# **CASE NOTES: United Technologies Corporation v. Groppo: Federal Sales and Use Tax Immunity and Connecticut Government Contractors; Statutory Right or Constitutional Privilege?**

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**[\*291]**

I. Introduction

United Technologies Corp. v. Groppo [[1]](#footnote-2)1 involves the application of the Connecticut sales and use tax [[2]](#footnote-3)2 to businesses performing U.S. Government contracts. The fundamental principle that the U.S. Government is exempt from taxation by the individual states reaches back to the landmark decision in McCulloch v. Maryland. [[3]](#footnote-4)3 Since that time, many decisions have attempted to clarify exactly when a state tax improperly rests on the U.S. Government and its agencies.

In Connecticut, this question is of vital importance to defense and other U.S. Government contractors because of the substantial cost associated with the sales and use tax, which has been as high as eight per cent, although presently it is six per cent. [[4]](#footnote-5)4 The Connecticut Supreme Court addressed this issue in 1958, in Avco Mfg. Corp. v. Connelly [[5]](#footnote-6)5 and its companion case, United Aircraft Corp. v. Connelly. [[6]](#footnote-7)6 The issue was well settled by these cases that U.S. Government contractors' purchases were exempt from Connecticut sales and use tax based on federal immunity from taxation. [[7]](#footnote-8)7

In 1982, the U.S. Supreme Court decided United States v. New Mexico, [[8]](#footnote-9)8 and held that a U.S. Government contractor was not exempt **[\*292]** from the New Mexico sales and use tax because it was not so closely related to the U.S. Government as to be considered an agent of the U.S. Government. [[9]](#footnote-10)9 Thus the constitutional exclusion against taxing the U.S. Government did not apply. The Court held that if the entity being taxed was not the U.S. Government or one of its agencies, it did not matter that the financial burden of the tax fell on the U.S. Government. [[10]](#footnote-11)10

Upon learning of this decision in 1982, the Connecticut Department of Revenue Services (hereinafter referred to as DRS) issued a letter to Connecticut businesses that, based on New Mexico, it would start collecting sales and use tax on services and materials purchased for U.S. Government contracts that it had previously considered exempt. [[11]](#footnote-12)11 As a result, the cost of doing business as a U.S. Government contractor in Connecticut increased due to the additional sales tax, reducing Connecticut businesses' competitiveness. [[12]](#footnote-13)12 Connecticut U.S. Government contractors, such as UTC, disagreed with the DRS. After audit by the DRS, they were assessed substantial sales and use taxes. [[13]](#footnote-14)13

The instant case is the first Connecticut case to address the impact of New Mexico and the 1982 DRS opinion on for-profit U.S. Government contractors. [[14]](#footnote-15)14 The issues in this case combine both constitutional **[\*293]** questions and interpretations of the Connecticut sales and use tax law.

The superior court held that the DRS was correct in its new policy of taxing purchases by Connecticut government contractors, because the constitutional questions had been settled by New Mexico. [[15]](#footnote-16)15 The superior court also distinguished the earlier Avco decision as based on an agency relationship not applicable to UTC. [[16]](#footnote-17)16 UTC argued that United States v. New Mexico did not make Avco obsolete because New Mexico did not change the incidence (i.e., the liability for payment) of the Connecticut sales and use tax; [[17]](#footnote-18)17 and in the alternative, that the Connecticut sales and use tax did not apply because, even if UTC was subject to the tax, its purchases for its contracts were exempt from the tax as "sales for resale" rather than sales "at retail." [[18]](#footnote-19)18 In United Technologies Corp. v. Groppo, the Connecticut Supreme Court reversed the superior court decision, allowing sales tax-exempt status for goods and materials purchased by Connecticut Federal Government contractors, and most significantly, upheld the decision it had previously made in Avco Mfg. Corp. v. Connelly. [[19]](#footnote-20)19 However, the court also denied a sales tax exemption for purchases of certain services not within the ambit of Avco. [[20]](#footnote-21)20

The following sections of this Casenote discuss: (1) the constitutional background of state taxes levied on the federal government; (2) the decision rendered by the Supreme Court in New Mexico and its reception by commentators and several state courts; (3) prior Connecticut case law; (4) the superior court decision; (5) the appellate briefs of the parties; (6) the Connecticut Supreme Court's ultimate resolution of the issue; and (7) the potential impact of the decision in United Technologies Corp. v. Groppo on Connecticut government contractors.

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II. Constitutional Background

The issue of state taxation of the federal government and its instrumentalities first arose in McCulloch v. Maryland, in which Chief Justice Marshall uttered the oft-quoted phrase, "[a]n unlimited power to tax involves, necessarily, a power to destroy." [[21]](#footnote-22)21 This decision is most noted (and taught) as an influential clarification of federal powers over the states. [[22]](#footnote-23)22 The constitutional issue it resolved concerned the ability of the State of Maryland to tax an instrumentality of the United States, the Bank of the United States (the Bank). [[23]](#footnote-24)23 Although not expressly stated in the Constitution, Chief Justice Marshall argued that, first, the Constitution implicitly provided Congress the power to create a corporation (the Bank) in order to exercise the powers granted by the Constitution, so the legislation enabling the Bank was a law of the United States that, under the Supremacy Clause, precluded a state tax on the Bank. [[24]](#footnote-25)24 His second argument was that Article I, Section 8 of the Constitution gave Congress the power to make all "necessary and proper" laws for executing its enumerated powers. Thus, creation of the Bank by Congress was a constitutional means, and was therefore part of the supreme law of the land, again under the Supremacy Clause. [[25]](#footnote-26)25 This holding was well justified in 1819 as a protection of the still emerging national government from state encroachment. [[26]](#footnote-27)26

In Weston v. City Council of Charleston, Chief Justice Marshall clarified the limitations on the states' powers to tax the federal government by invalidating a state tax that placed an economic burden on the federal government. [[27]](#footnote-28)27 This economic burden test endured for over 100 years, eliminating state taxation on most federal government contractors. [[28]](#footnote-29)28 In 1937, the Supreme Court, in the wake of the demise of Presi **[\*295]** dent Roosevelt's court-packing plan, issued several decisions that expanded the federal government's powers in areas traditionally reserved to the states. [[29]](#footnote-30)29 But in James v. Dravo Contracting Co., [[30]](#footnote-31)30 the Court expanded the states' powers by rejecting an independent federal contractor's traditional "economic burden" argument and instead holding that the contractor was not subject to federal immunity from state taxation. [[31]](#footnote-32)31 One commentator has suggested that in Dravo, the Supreme Court was countering its recent widening of federal powers, by "opening the door" to state taxation of federal contractors because it had allowed the federal government to intrude in areas that were historically the states'. [[32]](#footnote-33)32

In Alabama v. King & Boozer, [[33]](#footnote-34)33 the Supreme Court abandoned the economic burden test and developed in its place a "legal incidence" test that denied state tax exemption to a federal government contractor working under a cost-plus contract. [[34]](#footnote-35)34 The Court held that the legal incidence of the tax fell on the contractor, not the United States, and that the tax was non-discriminatory against the United States. [[35]](#footnote-36)35 Subsequent decisions by the Supreme Court refined this doctrine, permitting state sales taxes on federal contractors' purchases unless the contractors were determined to be "agents" of the federal government; however, the Court's decisions after Dravo did not set an "unwavering line." [[36]](#footnote-37)36 Since King & Boozer and until United States v. New Mexico, the Supreme Court gradually developed more stringent standards for tax immunity. [[37]](#footnote-38)37 Nevertheless, some decisions held that federal contractors similar to King & Boozer were immune from state taxation. [[38]](#footnote-39)38

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III. United States v. New Mexico

This case was the basis for the DRS' revised policy on imposing sales tax on purchases made by U.S. Government contractors. [[39]](#footnote-40)39 It involved three U.S. Government contractors that managed Sandia Laboratories, a government facility in Albuquerque, New Mexico. [[40]](#footnote-41)40 The operation of a government-owned facility by private contractors thus parallels the circumstances in Avco Mfg. Corp. v. Connelly.

A. Background

The three contractors were working for the Atomic Energy Commission (which has since had its responsibilities transferred to the Department of Energy (hereinafter DOE)). [[41]](#footnote-42)41 The three contractors were Sandia Corporation, a subsidiary of Western Electric Corporation; the Zia Company, a subsidiary of Santa Fe Industries, Inc.; and Los Alamos Constructors, Inc. (hereinafter LACI), a subsidiary of Zia. [[42]](#footnote-43)42 All three contracts provided that: (1) title to all personal property purchased under the contracts passed directly from the vendor to the Government, (2) the Government bore the risk of loss for such property, and (3) the Government had control over both the disposition of such property and the contractors' property management procedures. [[43]](#footnote-44)43 The contractors placed orders with vendors in their own names, identifying themselves as the buyers. [[44]](#footnote-45)44 The Government did not claim that the contractors were "federal instrumentalities," and acknowledged that the contractors were not "servants" for many independent functions such as hiring, employee supervision and establishing details of ongoing operations. [[45]](#footnote-46)45

All three contractors were paid by the Government under an "advanced funding" procedure through which the Government made funds available to the contractors through a letter of credit establishing **[\*297]** an account at a Federal Reserve Bank. [[46]](#footnote-47)46 While the United States owned the account balance, the contractors paid their expenses by drafts against the account so that only federal funds were expended for contractor purchases. [[47]](#footnote-48)47 Two years after commencement of the suit against New Mexico, on July 1, 1977, the agreements with the contractors were modified to designate each as an agent of the Government for purposes including disbursement of Government funds and "purchase, lease or other acquisition of property." [[48]](#footnote-49)48 Although the designation as agents authorized the contractors to "pledge the credit of the United States [for] all obligations properly incurred [as] Government obligations "from their inception,'" the United States denied intent to "formally and directly… designate the contractors as agents." [[49]](#footnote-50)49

B. The New Mexico Tax

The tax at issue was a gross receipts tax, which effectively operated as a sales tax for purchases made in-state and a compensating use tax for purchases made out-of-state of goods that were used in-state and that would have been taxed under the gross receipts tax if purchased in-state. [[50]](#footnote-51)50 Neither tax was imposed on the United States, its agents, instrumentalities or property. [[51]](#footnote-52)51 From 1967 on, Zia and LACI paid the gross receipts tax on their fixed fees (Sandia earned no fees), but the Government felt that their other expenditures were constitutionally immune from the tax. [[52]](#footnote-53)52

C. The Lower Court Decisions

The United States brought suit in July of 1975 to obtain a declaratory judgment that the advanced funds, vendor purchases and the use of government-owned property were not taxable under the gross receipts or compensating use taxes. [[53]](#footnote-54)53 The U.S. District Court for the District of **[\*298]** New Mexico ruled that the contractors were agents of the Government, so their purchases and use of government property were not taxable. It also held that the advanced funds were not compensation to the contractors and so were also not taxable under the two related taxes. [[54]](#footnote-55)54 On appeal, the decision was reversed by the United States Court of Appeals for the Tenth Circuit. [[55]](#footnote-56)55 The court found the agency argument unpersuasive (including the contract modifications), because along with the close government control of the contractor's operations, [[56]](#footnote-57)56 the contracts failed to "so incorporat[e] [the contractors] into the government structure as to [make them] instrumentalities of the United States." [[57]](#footnote-58)57

