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February 17, 2022

To: Sandy Dennies, Director of Administration

From: Douglas C. Dalena, Corporation Counsel
Burt Rosenberg, Asst. Corporation Counsel

Re: **I. BOARD OF FINANCE ROLE IN PHASE-IN OF REVALUATION**
II. AMENDMENT OF CODE SECTION 180-2

This memorandum of law addresses the following issues:

I. DOES THE BOARD OF FINANCE PLAY ANY ROLE REGARDING A DECISION TO PHASE IN REVALUATION, THE METHOD OF REVALUATION, AND THE TERM OF THE PHASE-IN?

II. MAY THE BOARD OF REPRESENTATIVES MAY AMEND CODE SECTION 180-2 TO ELIMINATE THE REQUIREMENT THAT PERSONAL PROPERTY TAX CITY-WIDE IS TAXED AT THE REAL ESTATE MILL RATE FOR TAX DISTRICT A

I. THE BOARD OF FINANCE DOES NOT PLAY ANY ROLE REGARDING A DECISION TO PHASE IN REVALUATION, THE METHOD OF REVALUATION, AND THE TERM OF THE PHASE-IN.

Pursuant to Connecticut General Statutes Section 12-62c, the revaluation procedure is as follows:

(a)(1) A municipality may phase in revaluation by requiring the Assessor to gradually increase assessments by one of the methods set forth in subsection

(b). The legislative body of the municipality must approve (i) the decision to phase in the revaluation, (ii) the methods by which the revaluation is instituted, and (iii) the term of the phase-in.

(a)(2) The legislative body of the municipality may approve the discontinuance of the phase-in at any time prior to the completion of the phase-in, subject to certain rules as to timing.

(b) Subsection (b) provides three methods to determine the phase-in or assessment increases.

(c) Subsection (c) addresses the assessment of new construction.

(d) Subsection (d) requires the CEO of a municipality to notify the Secretary of State of the revaluation within 30 days of the legislative vote to phase-in revaluation, or to discontinue such phase-in.

Based upon the foregoing statutory framework, it is clear that the municipal legislature is the sole body authorized to legislate regarding property tax revaluation. Consequently, the Board of Finance has no official authority over decisions regarding revaluation. The method and means of revaluation are solely within the authority of the Board of Representatives. Please note, however, that the Code of Ordinances does provide for a committee that has two members from the Board of Finance; the committee plays an advisory and liaison role regarding revaluation generally.

> **Sec. 6-101. - Property Revaluation Review Committee.**
> There shall be a Property Revaluation Review Committee. Such Committee shall be composed of two members of the Board of Representatives named by the President of the Board of Representatives, neither from the same political party, two members of the Board of Finance named by the Chair of the Board of Finance, neither from the same political party, and the Director of Administration or his or her designee. Such Committee shall act only to further the communication between the Tax Assessor, the Administration of the City, the Board of Representatives, the Board of Finance and the appraising vendor.

2. **THE BOARD OF REPRESENTATIVES MAY AMEND CODE SECTION 180-2 TO ELIMINATE THE REQUIREMENT THAT PERSONAL PROPERTY TAX CITY-WIDE IS TAXED AT THE REAL ESTATE MILL RATE FOR TAX DISTRICT A.**

Section 180-2 of the Code, enacted in 2000 and amended in 2002, provides as follows:

1. Pursuant to Section 7-148(c)(2)(B) of the Connecticut General Statutes and Section C8-40-1 of the Stamford Charter, there is hereby created a Personal Property Tax District.

2. The Personal Property Tax District shall comprise the entire area of Stamford.

3. All personal property within the Personal Property Tax District shall be taxed at a uniform mill rate, as determined by the Board of Finance pursuant to Section C8-30-10 of the City of Stamford Charter, such that the mill rate for personal property shall be reduced over six fiscal years so that as of Fiscal Year 2005/2006 and thereafter the mill rate for personal property in the Personal Property Tax District shall be equal to the mill rate for real property in the "A" Tax District.

Thus, under the terms of Section 180-2, all personal property City-wide is currently taxed at the mill rate for real property in Tax District A, but that section also established precedent for taxing personal property at a distinct rate. While it could be argued that the lack of *explicit* authority in Section 7-148(c) to establish a separate mill rate for personal property is a clear expression of the Legislature's intent to deny municipalities such authority, previous legal research by the Law Department at the time of enactment and during a dispute with the State Office of Policy and Management (OPM) over this issue, as well as an opinion by the Connecticut Attorney General stemming from that dispute, concluded that there is no prohibition on such action.[1]

In 2006, as a result of a dispute between the City and the Secretary of OPM over the City's enactment of a separate personal property district and corresponding distinct personal property mill rates, the Secretary, whose office had asserted that the City had no such authority, asked the Attorney General for an opinion on the following question:

> Does a municipal corporation have the authority to set different mill rates for the taxation of non-vehicle personal property located within the same municipal tax or sub-tax district?

