

CONNECTICUT GENERAL ASSEMBLY

STATE TAXES LEGISLATION

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State Taxes: Big Increases, Significant Changes

At the start of the session, policy-makers faced the tall task of closing a budget deficit of more than \$3 billion in each of the next two fiscal years amid a struggling economy. Governor Malloy recommended some spending cuts, significant tax increases and unprecedented state employee union concessions to close the budget gap.

By session's end, lawmakers passed the biggest tax hike in Connecticut history — \$2.1 billion in the first year and \$1.9 in the second year of the budget. Increases in the personal income tax and sales tax, among other tax hikes included in the new \$40.5 billion state budget, will impact all sectors of Connecticut's economy.

Fortunately this year, lawmakers backed away from other harmful tax changes. Rejected was a "throwback" provision that would have cost Connecticut-based exporters approximately \$20 million a year—hitting small and midsize Connecticut manufacturers the hardest.

Also discarded was an entirely new corporate tax system—called mandatory unitary reporting. Mandatory unitary aimed directly at companies with multiple locations, such as manufacturing, R&D, and headquarters companies that employ tens of thousands of our residents.

While lawmakers rejected municipal prop-

erty tax-reclassification schemes, they approved two revisionary proposals. One will delay property revaluation in several cities and towns; the other makes special property tax changes for the city of Hartford.

Here is a review of tax legislation this year.

PA 11-1 (HB 6292) AAC The Payment of Personal Property Taxes by Certain Telecommunication Companies

Changes how municipal tax collectors can bill telecommunications companies by permitting the tax collectors to bill the companies for half of the personal property taxes due in 2011, before they would otherwise be due. Similar to real property, this measure allows tax collectors to bill in two installments (the first prior to the July 1, 2011, due date and the second on or after that date). The first installment will equal half the company's 2010 assessment multiplied by the municipality's mill rate for FY 11. The second installment will equal the other half of the 2010 assessment multiplied by the municipality's FY 12 mill rate. The payments are due 30 days after receiving the tax bill.

These changes apply to assessment years beginning on or after Oct. 1, 2010.

Effective: April 16, 2011

PA 11-6 (SB 1239) AAC The Budget for the Biennium Ending June 30, 2013, and Other Provisions Relating to Revenue—As amended by HB 6652 (PA 11-61)

Makes numerous changes to the personal income tax, sales tax, corporate tax and other taxes.

Personal Income Tax: Numerous changes include increasing the top rate to 6.7% and phasing out the marginal rates for many taxpayers under a plan referred to as "recapture." The legislation also implements an earned

income tax credit and reduces the property tax credit from \$500 to \$300.

Effective: Rate changes are effective retroactively to Jan. 1, 2011. New withholding tables are effective Aug. 1, 2011

Sales and Use Tax: Increases the state sales and use tax rate from 6% to 6.35%; eliminates certain exemptions and newly imposes the tax on certain services. Exemptions eliminated include clothing and footwear of less than \$50 as well as nonprescription drugs and medicine. Services to be taxed include motor vehicle towing, pet grooming, spa services, and more.

Effective: July 1, 2011.

Luxury Sales and Use Tax: Beginning July 1, 2011, all luxury items (passenger cars, boats, jewelry, clothing, and footwear valued at more than certain amounts) will be subject to a 7% sales and use tax on the full sales price.

Effective: July 1, 2011.

Remote Sellers/Internet Sales: The tax package also makes certain remote sellers, including online retailers, subject to the sales and use tax. The requirement applies to out-of-state retailers who pay commissions to people located in Connecticut and who refer customers to them.

Effective: June 10, 2011

Hotel Tax: The hotel room tax rate increases from 12% to 15% on July 1, 2011.

Effective: July 1, 2011.

Hospital Tax: Repeals the gross earnings tax on hospitals and imposes a new tax on net patient revenue, which is set at the maximum rate allowable under federal law.