D. The Supreme Court Decision

The Supreme Court began its discussion with a review of prior cases, commencing with McCulloch v. Maryland and Weston v. City Council of Charleston, which laid down the economic burden test that had stood for a century. [[58]](#footnote-59)58 Continuing to James v. Dravo Contracting Co., the Court then discussed its somewhat contradictory subsequent decisions. [[59]](#footnote-60)59 To resolve these contradictions, the Court held that what was required was a return to the basic constitutional principle of the Supremacy Clause: "a State may not… lay a tax directly upon the United States." [[60]](#footnote-61)60 The Court then discussed the limits of the immunity doctrine, **[\*299]** that immunity may not rest on the effect of the tax on the United States, the economic burden on the United States, the provision of services to the Government, the use of federal property in private hands, or payment of the tax with government funds. [[61]](#footnote-62)61

Based on these limitations, the Court concluded that tax immunity was appropriate only "when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." [[62]](#footnote-63)62 The Court explained that this view was a narrow approach which gave "full range to each sovereign's taxing authority." [[63]](#footnote-64)63 Rejecting the argument that agency confers immunity, the Court held that a private taxpayer must actually "stand in the Government's shoes" to be immune from state taxation. [[64]](#footnote-65)64 Reaching back to the first of these "modern" tax assessment decisions, the Court referred to Chief Justice Hughes, who stated in Dravo that "a state tax is impermissible when the taxed entity is "so intimately connected with the exercise of a power or the performance of a duty' by the Government that taxation of it would be a "direct interference with the functions of government itself.'" [[65]](#footnote-66)65 Returning to its then most recent prior decision on this issue, the Court discussed its decision in United States v. Boyd, in which the Court rejected the contractor-exempt-as-agent argument, based on the contractors not being assimilated by the Government as a constituent part, in other words, the contractors not being "instrumentalities of the United States… enjoy[ing] governmental immunity." [[66]](#footnote-67)66

By this logic, the Court hoped to reduce the "manipulation and wooden formalism that occasionally have marked tax litigation - and that have no proper place in determining the allocation of power between co-existing sovereignties." [[67]](#footnote-68)67 The Court then took the Government to task for arguing that technicalities such as advance funding [[68]](#footnote-69)68 might confer state tax immunity, noting that such an approach would allow the **[\*300]** Government to confer constitutional immunity "by changing a few words in a contract." [[69]](#footnote-70)69 The Court suggested, in conclusion, that it was Congress' place to confer state tax immunity for particular contract types or programs, and that absent such Congressional action, the states' power to tax is deniable only with "the clearest constitutional mandate." [[70]](#footnote-71)70

Turning to the three contractors involved in the case, the Court framed the issue as follows: if the contractors were entities independent from the United States, then taxing them could not be considered a tax on the United States. [[71]](#footnote-72)71 The Court compared the tax issues and found them to be on all fours with Boyd, that "[t]he tax, the taxed activity and the contractual relationships do not differ from those involved in Boyd." [[72]](#footnote-73)72 The Court concluded that government contractors were discrete from the federal government, so that allowing states to impose use taxes was not offensive to the Supremacy Clause. [[73]](#footnote-74)73

With regard to the New Mexico gross receipts tax, the Court, following Dravo, upheld its application to funds received by the contractors for salaries and internal costs. [[74]](#footnote-75)74 In contrast to its straightforward disposal of the gross receipts tax as applied to salaries and internal costs, the Court found resolution of the tax on vendor sales to the contractors more complex. [[75]](#footnote-76)75

The Court commenced its discussion of sales tax immunity by examining ***Kern***-Limerick, Inc. v. Scurlock, which supported government contractor immunity from state sales taxes based on the logic that an independent entity could be a federal agent for procurement without incorporation within the Government. [[76]](#footnote-77)76 ***Kern***-Limerick set forth the following criteria for contractor immunity: (1) the contractor must identify itself as a federal procurement agent; (2) title to purchases must pass directly to the Government; (3) purchase orders must state they were purchases by the Government; (4) the United States was liable for the sale; **[\*301]** (5) the contractor was not liable for the purchase price; and (6) specific government approval was required for each purchase by the contractor. Nonetheless, the Court noted that ***Kern***-Limerick established only the position that "the State may not impose a tax the legal incidence of which falls on the Federal Government." [[77]](#footnote-78)77 The Court concluded that the contractors had an independent role in making purchases, and that the contractors' interests were different from the Government's interests. [[78]](#footnote-79)78 The last factor advanced by the plaintiffs, that the title passed directly to the federal government for goods purchased by the contractors, was held insufficient by the Court so long as the purchaser was sufficiently distinct from the United States Government. [[79]](#footnote-80)79

E. Aftermath of the Decision

In the wake of the Supreme Court's decision, comment appeared sparse. As discussed in detail below, three substantial casenotes were published which focused on United States v. New Mexico. [[80]](#footnote-81)80 Two of them were critical of the Court's decision, because of the incongruity between the Court's disavowing "manipulation and wooden formalism" [[81]](#footnote-82)81 and attempts to confer constitutional immunity "by changing a few words in the contract," [[82]](#footnote-83)82 for the use tax, while at the same time the Court endorsed a contract language-oriented, technical approach for sales tax based on ***Kern***-Limerick. [[83]](#footnote-84)83

The first of these went on to criticize the Court for failing adequately to define "separate taxable interest," whereby a contractor could be exempt from state taxation if it was using government-provided property only for Government purposes, as was the case in the ad valorem tax unsuccessfully applied to Rockwell in United States v. Colo **[\*302]** rado. [[84]](#footnote-85)84 More generally, the author opined that the Supreme Court had not resolved the question of when a federal contractor is immune from state taxation, because the decision lacked "definitive guidelines… continu[ing] a case-by-case analysis as did the Courts before it… by exception, not by rule." [[85]](#footnote-86)85

The second casenote stated that the Court, by failing to overrule ***Kern***-Limerick, failed to "eliminate a legal loophole that raises form above substance," but approved of the Court's protection of state taxes by limiting immunity to situations going beyond traditional agency and by reaffirming its lack of concern for the economic burden on the federal government. [[86]](#footnote-87)86 The last casenote was more approving of the Court's decision, but set forth a specious argument that if state sales and use taxes against government contractors were held to be unconstitutional, then a natural extension of that logic would be to render all of the contractor's internal costs (such as utilities, interest and rent) unconstitutional as well. [[87]](#footnote-88)87 This argument fails because such costs are not levied by the states in most cases, and have nothing to do with the supremacy issues raised in New Mexico. Several short articles which summarized New Mexico and its background were published following the decision as well. [[88]](#footnote-89)88

In an article about the Resolution Trust Corporation (a federal entity) and its immunity from local taxation, the decision in New Mexico was criticized as not having gone far enough towards ending the confusion concerning what is a federal instrumentality for tax purposes, and advocated that the Court reject the intergovernmental tax immunity doctrine altogether, claiming that "[i]t is the discriminatory taxation of one sovereign by another that so disrupts our federalist system that the Court must intercede." [[89]](#footnote-90)89

**[\*303]** In addition to academic commentary, two state decisions also provide noteworthy interpretations of the decision in New Mexico. Scotsman Manufacturing Co. v. Nevada involved a subcontractor under a prime contract to the United States Department of Energy which was constructing modular homes for use at a DOE test site. [[90]](#footnote-91)90 The Nevada Tax Commission, based on the decision in New Mexico, imposed a sales tax on the subcontractor's purchases under the subcontract. [[91]](#footnote-92)91 The Nevada Supreme Court, in a carefully reasoned analysis of New Mexico, noted that the Supreme Court had crafted a two-part test: the "constituent part" test (whether or not the contractor was so closely related to the United States as to be considered a constituent part), which was applicable to use taxes; and the "legal incidence" test (whether or not the legal incidence of the tax fell on the United States, per ***Kern***-Limerick), which was applicable to sales taxes. [[92]](#footnote-93)92 The Nevada court concluded that, because a sales tax was at issue, and because the legal incidence of the tax fell upon the United States through its prime contractor, the tax was in error, even though the contractor was not a constituent part of the United States. [[93]](#footnote-94)93

NLO, Inc. v. Limbach involved an Ohio contractor that operated a uranium manufacturing plant for DOE under a facilities contract (similar to the facilities contracts with Sandia, LACI and Zia). [[94]](#footnote-95)94 As was the case in Connecticut, the Ohio Tax Commissioner had eliminated a sales tax exemption for government contractors subsequent to the Supreme Court's decision in New Mexico. [[95]](#footnote-96)95 Ohio exempted sales for resale from its retail sales tax. [[96]](#footnote-97)96 NLO's tax liability was sustained based on its status as a facilities contractor (as in New Mexico), because it consumed the purchased goods. [[97]](#footnote-98)97 The Ohio court noted that a government contractor providing goods to the United States would be exempt from the sales tax as a seller for resale under existing Ohio case law. [[98]](#footnote-99)98

From UTC's and other Connecticut government contractors' point of view, the most significant response to the Supreme Court's decision **[\*304]** in New Mexico was, of course, the DRS decision to change its policy on the application of Connecticut's sales tax to purchases of goods and services by Connecticut government contractors. [[99]](#footnote-100)99 The DRS notice stated that:

The decision in the New Mexico case held that companies contracting with the Federal Government are obligated to pay the tax on personal property purchased by them in the performance of the contract irrespective of the title to the property vesting in the government. The contractor cannot be considered an agent or instrumentality of the Federal Government.

It is the opinion of the Department that the decision rendered by the Connecticut Supreme Court in the case of United Aircraft v. Sullivan is no longer operative. [[100]](#footnote-101)100

The DRS letter made no reference to the details of New Mexico or to its general holdings that exemptions may be found for contractors that are held to be constituent parts of the federal government or in those cases where the legal incidence of the tax falls on the Government.

IV. Prior Connecticut Case Law: Avco and United Aircraft

Examining the prior Connecticut Supreme Court decisions in Avco Manufacturing Corp. v. Connelly and United Aircraft Corp. v. Connelly will provide a better foundation for understanding the issues in UTC v. Groppo. Although not addressed in either decision, the historical significance of Connecticut as a major source of military goods cannot be overlooked. The first major Connecticut government contracts resulted from Eli Whitney developing mass interchangeability of rifle parts at the close of the eighteenth century. Yankee ingenuity helped Connecticut prosper in the nineteenth century as Remington and Colt became major Connecticut firearms manufacturers. In the early twentieth century, Connecticut manufacturers such as Sikorsky Aircraft, Chance-Vought, Hamilton-Standard and Pratt & Whitney (all United Aircraft divisions) helped the growing aeronautical industry, while the Electric Boat Division of General Dynamics became the premier United States submarine manufacturer. Connecticut industries and federal government contracts are closely linked; thus a financial impact on Connecticut's government contractors can have a substantial effect on the entire state.