The Attorney General's response, dated February 22, 2006, and attached hereto, is summarized as follows:

Stamford had passed an Ordinance which allowed it to set separate mill rates for personal property that were greater than the City-wide mill rates applicable to real property and motor vehicles. The express purpose of Ordinance No. 933 was to make the taxation of personal property more equitable, avoiding identical items of personal property being subject to different tax, depending on location; at the same time, it also simplified record keeping for owners of personal property in more than one tax district and avoided problems in determining the situs of taxable personal property that was moved between districts during the course of a year.

2. OPM had taken the position that Stamford's Ordinance was not permitted under Connecticut law. The basis of this contention was that municipalities are limited to those powers of taxation expressly provided by the State legislature. Since CGS Section 7-148(c) is silent on the subject of setting different mill rates, OPM contended that municipalities do not have the power to differentiate between real and personal property taxes unless expressly authorized by the State legislature to do so. In support of its contention, OPM pointed to CGS Section 12-122a, which allows municipalities with more than one tax district to set a uniform citywide mill rate for motor vehicles that may be different than the mill rate for other personal and real property in various districts. Lastly, OPM cited the rejection of Bill No. 5867 in 2000, which would have given municipalities the authority to set different mill rates for real and personal property, interpreted by OPM to constitute a rejection of a municipality's right to do so.

3. The levy and collection of taxes is a fundamental power given to municipalities by the state legislature pursuant to CGS Section 7-148(c)(2)(B). That provision is silent on whether municipalities may establish different mill rates for personal and real property within a municipal tax or sub-tax district. The Attorney General found no court cases interpreting or providing guidance on this issue.

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[1] It is however true that the establishment of separate personal property tax rates was never challenged in court, so it has not been tested by judicial review.

Section 7-148(c) does not mention mill rates at all. It gives municipalities the right to assess, levy and collect taxes on all property which may be lawfully taxed and regulates the mode of assessment and collection of taxes. Although the Section does not mention mill rates, the power to set mill rates is implicit in the municipality's authority to assess, levy and collect taxes.

4. The legislature has not mandated that mill rates for either personal or real property be uniform throughout the municipality, as the legislature has done for valuation and assessment rates pursuant to CGS Sections 12-62(a) and 12-62(b). Therefore, it can be implied that the legislature has left to the municipality the power to establish mill rates as it deems appropriate and necessary.

5. Municipal taxing powers must be measured against the requirements of the Home Rule Act, CGS Sections 7-187 through 7-201. Under Home Rule, municipalities are enabled to control their own affairs and conduct their own business to the fullest extent possible. Municipal property taxation is a local matter concerning which Home Rule charter provisions are controlling.

6. Municipal taxpayers who disagree with their local tax assessment may seek relief under CGS Sections 12-111 and 12-117a.

7. Based upon the foregoing considerations, the Connecticut Attorney General concluded that "there is no clear prohibition to the establishment of different mill rates for real and personal property in the same tax district or sub-tax district."

In sum, OPM challenged the lawfulness of the Stamford Code Section 180-2 which required that personal property in all tax districts be taxed at the mill rate for Tax District A. The Attorney General opined that the Ordinance was not prohibited by State law.

Therefore, we conclude that if the Board of Representatives wishes to amend Section 180-2 to eliminate the requirement that personal property tax in different tax districts be taxed at the same rate as real property in Tax District A or of real property in general, it may do so.

cc: Mayor Caroline Simmons
Richard Freedman, Chairman, Board of Finance
Tom Cassone, incoming Corporation Counsel
Tracy Donoghue, Clerk, Board of Finance
Valerie Rosenson, Legislative Officer, Board of Representatives

Attorney General, Richard Blumenthal

February 22, 2006

Robert L. Genuario, Secretary
Office of Policy Management
450 Capitol Avenue
Hartford, CT 06106-1308

Dear Secretary Genuario:

You have asked for an opinion on the following two questions:

(1) Does a municipal corporation have the authority to set different mill rates for the taxation of non-vehicle personal property and real property located within the same municipal tax or sub tax district?

(2) Does OPM have the authority to pursue a reimbursement, either by direct payment or by offsetting the pending claim of the City of Stamford, for grant claims it has paid based upon Grand List years 1999, 2000 and 2001?

Based upon the analysis that follows, the answer to your first question is that the law is unclear on whether a municipality may enact an ordinance establishing different mill rates for personal and real property within the same municipal tax or sub tax district. You or the City of Stamford may wish to seek legislative clarification on this issue. As to the second question, if Stamford's tax ordinances were determined to be beyond its authority, the time has passed for you to modify the grants for exemptions on Stamford's grand lists for years 1999, 2000 and 2001 by offsetting future grants to the city.