Effective: July 1, 2011, and applicable to calendar quarters starting on or after that date.

Electric Generation Tax: An electric generation facilities tax will be imposed at the rate of ¼ of a cent per net kilowatt hour of electricity

Continued on Page 2

State Taxes

Continued from Page 1

generated and uploaded into the regional bulk power grid at Connecticut facilities. The tax applies to all electricity except that generated by a resources-recovery facility, by customer-side distributed resources, or through use of a fuel cell or alternative energy system (such as solar or wind system).

Effective: May 4, 2011 and applicable for fiscal years 2011 and 2012, expiring June 30, 2013.

Corporation Tax Surcharge: A corporation tax surcharge of 20% is imposed for the 2012 and 2013 income years under the tax package.

Effective: May 4, 2011 and applicable for income years 2012 and 2013.

Tax Credit Cap: Instead of an increase in premium taxes, as was initially proposed by the Governor, insurance companies will see their tax credits capped at 30% (down from 70%), for income years 2011 and 2012.

Effective: May 4, 2011 and applicable for income years 2011 and 2012.

Estate and Gift Taxes: The estate and gift tax threshold is lowered from \$3.5 million to \$2 million. In addition, the existing 7.2% estate-tax rate is extended to estates and gifts valued at between \$2 million and \$3.5 million.

Effective: May 4, 2011 and retroactive to deaths occurring on or after Jan. 1, 2011.

Diesel Fuel Tax: The base tax on diesel fuel increases from 26 cents to 29 cents per gallon. This measure also imposes an inventory tax of 3 cents on each gallon a licensed seller has in stock as of the close of business or 11:59, whichever is earlier, on June 30, 2011.

Effective: The inventory tax is effective on May 4, 2011 and the rate per gallon increase is effective on July 1, 2011.

Excise Tax: The excise tax on alcoholic beverages is increased by 20%. Also imposes an additional inventory tax on product in stock on inventories as of July 1, 2011 or the opening of business, whichever date is earlier.

Effective: The inventory tax is effective on May 4, 2011 and the rate per gallon increase is effective on July 1, 2011.

Tobacco Taxes: A variety of tobacco taxes were increased. The cigarette tax increases from \$3 to \$3.40 per pack, the tax on snuff tobacco from 55 cents to \$1 per ounce, and the tax on other tobacco products from 27.5% to 50% of the wholesale price. However, a tax cap is placed on cigars at 50 cents each.

Effective: Sales occurring on or after July 1, 2011.

Cabaret Tax: PA 11-6 imposed a 3% tax on merchandise, services, food and beverages sold at numerous entertainment establishments. This measure was repealed in PA 11-62 and therefore is no longer applicable.

Effective: This measure initially was to go into

effect on July 1, 2011, but was repealed prior to the effective date of the tax.

Real Estate Conveyance Tax: The state real estate conveyance tax is increased from 0.5% to 0.75%; and makes permanent the 0.25% base municipal real estate conveyance tax, which was set to expire on July 1, 2011.

Effective: For conveyances occurring on or after July 1, 2011.

PA 11-61 (HB 6652) An Act Implementing the Revenue Items in the Budget and Making Budget Adjustments, Deficiency Appropriations, Certain Revisions to Bills of the Current Session and Miscellaneous Changes to the General Statutes

Makes numerous changes to various state tax and other laws. Many of the provisions of this measure modify some aspect of the recently adopted budget and tax package, PA 11-6. Here are the provisions that concern taxes.

Property Tax Exemptions and PILOTS for MME and Commercial Trucks: Eliminates the Payment in Lieu of Taxes (PILOTs) payments for commercial trucks and manufacturing machinery and equipment (MME) for assessment years beginning on or after Oct. 1, 2011. It also repeals statutes associated with the phase out of the property tax on MME.