**[\*305]**

A. Avco Manufacturing Corp. v. Connelly

The decision in Avco had its roots in the early Cold War, when Avco moved into the United States-owned factory (formerly occupied by Chance-Vought) in Stratford in 1951. [[101]](#footnote-102)101 The Government awarded Avco non-profit "facilities contracts" for the use of the factory and for purchase of new manufacturing machinery and equipment. [[102]](#footnote-103)102 The Armed Services Procurement Act of 1947, and its implementing regulations authorizing facilities contracts, defined ""property provided by the Government' as including both facilities actually furnished by the Government and those acquired by a contractor under a contract." [[103]](#footnote-104)103 They also provided that title to contractor-acquired facilities should vest in the Government as early as practicable; thus the Avco contracts provided that title to equipment "[would vest] in the Government immediately upon delivery of such property by the vendor." [[104]](#footnote-105)104 Equipment was purchased by Avco under strict government control, with notice to the vendors that the equipment was to be government owned. [[105]](#footnote-106)105 Avco did not treat such equipment as its own property and used it only for the manufacture of engines and parts for the Government. [[106]](#footnote-107)106

In 1953, the defendant (then Connecticut's tax commissioner), levied a sales tax deficiency against Avco (as did the Commissioner of Revenue Services in UTC v. Groppo) for purchases of machinery under the facilities contracts; Avco appealed to the superior court, which affirmed the tax deficiency. [[107]](#footnote-108)107 Avco's appeal to the Connecticut Supreme Court was directed at the superior court's holding that Avco was liable for sales tax because title to the equipment in question did not vest in the Government until after the equipment had been finally accepted by the Government. [[108]](#footnote-109)108

The Connecticut Supreme Court first discussed the pertinent portions of the sales and use tax act, which exempted sales to the United States or its agencies, and defined sales to include title transfers. [[109]](#footnote-110)109 The court concluded that "the party to whom title is transferred is the party **[\*306]** to whom the sale is made, regardless of the fact that another party participates in the transaction"; thus title to the facilities had passed directly to the United States. [[110]](#footnote-111)110

The court bolstered its argument, citing ***Kern***-Limerick, Inc. v. Scurlock [[111]](#footnote-112)111 and Alabama v. King & Boozer [[112]](#footnote-113)112 in support of the conclusion that:

[A] sales tax imposed upon a vendor who, in turn, is required to collect the tax from the purchaser is a tax upon the purchaser and that the imposition of such a sales tax in a transaction where the purchase is actually made for the government is unconstitutional. [[113]](#footnote-114)113

The court distinguished ***Kern***-Limerick, in which the government contract designated the contractor as an agent, from the Avco contracts, which had no express designation of agency, but noted that Avco "was duly authorized by the [G]overnment to act on its behalf...." [[114]](#footnote-115)114 The court distinguished King & Boozer because title did not pass to the Government until delivery, inspection and acceptance by the Government and because the Alabama statute imposed the sales tax on the ordering party, unlike Connecticut's statute, which emphasized title transfer. [[115]](#footnote-116)115

The defendant tax commissioner had claimed that the Connecticut use tax would apply regardless of ownership, rendering Avco liable even if the United States was found to hold title to the facilities in question. [[116]](#footnote-117)116 The court responded that this was a "strained and unintended construction," because "use" as defined by statute was incident to ownership. [[117]](#footnote-118)117 The court explained that this distinction made the then-recently decided (March 3, 1958) United States Supreme Court decisions in United States v. City of Detroit, [[118]](#footnote-119)118 United States v. Muskegon Township, [[119]](#footnote-120)119 and City of **[\*307]** Detroit v. Murray Corp., [[120]](#footnote-121)120 inapplicable to the Connecticut statute.

The court concluded by citing with approval a Kansas Supreme Court decision, General Motors Corp. v. State Commission of Revenue & Taxation, that had been decided shortly before its decision based on the "quite similar" Kansas sales and use tax, which held that use of government property under a government facilities contract was not "incident[al] to ownership of that property." [[121]](#footnote-122)121 The court closed with a discussion of the role of government contractors under facilities contracts, where the Government, having title to the facilities at the outset, made imposition of the sales or use tax "contrary to the specific exemptions of the statute as well as repugnant to the provisions of the constitution of the United States." [[122]](#footnote-123)122

B. United Aircraft Corp. v. Connelly

This case was decided the same day as Avco, March 25, 1958, and complemented the Avco decision by considering contracts for experimental work and manufacturing as well as facilities contracts, [[123]](#footnote-124)123 which were the sole subject of Avco. [[124]](#footnote-125)124 At issue were three facilities contracts with the United States Government, under which United Aircraft, through its various divisions, had purchased material such as machine tools and office equipment; fabrication materials were purchased under government contracts for experimental work, and miscellaneous materials were purchased by the plaintiff for use in government contracts for manufacturing of supplies or equipment. [[125]](#footnote-126)125

The court treated each category of personal property separately for clarity. [[126]](#footnote-127)126 One of the three facilities contracts was similar to the contracts in Avco in requiring that title vest in the Government upon deliv **[\*308]** ery to the contractor. [[127]](#footnote-128)127 The other two contracts required that title vest in the Government upon delivery to the contractor at the contractor's plant. [[128]](#footnote-129)128

This distinction applied to those purchases (under the two contracts) which specified a shipment point other than F.O.B. destination. [[129]](#footnote-130)129 For such purchases, the trial court held, and the Connecticut Supreme Court affirmed, that the assessment of taxes would be sustained because the contractor held title to the goods during the period between shipment from the vendor and arrival at the contractor's plant. [[130]](#footnote-131)130 This brief transportation period was held to constitute sufficient ownership and control to be considered a taxable use that justified imposition of the tax. [[131]](#footnote-132)131 The court found the trial court's findings to be "entirely in accord with [the] decision in the Avco case." [[132]](#footnote-133)132

Under the experimental contracts, the contractor manufactured, delivered and sold a variety of personal property to the Government. [[133]](#footnote-134)133 Sales taxes had been assessed for materials purchased by the contractor to manufacture items under the contracts. [[134]](#footnote-135)134 The purchased items included raw materials, finished components and tooling (used and consumed in the manufacturing process). [[135]](#footnote-136)135 The trial court held that, under the Connecticut Sales and Use Tax Act, the contractor's use of these materials was not subject to the tax, and the Connecticut Supreme Court affirmed. [[136]](#footnote-137)136 The court distinguished this type of contract from one in which skilled engineering services were to be provided and material **[\*309]** purchases were "incidental," so that the contractor's material purchases were not exempt "for resale," but taxable "sales at retail." [[137]](#footnote-138)137 The court concluded that United Aircraft's "purchases of personal property for use in carrying out the experimental contracts were properly exempted from taxation." [[138]](#footnote-139)138

As for the last type of contract (for ordinary manufacture), although the defendant claimed that the materials in question were not "directly used," the Connecticut Supreme Court affirmed the trial court's finding that the materials in question were used "directly" in manufacture and so were exempt from taxation. [[139]](#footnote-140)139 The court pointed out that the statute exempted materials used "in the process of manufacture," so it was not solely limited to "materials consumed in actual fabrication." [[140]](#footnote-141)140 The court's broad definition of manufacturing process was based on the apparent legislative intent to "include any use made of property as a necessary preliminary to the delivery of the finished product." [[141]](#footnote-142)141 The court concluded that the trial court was correct to set aside almost all of the assessments [[142]](#footnote-143)142 (except for those relating to the property purchased under the facilities contracts which were not shipped F.O.B. destination). [[143]](#footnote-144)143

C. Avco and United Aircraft Compared

The holding in Avco rests on both statutory interpretation and constitutional grounds: Under the Connecticut Sales and Use Tax Acts, purchases made under a United States Government facilities contract (which specifies that title immediately vests in the Government) are exempt from the sales tax. [[144]](#footnote-145)144 The court's decision established a two-part test. First, the statutory definition of "purchaser" must be examined to determine on which party the tax rests, [[145]](#footnote-146)145 and second, the tax must be examined to determine if it falls under the statutory exemption against **[\*310]** taxing the United States. [[146]](#footnote-147)146 The Avco decision stood squarely on the Connecticut statutes which placed the incidence of the tax on the party to whom title is transferred, and explained the State's exemption for the immunity of the federal government from taxation on constitutional grounds. [[147]](#footnote-148)147 The Connecticut Supreme Court relied on the United States Supreme Court's holding in ***Kern***-Limerick to support its decision that, if the United States is the purchaser (as defined by the contract's terms and the statutory definition of "incidence"), then the tax would be unconstitutional. [[148]](#footnote-149)148 It is noteworthy that the decision of the U.S. Supreme Court in New Mexico did not overrule ***Kern***-Limerick. [[149]](#footnote-150)149 In Avco, the Connecticut Supreme Court presciently foresaw the Supreme Court's interpretation of ***Kern***-Limerick, that "the State may not impose a tax the legal incidence of which falls on the Federal Government." [[150]](#footnote-151)150 Thus both the statutory and constitutional legs of Avco remain standing despite New Mexico.

United Aircraft, in contrast to Avco, does not reach the constitutional arguments for federal tax immunity with regard to the experimental and manufacturing contracts. [[151]](#footnote-152)151 Instead, the holding relies on the court's statutory interpretation of the Connecticut Sales and Use Tax Act that raw materials and purchased components of items to be delivered under contracts, as well as materials used in the manufacturing process, were exempt from the tax. [[152]](#footnote-153)152 This decision also appears untouched by New Mexico.

V. United Technologies Corp. v. Groppo: The Trial Court's Decision

With the ink barely dry on the decision in United States v. New Mexico, the defendant notified United States Government contractors in Connecticut of the decision to change the tax policy. [[153]](#footnote-154)153 UTC should have been well aware of the import of this new rule because (under its **[\*311]** prior corporate name, United Aircraft Corporation) it was the plaintiff in the 1958 Connecticut Supreme Court decision, United Aircraft Corp. v. Connelly, which exempted federal government contractors' vendor purchases from the Connecticut sales and use tax. [[154]](#footnote-155)154

A. Synopsis of the Facts

The plaintiffs, United Technologies Corp. (UTC) and its then subsidiary, Norden Systems, Inc. (Norden), are both U.S. Government contractors that purchase goods and services to perform their many research and supply contracts. [[155]](#footnote-156)155 The UTC contracts in question were placed with many UTC divisions. [[156]](#footnote-157)156 The Government purchasers included the United States Air Force, the Department of Defense, and the National Aeronautics and Space Administration. [[157]](#footnote-158)157 The contracts under which the purchases at issue had been made were subject to the provisions of either the Defense Acquisition Regulations (hereinafter DAR), the NASA Procurement Regulations (hereinafter NPR), or their successor, the Federal Acquisition Regulations (hereinafter FAR). [[158]](#footnote-159)158 The contract terms specifically provided that:

[T]itle to any property shipped to Plaintiff for which Plaintiff was reimbursed as a direct item of cost under the Government Contracts passed to and vested in the United States Government upon delivery of such property by the vendor, and title to all other property the cost of which Plaintiff was reimbursed under the Government Contracts passed to and vested in the United States Government upon the earliest of: (i) issuance for use of such property in the performance of a Government Contract, (ii) commencement of processing or use of such property in the performance of a Government Contract, or (iii) reimbursement of the cost thereof in whole or in part by the Govern **[\*312]** ment. [[159]](#footnote-160)159

In April 1986, following audits of UTC and its divisions, and Norden, the defendant Commissioner of Revenue Services [[160]](#footnote-161)160 issued assessments totaling $ 2,200,237, including $ 840,833 for the purchase of materials and $ 1,359,404 for the purchase of services. [[161]](#footnote-162)161

The contracts in question were of the cost-reimbursement type. [[162]](#footnote-163)162 Unlike a typical commercial purchase, where a price is fixed and payment is made upon delivery of the goods or services purchased, the U.S. Government, in recognition of the high risk of performing advanced research and development for a fixed price, uses a variety of cost-reimbursement-type contracts. [[163]](#footnote-164)163

Cost-reimbursement contracts include an estimate of the total contract cost and establish a ceiling that may not be exceeded by the contractor without government approval, unless done so at its own risk pending government approval. [[164]](#footnote-165)164 The key distinction relative to cost-reimbursement contracts here is that, because the U.S. Government paid UTC on a periodic basis for work actually performed, [[165]](#footnote-166)165 and because UTC had no obligation to perform work beyond the cost limits set forth in the contracts, [[166]](#footnote-167)166 the DAR, NPR and FAR provisions in these contracts specified that title to materials purchased by the contractor (here, UTC), passed immediately to the U.S. Government, in order to protect the U.S. Government's rights to the materials it had already paid UTC to ob **[\*313]** tain. [[167]](#footnote-168)167

B. The Issue

The court identified the following issue:

The issue in this tax appeal is whether goods and services purchased by private contractors pursuant to government contracts are exempt from sales and use taxes because title to these goods vests in the United States under the terms of the government contracts. Stated in a different way, we must decide whether the purchaser of the goods and services, under the facts in this case, is the United States or the private contractors. [[168]](#footnote-169)168