Background

Your request for opinion is based upon the following relevant background. The Office of Policy and Management ("OPM") administers two programs whereby the Secretary may provide grants to municipalities for certain property that qualifies as exempt from local taxation. Under the so-called "Distressed Municipalities Program," Conn. Gen. Stat. § 32-9s, the Secretary may provide a grant to a municipality for certain manufacturing or service facilities or certain machinery and equipment for which the municipal assessor granted an exemption from local taxation pursuant to Conn. Gen. Stat.§ 12-81(59), (60) and (70). Under the "Newly Acquired Machinery, Equipment and Commercial Vehicle Program," Conn. Gen. Stat. § 12-94b, the Secretary may provide a grant to a municipality for such personal property that the municipal assessor has granted an exemption from local taxation under Conn. Gen. Stat. § 12-81(72) and (74).

Claims for tax exemption under these programs must be filed by property owners on application forms prescribed by the Secretary with the local assessor or board of assessors. Conn. Gen. Stat. § 12-81(59)(c), (60)(c), (70)(B), (72)(B), and (74)(B), respectively. Thereafter the municipality must file a claim with the Secretary for a grant for said tax exempt property. Conn. Gen. Stat. §§ 32-9s, 12-94b.

Upon receipt of an application for a grant under the said programs

[t]he secretary may review any application for financial assistance submitted by a claimant in conjunction with a program. The secretary may exclude from reimbursement any property included in an application that, in the secretary's judgment, does not qualify for financial

assistance or may modify the amount of any financial assistance approved by an assessor or municipal official in the event the secretary finds it to be mathematically incorrect, not supported by the application, not in conformance with law or if the secretary believes that additional information is needed to justify its approval.

Conn. Gen. Stat. § 12-120b(c) (emphasis added).

A grant under the Distressed Municipalities Program shall be "in the amount of fifty per cent of the amount of the tax revenue which the municipality or district would have received except for the provisions of subdivisions (59), (60) and (70) of section 12-81." Conn. Gen. Stat. § 32-9s (emphasis added). With respect to the property under the Newly Acquired Machinery, Equipment and Commercial Vehicle Program, "commencing on or after October 1, 2000, the grant payable for such property to any municipality under the provisions of this section shall be equal to eighty per cent of the property taxes which, except for the exemption under the provisions of subdivisions (72) and (74) of section 12-81, would have been paid." Conn. Gen. Stat. § 12-94b (emphasis added).[1]

Thus, grants authorized under these programs are based upon the actual tax that would have been paid to the municipality if the property subject to the tax were not exempt. The Secretary must therefore base his award of a grant, inter alia, on the actual municipal property tax that would have been levied on such property.

The cities of Stamford and New London each had passed ordinances that allowed them to set separate mill rates for personal property that was greater than the citywide mill rates applicable to real property and motor vehicles. On May 1, 2000, Stamford enacted ordinance 933,[2] which created a city-wide personal property tax district. Personal property located in such district is taxed at a separate, uniform mill rate different from the rate applicable to real property or motor vehicles. Stamford states that the purpose of ordinance 933 is "to make the taxation of personal property more equitable, avoiding identical items of personal property being subject to different tax, depending on location; at the same time, it also simplified recordkeeping for owners of taxable personal property in more than one tax district and avoided problems in determining the situs of taxable personal property that was moved between districts during the course of a year."[3]

The ordinance enacted by the city of New London on May 17, 2004 also established a personal property tax district. New London claims that Conn. Gen. Stat. §7-148(c)(2)(B) provides authority for creation of this new tax district. New London's personal property tax district, like Stamford's, encompasses the entire geographical area of the city. The district's purpose was described by the City Manager as a means "to segregate personal property from real and motor vehicle property in order to provide a more stable basis for taxation."[4] New London set a personal property mill rate of 33.77 and a motor vehicle and real property mill rate of 25.34 for the Grand List of October 1, 2003.

You have informed us that OPM notified the two cities that it has overpaid them with respect to the grants under the two programs described above. OPM takes the position that the local ordinances, which establish distinct personal property tax districts with their associated distinct mill rates, are not permitted under Connecticut law. As a result OPM wishes to recoup that portion of the grants the State paid that OPM considers to be an overpayment as a result of the higher mill rates applied to the subject personal property.

Against this fabric interwoven with factual and legal issues, you have posed two questions. First, you ask this office to address whether a municipality has the authority to establish variant mill rates based on the type of property located within its boundaries. Second, assuming the answer to the first question is negative, you ask whether OPM may pursue reimbursement from a municipality that had received a grant from OPM under the stated programs based upon

impermissible tax rates, notwithstanding the State's transfer of funding to the municipality for claims related to the Grand Lists of 1999, 2000 and 2001.

