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SPECIAL NOTICE

Legislative Changes Affecting Motor Vehicle Fuels Tax, Sales and Use Taxes, and Rental Surcharge

Effective Dates: The effective dates for these legislative changes are provided below.

Motor Vehicle Fuels Tax

Increase in Motor Vehicle Fuels Tax Rate on Diesel Fuel: The Department of Revenue Services (DRS) has calculated the new diesel fuel tax rate for the twelve-month period beginning July 1, 2018. Effective July 1, 2018, the new diesel fuel tax rate is 43.9¢ per gallon. That rate will remain in effect through June 30, 2019. This rate represents a 2.2¢ per gallon increase in the tax rate (formerly 41.7¢ per gallon) on diesel fuel per gallon. For more information, see **Announcement 2018(2)**, *Motor Vehicle Fuels Tax Rate on Diesel Fuel Effective July 1, 2018*.

Effective **July 1, 2018**.

Conn. Gen. Stat. § 12-458(a)(2) and Conn. Gen. Stat. § 12-458h.

New Motor Vehicle Fuels Tax Exemption for Licensed Marine Fuel Dock Owners or Operators: Effective July 1, 2018, persons licensed by DRS to distribute diesel fuel (Special Fuel Distributors) may sell dyed diesel fuel exempt from motor vehicle fuels tax if the sale is made directly to owners or operators of marine fuel docks who are licensed by DRS to purchase and sell dyed diesel fuel (Marine Fuel Dock Owners or Operators).

A marine fuel dock **must** be licensed in order to qualify for the motor vehicle fuels tax exemption, but marine fuel docks are not required to become licensed and may continue to purchase tax-paid diesel fuel. A distributor may not provide exempt diesel to a marine fuel dock who is not licensed.

Public Acts 2018, No. 18-81, § 64 also requires licensed Marine Fuel Dock Owners or Operators for which such fuel is being purchased to provide the distributor of such fuel with a declaration affirming

that the fuel will be used *exclusively for marine purposes*. For purposes of this exemption, the term *marine use* means dispensing dyed diesel fuel directly into the fuel tank of a vessel or vessel motor. See **Form AU-478**, *Marine Fuel Dock Owner or Operator Declaration/Motor Vehicle Fuels Tax Exemption*. Form AU-478 must be taken by the distributor in good faith and may be used for purchases by that marine fuel dock owner or operator for up to three years.

Please be advised that while purchases and sales of dyed diesel fuel by licensed Marine Fuel Dock Owners or Operators used exclusively for marine purposes will become exempt from the motor vehicles fuels tax, such purchases and sales will become subject to the Connecticut sales and use tax as of July 1, 2018. Licensed Marine Fuel Dock Owners or Operators must collect sales tax from their customers and remit it to DRS on **Form OS-114**, *Connecticut Sales and Use Tax Return*.

Effective **July 1, 2018**.

Conn. Gen. Stat. § 12-458(a)(3), as amended by Public Acts 2018, No. 18-81, § 64.

Requirements for Licensed Marine Fuel Dock Owners or Operators: Only licensed Marine Fuel Dock Owners or Operators may purchase dyed diesel fuel exempt from tax provided they can “properly control the sale of fuel through meters, pumps or other dispensing devices into the fuel tank of a vessel or vessel motor.”

Persons wishing to become a licensed Marine Fuel Dock Owner or Operator should contact the Excise Tax Subdivision of the Audit Division of DRS at **860-541-3224**, weekdays during business hours.

Marine docks are not required to become licensed as Marine Fuel Dock Owners or Operators. If a marine dock is unable or unwilling to comply with the requirements of this exemption, there is no obligation

to become a licensed Marine Fuel Dock Owner or Operator. Marine docks can continue to purchase tax-paid diesel fuel and maintain their current business model.

Public Acts 2018, No. 18-81, § 65 requires licensed Marine Fuel Dock Owners or Operators to:

keep and maintain proper accounting records of all purchases from the distributor and sales invoices to the purchaser, showing the signature of the purchaser and the vessel registration number of the vessel serviced, and the inventory on hand on the first day of each month.

This Act provides that licensed Marine Fuel Dock Owners or Operators must maintain such records for at least three years. The Act also provides that the Commissioner of Revenue Services will, at regular intervals, audit such records and if any discrepancies are found for which a satisfactory explanation does not exist, the licensed owner or operator will be held liable for the tax.

DRS may revoke a license to sell dyed diesel fuel for failure to properly control and safeguard the state from any diversion to uses of the fuel other than for marine purposes.