C. Contract Terms and Obligations

The superior court decision chose one contract to discuss as a representative sample of the type of contract at issue. [[169]](#footnote-170)169 It was a contract awarded to UTC's Power Systems Division for development of a fuel cell for the U.S. Army. [[170]](#footnote-171)170 A fuel cell generates electric power from fuels such as natural gas. [[171]](#footnote-172)171 The decision discusses the procurement process prior to award of the contract, including the Government determining its needs and issuing a Request for Proposals, UTC reviewing the request, preparing cost and technical proposals (including identifying vendors and obtaining their costs) and submitting its proposal, and the Government's subsequent evaluation, selection and negotiation of a contract. [[172]](#footnote-173)172

The court discussed UTC's purchase of materials and services subsequent to the award of the contract by the Army, including the fact that UTC dealt directly with and paid the vendors (who were not privy to UTC's agreement with the Government that title vested in the United States). [[173]](#footnote-174)173 UTC's duties, as noted by the court, also included managing subcontracts, hiring staff, and developing and delivering the fuel cell, but the Government directly paid all shipping costs for property shipped **[\*314]** to UTC and UTC did not use such property for any purpose other than performing the contract. [[174]](#footnote-175)174 The court then discussed the U.S. Government's rationale for placing this contract: that it does not have expertise in the fuel cell area, and must rely on the contractor to purchase the individual components, develop the fuel cell and turn over the finished product to the U.S. Government. [[175]](#footnote-176)175 The court concluded that "the basic purpose of the prime contract is to engage a contractor with expertise in the area of intended development to produce a product or service of benefit to the government." [[176]](#footnote-177)176

D. The Impact of United States v. New Mexico on Connecticut Law

Subsequent to Avco Manufacturing Corp. v. Connelly, the DRS considered purchases made by government contractors to be made on behalf of the federal government, and thus exempt from sales and use tax. [[177]](#footnote-178)177 The court noted that the holding in New Mexico, whether "the levy falls on the United States itself, or on an agency… that… cannot be realistically viewed as [a] separate entit[y]," resulted in the change in the DRS policy. [[178]](#footnote-179)178

The plaintiffs claimed that New Mexico did not render Avco obsolete, because, unlike the New Mexico statute which places the incidence of the tax on the seller, the Connecticut statute places the incidence of the tax on the purchaser, here, the United States Government, which is tax-exempt. [[179]](#footnote-180)179 In the alternative, the plaintiffs argued that even if the court held that they were the purchasers under Connecticut law, the purchases would still be exempt as purchases for resale. [[180]](#footnote-181)180

E. Connecticut's Sales and Use Tax and Its Constitutionality

The court first reviewed the Connecticut Sales and Use Tax Statutes, and concluded that in Connecticut, the burden falls on the purchaser to pay the tax, not on the seller. [[181]](#footnote-182)181 Next, the court reviewed the **[\*315]** case history of taxation by states against the United States, starting with the Supremacy Clause of the United States Constitution and McCulloch v. Maryland. [[182]](#footnote-183)182

The court explained that, consistent with McCulloch, Connecticut's statutes exempted sales of property or services to the United States Government. [[183]](#footnote-184)183 This was bolstered by the court's reference to a recent Supreme Court decision, South Carolina v. Baker, which held that, "States can never tax the United States directly but can tax any private parties with whom it does business, as long as the tax does not discriminate against the United States or those with whom it deals." [[184]](#footnote-185)184 This passage appears particularly inapposite because: (1) while it implies that taxes on private parties doing business with the United States are permitted, by using "can," it does not reach the issue of whether or not the purchaser is the United States; (2) the tax in Baker was not claimed to be discriminatory against the United States; (3) the conclusion of the quoted sentence, modifying the reference to the United States by adding "those with whom it deals" is ambiguous because it could refer to government **[\*316]** contractors such as UTC (thus supporting UTC's position here); and (4) the passage may be considered only dicta because the issue in Baker concerned the constitutionality of a federal tax on state bonds, not a state tax on the federal government. [[185]](#footnote-186)185

The court then briefly reviewed the line of cases starting with James v. Dravo Contracting Co. up to United States v. Boyd as discussed by the Supreme Court in United States v. New Mexico. [[186]](#footnote-187)186 Quoting from New Mexico, the court emphasized the United States Supreme Court's holding that to "resist the State's taxing power, a private taxpayer must actually "stand in the Government's shoes.'" [[187]](#footnote-188)187

F. Agency and Avco Manufacturing Corp. v. Connelly

Noting the plaintiffs' concession that they were not agencies of the United States Government, nor so closely connected to it that they could not be considered separate entities, the court returned to the issue. If the plaintiffs were held to be the purchasers under Connecticut law, then the tax would be constitutional under New Mexico. [[188]](#footnote-189)188 In doing so, the court apparently juxtaposed two distinct issues, the constitutionality of a state tax on a United States Government contractor and the definition of "purchaser" under Connecticut law.

The court recognized that the key question in Avco was essentially identical to the issue in the case before it, [[189]](#footnote-190)189 and to the resultant holding in Avco, that title passed from the vendors directly to the United States. [[190]](#footnote-191)190 However, the court reversed the order and the import of the two-part test in Avco. [[191]](#footnote-192)191 After first examining the constitutionality of taxes on government contractors in general, the court then turned to the statute as interpreted in Avco. [[192]](#footnote-193)192

The court returned to Avco and distinguished it from the case at bar, claiming that Avco, unlike UTC, was acting as an agent of the **[\*317]** United States. [[193]](#footnote-194)193 That Avco was "duly authorized" to make purchases for the United States was a conclusion drawn by the Avco court [[194]](#footnote-195)194 based on the circumstances of the case. [[195]](#footnote-196)195 Contrasting Avco with UTC, the court noted that UTC responded to government requests with bids that encompassed materials, labor and profit, while Avco merely used the government facilities, as the Government's agent. [[196]](#footnote-197)196 This ignored the Avco court's recognition that Avco used the facilities "in connection with the performance of a separate contract or contracts for supplies or services." [[197]](#footnote-198)197 The court continued by noting that Avco's purchase orders stated they were made for the Government while UTC's purchase orders were made on their own behalf, and that UTC dealt directly with, and paid the vendors. [[198]](#footnote-199)198 However, Avco placed the purchase orders and paid the vendors as well. [[199]](#footnote-200)199

The court then asked, if Avco stands only for the principle that acquisition of title defines the purchaser, why did the Avco court need to examine so carefully the surrounding circumstances? [[200]](#footnote-201)200 The answer, from Avco, is to distinguish Connecticut's tax law as it applied to Avco from the laws of other states as interpreted by the Supreme Court. [[201]](#footnote-202)201 **[\*318]** While the court drew heavily on the so-called agency in Avco to distinguish it from the present case, the actual distinctions are minor: first, Avco had a non-profit facilities contract, but earned profit on its other contracts, while UTC earned profit on the contracts in question; second, although Avco's purchase orders stated that title vested in the United States and UTC's did not, both parties' contracts did state that title vested in the United States Government.

G. The Parties' Roles Defining the Transactions

The court then looked at the roles of the parties, that the contractor, UTC, was obligated to produce an end product, not "each nut and bolt." [[202]](#footnote-203)202 In contrast, according to the court, "Avco was an agent for the government, and… [t]itle to the facilities in Avco vested in the United States not by virtue of any contractual agreement but by reason that it was the United States, acting through its agent, Avco, that purchased the facilities from the vendors." [[203]](#footnote-204)203

The court again drew the distinction that there was neither privity nor consideration between UTC's vendors and the Government, to show that the statutory definition of a sale under the tax code was not fulfilled. [[204]](#footnote-205)204 The court noted that UTC could have taken title in their own name because they provided consideration to the vendors, [[205]](#footnote-206)205 but this was the case with Avco and its vendors as well. [[206]](#footnote-207)206 The court reasoned that the transfer of title from a vendor to the United States was an assignment via the contractor, which was insufficient to satisfy the sales and use tax statutory exemption. [[207]](#footnote-208)207 The court concluded that UTC was the purchaser of the goods and services under the government contracts, as opposed to the United States. [[208]](#footnote-209)208

**[\*319]**

H. Purchases for Resale

Finally, having concluded that UTC was the purchaser and consumer of the goods received from the vendors, the court dismissed UTC's alternative argument that the purchases were for resale. [[209]](#footnote-210)209 Connecticut statutes specifically exclude "sales for resale" from their definition of "retail sales" and "sales at retail," [[210]](#footnote-211)210 which are the subject of the sales tax. [[211]](#footnote-212)211 The court noted that a purchaser, consumer and user of personal property has "no intention of reselling that property." [[212]](#footnote-213)212

The court's reference here appears to beg the question by referring to a case in which the taxpayer was held liable precisely due to his failure to provide for title transfer to the customer. The case referred to by the court, Fusco-Amatruda Co. v. Tax Commissioner, involved a general contractor whose liability for Connecticut sales tax was held to rest on two grounds: first, that the contractor failed to obtain a tax exemption certificate from his client, an exempt religious entity; [[213]](#footnote-214)213 and second, that the terms of the contract between the general contractor and the client did not provide for any transfer of title to the client of goods purchased by the contractor. [[214]](#footnote-215)214 Thus the Connecticut Supreme Court's holding in Fusco that the contractor had no intention of reselling the property he had purchased is apparently based on his failing the test in Avco, because the contract lacked provisions for transfer of title. This case supported UTC's position, because its contract with the United States did in fact provide for transfer of title. [[215]](#footnote-216)215

In a similar case involving application of a sales tax on a government contractor, Dresser Industries, Inc. v. Lindley, the Ohio Supreme Court held that Ohio's sales tax did not apply because goods purchased by the contractor had been purchased for resale under its government contracts. [[216]](#footnote-217)216 The Ohio court noted that the terms of the government contracts (which were the same as those in UTC v. Groppo) required that "the title to the tangible personal property which was created auto **[\*320]** matically vested in the government… [t]herefore [the contractor] had to resell the property obtained in the subcontracts to fulfill its contractual obligation to the United States." [[217]](#footnote-218)217 This supported the court's conclusion that the purchases were for resale because the primary purpose of the contract was to resell the items as part of a finished contract. [[218]](#footnote-219)218 The same conclusion could be drawn as well in Connecticut for UTC: its contracts automatically require that title to property purchased under the government contracts must be transferred to the Government, thus their purpose was to purchase the goods for resale.