The Authority to Set Tax Rates Is a Fundamental Power Given to Municipalities by the Connecticut General Assembly

Your first question seeks the opinion of this office on a question of municipal law: "Does a municipal corporation have the authority to set different mill rates for the taxation of non-vehicle personal property and real property located within the same municipal tax or sub tax district?" The Attorney General generally does not issue opinions to municipalities or state officials regarding areas of the law that are strictly within the jurisdiction of municipal governments, because this office is not statutorily authorized to provide legal advice to municipalities, their officers and employees or state officials on such subjects. See, e.g., __ Op. Atty. Gen. __ (No. 2000-026), Marc S. Ryan August 31, 2000(declining to provide an interpretation of Conn. Gen. Stat. §12-63c(a) concerning the procedure local tax assessors are to employ in the valuation of commercial and industrial property because it is a "local issue that is the subject of ongoing litigation in the Superior Court"); __ Op. Atty. Gen. ___ (No. 88-41), Hon. Lester J. Forst, Dec. 15, 1988 (declining to provide opinion whether an independent engineering consultant would be considered an agent of the municipality which hires him and whether he would enjoy the protections from liability of a municipal employee); __ Op. Atty. Gen. __ (No. 85-8), Hon. Joseph E. Canale, January 28, 1985 (declining to comment on local ordinances and statutes affecting local government); __ Op. Atty. Gen. __, Hon. Edward J. Kozlowski, Nov. 20, 1972(declining to give opinion on violation of local ordinance).

The Secretary does, however, have specific statutory authority to assist local governments in the area of municipal taxation and administers two grants in lieu of taxes programs. Under Conn. Gen. Stat. § 4-66a the legislature delegated authority to the Secretary to provide advisory services to municipalities:

(a) The Secretary of the Office of Policy and Management shall advise the Governor on matters concerning local government including state laws relating to local government, . . .

(c) The secretary may provide planning and management assistance to local governments utilizing such state and federal funds as may be appropriated for such purpose.

(d) The secretary shall encourage each department of state government which deals with local governments to provide technical assistance in their areas of specialization. The secretary shall advise local officials on programs of state and federal assistance for which local governments are eligible and provide assistance, when requested, in applying for such assistance.

Furthermore with respect to the area of taxation, under Conn. Gen. Stat. §12-9 the Secretary "shall annually cause to be prepared by the tax collector [of each municipality] complete statements relating to the mill rate and tax levy during the preceding year, such statements to be made upon printed blanks to be prepared and furnished by the secretary to all such officers at least thirty days before the date prescribed by the secretary for the filing of such statements."

In addition to these general provisions, the Secretary has authority to administer the two municipal grant in lieu of tax programs described above. Our courts have construed the Secretary's role under grants provided pursuant to Conn. Gen. Stat. § 12-94b as a "watchtower" function "to take action to exclude property from a tax exemption when 'in his judgment, it does not qualify pursuant to subdivision (72) or (74) of § 12-81.'" Lombardo's Ravioli Kitchen, Inc. v. Ryan, 47 Conn. Supp. 540, 546, 815 A.2d 302 (2002); aff'd, 268 Conn. 222, 842 A.2d 1089 (2004).[5] Under these programs the Secretary may modify the amount of a grant, if he finds the claim is "not in conformance with law." Conn. Gen. Stat. § 12-120b(c).

You have cited your administration of the two grant in lieu of taxes programs as authority for you to determine the legality of municipal tax ordinances and the basis for your request for an opinion by this office. Our review commences with the fundamentals of municipal taxation in this state.

In Connecticut, the power to levy taxes is vested in the General Assembly. Kellems v. Brown, 163 Conn. 478, 487, 313 A.2d 53, appeal dismissed, 409 <st2:country-region>U.S.</st2:country-region> 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678; Beach v. Bradstreet, 85 Conn. 344, 348, 82 A. 1030. In exercising this power, the legislature is given broad discretion, subject only to the constitutional requirements of due process and equal protection. Lublin v. Brown, 168 Conn. 212, 220, 362 A.2d 769; State v. Murphy, 90 Conn. 662, 666, 98 A. 343; Madden v. Kentucky, 309 <st2:country-region>U.S.</st2:country-region> 83, 87-88, 60 S. Ct. 406, 84 L. Ed. 590; F. S. Royster Guano Co. v. Virginia, 253 <st2:country-region>U.S.</st2:country-region> 412, 415, 40 S. Ct. 560, 64 L. Ed. 989.

Included within the General Assembly's discretion is the power to authorize municipalities to collect taxes, for example, by granting them a charter. State ex rel. Brush v. Sixth Taxing District, 104 Conn.192, 198-99, 132 A. 561. A municipality, as a creation of the state, has no inherent power of its own, id., 198, nor does it have any powers of taxation except those expressly granted to it by the legislature. For these reasons, a municipality's "powers of taxation can be lawfully exercised only in strict conformity to the terms by which they were given"; Low Stamford Corporation v. Stamford, 164 Conn. 178, 182, 319 A.2d 369; Consolidated Diesel Electric Corporation v. Stamford, 156 Conn. 33, 36, 238 A.2d 410; and "statutes conferring authority to tax must be strictly observed." E. Ingraham Co. v. Bristol, 144 Conn. 374, 378, 132 A.2d 563; Thames Mfg. Co. v. Lathrop, 7 Conn. 550, 556; see 14 McQuillin, Municipal Corporations (3d Ed.) § 38.06.

