



Do-It-Yourself Government:

Creating and Understanding Special Taxing Districts

By Adam J. Cohen

Are your clients unsatisfied with their local governments? They and their neighbors can make one of their own: Connecticut law allows condominiums, residential associations, neighborhoods, and other geographical collectives to create public entities called “special taxing districts.” These districts are full-fledged governmental bodies that can bring about significant financial and community benefits for their members. Creating them can be good for your clients, and understanding how they work can be important for your practice.

“Town Within a Town”

According to Chapter 105 of the Connecticut General Statutes, a taxing district is an independent special-purpose government that provides services to property owners in a designated, geographically contiguous area.¹ Just like towns, they are funded by levying taxes and issuing bonds, they elect officers and adopt ordinances,

and they must comply with the Freedom of Information Act and many other state and federal laws regulating municipalities. Special taxing districts are not to be confused with service districts, port and sewer authorities, and other entities created and controlled by towns themselves. To the contrary, one of these districts is more like a “town within a town,” created and run by the people who live there and need more than their town government has to offer. Special tax districts allow residents of a particular street or neighborhood who want better, different, or specialized municipal services—and who are willing to pay for such services with higher taxes—to obtain them. Indeed, the Connecticut Supreme Court suggested decades ago that establishing a tax district would be the sole recourse for taxpayers complaining about which part of town their municipal taxes were benefiting.²

Districts do not have general police powers. Instead, they must choose their purposes from a circumscribed statutory list of municipal services, which includes

firefighting, roadway and sewer work, security, refuse disposal, and the like.³ In *Wright v. Woodridge Lake Sewer Dist.*, 218 Conn. 144 (1991), the Connecticut Supreme Court held that districts can enact regulations that are reasonably related to those purposes, just like towns can. Still, they must be very careful about which of the statutory purposes they select: in one recent case, a district was enjoined from installing speedbumps on its roadways because its charter empowered it not to “construct” roads (as it could have), but merely to “maintain” them.⁴

The Connecticut Supreme Court’s most comprehensive analysis of the powers of taxing districts occurred in *Windham First Taxing Dist. v. Town of Windham*, 208 Conn. 543 (1988). The case involved what the court described as a “turf war” between a town and district, both of which provided and taxed for street lighting in a particular area. The district sued in an effort to stop the town from doing so, primarily because of the “dual taxation” that resulted. In reconciling the various legislative directives,

the court noted that tax districts had been considered “supplemental and secondary to the jurisdiction and services of the primary local government” since the first statute authorizing their creation in 1893. Their powers, reasoned the court, are enumerated rather than general in nature and ought not to be construed in a way that would “foster the balkanization of local municipal government.” The majority therefore concluded that “special tax districts are authorized to supply services where lacking, or to augment them when they are already provided by the municipality, but cannot displace or preempt the town’s primary authorized power to provide and tax for such services.”⁵

District Activities

Although they cannot forcibly supersede town functions or taxation, districts are authorized by statute to voluntarily coordinate their services with towns or other districts to avoid redundancy and to negotiate contracts to conduct their operations jointly with them.⁶ Some towns even give districts cash reimbursements for taking over certain municipal services. Districts can also choose to formally consolidate with other local governments.⁷ Otherwise, however, districts act autonomously and with little oversight by state or local authorities, other than annually providing the town clerk with contact information and a basic fiscal report. They are not bound by state or local codes regulating ethics, personnel policies, or contract bidding. Neither are towns liable for the independent activities of districts located within their boundaries.⁸

Districts base the taxes they levy on the property valuations made by the assessors of the towns in which they are located, but they set their own mill rates. By law, districts have all of the same powers to collect their taxes as towns do, and their liens share equal priority.⁹ This means, for example, that they would not be properly named as defendants in each other’s tax lien foreclosures, although they have the right to join as co-plaintiffs if the same resident owes taxes to both entities.¹⁰ Districts across Connecticut have annual budgets that vary from a few hundred dollars to several million dollars, and these must be

independently audited on an annual basis.¹¹ Most are managed by unpaid volunteers, although some have salaried officers, clerical staffs, or maintenance crews.

Today there are more than 300 special taxing districts throughout Connecticut; some towns have several while others have none. The majority are residential improvement associations such as those for condo-

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miniums, gated communities, and homes along private roads, where the districts provide enhanced services for snow removal, trash collection, outdoor lighting, private water supplies, and sewer systems. Several fire departments are also organized as taxing districts while still other special taxing districts include beach and lake associations that care for watercourses, recreational facilities, forests, and shorelines, especially during seasons of higher usage.¹²

Creating a District

Many taxing districts now in existence were originally created by special act of the Connecticut General Assembly, but creating a district in this manner has become very rare. Since the 1950s, most districts have been founded by the residents themselves under a relatively simple process monitored by the town in which the district will be located. The process is initiated when at least fifteen eligible voters sign a petition detailing the boundaries of the proposed district and the services it would provide and then submit it to the town’s governing body. Within thirty days, that body must call a meeting of the people who reside within the proposed district’s boundaries. The town must publish notices

of the meeting in two successive issues of a local newspaper, at least two weeks in advance. The decision can be made by referendum instead of a meeting if the governing body so chooses or if a fixed proportion of voters so demand.¹³