I. Conclusion

The court concluded that UTC was liable for the sales and use taxes as assessed, except for certain design and engineering services that were not subject to the tax, as conceded by the defendant. [[219]](#footnote-220)219

VI. The Appeal

A. The United Technologies Corporation Appellate Brief

UTC argued error in the Superior Court's findings of fact and law. [[220]](#footnote-221)220 With regard to the claimed errors of fact, UTC addressed the court's analysis that concluded the methods used by Avco to make purchases were distinguishable from UTC's methods and that, unlike UTC, Avco was an agent of the United States. [[221]](#footnote-222)221 UTC claimed the court's findings of fact were erroneous: (1) in its interpretation of the nature of cost-reimbursement contracts, because savings from reduced vendor prices inure to the Government under such contracts; (2) in not recognizing (based on a witness' testimony) that UTC was required to obtain government approval prior to some purchases; and (3) in failing to dis **[\*321]** tinguish that, unlike a fixed-price contract, a cost-reimbursement contract only obligates the contractor to perform up to the allotted costs; the Government may specify sources of supplies and services; and the Government holds title, risk of loss and control over the disposition of the property. [[222]](#footnote-223)222 UTC next argued that the court's effort to distinguish Avco's purchasing methods from UTC's was erroneous because both Avco and UTC bid for contracts, were paid for their costs, hired staff and purchased goods and services, dealt directly with and paid their vendors and were not agents of the United States. [[223]](#footnote-224)223 In further support, UTC drew a parallel to the State's recently granted exemption to utilities that installed energy conservation equipment in state buildings based on title passing to the State. [[224]](#footnote-225)224

UTC then turned to the superior court's legal holdings. UTC argued that there was error in the court's conclusion that the Sales and Use Tax could be applied absent ownership, because the statute was based on passage of title. [[225]](#footnote-226)225 The government, by receiving title immediately, became the owner of the materials purchased by UTC. [[226]](#footnote-227)226 Next, UTC argued that Avco Manufacturing Corp. v. Connelly and United Aircraft Corp. v. Connelly remained valid in the face of United States v. New Mexico because the Connecticut statutes exempted sales to the United States "regardless of whether Connecticut is constitutionally required to do so," and because Connecticut places the legal incidence of its tax on the purchaser, unlike New Mexico. [[227]](#footnote-228)227

UTC contrasted the two Connecticut statutes, Conn. Gen. Stat. 12-412(1), which exempts sales to the United States, and 12-412(2), which exempts sales that are constitutionally prohibited from taxation, and noted that the court's inference that the former only applied to constitutionally exempt sales rendered the latter effectively meaningless. [[228]](#footnote-229)228 UTC contended, that the holding in New Mexico was inapposite to Connecticut, because, unlike the plaintiffs in New Mexico, UTC was not claiming to be an agent of the United States, but rather, that the tax fell directly on the United States because the legal incidence of the tax was on the United States under Connecticut law, a conclusion not reached in **[\*322]** New Mexico based on the different state statute. [[229]](#footnote-230)229

UTC also presented an alternative argument that the superior court had erred because the purchases made by UTC were exempt purchases for resale under Connecticut statutes and the contract terms. [[230]](#footnote-231)230 Noting that the Federal Acquisition Regulations required that the property it purchased became government property, UTC concluded that the only purpose of its purchases was for resale to the United States. [[231]](#footnote-232)231 UTC then distinguished Fusco [[232]](#footnote-233)232 as involving a contract for construction of real property, which was treated differently under Connecticut law than sales of personality, because sales of real property improvements are not subject to the Sales and Use Tax. [[233]](#footnote-234)233 UTC also noted that Fusco had cited Avco for the proposition that purchases under a contract which did pass title to a non-taxable entity would therefore be exempt. [[234]](#footnote-235)234

UTC concluded its appeal with a discussion of the services purchased under its contracts, noting that services, as property, can be considered purchases for resale. [[235]](#footnote-236)235 UTC then distinguished a Connecticut case involving a highway construction contractor's taxable purchases of watchman and flagman services, as purchases incidental to the primary construction effort, unlike UTC's purchases of research, testing, design and clerical services. [[236]](#footnote-237)236

B. The Department of Revenue Services Appellate Brief

The DRS concurred with UTC's statement of facts except for noting that the object of the contracts between UTC and the government was provision of a product or report to the United States, which the State was not attempting to tax, as opposed to its intent to tax the purchase of goods and services used by UTC in support of its contracts. [[237]](#footnote-238)237 **[\*323]** Endorsing the trial court's findings, the DRS first distinguished the exemption provided by the State for contractors providing energy conservation equipment to the State as a statutory, not a contractual relationship. [[238]](#footnote-239)238

Turning to UTC's argument that the two Connecticut statutes, Conn. Gen. Stat. 12-412(1) and 12-412(2), had distinct purposes, [[239]](#footnote-240)239 the DRS argued they were effectively two sides of the same coin: 12-412(1), exempting sales to government entities, being a positive expression compared to 12-412(2), negatively prohibiting unconstitutional taxes. [[240]](#footnote-241)240 Accepting UTC's argument that the legal incidence of the tax is on the purchaser, the DRS denied that the United States was the purchaser because UTC was the consumer. [[241]](#footnote-242)241

Next, in support of its contention that United States v. New Mexico had effectively overruled Avco Manufacturing Corp. v. Connelly and United Aircraft Corp. v. Connelly, the DRS provided a detailed discussion of New Mexico and emphasized the similarities between the Connecticut and New Mexico taxes. [[242]](#footnote-243)242 Quoting from Conn. Gen. Stat. 12-408, the DRS emphasized that the sales tax is calculated based on the retailer's gross receipts; thus there was no effective distinction between Connecticut's Sales and Use Tax and New Mexico's Gross Receipts Tax. [[243]](#footnote-244)243 Continuing the comparison, the DRS then noted the similar definitions of a sale, because both states' statutes embraced any transfer of property as constituting a sale. [[244]](#footnote-245)244

Examining the United States' liability, the DRS concluded the Government was not the purchaser despite the immediate vesting of title, because it was not the consumer. [[245]](#footnote-246)245 Therefore the Connecticut Supreme Court's holding in Avco, according to the DRS, "that the party to whom title is transferred is the party to whom the sale is made, is merely **[\*324]** ipse dixit." [[246]](#footnote-247)246 Because the Avco holding lacked any reasoning or basis, the DRS argued that the court should instead look to the underlying object of the transaction, the sale of an end product, not the individual materials or services purchased or the passage of title. [[247]](#footnote-248)247

Again bolstering its argument with passages from New Mexico, the DRS argued the court should not be swayed by formalisms, but instead should simply look to see if the contractor "stands in the shoes of the Government." [[248]](#footnote-249)248 The DRS noted that New Mexico also would deny tax exempt status based on the economic burden of the tax falling on the United States, the title passing to the United States, or the usage of United States property. [[249]](#footnote-250)249

The DRS next responded to UTC's argument that Avco was factually similar to the present case, by arguing that, unlike UTC, Avco involved a facilities contract where the United States owned the plant and Avco received no profit on the facilities contracts. In further support of its argument against Avco, the DRS noted that Avco had relied heavily on the Supreme Court's decision in ***Kern***-Limerick, which had been "virtually read… out of existence" by New Mexico. [[250]](#footnote-251)250 Noting UTC's independent, profit-making role, the DRS contrasted the greater degree of government control of the contractor's activities in Avco, United Aircraft and ***Kern***-Limerick. [[251]](#footnote-252)251 The DRS emphasized that New Mexico (and the other cases it cited) supports the proposition that UTC's utilization of the government property in performing its for-profit government contracts constituted a taxable beneficial use. [[252]](#footnote-253)252

As for UTC's alternative "sales for resale" argument, the DRS con **[\*325]** sidered it to be "fallacious because UTC admittedly used the property in performing its government contracts." [[253]](#footnote-254)253 The DRS based this conclusion on Conn. Gen. Stat. 12-410, which allows an exemption for sales for resale only for retention, demonstration or display of the property while holding it for resale, as contrasted with UTC's use of the property to perform its contracts. [[254]](#footnote-255)254 Therefore, the DRS concluded the use of the property was "merely incidental to the primary purpose of the contracts." [[255]](#footnote-256)255

In concluding this section, the DRS supported the superior court's holdings: (1) that UTC, not the Government, was the purchaser of the property; (2) that the Government did not intend to purchase each separate part or item purchased by UTC; (3) that UTC's witness did not contradict these findings; and (4) that Avco was distinguishable because it concerned a facilities contract and was based on the "agency" theory of ***Kern***-Limerick, which had been "abandoned by the United States Supreme Court in United States v. New Mexico." [[256]](#footnote-257)256

The DRS then shifted its focus to the taxability of services purchased by UTC, claiming its case to be stronger because there is no passage of title for services, unlike the case for personal property. [[257]](#footnote-258)257 Noting that the government contract provisions for passage of title did not apply to services, the DRS considered UTC to be the consumer of the services, thus liable for the tax. [[258]](#footnote-259)258 Similar to the argument advanced by the DRS against UTC's claimed "sale for resale" exemption, the DRS argued that the United States did not desire to purchase third-party design, testing or drafting services through UTC, but instead intended to acquire a completed project. [[259]](#footnote-260)259

**[\*326]**

C. The United Technologies Corporation Reply Brief

UTC's reply focused on the legal incidence of the tax being the distinguishing factor between the New Mexico tax (incidence on the seller) and the Connecticut tax (incidence on the purchaser), which rendered the decision in United States v. New Mexico inapplicable to Connecticut tax law. [[260]](#footnote-261)260 In further support of this contention, UTC advanced a recent United States Supreme Court decision [[261]](#footnote-262)261 that held that a state gasoline tax that did not have a "pass through" provision to consumers was invalid because its legal incidence remained on the Indian retailers. [[262]](#footnote-263)262 UTC contrasted the Oklahoma tax to the Connecticut tax, in which the law does have a pass through provision (making the United States the purchaser, and making the purchases exempt). [[263]](#footnote-264)263 UTC noted that the Supreme Court stated in Oklahoma Tax Commission v. Chickasaw Nation, "the state is free to amend its law to shift the tax's legal incidence," just as Connecticut is free to do so if it so chooses. [[264]](#footnote-265)264

Revisiting its distinction drawn between Conn. Gen. Stat. 12-412(1) and 12-412(2), [[265]](#footnote-266)265 UTC argued that because the former exempts taxing sales to the United States, while the latter prohibits taxing sales exempted under United States law or constitutional grounds, accepting the DRS' argument that they meant the same thing [[266]](#footnote-267)266 "would render Conn. Gen. Stat. 12-412(1) meaningless." [[267]](#footnote-268)267 According to UTC, this interpretation would render the statute superfluous, and would violate the legislative policy to exempt purchases by the United States regardless of the constitutionality of such an exemption. [[268]](#footnote-269)268

For the DRS to avoid the Connecticut Supreme Court's holding in Avco Manufacturing Corp. v. Connelly (that the purchaser is the party **[\*327]** gaining title) by arguing it was unsupported "ipse dixit," [[269]](#footnote-270)269 according to UTC, denies the strength of the court's holding: "[a]lthough we use English rather than Latin, we believe that the Court's conclusion in Avco should more properly be referred to as "precedent.'" [[270]](#footnote-271)270 This was reinforced by reference to the statutory definition of taxable use as "exercise of any right or power over tangible personal property incident to the ownership of that property." [[271]](#footnote-272)271 UTC next countered DRS' argument for the similarity between the New Mexico and Connecticut statutes, by distinguishing the differing New Mexico definitions of "buying," "selling," and "use," as based on different concepts of ownership. [[272]](#footnote-273)272

UTC concluded its reply by distinguishing the precedents asserted by the DRS. First, UTC noted that White Oak [[273]](#footnote-274)273 was inapplicable because it involved special rules for real property improvement and because there was no transfer of title to the Government. [[274]](#footnote-275)274 Second, UTC argued in the alternative that if the sales were held to have been made to UTC, then the title transfer to the United States would nonetheless render the purchases exempt because the parties' intent was to effect the immediate transfer of title as evidenced by the contract terms. [[275]](#footnote-276)275 Third, UTC argued that Maecon concerned a contract for realty improvement where the contractor had the right to use materials it purchased as it saw fit, with no rights vesting in the United States until delivery, unlike the contracts involved in the present case. [[276]](#footnote-277)276 Fourth, UTC distinguished Hawkins County as concerning "an ad valorem property tax on the user of property owned by the Federal Government," unlike Connecticut's **[\*328]** use tax which is based on ownership. [[277]](#footnote-278)277 Last, concerning NLO, UTC noted that the Ohio law under which it was argued applied to transactions including title, possession, or both, again unlike Connecticut's law which defines a sale to have occurred "only upon a transfer of title." [[278]](#footnote-279)278