Pepin v. City of Danbury, 171 Conn. 74, 82-83, 368 A.2d 88 (1976).

The levy and collection of taxes is a fundamental power given to municipalities by the legislature. Conn. Gen. Stat. § 7-148(c) sets forth the power of taxation that the legislature has delegated to our municipalities:

(c) Powers. Any municipality shall have the power to do any of the following, in addition to all powers granted to municipalities under the constitution and general statutes:
. . .

(2) Finances and appropriations. . . .

(B) Assess, levy and collect taxes for general or special purposes on all property, subjects or objects which may be lawfully taxed, and regulate the mode of assessment and collection of taxes and assessments not otherwise provided for, including establishment of a procedure for the withholding of approval of building application when taxes or water or sewer rates, charges or assessments imposed by the municipality are delinquent for the property for which an application was made; . . .

Setting a municipal tax involves three basic processes: valuation of property, assessment, and establishment of a mill rate. All property shall be valued at its fair market value. Conn. Gen. Stat. § 12-62(a). Each municipality is required to assess all property for local taxation purposes at a uniform rate of 70% of the actual value. Conn. Gen. Stat. § 12-62a(b). Each local tax assessor shall publish a grand list, which shall contain the assessed values of all property in the town for the assessment year commencing on the first day of October. Conn. Gen. Stat. § 12-55(a). After a municipality’s expenditures are approved by its governing body, a tax rate or mill rate is adopted to support the required revenue. See, e.g., Conn. Gen. Stat. § 7-344.[6]

Conn. Gen. Stat. § 7-148(c) is silent on whether municipalities may establish different mill rates for personal and real property within a municipal tax or sub tax district. Additionally, this office has found no court cases interpreting or providing guidance on this issue.

According to your letter to this office, you have rested your determination that the Stamford and New London ordinances are invalid on the general proposition that municipalities only have the power of taxation expressly provided to them by the legislature. McQuillin's Municipal Corporations 3rd Edition 44.05. Since Section 7-148(c) is silent on the setting of different mill rates, it is your belief that municipalities do not have the power to differentiate between real and personal property unless expressly authorized to do so by the legislature. As support for this proposition you cite to Conn. Gen. Stat. § 12-122a, which expressly allows municipalities that have more than one tax district to set a uniform city-wide mill rate for motor vehicles that may be different from the mill rate established for other personal and real property in the various tax districts. Finally, in 2000, the Committee on Finance, Revenue and Bonding rejected Bill No 5867, a bill that would have given municipalities the express authority to set different mill rates for personal and real property, which you interpret to constitute a rejection of a municipality's power to do so.[7]

Conn. Gen. Stat. § 7-148(c) does not mention mill rates at all. Instead, municipalities are given the authority to assess, levy and collect taxes … on all property, subjects or objects which may be lawfully taxed, and regulate the mode of assessment and collection of taxes." Although Section 7-148(c) does not expressly authorize towns to establish mill rates, it cannot be argued that municipalities lack the authority to establish them. Though unmentioned by the legislature, the power to set mill rates must be implicit in a municipality's authority to "assess, levy and collect taxes."

The legislature has not mandated that mill rates for either personal or real property be uniform throughout a municipality, as the legislature has done for valuation and assessment rates. Conn. Gen. Stat. 12-62(a) and 12-62a(b). It could be implied, therefore, that by failing to specifically address mill rates, as the legislature has done for valuations and assessment rates, the legislature has left to the municipality the power to establish mill rates for all classes of property as it deems to be appropriate and necessary, Conn. Gen. Stat. 7-148(c) does expressly give municipalities full authority to "regulate the mode of assessment and collection of taxes."

Moreover, our consideration of this issue must be guided by principles of law beyond those general principles that caution for a limit on municipal taxing authority. Municipal taxing powers in Connecticut must also be measured against the background of the purposes and requirements of Connecticut's Home Rule Act, Conn. Gen. Stat. § 7-187 to 7-201. As our Supreme Court has stated:

The rationale of the act, simply stated, is that issues of local concern are most logically answered, pursuant to a home rule charter, exclusive of the provisions of the General Statutes. . . . [H]ome rule legislation was enacted "to enable municipalities to conduct their own business and control their own affairs to the fullest extent possible in their own way . . . upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give the municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs."

Caulfield v. Noble, 178 Conn. 81, 86-87 (1979) (quoting Fragley v. Phelan, 126 Cal. 383, 387 (1899)). Therefore, a state statute "cannot deprive cities of the right to legislate on purely local affairs germane to city purposes." *Id.* at 87; accord Board of Education v. Naugatuck, 268 Conn. 295, 611-12 (2003). Municipal property taxation "is a local matter, concerning which home rule charter provisions are controlling." Caulfield, 178 Conn. at 90.