As the Office of Policy and Management (OPM) will no longer be making PILOT payments to towns, this measure transfers from OPM to municipal assessors the task of determining the documentation to support an application, as well as the authority to request it and the applicable federal tax returns and accompanying documentation, for a five-year MME exemption.

Eliminated for assessment years 2006 through 2011 are the requirements that MME owners file a supplement to their personal property declaration regarding the acquisition, costs and depreciated value of MME; and that the town assessors determine the MME's depreciated value, using the 2005 assessment year method.

Retained is the existing state-reimbursed property tax exemption for eligible MME in enterprise zones, targeted investment communities, and the Bradley Airport Development Zone (BADZ).

Effective: Although these sections of the bill are in effect as of July 1, 2011, the repeal of the MME and commercial truck PILOT, the property tax exemption and PILOT for older MME, five-year MME depreciation schedule, and state grant payment to replace the MME PILOT beginning in FY 14 are effective for assessment years starting on or after Oct. 1, 2011.

Municipal Transition Grants for MME PILOT Loss: Modifies and builds off of a provision in the budget and tax package (PA 11-6) by removing enterprise zone PILOTs from the basis for the manufacturing transition grants, specifying the dollar amount each town is to receive, mandating quarterly grant payments by OPM, and specifying other permissible adjustments

to the grants.

Effective: July 1, 2011

Collection of Sales and Use Tax by Remote Sellers:

The budget (PA 11-6) requires certain remote sellers with no physical presence in Connecticut to impose and collect sales tax on their taxable sales in the state. The act presumes a seller is a retailer with sales tax nexus here if it annually sells more than \$2,000 worth of taxable items or services in Connecticut through certain agreements with Connecticut residents. PA 11-6 also allowed remote sellers to rebut the presumption that they were responsible for collecting Connecticut sales tax. This measure (PA 11-61) changes a number of these aspects of the budget bill (PA 11-6):

- Repeals the rebuttable presumption.
- Changes the Connecticut residency requirement to the business making the referrals being located in the state.
- Specifies that an entity is "engaged in business in this state" if selling taxable items or services as specified above, thereby making it liable for the collection of Connecticut sales tax.
- Applies the remote seller liability for the collection of sales tax retroactively to sales occurring on or after May 4, 2011 (instead of on or after July 1, 2011 as specified in PA 11-6).

Effective: June 21, 2011, and applicable to sales occurring on or after May 4, 2011.

Other Sales Tax Changes: Numerous changes were made to the sales tax in PA 11-6 including making certain intrastate transportation services subject to the sales tax. This measure modifies PA 11-06 and the application of the sales tax by Medicaid nonemergency medical transportation, certain paratransit services, and dial-a-ride services.

Other changes to the sales tax provisions in PA 11-6 include restoring the exemptions for services provided by a person selling clothing and footwear on consignment and property or services used in operating solid waste-to-energy facilities. The measure also extends the sales tax to taxable services that are billed to customers for any period that includes July 1, 2011.

Effective: Various dates

Economic Nexus for Corporation Tax:

Modifies the state's current economic nexus provisions by requiring companies to both have a "substantial economic presence" in Connecticut AND derive income from sources in Connecticut.

The act also codifies DRS policy which exempts from the tax companies that under the Internal Revenue Code are treated as foreign corporations and don't have income "effectively connected" with a U. S. trade or business.

Effective: June 21, 2011, and applicable to income years starting on or after January 1, 2011.

Continued on Page 3

State Taxes

Continued from Page 2

Corporation Tax Overpayments: Codifies the current DRS practice of allowing companies that overpay their estimated corporation taxes for a given year the ability to apply the overpayment to the following year's estimated tax payments.

Effective: Oct. 1, 2011, and applicable to payments for income years starting on or after Jan. 1, 2012.