VII. United Technologies Corporation v. Groppo: The Connecticut Supreme Court's Decision

The Connecticut Supreme Court reversed the superior court decision in part, as to the purchase of personal property, and affirmed its decision in part, as to purchases of services. [[279]](#footnote-280)279 After summarizing the events leading to the suit, the sales and use tax statutes at issue, [[280]](#footnote-281)280 and the lower court proceedings, the court noted that the trial court's remand for determination of the amount of the assessment relating to non-taxable engineering and design services had been resolved by stipulation of the parties. [[281]](#footnote-282)281

Reviewing the facts of the case, the court emphasized the contract terms relative to the treatment of property purchased by UTC, [[282]](#footnote-283)282 and also noted the variety of services purchased pursuant to the contracts. [[283]](#footnote-284)283 The court then explained that the purpose of its review was to examine the trial court's legal conclusion that "the plaintiffs were the purchasers and consumers of the tangible personal property and services." [[284]](#footnote-285)284

In order to determine the validity of the trial court's conclusion, three issues were stated by the Connecticut Supreme Court: (1) whether **[\*329]** United States v. New Mexico "effectively overruled" its decision in Avco Manufacturing Corp. v. Connelly; (2) if not, how Avco should apply in determining whether UTC was the purchaser and consumer of the tangible personal property in question; and (3) how Avco should apply in determining whether UTC was the purchaser and consumer of the provided services. [[285]](#footnote-286)285

A. Did New Mexico Overrule Avco?

The court first summarized the facts in New Mexico and Avco and the DRS decision to begin imposing sales and use tax on purchases by government contractors after New Mexico. [[286]](#footnote-287)286 Contrasting Avco with New Mexico, the court explained that the issue in Avco was "to determine the actual purchaser," while the issue in New Mexico was to decide whether the contractors, having conceded that they were the purchasers and consumers under New Mexico law, could nevertheless claim federal immunity. [[287]](#footnote-288)287

Given these differing issues, the court distinguished the immunity test in New Mexico (whether the levy fell on the United States or "on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities") [[288]](#footnote-289)288 as limited to determining federal immunity only subsequent to a determination that tax liability was otherwise present. [[289]](#footnote-290)289 The court explained that "[s]pecifically not in issue before the United States Supreme Court in New Mexico was a determination of who was legally responsible for the tax." [[290]](#footnote-291)290

According to the court, the holding in New Mexico recognized this logical progression: because the Government (as plaintiff) had conceded that the tax fell on the contractors, it must "then [be determined] whether the contractors can realistically be considered entities independent of the United States." [[291]](#footnote-292)291 Thus, the court concluded that the decision in New Mexico rested on evaluation of the contractor/government relationship because the contractors were legally responsible for the tax. [[292]](#footnote-293)292

**[\*330]** The court then noted that Avco had considered only the "initial inquiry… upon whom does the levy fall?" [[293]](#footnote-294)293 This was contrasted with New Mexico, which defined whether entities, once they were held liable, could claim federal immunity: "[i]n other words, New Mexico only defined the parameters in which federal immunity operates, it did not decide who was responsible for the tax, as did Avco." [[294]](#footnote-295)294 Based on this analysis, the court concluded its consideration of the first issue by holding that the decision in New Mexico did not overrule or affect its decision in Avco. [[295]](#footnote-296)295

B. Tax Liability for Personal Property Under Avco

Having concluded that Avco was not overruled by New Mexico, the court made short work of the second issue, whether UTC was the purchaser of the tangible personal property under its government contracts based on Avco. [[296]](#footnote-297)296 Because the legal incidence of the sales tax falls on the purchaser, and because Avco defined the purchaser as the party taking title, the court decided it must examine the parties' intent in order to determine which party held title. [[297]](#footnote-298)297 Based on the undisputed contract terms, [[298]](#footnote-299)298 the court then held it was "clearly the parties' intent that the Government take immediate title to all tangible personal property purchased from vendors" [[299]](#footnote-300)299 and concluded that UTC was exempt from "sales and use tax levied on the purchase and consumption of the tangible personal property." [[300]](#footnote-301)300

C. Tax Liability for Services under Avco

The last issue before the court was the applicability of Avco to the taxability of services purchased by UTC. The court noted that, although **[\*331]** services are subject to sales and use tax, [[301]](#footnote-302)301 UTC claimed they were exempt based on the DRS' identical treatment of property and services since Avco. [[302]](#footnote-303)302 The court disagreed because Avco was decided in 1958 but services had only become subject to the sales and use tax in 1975; thus "the decision in Avco was narrowly directed toward the purchase of tangible personal property and is therefore inapplicable to the purchase of services." [[303]](#footnote-304)303

Having set Avco aside for services, the court considered whether the exemption for purchases by the United States would still apply, if the United States could be held to be the purchaser of the services. [[304]](#footnote-305)304 The court rejected this argument because the focus of the sales and use tax statutes for services is on acceptance and receipt, [[305]](#footnote-306)305 which were performed by UTC, not the United States. [[306]](#footnote-307)306

Finally, the court examined UTC's argument that the services were exempt as purchases for resale. [[307]](#footnote-308)307 Similar to the issue of tangible personal property, the court looked to the intent of the parties to determine if the purchases were for resale. [[308]](#footnote-309)308 The cornerstone of this analysis is that if "the transaction is only incidental to a service performed for the purchaser, it is not considered a resale for tax purposes." [[309]](#footnote-310)309

In support of this analysis, the court examined three of its earlier decisions. [[310]](#footnote-311)310 First the court discussed American Totalisator Systems, Inc. v. Dubno, [[311]](#footnote-312)311 in which sales tax liability for purchased services was upheld (as not exempt sales for resale) because the parties' intent was to have the contractor operate the State's wagering systems, not to provide purchased personnel services. [[312]](#footnote-313)312 Next, the court examined White Oak **[\*332]** Corp. v. Department of Revenue Services, [[313]](#footnote-314)313 and noted that the taxpayer's liability rested on purchased traffic control services being "incidental to… performance of [its] construction contracts." [[314]](#footnote-315)314 Last, the court offered Fusco-Amatruda Co. v. Tax Commissioner [[315]](#footnote-316)315 for the proposition that a building contractor was liable for sales tax because it was the consumer of materials it had purchased to satisfy its contract obligations, which would apply equally to services purchased to fulfill contract obligations, as was the case with UTC. [[316]](#footnote-317)316

The court followed this analysis by returning to the UTC contract. [[317]](#footnote-318)317 The court noted that the fuel cell contract [[318]](#footnote-319)318 language required development of the fuel cell, not purchasing of the personal services required to produce the fuel cell: "[t]he Contractor shall furnish all personnel, engineering, labor… and services necessary to design, fabricate, test and deliver methanol fuel cell power units...." [[319]](#footnote-320)319 Thus the court distinguished UTC's responsibilities under the contract, which included procurement of taxable services, from the ultimate goal of the contract, development of the fuel cell. [[320]](#footnote-321)320 Based on the nature and language of the contract, the court held that the services were incidental to the primary purpose of the contract, so UTC rather than the Government was the consumer of the services used. [[321]](#footnote-322)321 Therefore the court concluded that the purchase of services by UTC was not "for resale" and concurred with the trial court that UTC was liable for the sales tax on services purchased for its government contracts. [[322]](#footnote-323)322

VIII. Conclusion

The decision by the Connecticut Supreme Court will likely put to **[\*333]** rest any further claims by the DRS to sales tax liability for materials purchased by Connecticut government contractors. This decision provides an obvious benefit by helping make Connecticut contractors more competitive based on lower costs. At the same time, the possibility remains that legislative actions could summarily remove this advantage by simply changing the definition of "purchaser" to include users or consumers. As of this writing, the Connecticut State Legislature has not considered revisions to the sales tax statutes regarding government contractors subsequent to the Connecticut Supreme Court reaching its decision in UTC v. Groppo. Thus, it is too early to determine if the legislature will attempt to change the definition of "purchaser" or react in any other way to the court's decision.

With regard to services purchased by Connecticut government contractors, the Connecticut Supreme Court's decision is less clearly defined, and could well continue to create controversy. In this regard, legislative action could make the law more uniform by providing an exemption for all purchases under government contracts, whether for services or materials. In 1993, the Connecticut Legislature provided an exemption to the Sales and Use Tax for Connecticut aircraft and aircraft component manufacturers; [[323]](#footnote-324)323 thus the effect of the Connecticut Supreme Court's decision on some of Connecticut's government contractors, including many UTC divisions, will be limited. This should be expanded to exempt purchases made by all Connecticut government contractors from the Sales and Use Tax in order to improve Connecticut businesses' competitiveness and so strengthen their ability to obtain United States Government contracts in a time of increasing reductions in federal spending.

United States v. New Mexico was inapposite to UTC because New Mexico involved a fundamentally different type of contract, a facilities contract to operate a United States owned research laboratory, [[324]](#footnote-325)324 as opposed to cost-reimbursement contracts for supplies and research and development. [[325]](#footnote-326)325 Both UTC and the DRS failed to emphasize this distinction between Avco and United Aircraft. The holding in United Aircraft relating to experimental contracts [[326]](#footnote-327)326 is more on point than that relating to **[\*334]** facilities contracts in Avco. [[327]](#footnote-328)327 The court's second holding in United Aircraft, that purchases under experimental contracts were exempt from the sales and use tax, was based strictly on its statutory interpretation. [[328]](#footnote-329)328 Thus United States v. New Mexico could not affect the validity of its holding in Avco. [[329]](#footnote-330)329 Contrary to the DRS' position, New Mexico did not overrule Avco. [[330]](#footnote-331)330 New Mexico attempted to provide clarity to the Supreme Court's prior decisions, but did not overrule any of the "modern" tax decisions from James v. Dravo onwards. [[331]](#footnote-332)331 When the Connecticut Supreme Court decided Avco and United Aircraft in 1958 it distinguished as inapplicable to Connecticut most of the same cases relied on by the Supreme Court in its New Mexico holding. [[332]](#footnote-333)332 Because the state, subject to constitutional limits, is the final arbiter of what transactions it will tax, the Connecticut Supreme Court was correct in upholding its decisions in United Aircraft and Avco. [[333]](#footnote-334)333

The remaining sections of this Casenote will provide some additional perspectives on the tax liability, first, for material purchases, and second, for purchased services.

A. Material Purchases

The constitutional grounds set forth in United States v. New Mexico make clear the proposition that it is not unconstitutional for a state to place a sales or use tax on materials and services purchased by a government contractor. [[334]](#footnote-335)334 It is equally clear, however, that the weight of Connecticut statute and precedent supports the continued exemption from the Sales and Use Tax of such purchases of materials by Connecticut government contractors, and that the United States Constitution does not preclude such an exemption. [[335]](#footnote-336)335

United States Government contractors have multi-faceted responsibilities under their cost reimbursement contracts. [[336]](#footnote-337)336 These not only include performing the assigned work or delivering the required product, **[\*335]** but also include separate obligations to purchase, manage, account for and dispose of government property, including materials purchased under the contract, in accordance with specific and demanding government regulations. [[337]](#footnote-338)337 It is these obligations which supported the plaintiff's contention that the materials were purchased for resale because of the United States Government's control of such materials.

A cost reimbursement contract with the United States Government may be unilaterally terminated or have its funding withdrawn at any time by the Government, in which case the United States takes possession of materials purchased for the contract by virtue of the title granted in the contract. [[338]](#footnote-339)338 This also supported the plaintiff's contention that the materials were purchased for resale, because the Government retains not only title to the property during contract performance, but also has the right to take physical possession of such property whenever it so chooses. [[339]](#footnote-340)339

B. Purchased Services

The Supreme Court, in New Mexico, decried the "manipulation and wooden formalism that occasionally have marked tax litigation." [[340]](#footnote-341)340 To the extent that the Connecticut Supreme Court relied on what it described as the "narrowly directed" [[341]](#footnote-342)341 decision in Avco, the court's decision in UTC not to allow a tax exemption for purchased services could fit this New Mexico criteria.