The town’s governing body has no official say in whether the district is created. Rather, its role is limited to organizing the meeting or referendum by which the people who would live in the proposed district make that decision. The meeting is run by a moderator chosen by those in attendance. If the district’s creation is approved by a two-thirds vote of the persons who would reside there, then its name, annual meeting date, and interim officers (who serve until the first annual meeting) are chosen by majority vote. Dissenting residents who are legitimately outvoted have no recourse, even if they claim not to receive any benefit from membership.¹⁴ The district is deemed created only after a charter and list of officers and directors are filed with the clerk of the forum town. From that point on, the district manages itself.¹⁵

The process for creating a district is a strict one; deviations are not permitted. For example, the Connecticut Supreme Court has prohibited a town from putting the creation of a district in one area up to a town-wide referendum.¹⁶ Nevertheless, in *Stroiney v. Crescent Lake Tax District*, 205 Conn. 290 (1987), the court held that once a district has been created and is operating in good faith, it constitutes a “*de facto* municipal corporation” that cannot be challenged by private parties; only the state has standing to do so, by means of a *quo warranto* proceeding.

Benefits for Residents and for Towns

Organizing as a special taxing district can offer residents a number of benefits. In addition to providing the enhanced services which prompted its formation, the district’s taxes levied to pay for certain of those services are widely considered to be deductible on the residents’ individual federal income tax returns.¹⁷ This deduction is generally understood as applicable only to taxes paid for the types of services that municipalities traditionally provide, such

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as trash collection and road repairs, and not for services that property owners usually perform themselves, such as private landscaping and pool maintenance.

Districts can also benefit the host towns by preventing a small group of residents from usurping taxes and resources from their neighbors who do not share their needs and by coordinating with towns or other districts to efficiently concentrate municipal services where they are most needed. As a smaller, more discrete, and more focused unit of government, a district's leadership can be more responsive to the concerns of its constituency.

Districts enjoy enhanced tools for avoiding budget shortfalls because their revenue is collected in the same way as municipal taxes—including powerful recovery mechanisms and superior lien priority. For example, although a condominium might only be able to collect unpaid dues through foreclosure or other litigation, the same condominium organized as a taxing district can usually collect those debts by property auction or bank garnishment without ever having to file a lawsuit.¹⁸ In addition, unlike an association organized as a private entity, a district's own vehicles, office equipment, and other personal property in its name are ordinarily not taxable by the town. Districts also generally enjoy municipal immunity for governmental acts.¹⁹

Potential Drawbacks

Creating another layer of government is not necessarily a good thing: it can detract from the cohesiveness and coordination of local services programs while producing administrative expenses that minimize its other financial advantages. Also, even well-

meaning district officers may be unfamiliar with laws regulating district activities, finances, and tax collections. If a district eventually chooses to terminate (under a statutory mechanism requiring petitioning, advertising, and voting procedures similar to those for creating a district), the forum town will automatically assume its leftover assets.²⁰ The town, for example, may have to repair the former district's facilities or bring its roads up to town standards. A few districts have been quite literally abandoned, and some others have continued despite the wishes of their residents.²¹

Converting into a taxing district might take some getting used to for some existing associations. Many condominiums and neighborhood organizations prefer to impose a flat annual fee that is equal for all members rather than a tax based on assessed property value. In addition, the district's officers will be susceptible to § 1983 liability and will therefore need the appropriate insurance. Importantly, districts with annual revenues exceeding \$250,000 are required to have minority political party representation on their managing boards, such that certain residents may be disqualified from office depending on the political affiliations of the sitting officers.²² This may make little sense for many types of communities, and may even require that, as occurred in *State ex rel. Santaniello v. O'Connor*, 30 Conn.Supp. 74 (1972), a Republican receiving fewer votes than a Democrat be nonetheless declared the winner of an election. Some district elections have become surprisingly political and partisan, involving caucuses and complex nomination rules.²³

Nevertheless, the benefits of creating a district often outweigh such potential drawbacks or the costs of maintaining it.

Several districts have seen significant increases in property values attributable to the enhanced services and efficiency the district form provides.

Understanding the powers and purposes of taxing districts is essential for Connecticut communities, taxpayers, and their counsel who might benefit from and consider forming or working with these specialized governmental entities. **CL**

Adam J. Cohen is a senior associate in the Litigation Department of Pullman & Comley. He represents and gives seminars to towns and taxing districts in matters ranging from revenue collection strategies to commercial disputes. He is also the author of Special District Update, a regular newsletter issued to districts throughout Connecticut.