The General Statutes also provide specific remedies for local taxpayers who may disagree with

their local tax assessment as a check on municipal taxing ordinances.[8] Conn. Gen. Stat. §§12-111 and §§12-117a allow any taxpayer "claiming to be aggrieved by the doings of the assessors of such town" to appeal to the board of assessment appeals within the town and thereafter to the "superior court for the judicial district in which such town or city is situated." Conn. Gen. Stat. §§12-119 allows a taxpayer seeking relief from an alleged wrongful property assessment to "make application for relief to the superior court for the judicial district in which such town or city is situated" and "in all such actions, the Superior Court shall have the power to grant such relief upon such terms and in such manner and form as to justice and equity appertains." We are not aware that any action has been taken by taxpayers in Stamford or New London to contest the tax ordinances those cities have implemented.

In view of the specific statutes authorizing towns to regulate the mode of assessment and collection of taxes (Conn. Gen. Stat. § 7-148(c)), to levy and collect taxes to meet their ongoing expenses and financial obligations (Conn. Gen. Stat. § 7-344, §§12-122), the intrinsically local nature of the municipal budget and tax process, the specific statutory remedies available to individual taxpayers to challenge the taxes assessed against them, and the absence of any Connecticut statute requiring or any judicial decision holding that personal and real property must be taxed at the same mill rate within a tax or sub tax district, we must conclude that there is no clear prohibition to the establishment of different mill rates for real and personal property in the same tax or sub tax district.

As you point out, however, there is also no clear statutory authority for such action. Additionally, the enactment of Conn. Gen. Stat. § 12-122a, allowing municipalities to establish a city-wide uniform mill rate for motor vehicles, may be construed as an implied limitation on the power of municipalities to differentiate among other types of personal property and real property. As Conn. Gen. Stat. § 7-148 is completely silent on a municipality's authority to establish mill rates, and there are two reasonable yet contradictory interpretations that may be drawn from that legislative silence, we conclude that the statute is ambiguous and should be clarified by the General Assembly.

OPM Does Not Have the Authority to Recover Grant Overpayments for the Grand Lists of 1999, 2000 and 2001 From Future Grants

Your second question seeks guidance on the recovery of overpayments on grants made pursuant to Conn. Gen. Stat. §§ 32-9s and 12-94b for property that appeared on Stamford's Grand Lists for 1999, 2000 and 2001. As stated above, until the legislature clarifies municipalities' power to set different tax rates, OPM at this time does not have any basis for seeking recovery of any payments made to Stamford under Sections 32-9 and 12-94b. However, should the legislature clarify the law or a court determine that Stamford's taxing ordinance is illegal, the time has passed for OPM to offset against future grant payments any grant overpayments it may have made for the years 1999, 2000 and 2001.

We begin our review with the two statutory provisions that establish the two grant programs under which OPM provided the grants. These statutes direct the Secretary with respect to the process for reviewing and modifying claims and certifying grant payments.

Conn. Gen. Stat. § 32-9s provides in relevant part:

The state shall make an annual grant payment to each municipality, to each district, as defined in section 7-325, which is located in a distressed municipality, targeted investment community or enterprise zone and to each special services district created pursuant to chapter 105a which is located in a distressed municipality, targeted investment community or enterprise zone in the amount of fifty per cent of the amount of that tax revenue which the municipality or district would have received except for the provisions of subdivisions (59), (60) and (70) of section 12-81. On or before the first day of August of each year, each municipality and district shall file a

claim with the Secretary of the Office of Policy and Management for the amount of such grant payment to which such municipality or district is entitled under this section. . . . The secretary shall, on or before the December first next succeeding the deadline for the receipt of such claims, certify to the Comptroller the amount due under this section, including any modification of such claim made prior to December first, to each municipality or district which has made a claim under the provisions of this section. The Comptroller shall draw an order on the Treasurer on or before the following December fifteenth, and the Treasurer shall pay the amount thereof to each such municipality or district on or before the following December thirty-first. If any modification is made as the result of the provisions of this section on or after the December first following the date on which the municipality or district has provided the amount of tax revenue in question, any adjustment to the amount due to any municipality or district for the period for which such modification was made shall be made in the next payment the Treasurer shall make to such municipality or district pursuant to this section. . . .

This provision contemplates an annual grant payment to each municipality for a portion of the tax revenue that the municipality would have received except for the exemptions under Conn. Gen. Stat. § 12-81(59), (60) and (70). Claims for this grant must be received by the Secretary on or before the first day of August following the October grand list for which the claim is made. The Secretary's review of the claim must be conducted in accordance with Conn. Gen. Stat. § 12-120b. On or before the December first which immediately follows the claim filing deadline, i.e., the preceding August first, the Secretary shall certify to the State Comptroller the amount due as a grant under Conn. Gen. Stat. § 32-9s. The State Treasurer is directed to pay the grant on or before December thirty-first of the same year.