The distinction drawn between purchased services and materials is not as clear as the Connecticut court believes. For example, if a Connecticut government contractor purchases a part from a vendor, now it will be exempt under the holding in UTC. [[342]](#footnote-343)342 But if the same government contractor were to purchase the raw materials to make the part, and purchase the services to assemble the part from an independent contractor, then the cost of the purchased services would be subject to the sales tax. [[343]](#footnote-344)343 Logic and efficiency dictate a uniform policy in lieu of this anomaly.

The types of services purchased by UTC, testing, personnel, com **[\*336]** puter and data processing, stenographic, design and engineering services, [[344]](#footnote-345)344 all related to the development efforts under the contract, but did not, according to the Connecticut Supreme Court, go beyond "incidental" services according to the intent of the parties. [[345]](#footnote-346)345

By assisting in the development efforts, these services directly fulfill other significant contract requirements: such as development of patent and intellectual property rights. [[346]](#footnote-347)346 The contract terms covering these areas were not referenced by UTC, the trial court nor the Connecticut Supreme Court. Nonetheless, substantial requirements relative to patents and intellectual property are included in every government contract and play an especially important role in protecting the Government's rights in a research and development contract. [[347]](#footnote-348)347 In a development program, the Government's goal is not simply to obtain a prototype, but to obtain the scientific and engineering knowledge sufficient to result ultimately in a manufactured product. [[348]](#footnote-349)348 In that respect, the Connecticut Supreme Court should not have classified services as incidental. As a major element of the development effort, purchased services are purchased for resale; thus they should be exempt as well as materials.

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1. 1 238 Conn. 761, 680 A.2d 1297 (1996) [United Technologies Corporation is hereinafter referred to as UTC]. The Connecticut Supreme Court granted UTC's motion to take the case from the Appellate Court. Id. [↑](#footnote-ref-2)
2. 2 Conn. Gen. Stat. 12-407 to 412 (1995). [↑](#footnote-ref-3)
3. 3 17 U.S. (4 Wheat.) 316 (1819). [↑](#footnote-ref-4)
4. 4 Conn. Gen Stat. 12-408(1) (reduced from eight per cent to six per cent in 1991). [↑](#footnote-ref-5)
5. 5 145 Conn. 161, 140 A.2d 479 (1958). [↑](#footnote-ref-6)
6. 6 145 Conn. 176, 140 A.2d 486 (1958). United Aircraft is now UTC. [↑](#footnote-ref-7)
7. 7 United Technologies Corp. v. Groppo, 238 Conn. 761, 762-65, 680 A.2d 1297, 1298-1300 (1996). [↑](#footnote-ref-8)
8. 8 455 U.S. 720 (1982). [↑](#footnote-ref-9)
9. 9 Id. at 735. The court stated:

   [T]he conclusion [is] that tax immunity is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned.

