle is subject to taxation.

(6) Information concerning any vehicle subject to taxation in a town other than the town in which it is registered may be included on any declaration or report filed pursuant to section 12-41, as amended by this act, 12-43 or 12-57a. If a motor vehicle or snowmobile is registered in a town in which it is not subject to taxation, pursuant to the provisions of subdivision (4) of this section, the assessor of the town in which such vehicle is subject to taxation shall notify the assessor of the town in which such vehicle is registered of the

name and address of the owner of such motor vehicle or snowmobile, the vehicle identification number and the town in which such vehicle is subject to taxation. The assessor of the town in which said vehicle is registered and the assessor of the town in which said vehicle is subject to taxation shall cooperate in administering the provisions of this section concerning the listing of such vehicle for property tax purposes.

Sec. 3. Section 14-163 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2004*):

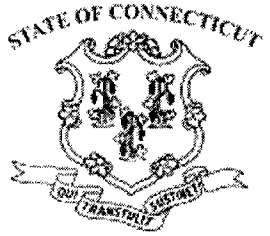
[The commissioner, on or before the first day of December, annually, shall furnish to the tax assessors in each town a list containing the names and addresses of the owners of motor vehicles and snowmobiles residing in their respective towns, as they appear by the records of the Department of Motor Vehicles, with a description of such vehicles. The commissioner shall, on or before December 1, 2000, and December first, annually thereafter, furnish to the Commissioner of Revenue Services a list containing the names, addresses and federal Social Security account numbers or federal employer identification numbers, or both, if available, of the owners of motor vehicles as they appear by the records of the Department of Motor Vehicles, and the vehicle identification numbers of such vehicles, in order to establish the identification of persons affected by the tax laws of the state. ]

(a) The commissioner shall compile information concerning motor vehicles and snowmobiles subject to property taxation pursuant to section 12-71, as amended by this act, using the records of the Department of Motor Vehicles and information reported by owners of motor vehicles and snowmobiles. In addition to any other information the owner of a motor vehicle or snowmobile is required to file with the commissioner by law, such owner shall provide the commissioner with the name of the town in which such owner's motor vehicle or snowmobile is to be set in the list for property tax purposes, pursuant to section 12-71, as amended by this act. On or before December 1, 2004, and annually thereafter, the commissioner shall furnish to each assessor in this state a list identifying motor vehicles and snowmobiles that are subject to property taxation in each such assessor's town. Said list shall include the names and addresses of the owners of such motor vehicles and snowmobiles, together with the vehicle identification numbers for all such vehicles for which such numbers are available.

(b) On or before October 1, 2004, and annually thereafter, the commissioner shall furnish to each assessor in this state a list identifying motor vehicles and snowmobiles in each such assessor's town that were registered subsequent to the first day of October of the assessment year immediately preceding, but prior to the first day of August in such assessment year, and that are subject to property taxation on a supplemental list pursuant to section 12-71b. In addition to the information for each such vehicle and snowmobile specified under subsection (a) of this section that is available to the commissioner, the list provided under this subsection shall include a code related to the date of registration of each such vehicle or snowmobile.

Approved on June 8, 2004

# APPENDIX L




***House Bill No. 5801***

## *May, 2004 Special Session, Public Act No. 04-2*

### *AN ACT CONCERNING BUDGET IMPLEMENTATION.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

...

Sec. 32. (NEW) (*Effective from passage and applicable to assessment years commencing on or after October 1, 2003*) (a) Notwithstanding any provision of the general statutes, any municipal charter, any special act or any home rule ordinance, any municipality required to effect a revaluation of real property under section 12-62 of the general statutes, as amended by this act, for the 2003, 2004 or 2005 assessment year shall not be required to effect a revaluation prior to the 2006 assessment year provided any decision not to implement a revaluation pursuant to this subsection shall be approved by the legislative body of such town or, in any town where the legislative body is a town meeting, by the board of selectmen. Any required revaluation subsequent to any delayed revaluation effected pursuant to this subsection shall be effected in accordance with the provisions of said section 12-62. The rate maker, as defined in section 12-131 of the general statutes, in any municipality that elects, pursuant to this subsection, not to implement a revaluation may prepare new rate bills under the provisions of chapter 204 of the general statutes in order to carry out the provisions of this section.

(b) The assessor or board of assessors of any municipality that elects, pursuant to subsection (a) of this section, not to implement a revaluation of real property for the 2003 assessment year shall prepare a revised grand list for said assessment year, which shall reflect the assessments of real estate according to the grand list in effect for the assessment year commencing October 1, 2002, subject only to transfers of ownership, additions for new construction and reductions for demolitions. Such assessor shall send notice of any increase in the valuation of real estate over the valuation of such real estate as of October 1, 2002, or notice of the valuation of any real estate which is on the grand list to be effective for the October 1, 2003, assessment year but was not on such

list in the prior assessment year, to the last-known address of the person whose valuation is so affected, and such person shall have the right to appeal such increase or valuation during the next regular session of the board of assessment appeals at which real estate appeals may be heard.