The Secretary is expressly authorized to modify grants allowed under § 32-9s. While the exact deadline for modifying the grant is not expressly provided in § 32-9s, a reading of that provision together with § 12-120b(d)(4) indicates that the Secretary may modify a grant no later than one year after the date a claim is filed. Adjustments to grants that have already been paid are allowed by adjusting the next grant payment due on the next December thirty-first.

Conn. Gen. Stat. § 12-120b(d)(4) directs the manner of providing notice to municipalities of any "final modification" of financial assistance under § 32-9s. This procedure is set forth as follows:

(4) The secretary shall notify each claimant of the final modification or denial of financial assistance as claimed, in accordance with the procedure set forth in this subsection. A copy of the notice of final modification or denial shall be sent concurrently to the assessor or municipal official who approved such financial assistance. With respect to property tax exemptions under section 12-81g or subdivision (55), (59), (60) or (70) of section 12-81, and tax relief pursuant to section 12-129d or 12-170aa, the notice pursuant to this subdivision shall be sent not later than one year after the date claims for financial assistance for each such program are filed with the secretary. For property tax exemptions under subdivision (72) or (74) of section 12-81, such notice shall be sent not later than the date by which a final modification to the payment for such program must be reflected in the certification of the secretary to the Comptroller. For the program of rebates under section 12-170d, such notice shall be sent not later than the date by which the secretary certifies the amounts of payment to the Comptroller.

(Emphasis added.)

Thus, for § 32-9s claims under Stamford's Grand List of 1999, Stamford was required to file its claim by August 1, 2000 and the Treasurer was required to make the grant payment, if any, by December 31, 2000. The Secretary had one year from the 2000 filing date to notify the city of any modification and make any adjustment from the next payment made by the Treasurer, which would have been due on or before December 31, 2001. Likewise, for such claims under Stamford's Grand List of 2000, Stamford was required to file its claim by August 1, 2001 and the Treasurer was required to make the grant payment, if any, by December 31, 2001.

The Secretary had one year from Stamford's 2001 filing date to notify the city of any modification and make any adjustment from the next payment made by the Treasurer, which would have been due on or before December 31, 2002. Finally, for such claims under Stamford's Grand List of 2001, Stamford was required to file its claim by August 1, 2002 and the Treasurer was required to make the grant payment, if any, by December 31, 2002. The Secretary had one year from Stamford's 2002 filing to notify the city of any modification and make any adjustment from the next payment made by the Treasurer, which would have been due on or before December 31, 2003.

Because the statute only permits the Secretary to make adjustments to a §32-9s grant by adjusting a future grant payable in the next succeeding grant cycle, the Secretary may not now make adjustments for the grand lists of 1999, 2000 and 2001 from grants payable in 2005 or thereafter, because such adjustment would be beyond the one year limitation for each respective grand list claim.

We turn now to grants under Conn. Gen. Stat. § 12-94b. This statute provides in relevant part:

On or before March fifteenth, annually, commencing March 15, 1998, the assessor or board of assessors of each municipality shall certify to the Secretary of the Office of Policy and Management, on a form furnished by said secretary, the amount of exemptions approved under the provisions of subdivisions (72) and (74) of section 12-81, . . . Said secretary shall review each such claim as provided in section 12-120b. Not later than December first next succeeding the conclusion of the assessment year for which the assessor approved such exemption, the secretary shall notify each claimant of the modification or denial of the claimant's exemption, in accordance with the procedure set forth in section 12-120b. . . . The secretary shall, on or before December fifteenth, annually, certify to the Comptroller the amount due each municipality under the provisions of this section, including any modification of such claim made prior to December first, and the Comptroller shall draw an order on the Treasurer on or before the twenty-fourth day of December following and the Treasurer shall pay the amount thereof to such municipality on or before the thirty-first day of December following. If any modification is made as the result of the provisions of this section on or after the December fifteenth following the date on which the assessor has provided the amount of the exemption in question, any adjustments to the amount due to any municipality for the period for which such modification was made shall be made in the next payment the Treasurer shall make to such municipality pursuant to this section. . . . As used in this section, "municipality" means each town, city, borough, consolidated town and city and consolidated town and borough and each district, as defined in section 7-324, and "next succeeding" means the second such date.

(Emphasis added.)

This provision contemplates an annual grant payment to each municipality toward the property taxes that the municipality would have received except for the exemptions under Conn. Gen. Stat. § 12-81(72) and (74). Claims for the grant must be received by the Secretary on or before the fifteenth day of March following the grand list for which the claim is made. Annually, on or before December fifteenth, the Secretary shall certify to the State Comptroller the amount due as a grant under this section. The State Treasurer shall pay the grant on or before December thirty-first of the year in which the claim is made.