Cap on Tax Credits Applied to the Premium Tax Liability: Modifies the cap on tax credits applied to the premium tax liability in several ways:

- Places insurance premium tax credits into three groups: digital animation credits, insurance reinvestment fund credits, and all other credits.
- Specifies the order in which the credits must be used to offset premium tax liability.
- States that digital animation credits do not fall under the 30% cap (originally 70%) on use of tax credits to reduce a company's annual insurance premium tax liability.
- Sets the maximum premium tax liability an insurer can offset in 2011 and 2012. However, it doesn't state a maximum percentage reduction in premium tax liability for companies using digital animation or insurance reinvestment credits only, nor in combination with any of the other credits.

Effective: June 21, 2011

Nonadmitted Insurers, Insurance Policies and Premium Taxes: Sections 33 through 36 make numerous changes regarding "nonadmitted" insurance policies and/or insurers. These changes were made as a result of 2010 federal Nonadmitted and Reinsurance Reform Act (NRRRA). Changes include:

- Limiting the policies subject to the premium tax
- Changing how policy holders and brokers pay the tax
- Excusing some commercial purchasers from specified filing mandates
- Permitting the commissioners of insurance and revenue services to enter into an agreement with other states concerning the allotment of premium taxes between the states in where a policy covers more than one state.

The measure also changes the penalty and interest due on unpaid tax payments.

To comply with NRRRA provisions, the measure limits the premium tax to any nonadmitted insurance policy acquired from the insurer or through a licensed broker where Connecticut is the insured's principal place of business or residence. Individuals and brokers under this measure must file quarterly tax returns and pay the tax to DRS and DOI by the 15th day of

these months.

For late payments, this measure sets the interest rate at 1% for both brokers and individuals who obtain the policy directly from the insured. The \$75 minimum penalty for directly procured policies was repealed. This measure also allows the commissioner to request, and the attorney general to recover, interest and penalties owed on directly procured policies. The ability to request recovery of taxes already exists.

Provisions of this measure also allow the commissioners of the revenue services and insurance departments to enter into reciprocal agreements with other states to allocate premium taxes. They are also permitted to enter into agreements with others for the purpose of collecting and processing such taxes.

Effective: June 21, 2011 and applicable to nonadmitted insurance coverage in effect on or after July 1, 2011.

Film Credit Transfers: Section 37 of this measure modifies PA 11-6 by limiting the maximum transfer of film production tax credits allowed. In 2011 the limit will be 50% of the credit in any single income year. In 2012 and after, the limit will be 25% of the credit in any one income year. In addition to the already Exempt Corporation and/or insurance premium taxpayer, this measure exempts entities that own, directly or indirectly, at least 50% of another entity liable for the business entity tax.

Effective: July 1, 2011

Cigar Tax: Section 38 of this measure caps the recently increased tobacco tax as it relates to cigars. PA 11-6 increased the tax on most tobacco products from 27.5% to 50% of the wholesale price. This measure caps the tax at 50 cents on each cigar.

Effective: Applicable to all sales on or after July 1, 2011.

Hospital Net Patient Revenue Tax: Modifies the initial hospital net patient revenue tax imposed under PA 11-6 and PA 11-44, by changing who determines the revenue periods from a calendar quarterly basis to whatever the DSS commissioner establishes as the revenue period.

Effective: July 1, 2011 and applicable to calendar quarters beginning on and after that date.

Validation of Estate Tax Lien Release Certificates Issued Prior to Effective of New Tax Law: Because the estate tax threshold was lowered retroactively by the new budget and tax package, (PA 11-6), this measure validates probate court lien release certificates issued and recorded in town records prior to May 4, 2011, for estates of those who passed away on or after Jan. 1, 2011.

Effective: June 21, 2011

Exemption from Generation Tax: This provision exempts electricity generated by a facility using processes that reclaim material or energy values from solid waste from the new electric generation tax.

Effective: July 1, 2011

Electronic Funds Transfer Requirements

for Withholding: Allows the DRS, in most cases, to expand the mandatory electronic funds transfer of withholding taxes. Under this measure, the DRS commissioner is required to notify the payer of the electronic payment requirement.