Effective **July 1, 2018**.

Public Acts 2018, No. 18-81, § 65.

Form AU-478, Marine Fuel Dock Owner or Operator Declaration: Pursuant to Public Acts 2018, No. 18-81, DRS has developed **Form AU-478, Marine Fuel Dock Owner or Operator Declaration**. This form must be submitted to a Special Fuel Distributor for purchases of dyed diesel fuel by a licensed Marine Fuel Dock Owner or Operator. When properly completed, **Form AU-478** will affirm that such fuel will be used exclusively for marine purposes and that such fuel will be delivered to a tank in which fuel is kept exclusively for marine purposes (dual use fuel tanks will not qualify for the exemption). When submitting **Form AU-478**, licensed Marine Fuel Dock Owners or Operators must provide a valid Connecticut Tax Registration Number.

Effective **July 1, 2018**.

Conn. Gen. Stat. § 12-458(a)(3), as amended by Public Acts 2018, No. 18-81, § 64.

Sales and Use Taxes

Fuel Sold by Licensed Marine Dock Owners or Operators is Subject to Sales Tax: The legislation exempts dyed diesel fuel sold to the owner or operator of marine fuel docks exclusively for marine purposes from motor vehicle fuels tax. Due to this legislation, the sale of exempt dyed diesel fuel by licensed marine dock owners or operators is subject to sales tax at the 6.35% rate because the exemption under Conn. Gen. Stat. § 12-412(15)(B) no longer applies.

Effective **July 1, 2018**.

Public Acts 2018, No. 18-81, § 64.

Reduced Tax Rate on Vessels, Motors for Vessels, and Trailers to Transport Vessels:

A new tax rate of 2.99% is imposed on sales and purchases of vessels, motors for vessels, and trailers used for transporting a vessel. Note that the exemption for sales of vessels that will be docked in this state for 60 or fewer days in a calendar year remains in effect.

Sales of vessels that will be docked in Connecticut for more than 60 days in a calendar year made on or before June 30, 2018, are subject to the 6.35% rate. The new 2.99% sales and use tax rate will not apply to the sale of any vessel, motor for a vessel, or trailer for a vessel that has been purchased under a binding sales contract and fully paid for prior to July 1, 2018, regardless of the delivery date.

Definition of “Vessel”: Only a *vessel* that is of a type that must be registered with the Connecticut Department of Motor Vehicles (DMV) qualifies for the reduced tax rate of 2.99%.

Vessels of the following types must be registered with DMV, and so qualify for the 2.99% rate:

- All *motorboats*, which are defined as any watercraft fitted with propulsion machinery, whether or not such machinery is the principal source of propulsion;
- All vessels with a length of 19 ½ feet or more that are not motorboats and are not propelled solely by paddles or oars (e.g., sailboats); **and**
- Personal watercraft such as jet skis.

Vessels propelled solely by paddles or oars, and vessels less than 19 ½ feet in length that are not

motorboats, are not required to be registered with DMV and are not eligible for the reduced 2.99% tax rate.

Effective **July 1, 2018**.

Public Acts 2018, No. 18-81, §§ 63, 64.

Exemptions for Feminine Hygiene Products and Diapers: Two exemptions were added by legislation enacted in 2016 that have an effective date this year:

1. feminine hygiene products; **and**
2. disposable or reusable diapers.

Feminine hygiene products include sanitary napkins, tampons, panty liners, douches, feminine hygiene syringes; and vaginal creams, foams, ointments, jellies, powders, and sprays used for hygiene purposes.

These new exemptions are effective for sales occurring on and after **July 1, 2018**.

Conn. Gen. Stat. § 12-412(122) and (123), as added by Public Acts 2016, No. 16-3, § 202.

Certain Out-of-State Sellers Must Collect Sales Tax:

The definitions of “retailer” and “engaged in business in the state” are clarified to include the Internet among the means by which such retailers are considered to be soliciting sales in Connecticut.

The legislation changes the nexus standard, so that out-of-state retailers that regularly or systematically solicit sales of tangible personal property in Connecticut must collect and remit sales tax if:

1. Their Connecticut sales exceed a threshold of 200 transactions during the preceding twelve-month period (ending September 30) (previously, the threshold was 100 sales); **and**
2. Their gross receipts are \$250,000 or more during that twelve-month period.

Effective **December 1, 2018**.

Conn. Gen. Stat. § 12-407(a)(12) and (15), as amended by Public Acts 2018, No. 18-152, §§ 2 and 3.