The Secretary's review of claims for grants under § 12-94b must be conducted in accordance with the procedures set forth in Conn. Gen. Stat. § 12-120b. The Secretary is authorized to modify the grants allowed under § 12-94b. Section 12-120b(d)(4) expressly states with respect to this program that "[f]or property tax exemptions under subdivision (72) or (74) of section 12-81, such notice [of modification] shall be sent not later than the date by which a final modification to the payment for such program must be reflected in the certification to the Comptroller." Section 12-94b limits the Secretary's time to review a claim and either modify it

or deny it and notify the claimant and the assessor to the December first which is two years after the conclusion of the assessment year[2] for which the local assessor approved the tax exemption that is the subject of the grant.

Thus, for § 12-94b claims under Stamford's Grand List of 1999, Stamford was required to file its claim by March 15, 2000 and the Treasurer was required to make the grant payment, if any, on or before December 31, 2000. The Secretary had until December 1, 2001 to notify the claimant and city assessor of any modification. Any adjustment in accordance with the modification could be made from the grant payment that would have been due on or before December 31, 2001. Likewise, for Stamford's claims under its Grand List of 2000, the city was required to file its claim by March 15, 2001 and the Treasurer was required to make the grant payment, if any, by December 31, 2001. The Secretary had until December 1, 2002 to notify the city and the claimant of any modification to that grant and any adjustment could be made from the grant payment that would have been due on or before December 31, 2002. Finally, for Stamford's claims under this program for its Grand List of 2001, Stamford was required to file its claim by March 15, 2002 and the Treasurer was required to make the grant payment, if any, on or before December 31, 2002. The Secretary had until December 1, 2003 to notify the city and the claimant of any modification and any adjustment could have been made from the next grant payment that would have been due on or before December 31, 2003.

Because §12-94b sets an outer limit for the Secretary to make modifications to a grant by adjusting future grant payments no later than two years after the assessment year for which the original grant claim was made, the Secretary cannot now make adjustments to grants already paid for the grand lists of 1999, 2000 or 2001 from grants payable in 2005 or thereafter under this program.

We trust this answers your questions on the Distressed Municipalities Program and the Newly Acquired Machinery, Equipment and Commercial Vehicles Program.

Very truly yours,

RICHARD BLUMENTHAL

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[1] For Grand Lists prior to October 1, 2000, the Secretary was authorized to make grants equal to 100% of the property taxes that were exempted under Conn. Gen. Stat. § 12-81(72) and (74). See2001 Conn. Pub. Act No. 01-6, § 53 (June Special Session).

[2] Codified as Stamford Code § 180-2.

[3] These reasons were presented to OPM by Kenneth B. Povodator, Assistant Corporation Counsel of the City of Stamford.

[4] Letter (undated) from New London City Manager Richard Brown to W. David LeVasseur, Undersecretary, Intergovernmental Policy Division, Office of Policy and Management.

[5] In Lombardo's Ravioli Kitchen v. Ryan, the trial court stated at 47 Conn. Supp. at 546:

The exemption provisions at issue here provide for the secretary of the office to be a "watchtower" over the decisions of the assessor in granting a taxpayer's request for an exemption. Section 12-94(a) [sic] requires the secretary annually to review taxpayers' exemption applications and to disqualify an exemption if the secretary deems that the taxpayer has not met the conditions provided for in § 12-81(72). Whereas our appellate courts have recognized the right of assessors in each municipality to have a "watchtower" role in the administration of a fair and equitable taxing system, one also sees a similar clear legislative mandate to grant to the secretary of the office a continuous duty to act as a "watchtower" in order to achieve a fair and equitable process in granting exemptions from taxation. [citations omitted.]

[6] In Horton v. Meskill, 172 Conn. 615, 630 n. 10, 376 A.2d 359 (1977), the court explained:

Mill rate is the term Connecticut towns use to indicate the local property tax rate. The mill rate indicates how many property tax dollars are paid for each $ 1000 of assessed valuation. For example, a mill rate of 16.35 mills means that a taxpayer pays $ 16.35 for each $ 1000 of his total assessed valuation.

[7] As you note, however, courts are reluctant to draw inferences regarding legislative intent from a committee's failure to report a bill to the floor. Department of Social Services v. Saunders, 247 Conn.686, 706, 724 A2d 1093 (1999). It is just as reasonable to conclude that the legislative committee rejected the bill because it believed that municipalities already had the power to set different mill rates as to conclude that the Committee declined to give them that power.

[8] According to the City of Stamford, taxpayers subject to its personal property tax ordinance are not all eligible for the tax exemptions administered by OPM.

[9] The assessment year is that period which commences on October 1 on which date the local assessor assessed the property and concludes on September 30 of the succeeding calendar year. See generally, Conn. Gen. Stat. § 12-55(a).