Effective: July 1, 2011, and applicable to tax periods ending on or after that date.

Successor Liability for Withholding Taxes:

Changes some of the laws regarding successor liability for withholding taxes. First, it mandates a successor who purchases a business or its entire stock from an employer to withhold enough funds from the purchase price to cover the withholding tax due. The monies may be released when the original employer provides a DRS receipt for the tax payment or a certificate that no taxes are due. The DRS commissioner must issue the certificate that no taxes are due or mail the buyer a tax deficiency assessment notice.

Effective: July 1, 2011, and applicable to sales of businesses and stock occurring on or after that date.

Deficiency Assessment Notices: Changes the time by which DRS must send deficiency assessment notices.

Effective: June 21, 2011 and applicable to tax years starting on or after Jan. 1, 2011.

Penalty for Failing to Pay Taxes

Electronically: Sets a cap on penalties for failing to pay taxes electronically, when so required. For first time offenders, the penalty is capped at 10% or \$2,500, whichever is less. Subsequent offenses remain at the existing 10% penalty with no maximum.

Effective: June 21, 2011 and applicable to tax periods starting on or after January 1, 2012.

Tax Security Requirements for Nonresident

Contractors: Explains who a nonresident contractor is and sets forth what DRS must verify related to a nonresident contractor or subcontractor. It also changes tax security requirements for nonresident contractors in several ways. First, it clarifies that the bond requirement is only for nonresident general or prime contractors, and the hold-back obligation is only on nonresident subcontractors that aren't DRS verified. It also changes the hold-back provisions so that general contractors, not customers, are required to hold back funds from their unverified subcontractors. Last, customers that contract with unverified general or prime contractors are required get proof that the contractors posted the required bond.

This Act limits customer tax liability only to those people that do business with an unverified prime or general contractor and fail to get proof that the contractor has posted the required bond. The customer's liability is capped at 5% of the contract price and only of the contract in question.

In addition to the limitations existing prior to the adoption of this measure, this Act states it

Continued on Page 4

State Taxes

Continued from Page 3

only applies to contracts of \$ 250,000 or more. The Act splits nonresident contractors into two groups—"prime or general;" and subcontractors—and requires every unverified prime or general contractor with a contract in Connecticut priced at more than \$ 250,000 to post a bond with DRS equal to 5% of the contract price. It also imposes hold back provisions on any resident (or verified or unverified nonresident) general or prime contractor doing business with an unverified subcontractor. It also specifies how bonds and hold backs must be released. The measure also addresses certificates of compliance and certain DRS disclosure requirements.

Effective: Oct. 1, 2011

Energy Conservation and Load

Management Fund: Repeals the state treasurer's authority to issue economic recovery revenue bonds and bars the use of any competitive transition assessment charge to secure and pay the bonds. Furthermore, this measure stops the diversion of revenue from the Energy Conservation and Load Management Fund.

Effective: June 21, 2011

Cabaret Tax Repeal: Repeals the cabaret tax established in PA 11-6 and requires the state to give back any monies already collected to the town where the sale happened.

Effective: June 21, 2011

Aerospace and Defense Plant Tax

Incentives: Limits the current aerospace and defense plant tax incentives for improving property, acquiring machinery and equipment, and creating jobs, to facilities that are vacant on or after June 21, 2011 and which employed at least 800 people.

Effective: June 21, 2011

Reciprocal Agreements Concerning Tax

Refunds from Other States: Repeals certain notice and certification requirements when the DRS withholds a taxpayer's Connecticut tax refund for another state where the taxpayer owes taxes.

Effective: June 21, 2011

Transportation Strategy Board Eliminated:

Provisions of this measure eliminate the Transportation Strategy Board (TSB) but retains its projects account, enumerated projects, and the requirement that the governor identify projects to implement the transportation strategy that the TSB originally proposed as well as a plan to finance them.