Sec. 33. Subsections (a) and (b) of section 12-62 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective October 1, 2003, and applicable to assessment years commencing on or after October 1, 2003*):

(a) (1) Commencing October 1, 1997, the assessor or board of assessors of each town shall revalue all of the real estate in their respective municipalities for assessment purposes in accordance with the provisions of subsection (b) of this section. The assessments derived from each such revaluation shall be used for the purpose of levying property taxes in such municipality in the assessment year in which such revaluation becomes effective and in each assessment year thereafter until the next succeeding revaluation in accordance with the provisions of subsection (b) of this section. In the performance of these duties, except in any municipality where there is a single assessor, at least two of the assessors shall act together and all valuations shall be separately approved by a majority of the assessors.

(2) The assessor or board of assessors of each town shall view by physical inspection all of the real estate in their respective municipalities for assessment purposes within the period of time provided in subdivision (3) of this subsection.

(3) An assessor shall have fulfilled the requirement to view by physical inspection if a physical inspection of a property has been made at any time from June 27, 1997, to October 1, 2009, inclusive, and thereafter, the assessor or board of assessors shall view by physical inspection each parcel of real estate no later than **[**twelve**]** ten years following the preceding inspection.

(b) **[**(1)**]** The assessor or board of assessors of each town shall revalue all of the real estate in their respective municipalities **[**in accordance with the schedule provided in this section. Nothing in this subsection shall be construed to prohibit a town from effecting more frequent revaluations between the implementation of each revaluation required in accordance with the provisions of this section.

| Town/City | Year of Next Revaluation | Year of Subsequent Revaluation |
|---|---|---|
| Andover | 2001 | 2005 |
| Ansonia | 2002 | 2006 |

| | | |
|---|---|---|
| Ashford | 2002 | 2006 |
| Avon | 1999 | 2003 |
| Barkhamsted | 1999 | 2003 |
| Beacon Falls | 2001 | 2005 |
| Berlin | 1997 or 1998 | 2002 |
| Bethany | 1999 | 2003 |
| Bethel | 1999 | 2003 |
| Bethlehem | 1999 | 2003 |
| Bloomfield | 2000 | 2004 |
| Bolton | 1999 | 2003 |
| Bozrah | 2001 | 2005 |
| Branford | 2000 | 2004 |
| Bridgeport | 1999 | 2003 |
| Bridgewater | 1999 | 2003 |
| Bristol | 1997 or 1998 | 2002 |
| Brookfield | 2001 | 2005 |
| Brooklyn | 2000 | 2004 |
| Burlington | 1999 | 2003 |
| Canaan | 1997 or 1998 | 2002 |
| Canterbury | 2000 | 2004 |
| Canton | 1999 | 2003 |
| Chaplin | 1999 | 2003 |
| Cheshire | 1999 | 2003 |

| | | |
|---|---|---|
| Chester | 1999 | 2003 |
| Clinton | 2000 | 2004 |
| Colchester | 2001 | 2005 |
| Colebrook | 2000 | 2004 |
| Columbia | 2001 | 2005 |
| Cornwall | 2001 | 2005 |
| Coventry | 2000 | 2004 |
| Cromwell | 1999 | 2003 |
| Danbury | 1997 or 1998 | 2002 |
| Darien | 1999 | 2003 |
| Deep River | 2001 | 2005 |
| Derby | 2000 | 2004 |
| Durham | 2000 | 2004 |
| Eastford | 1997 or 1998 | 2002 |
| East Granby | 1999 | 2003 |
| East Haddam | 2002 | 2006 |
| East Hampton | 2000 | 2004 |
| East Hartford | 2001 | 2005 |
| East Haven | 2000 | 2004 |
| East Lyme | 2001 | 2005 |
| Easton | 2002 | 2006 |
| East Windsor | 2002 | 2006 |
| Ellington | 2000 | 2004 |

| | | |
|---|---|---|
| Enfield | 2001 | 2005 |
| Essex | 1999 | 2003 |
| Fairfield | 2001 | 2005 |
| Farmington | 2002 | 2006 |
| Franklin | 1999 | 2003 |
| Glastonbury | 2002 | 2006 |
| Goshen | 1997 or 1998 | 2002 |
| Granby | 1997 or 1998 | 2002 |
| Greenwich | 2001 | 2005 |
| Griswold | 2001 | 2005 |
| Groton | 2001 | 2005 |
| Guilford | 2002 | 2006 |
| Haddam | 2001 | 2005 |
| Hamden | 2000 | 2004 |
| Hampton | 1999 | 2003 |
| Hartford | 1999 | 2003 |
| Hartland | 2001 | 2005 |
| Harwinton | 1999 | 2003 |
| Hebron | 2001 | 2005 |
| Kent | 1999 | 2003 |
| Killingly | 2002 | 2006 |
| Killingworth | 2001 | 2005 |
| Lebanon | 1999 | 2003 |