Marketplace Facilitators: Makes “marketplace facilitators” liable to collect and remit Connecticut use tax.

- A **marketplace facilitator** is defined as any person who (1) facilitates retail sales of at least \$250,000 during the prior twelve-month period by marketplace sellers by providing a forum that lists or advertises tangible personal property subject to sales and use taxes or taxable services, including digital goods, for sale by such marketplace sellers; (2) directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers, **and** (3) receives compensation or other consideration for such services.
- A **marketplace seller** is defined as any person who has an agreement with a marketplace facilitator regarding retail sales of such person, whether or not such person is required to obtain a permit under Conn. Gen. Stat. § 12-409.
- A **forum** is defined as a physical or electronic place, including, but not limited to, a store, a booth, an Internet web site, a catalog or a dedicated sales software application, where tangible personal property or taxable services are offered for sale.

A marketplace facilitator is considered the retailer of each sale such facilitator facilitates on its forum for a marketplace seller. Each marketplace facilitator must:

- Collect and remit sales tax on each such sale;
- Be responsible for all obligations imposed under chapter 219 of the general statutes as if the marketplace facilitator was the retailer of such sale; **and**
- Keep such records and information as may be required by DRS under Conn. Gen. Stat. § 12-426(3) to ensure proper collection and remittance of the tax.

Any marketplace seller who is a retailer with a valid seller’s permit is not required to collect the sales or use tax imposed for a particular sale and must not include the receipts from such sale on its sales tax return, if:

1. The marketplace seller can show that such sale was facilitated by a marketplace facilitator:
 - (A) with whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all taxable sales such facilitator facilitates for such seller; or

(B) from whom such seller requested and received in good faith a properly completed certificate of collection certifying that such facilitator is registered to collect sales tax and will collect sales tax on all taxable sales by such seller and facilitated by such facilitator; **and**

2. Any failure of such facilitator to collect the proper amount of tax for such sale was not the result of such seller providing incorrect information. DRS must administer the provisions of this subsection in a manner consistent with Conn. Gen. Stat. § 12-410 and as if its language had expressly referred to a certificate of collection.

Any purchaser of tangible personal property or taxable services who overpaid sales or use tax to a marketplace facilitator may submit a claim for refund under Conn. Gen. Stat. § 12-425, in such form and manner as DRS prescribes. No such purchaser will have a cause of action against a marketplace facilitator for the recovery of any such overpayment under any provision of the general statutes.

For a taxable sale occurring between December 1, 2018, and December 31, 2019, if a marketplace facilitator or marketplace seller incurs liability for failure to collect the tax due on a taxable sale, DRS must reduce such tax liability by 5%, reduce the interest, and waive any associated penalties, if the facilitator or seller can show to the satisfaction of DRS that:

1. The facilitator and the marketplace seller are not “affiliated persons,” as described in Conn. Gen. Stat. § 12-407(a)(15)(C), as amended by *Public Acts 2018, No. 18-152, § 3*;
2. The failure to collect sales tax due was not due to an error in sourcing the sale; **and**
3. The sale occurred on or before December 31, 2019.

Effective **December 1, 2018.**

Public Acts 2018, No. 18-152, §§ 4-5.

Notice to be Provided by Referrers: Requires “referrers” to provide notice to consumers about Connecticut use tax obligations.

A *referrer* is defined as any person who:

1. Contracts or otherwise agrees with a seller to list or advertise for sale one or more items of tangible personal property by any means, including an Internet web site and a catalog, provided such listing or advertisement

includes the seller's shipping terms or a statement of whether the seller collects sales tax (“shipping terms” does not mean a seller's mere mention of general shipping costs in the seller's own listing or advertisement);

2. Offers a comparison of similar products offered by multiple sellers;
3. Receives commissions, fees or other consideration in excess of \$125,000 during the prior twelve-month period from a seller or sellers for such listings or advertisements;
4. Refers, via telephone, Internet web site link or other means, a potential customer to a seller or an affiliated person of a seller, as described in Conn. Gen. Stat. § 12-407(a)(15)(C) as amended by *Public Acts 2018, No. 18-152, § 3*; **and**
5. Does not collect payments from the customer for the seller.