Effective: July 1, 2011

Additional Dedicated Funds for the Special

Transportation Fund: Identifies additional funds that are to be dedicated to the Special

Transportation Fund, along with some minor changes.

Effective: July 1, 2011

Water Company Bills: Section six of this measure requires any water company rate adjustment resulting from an infrastructure project be identified separately on customer bills.

Effective: June 21, 2011

Regional Performance Incentive Grant

Program: Expands the kinds of entities eligible to receive a Regional Performance Incentive Grant. In addition to municipalities' respective regional planning organizations, regional council of elected officials, or regional councils of governments, an eligible entity includes two or more municipalities and regional economic development districts.

Provisions of this measure also modify the application deadline, selection process and reporting requirements of the grant program. Furthermore it creates a new nonlapsing account with dedicated funding for the grant program.

Effective: July 1, 2011

PA 11-78 (SB 1216) AAC The Urban Reinvestment Act and the Federal New Markets Tax Credit Program and Correcting an Effective Date

Synchronizes the requirements for the state Urban Industrial Sites Reinvestment (UISR) tax credits with federal New Market tax credits for certain business development projects getting investments qualifying for both credits. The measure establishes a separate group of community development entities (CDEs) through which investors may claim UISR and New Markets credits for the same investment. CDEs remain "contractually-bound" and qualify for UISR credits if they have entered into an allocation agreement with the Community Development Financial Institutions Fund for a share of New Markets tax credits and their respective service areas in the allocation agreement include Connecticut. This measure mandates that these projects meet the state and federal eligibility requirements and subjects them to the federal rules for recapturing credits.

The measure also corrects an inconsistency in **Public Act 10-98**, which created the Bradley Airport Development Zone, by making the tax credits in that act applicable to income years beginning on or after Jan. 1, 2012 instead of Jan. 1, 2013 as originally written.

Effective: July 1, 2011

PA 11-145 (HB 6561) AAC A Waiver from Required Electronic Reporting and Payment of Taxes

Allows taxpayers, including employers, that are required to pay taxes by electronic funds transfer to seek a hardship waiver from the Department of Revenue Services (DRS). It also

permits the DRS to waive the electronic filing or payment requirement. The waiver must be requested in writing at least 30 days prior to the filing or payment due date. DRS must promptly inform the taxpayer of its decision, which is final and not subject to review or appeal.

If granted, a waiver is effective for 12 months from the date the DRS grants it. The taxpayer then is allowed to file a signed paper return or make payments other than by electronic funds transfer.

Preparers of tax returns are not eligible for the waivers.

Effective: Oct. 1, 2011, and applicable to tax periods starting on or after that date

PA 11-212 (HB 6559) AAC The Municipal Option to Adopt Assessment Rates Limiting Property Tax Increases on Residential Properties

Changes the maximum permitted property tax increases for Hartford taxpayers and ties the increases to municipal spending. For residential properties, the increases are limited to anywhere from 3.5% to 5%. For apartment properties, the assessment rate will increase to 50% as of Oct. 1, 2012, and to 70% as of Oct. 1, 2015. In addition, the legislation includes the requirement that Hartford hold a referendum on its budget under certain conditions.

Effective: Upon Governor's signature, and applicable to assessment years commencing on or after Oct. 1, 2011

PA 11-239 (SB 1162) AAC The Filing Deadline for Certain Property Tax Exemptions

This proposal started simply as a measure to extend the filing deadlines for certain property tax exemptions for some Connecticut employers in Bloomfield, Franklin, Hartford, Sprague, Seymour, New Haven, Windsor, and Danbury. However, the bill expanded significantly to permit several municipalities (Cromwell, East Windsor, Farmington, Orange, Stamford and Windham) to delay property revaluation until the assessment year beginning Oct. 1, 2012.

Effective: Upon Governor's signature for all of the aspects of the measure mentioned above.

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