| | | |
|---|---|---|
| Ledyard | 2001 | 2005 |
| Lisbon | 2001 | 2005 |
| Litchfield | 1999 | 2003 |
| Lyme | 1999 | 2003 |
| Madison | 2000 | 2004 |
| Manchester | 2000 | 2004 |
| Mansfield | 2000 | 2004 |
| Marlborough | 2001 | 2005 |
| Meriden | 2001 | 2005 |
| Middlebury | 2001 | 2005 |
| Middlefield | 2001 | 2005 |
| Middletown | 1997 or 1998 | 2002 |
| Milford | 2000 | 2004 |
| Monroe | 1999 | 2003 |
| Montville | 2001 | 2005 |
| Morris | 2000 | 2004 |
| Naugatuck | 1997 or 1998 | 2002 |
| New Britain | 2002 | 2006 |
| New Canaan | 1999 | 2003 |
| New Fairfield | 2000 | 2004 |
| New Hartford | 1999 | 2003 |
| New Haven | 2000 | 2004 |
| Newington | 2000 | 2004 |

| | | |
|---|---|---|
| New London | 1999 | 2003 |
| New Milford | 2001 | 2005 |
| Newtown | 2002 | 2006 |
| Norfolk | 1999 | 2003 |
| North Branford | 2001 | 2005 |
| North Canaan | 1997 or 1998 | 2002 |
| North Haven | 2000 | 2004 |
| North Stonington | 2000 | 2004 |
| Norwalk | 1999 | 2003 |
| Norwich | 1999 | 2003 |
| Old Lyme | 2000 | 2004 |
| Old Saybrook | 1999 | 2003 |
| Orange | 2000 | 2004 |
| Oxford | 2000 | 2004 |
| Plainfield | 1997 or 1998 | 2002 |
| Plainville | 2000 | 2004 |
| Plymouth | 2001 | 2005 |
| Pomfret | 2000 | 2004 |
| Portland | 2001 | 2005 |
| Preston | 1997 or 1998 | 2002 |
| Prospect | 2000 | 2004 |
| Putnam | 1999 | 2003 |

| | | |
|---|---|---|
| Redding | 1997 or 1998 | 2002 |
| Ridgefield | 1997 or 1998 | 2002 |
| Rocky Hill | 1999 | 2003 |
| Roxbury | 1997 or 1998 | 2002 |
| Salem | 2001 | 2005 |
| Salisbury | 2000 | 2004 |
| Scotland | 1999 | 2003 |
| Seymour | 2001 | 2005 |
| Sharon | 1999 | 2003 |
| Shelton | 2001 | 2005 |
| Sherman | 1999 | 2003 |
| Simsbury | 2002 | 2006 |
| Somers | 2002 | 2006 |
| Southbury | 1997 or 1998 | 2002 |
| Southington | 2001 | 2005 |
| South Windsor | 2002 | 2006 |
| Sprague | 2000 | 2004 |
| Stafford | 2000 | 2004 |
| Stamford | 2001 | 2005 |
| Sterling | 1997 or 1998 | 2002 |
| Stonington | 2002 | 2006 |
| Stratford | 2000 | 2004 |

| | | |
|---|---|---|
| Suffield | 1999 | 2003 |
| Thomaston | 1999 | 2003 |
| Thompson | 2000 | 2004 |
| Tolland | 2000 | 2004 |
| Torrington | 1999 | 2003 |
| Trumbull | 2000 | 2004 |
| Union | 1999 | 2003 |
| Vernon | 2000 | 2004 |
| Voluntown | 2001 | 2005 |
| Wallingford | 2000 | 2004 |
| Warren | 1997 or 1998 | 2002 |
| Washington | 1999 | 2003 |
| Waterbury | 1997 or 1998 | 2002 |
| Waterford | 1997 or 1998 | 2002 |
| Watertown | 1999 | 2003 |
| Westbrook | 2001 | 2005 |
| West Hartford | 1999 | 2003 |
| West Haven | 2000 | 2004 |
| Weston | 1999 | 2003 |
| Westport | 1999 | 2003 |
| Wethersfield | 1999 | 2003 |
| Willington | 1999 | 2003 |
| Wilton | 2002 | 2006 |

| | | |
|---|---|---|
| Winchester | 2002 | 2006 |
| Windham | 2001 | 2005 |
| Windsor | 1999 | 2003 |
| Windsor Locks | 1999 | 2003 |
| Wolcott | 2000 | 2004 |
| Woodbridge | 2000 | 2004 |
| Woodbury | 1999 | 2003 |
| Woodstock | 2000 | 2004 |

(2) For the assessment date four years following the date of the subsequent revaluation required under subdivision (1) of this subsection and every fourth year thereafter, the assessor or board of assessors shall revalue all of the real estate in their respective municipalities.

(3) Any municipality required to revalue all real property for assessment year 1997 or 1998, which revalued such real property for the assessment year 1996, shall not be required to revalue for assessment year 1997 or 1998 but shall be required to revalue all real property for assessment year 2002] not later than five years after the last revaluation conducted in each municipality, except as provided in section 32 of this act. In carrying out the provisions of this subsection, any municipality which last effected revaluation by statistical means shall effect its next revaluation by physical inspection provided in no case shall a physical inspection be required more than once every ten years. In carrying out the provisions of this subsection, any municipality which last effected revaluation by physical inspection may effect its next revaluation by statistical means.