Each referrer must, to the extent not prohibited by the Constitution of the United States:

1. Post a conspicuous notice on or in such referrer's medium that informs consumers:
 - (A) that sales or use tax is due from Connecticut purchasers on certain purchases;
 - (B) that the seller might not collect and remit sales tax on a purchase;
 - (C) that Connecticut requires Connecticut purchasers to file a use tax return if sales tax is not imposed at the time of the sale by the seller;
 - (D) of the instructions for obtaining additional information from DRS regarding the remittance of sales and use taxes on purchases made by Connecticut purchasers; and
 - (E) that such notice is being provided pursuant to this act; **and**
2. Provide, commencing not later than July 1, 2019, a quarterly notice to each seller to whom such referrer transferred during the previous calendar year a potential purchaser located in this state that contains:
 - (A) a statement that Connecticut imposes a sales or use tax on sales made to Connecticut purchasers;
 - (B) a statement that a seller making sales to Connecticut purchasers must collect and remit sales and use taxes to DRS; and

(C) instructions for obtaining additional information regarding the Connecticut sales and use taxes from DRS.

Not later than January 31, 2020, and annually thereafter, each referrer must submit a report electronically, in a form and manner prescribed by DRS, to DRS that contains the name and address of each seller who received a notice from a referrer in the calendar year immediately preceding, and the name and address of each seller for which the referrer knows that such seller (i) listed or advertised such seller's tangible personal property on or in such referrer's medium, **and** (ii) collected and remitted Connecticut sales and use taxes.

Effective **December 1, 2018**.

Public Acts 2018, No. 18-152, § 6.

Limitation on Fulfillment Service Exclusion:

An out-of-state retailer that is not otherwise engaged in business in Connecticut is not required to collect and remit Connecticut sales tax solely because it purchases fulfillment services from an unaffiliated in-state company or owns property stored on that company's premises. A company provides "fulfillment services" when it receives orders from a retailer or its agent, fills them from the retailer's inventory stored on its premises, and ships them to the retailer's customers.

The legislation limits the out-of-state retailers that are exempt from collecting and remitting state sales tax under the fulfillment house exclusion in two ways: it excludes storing goods on the premises of marketplace facilitators from being eligible for this exclusion, and makes only orders shipped to destinations outside of Connecticut eligible for the exclusion.

Effective **December 1, 2018**.

Conn. Gen. Stat. § 12-407(a)(15)(a), as amended by Public Acts 2018, No. 18-152, § 3.

Change to the Definition of "Veteran" for the Farmer Exemption: A "veteran" who never owned or leased property for commercial agricultural production or who owned or leased property for such purpose for less than two years may apply for a tax exemption permit as a "start-up" farmer. A *veteran* is defined as a person (1) honorably discharged from, or released under honorable conditions from active service in, the armed forces, as defined in Conn. Gen. Stat. § 27-103, as amended by this act, **or** (2) with a

qualifying condition, as defined in said section, who has received a discharge other than bad conduct or dishonorable from active service in the armed forces.

Effective **October 1, 2018**.

Conn. Gen. Stat. § 12-412(63), as amended by Public Acts 2018, No. 18-47, §14.

Rental Surcharge

Surcharge Applies Only to Machinery:

Legislation enacted in 2017 repeals the 3% surcharge on rentals of passenger motor vehicles and rental trucks. Instead, rental companies have the option to charge individually itemized charges or fees on such rentals for a period of less than 31 days. Such charges or fees may include, but are not limited to, a vehicle cost recovery fee, airport access fee, or airport concession fee.

Only companies that rent pieces of machinery must file an annual consolidated report with DRS and remit the surcharge.

Effective **January 1, 2018**.

Conn. Gen. Stat. § 12-692, as amended by Public Acts 2017, No. 17-2, (June Spec. Sess.), § 653.

Surcharge Rate is Increased: The rental surcharge on machinery is increased from 1.5% to 2.75%.

Effective **July 1, 2018**.

Conn. Gen. Stat. § 12-692, as amended by Public Acts 2018, No. 18-136, § 1.

Effect on Other Documents: Special Notice 2018(5), Legislative Changes Affecting Motor Vehicle Fuels Tax, Sales and Use Taxes, and Rental Surcharge, is modified and superseded.

Effect of This Document: A Special Notice announces a new policy or practice in response to changes in state or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by DRS.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

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Motor vehicle fuels tax
Sales and use taxes
Rental surcharge
Issued: 07/17/2018

File Electronically: You can choose first-time filer information and filing assistance or log directly into the *TSC* to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the *TSC*. Log in and select the *Make Payment Only* option. Choose a payment date up to the due date of the tax and mail a paper return to complete the filing process.

DRS E-alerts Email Service: Get connected to the latest DRS news including new legislation, policies, press releases, and more. Visit the DRS website at www.ct.gov/DRS and select *Sign up for e-alerts* under *How Do I?* on the gold navigation bar.