Notes

1. See C.G.S. § 7-324; *Larkin v. Bontatibus*, 145 Conn. 570 (1958) (non-contiguous district was void).
2. *Moore v. Town of Stamford*, 134 Conn. 65 (1947).
3. See C.G.S. § 7-326.
4. *Graiff v. Bogus Hill Tax District*, 37 Conn.L.Rptr. 532 (July 21, 2004).
5. *Windham First Taxing Dist. v. Town of Windham*, 208 Conn. 543, 555-56 (1988).
6. See C.G.S. § 7-148cc and § 7-339a, *et seq.*
7. See C.G.S. § 7-195, *et seq.*
8. See, e.g., *Pickering v. City of West Haven*, Superior Court of Connecticut, No. 332638, 1994 WL 570240 (Sept. 30, 1994) (awarding summary judgment in favor of city not involved in district's alleged wrongdoing).
9. See C.G.S. § 7-328(a), § 12-172, and § 12-195b(b).
10. See C.G.S. § 12-181; *Cordani v. Stramaglia*, 14 Conn.L.Rptr. 164 (Mar. 15, 1995).
11. See C.G.S. § 7-392(a).
12. See C.G.S. § 7-326.

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a state employee, C.G.S. § 52-556. Therefore, an inmate who receives permanent injuries in an accident while a passenger in a Department of Correction vehicle may bring a direct civil action against the state under the general waiver of § 52-556, even though the claim could also be pursued through a complaint filed with the claims commissioner pursuant to the more restricted waiver of § 4-165b.

As applied to chiefs and deputy chiefs of the fire and police departments, the provision of the Meriden pension plan for firefighters and police officers (established by a 1949 special act) that fixes the pension benefit as “one-half of the prevailing rate or pay for the rank [a retiree] has attained and holds at the time of retirement,” plus one half of cost-of-living adjustments granted to active members, requires that the benefit received by retired chiefs and deputies (or their widows) be increased to reflect any increase in salary paid to a retiree’s successor over the salary formerly paid to the retiring official. The city’s practice had always been to increase benefits for retired chiefs and deputies upon an increase awarded to current, in-office chiefs or deputies,

so the impact of this holding is only to pass on incremental jumps in salary occurring when a new official is hired to replace a retiring official at a salary greater than that of the retiring official. *Kosienski v. Meriden*, 38 CLR 764 (Tanzer, J.).

Longley v. State Employees Retirement Commission, 38 CLR 474 (Beach, J.), holds that pay for unused vacation time received during the last year of employment by a retiring state employee is included in the employee’s wages for the purpose of determining the employee’s three highest-earning years of state service. However, the employee’s base salary for that year, for purposes of calculating the amount of pension payment, must be based on an average determined by dividing the total wages, including the vacation pay, by the period of actual employment plus a period attributable to the time during which the vacation was earned. The employee unsuccessfully argued that the total wages and vacation payment should be used without adjustment for the fact that the vacation payment is not directly related to the services performed during the year in which the payment was received. **CL**

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13. See C.G.S. § 7-325(a).
14. *Bagnall v. Millstone Ridge Tax District*, Superior Court of Connecticut, No. 048595, 1992 WL 201975, *1 (Aug. 5, 1992) (advising them to “seek a change in the law”).
15. See C.G.S. § 7-325(a), -(c).
16. *Walton v. Burdick*, 184 Conn. 200 (1981).
17. See 26 U.S.C. § 164(a), -(c).
18. See C.G.S. § 7-328(a), § 12-157, and § 12-162.
19. See C.G.S. § 52-557n; *Dezso v. First Taxing District*, 21 Conn.L.Rptr. 482 (Mar. 10, 1998) (awarding summary judgment for district under immunity principles).
20. See C.G.S. § 7-329.
21. See, e.g., *Allingtown Taxpayer Alliance v. Haley*, Superior Court of Connecticut, No. 0174640, 2001 WL 1617434 (Nov. 28, 2001) (district’s leadership resisting residents’ termination petition).
22. See C.G.S. § 9-167a; *State ex rel. Maisano v. Mitchell*, 155 Conn. 256 (1967) (Democrat found to be elected to office illegally where too many other officers were already Democrats).
23. See, e.g., *Flewellyn v. Hempstead*, 47 Conn.App. 348 (1997) (dispute over party caucus).

GEORGE M. PRESCOTT JR., ESQ.

**Master of Laws in Bankruptcy and
Adjunct Professor of *Bankruptcy Jurisdiction*,
St. John’s University School of Law, New York**

**Former Law Clerk to the
Honorable Dickinson R. Debevoise,
United States Senior District Judge**

**Appellate experience in the
Supreme Court of the United States,
the United States Court of Appeals for the First Circuit,
and the United States District Court
for the Southern District of New York**

**BANKRUPTCY APPEALS
FEDERAL CIVIL APPEALS**

**Mr. Prescott welcomes lawyer-to-lawyer referrals
and new clients seeking representation
in bankruptcy and other federal civil appeals.**

**300 Front Street/P.O. Box A
Lincoln, RI 02865**

**(401)726-8200
gmpjrlaw@msn.com**