   Id. [↑](#footnote-ref-10)
10. 10 United States v. New Mexico, 455 U.S. at 733 (citing Alabama v. King & Boozer, 314 U.S. 1, 9 (1941)). [↑](#footnote-ref-11)
11. 11 United Technologies Corp. v. Groppo, No. CV86-0321340, 1995 WL 321864, at \*4 (Conn. Super. Tax., May 19, 1995). (This was the superior court's memorandum of decision which resulted in the appeal discussed herein.) The DRS letter was published in the St. Tax Rep. (Conn.) (CCH) P 200-14, at 10,442 (July 1982). It stated, in part, that "[i]t is the opinion of the Department that the decision rendered by the Connecticut Supreme Court in the case of: United Aircraft v. Sullivan is no longer operative." For the complete text of the letter see infra note 100. [↑](#footnote-ref-12)
12. 12 See Mesa Verde Co. v. Montezuma County Bd. of Equalization, 898 P.2d 1 (Colo. 1995). The Supreme Court of Colorado, in reviewing a Colorado property tax law that exempted United States-owned property from taxation even if in the hands of contractors, quoted the legislative intent, "to exempt from state property taxation government contractors… who bid on government contracts in competition with contractors from other states." Id. at 6 (citation omitted). However, in Mesa Verde the court held the statute to be unconstitutional under the Colorado State Constitution, which expressly identified the categories which were exempt. Id. at 7. [↑](#footnote-ref-13)
13. 13 United Technologies Corp., 238 Conn. at 763, 680 A.2d at 1299. [↑](#footnote-ref-14)
14. 14 United States v. New Mexico, 455 U.S. at 720. Other Connecticut DRS cases addressing United States v. New Mexico include Rich-Taubman Assoc. v. Meehan, 236 Conn. 613, 674 A.2d 805 (1996) (operator of city-owned parking garage successfully claimed it was an agent of the city and was held not liable for sales tax based on common-law agency principles); and NERAC, Inc. v. Meehan, No. 375219, 1995 WL 57809 (Conn. Super. Tax, Jan. 27, 1995) (non-profit corporation successfully claimed it was an instrumentality of the U.S. Government (National Aeronautics and Space Administration) and was held to be exempt from the sales and use tax). [↑](#footnote-ref-15)
15. 15 United Technologies Corp., 1995 WL 321864, at \*5. [↑](#footnote-ref-16)
16. 16 Id. at \*6. This was based on its interpretation of the holding in Avco Mfg. Corp. that Avco was an agent of the U.S. Government. [↑](#footnote-ref-17)
17. 17 Id. at \*4. UTC claimed that the decision in Avco Mfg. Corp. was not rendered obsolete because, under Connecticut law, "the legal incidence of the sales and use tax falls on the purchaser, and… the purchaser in this case is the government." Id. [↑](#footnote-ref-18)
18. 18 United Technologies Corp., 1995 WL 321864, at \*8. [↑](#footnote-ref-19)
19. 19 United Technologies Corp., 238 Conn. at 774, 680 A.2d at 1304. [↑](#footnote-ref-20)
20. 20 Id. [↑](#footnote-ref-21)
21. 21 McCulloch, 17 U.S. (4 Wheat.) at 327. [↑](#footnote-ref-22)
22. 22 See, e.g., Gerald Gunther, Constitutional Law 82-84 (12th ed. 1991). [↑](#footnote-ref-23)
23. 23 See id. [↑](#footnote-ref-24)
24. 24 See id. at 68. The Supremacy Clause is set forth in U.S. Const. art. VI, cl. 2: "This Constitution, and the Laws of the United States… shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...." [↑](#footnote-ref-25)
25. 25 See Gunther, supra note 22, at 76. [↑](#footnote-ref-26)
26. 26 See C. Crady Swisher III, United States v. New Mexico: Reassessment of Federal Contractor's Constitutional Immunity from State Taxation, 25 Wash. U. J. Urb. & Contemp. L. 361, 367-68 n.20 (1983). [↑](#footnote-ref-27)
27. 27 27 U.S. (2 Pet.) 449, 468 (1829). The state had imposed a tax on interest earned on federal bonds. By impeding the ability of the federal government to obtain credit, the state indirectly placed an impermissible economic burden on the federal government. [↑](#footnote-ref-28)
28. 28 United States v. New Mexico, 455 U.S. 720, 731 (1982). [↑](#footnote-ref-29)
29. 29 See NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). [↑](#footnote-ref-30)
30. 30 302 U.S. 134 (1937). [↑](#footnote-ref-31)
31. 31 Id. [↑](#footnote-ref-32)
32. 32 See Swisher, supra note 26, at 371. [↑](#footnote-ref-33)
33. 33 314 U.S. 1 (1941). King & Boozer sold lumber to U.S. Government contractors that were constructing an Army camp under cost-type contracts. [↑](#footnote-ref-34)
34. 34 Id. Under a cost-plus contract, the contractor is paid all of its costs plus a fixed fee. A key element of this type of contract is the government's retention of title in goods purchased by the contractor for the contract. [↑](#footnote-ref-35)
35. 35 King & Boozer, 314 U.S. at 6-9. [↑](#footnote-ref-36)
36. 36 United States v. New Mexico, 455 U.S. 720, 731 (1982). [↑](#footnote-ref-37)
37. 37 See United States v. Township of Muskegon, 355 U.S. 484, 486 (1958) (upholding a use tax in part because the contractor was not "a servant" of the United States). [↑](#footnote-ref-38)
38. 38 See United States v. Livingston, 364 U.S. 281 (1960), summarily aff'g, 179 F. Supp. 9 (E.D.S.C. 1959) (E. I. du Pont operated the Savannah River Project for the United States for a one dollar fee plus costs); United States v. Colorado, 460 F. Supp. 1184 (D. Colo. 1978), aff'd mem., sub nom, Jefferson County v. United States, 450 U.S. 901 (1981) (holding tax on Rockwell operation of government facility to be, in reality, an impermissible ad valorem tax on government property). [↑](#footnote-ref-39)
39. 39 St. Tax Rep. (Conn.) (CCH) P 200-14, at 10,442 (July 1982). [↑](#footnote-ref-40)
40. 40 New Mexico, 455 U.S. at 723. [↑](#footnote-ref-41)
41. 41 Id. at 723 n.1. [↑](#footnote-ref-42)
42. 42 Id. at 724. Zia and LACI received their costs plus a fixed annual fee from the government in exchange for their services. Id. Sandia did not receive a fixed fee, but did receive the tangible benefit of royalty-free, irrevocable licenses for communications-related inventions developed by Sandia's employees during their performance of the contract, in addition to recovering their costs of performance. New Mexico, 455 U.S. at 724. [↑](#footnote-ref-43)
43. 43 Id. at 724-25. [↑](#footnote-ref-44)
44. 44 New Mexico, 455 U.S. at 725. [↑](#footnote-ref-45)
45. 45 Id. [↑](#footnote-ref-46)
46. 46 New Mexico, 455 U.S. at 726. [↑](#footnote-ref-47)
47. 47 Id. [↑](#footnote-ref-48)
48. 48 Id. [↑](#footnote-ref-49)
49. 49 Id. at 727 (internal citations omitted). [↑](#footnote-ref-50)
50. 50 New Mexico, 455 U.S. at 727 (citing N.M. Stat. Ann. 72-16A-4 (Michie 1975) for the gross receipts tax and N.M. Stat. Ann. 72-16A-7 (Michie 1975) for the compensating use tax; citations are to codifications in effect at the time of initiation of the litigation for consistency). [↑](#footnote-ref-51)
51. 51 Id. at 728 (citing N.M. Stat. Ann. 72-16A-12.1, 72-16A-12.2 (Michie 1975)). [↑](#footnote-ref-52)
52. 52 Id. [↑](#footnote-ref-53)
53. 53 Id. [↑](#footnote-ref-54)
54. 54 New Mexico, 455 U.S. at 729 (citing United States v. New Mexico, 455 F. Supp. 993, 997 (D.N.M. 1978) (the trial court decision)). [↑](#footnote-ref-55)
55. 55 Id. at 729 (citing United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980) (the appellate court decision)). [↑](#footnote-ref-56)
56. 56 Id. at 729-30. [↑](#footnote-ref-57)
57. 57 Id. at 730 (citing United States v. New Mexico, 624 F.2d at 118) (quoting United States v. Boyd, 378 U.S. 39, 48 (1964)). [↑](#footnote-ref-58)
58. 58 New Mexico, 455 U.S. at 730-31. [↑](#footnote-ref-59)
59. 59 Id. at 732-33. The Court analyzed three groups of cases. It discussed United States v. Allegheny County, 322 U.S. 174 (1944), which invalidated a state property tax on government property in the hands of a private contractor, but which was overruled by United States v. City of Detroit, 355 U.S. 466 (1958). It compared Livingston v. United States, 364 U.S. 281 (1960), which invalidated a state use tax applied to a federal contractor; with United States v. Boyd, 378 U.S. 39 (1964), which upheld a "virtually identical" state tax. Finally, it compared Alabama v. King & Boozer, 314 U.S. 1 (1941), and United States v. Township of Muskegon, 355 U.S. 484 (1958), which implied that tax immunity could be achieved through status as an agent or servant, respectively, of the U.S. Government, with James v. Dravo Contracting Co., 302 U.S. 134 (1937), and Boyd, which held, respectively, that tax immunity did not depend on agency and that contractors' status as agents of the United States did not confer immunity because they were not "instrumentalities" of the United States. [↑](#footnote-ref-60)
60. 60 New Mexico, 45 U.S. at 733 (citations omitted). [↑](#footnote-ref-61)
61. 61 Id. at 734-35 (citations omitted). [↑](#footnote-ref-62)
62. 62 Id. at 735. [↑](#footnote-ref-63)
63. 63 Id. at 736. The Court also explained that state taxes would be unconstitutional if discriminatory against the federal government or a substantial interference with its activities. Id. at 735 n.11 (citations omitted). [↑](#footnote-ref-64)
64. 64 United States v. New Mexico, 455 U.S. at 736 (quoting City of Detroit v. Murray Corp., 355 U.S. 489, 503 (1958)). [↑](#footnote-ref-65)
65. 65 Id. (citations omitted). [↑](#footnote-ref-66)
66. 66 Id. (citing Boyd, 378 U.S. at 48). [↑](#footnote-ref-67)
67. 67 Id. at 737. [↑](#footnote-ref-68)
68. 68 United States v. New Mexico, 455 U.S. at 737. [↑](#footnote-ref-69)
69. 69 Id. (quoting ***Kern***-Limerick, Inc. v. Scurlock, 347 U.S. 110, 126 (1954)). [↑](#footnote-ref-70)
70. 70 United States v. New Mexico, 455 U.S. at 738 (quoting Michelin Tire Corp. v. Wages, 423 U.S. 276, 293 (1976)). [↑](#footnote-ref-71)
71. 71 United States v. New Mexico, 455 U.S. at 738. [↑](#footnote-ref-72)
72. 72 Id. at 740. [↑](#footnote-ref-73)
73. 73 United States v. New Mexico, 455 U.S. at 740-41. [↑](#footnote-ref-74)
74. 74 Id. at 741. [↑](#footnote-ref-75)
75. 75 Id. [↑](#footnote-ref-76)
76. 76 Id. (referring to the Government's emphasis on the Court's holding in ***Kern***-Limerick Inc. v. Scurlock, 347 U.S. 110 (1954)). ***Kern***-Limerick was a tractor vendor in Arkansas that had sold two tractors to a government contractor building a Navy ammunition depot under cost-plus-fixed-fee contracts. [↑](#footnote-ref-77)
77. 77 New Mexico, 455 U.S. at 742. [↑](#footnote-ref-78)
78. 78 Id. at 743. Responding to the criteria from ***Kern***-Limerick, (see note 77 and accompanying text), the Court accepted the Government's self-stated liability for the purchase price, but noted that: (1) Sandia and Zia made purchases in their own names; (2) they were themselves liable to vendors; (3) they did not inform vendors that the Government had the only interest in the purchase; (4) the Government disclaimed formal nomination of the contractors as agents; and (5) Sandia and Zia did not need advance government approval for each purchase. Id. [↑](#footnote-ref-79)
79. 79 Id. [↑](#footnote-ref-80)
80. 80 See infra notes 84, 86, and 87 and accompanying text. [↑](#footnote-ref-81)
81. 81 See New Mexico, 455 U.S. at 737. [↑](#footnote-ref-82)
82. 82 Id. [↑](#footnote-ref-83)
83. 83 Id. (citing ***Kern***-Limerick, Inc. v. Scurlock, 347 U.S. 110 (1954)). [↑](#footnote-ref-84)
84. 84 Captain Craig E. Hodge, USAF, State Taxation of Federal Contractors - a View After United States v. New Mexico, 24 A.F. L. Rev. 104, 127-28 (1982-1983). (See supra note 38 regarding United States v. Colorado, 460 F. Supp 1184 (D. Colo. 1978).) [↑](#footnote-ref-85)
85. 85 Hodge, supra note 84, at 122. [↑](#footnote-ref-86)
86. 86 See Swisher, supra note 26, at 383-84. [↑](#footnote-ref-87)
87. 87 Constantine Peter Malandrinos and Elizabeth Reyes Avila, United States v. New Mexico: State Taxation as Applied to Government Contractors, 16 U. West L.A. L. Rev. 87, 109 (1984). [↑](#footnote-ref-88)
88. 88 See, e.g., Roland L. Young, Taxation… Federal Immunity, 68 A.B.A. J. 619 (May, 1982); Margaret E. O'Neil, Government Contractors and Immunity from State Taxation: United States v. New Mexico, 36 Tax Law. 479 (1983); Sharon K. Tarr, United States Supreme Court Review of Tenth Circuit Decisions I: United States v. New Mexico - Affirmed, 60 Denv. L.J. 411 (1983). [↑](#footnote-ref-89)
89. 89 Gregory G. Brooker, Distorted Federalism: the Resolution Trust Corporation and Local Special Assessments, 15 Hamline L. Rev. 327, 344 (1992). [↑](#footnote-ref-90)
90. 90 Scotsman Mfg. Co. v. Nevada, 808 P.2d 517, 518 (Nev. 1991). [↑](#footnote-ref-91)
91. 91 Id. at 520-21. [↑](#footnote-ref-92)
92. 92 Id. (citations omitted). [↑](#footnote-ref-93)
93. 93 Scotsman, 808 P.2d at 521. [↑](#footnote-ref-94)
94. 94 NLO, Inc. v. Limbach, 613 N.E.2d 193 (Ohio 1993). [↑](#footnote-ref-95)
95. 95 Id. at 197. [↑](#footnote-ref-96)
96. 96 Id. at 195. [↑](#footnote-ref-97)
97. 97 Id. at 197. [↑](#footnote-ref-98)
98. 98 NLO, 613 N.E.2d at 195-96 (citing Dresser Indus., Inc. v. Lindley 465 N.E.2d 430 (Ohio 1984)). [↑](#footnote-ref-99)
99. 99 See supra note 39. [↑](#footnote-ref-100)
100. 100 Id. [↑](#footnote-ref-101)
101. 101 Avco Mfg. Corp., 145 Conn. at 163-64, 140 A.2d at 481. [↑](#footnote-ref-102)
102. 102 Id. [↑](#footnote-ref-103)
103. 103 Id. (citing 41 U.S.C.A. 151-161 and 32 C.F.R. 412.101-2 (1951)) . [↑](#footnote-ref-104)
104. 104 Id. at 165, 140 A.2d at 481 n.2. [↑](#footnote-ref-105)
105. 105 Avco Mfg. Corp., 145 Conn. at 166, 140 A.2d at 481-82. [↑](#footnote-ref-106)
106. 106 Id. at 167, 140 A.2d at 482. [↑](#footnote-ref-107)
107. 107 Id. at 163, 140 A.2d at 480-81. [↑](#footnote-ref-108)
108. 108 Id. at 168, 140 A.2d at 483. [↑](#footnote-ref-109)
109. 109 Avco Mfg. Corp., 145 Conn. at 169, 140 A.2d at 483. [↑](#footnote-ref-110)
110. 110 Id. The parties' intent was evidenced by the contract language, the purchase orders, bills of lading, government regulations and the parties' conduct. [↑](#footnote-ref-111)
111. 111 347 U.S. 110 (1954). [↑](#footnote-ref-112)
112. 112 314 U.S. 1 (1941). [↑](#footnote-ref-113)
113. 113 Avco Mfg. Corp., 145 Conn. at 171, 140 A.2d at 484. [↑](#footnote-ref-114)
114. 114 Id. [↑](#footnote-ref-115)
115. 115 Id. at 171-72, 140 A.2d at 484-85. [↑](#footnote-ref-116)
116. 116 Id. at 172, 140 A.2d at 485. [↑](#footnote-ref-117)
117. 117 Avco Mfg. Corp., 145 Conn. at 172, 140 A.2d at 485 (citing 2095(2)). [↑](#footnote-ref-118)
118. 118 Id. at 173, 140 A.2d at 485 (citing United States v. City of Detroit, 355 U.S. at 495, 505). See also United States v. New Mexico, 455 U.S. 720, 732-33 (1982) (regarding the Supreme Court's discussion of this case). [↑](#footnote-ref-119)
119. 119 Avco Mfg., Corp., 145 Conn. at 173, 140 A.2d at 485 (citing United States v. City of Detroit, 355 U.S. at 484). See also New Mexico, 455 U.S. at 732-33 (regarding the Supreme Court's discussion of this case in its New Mexico decision, as well). [↑](#footnote-ref-120)
120. 120 Avco Mfg. Corp., 145 Conn. at 173, 140 A.2d at 485 (citing United States v. City of Detroit, 355 U.S. 489 (1958)). See also New Mexico, 455 U.S. at 732-33 (regarding the Supreme Court's discussion of this case). [↑](#footnote-ref-121)
121. 121 Avco Mfg. Corp., 145 Conn. at 174, 140 A.2d at 485-86 (citing General Motors Corp. v. State Comm'n of Revenue & Taxation, 320 P.2d 807 (Kan. 1958)). [↑](#footnote-ref-122)
122. 122 Avco Mfg. Corp., 145 Conn. at 175, 140 A.2d at 486. [↑](#footnote-ref-123)
123. 123 United Aircraft Corp. v. Connelly, 145 Conn. 176, 179, 140 A.2d 486, 488-89 (1958). This case involved consolidation of four separate appeals by United Aircraft from various assessments by the defendant tax commissioner. [↑](#footnote-ref-124)
124. 124 Avco Mfg. Corp., 145 Conn. at 163-64, 140 A.2d at 481. [↑](#footnote-ref-125)
125. 125 United Aircraft Corp., 145 Conn. 176, 179, 140 A.2d at 488-89. [↑](#footnote-ref-126)
126. 126 Id. [↑](#footnote-ref-127)
127. 127 Id. at 180, 140 A.2d at 489. Thus, if title passed from the vendor at the vendor's site, title would vest immediately in the Government. [↑](#footnote-ref-128)
128. 128 Id. (emphasis added). [↑](#footnote-ref-129)
129. 129 United Aircraft Corp., 145 Conn. at 180, 140 A.2d at 489. In F.O.B. (Free on Board) destination, a shipment's title passes to the purchaser upon arrival of goods at the delivery site, as opposed to F.O.B. origin shipments, where title passes upon shipment from the seller. [↑](#footnote-ref-130)
130. 130 Id. at 181, 140 A.2d at 489. [↑](#footnote-ref-131)
131. 131 Id. at 182, 140 A.2d at 490. The court explained that the statutory definition of "use" in Gen. St. 1949, 2091(6) was "the exercise of any right or power over tangible personal property incident to ownership of that property," i.e., even the right to control the property while it was in shipment. Id. [↑](#footnote-ref-132)
132. 132 United Aircraft Corp., 145 Conn. at 182, 140 A.2d at 490. [↑](#footnote-ref-133)
133. 133 Id. at 182-83, 140 A.2d at 490. [↑](#footnote-ref-134)
134. 134 Id. [↑](#footnote-ref-135)
135. 135 Id. at 183, 140 A.2d at 490. [↑](#footnote-ref-136)
136. 136 United Aircraft Corp., 145 Conn. at 184, 140 A.2d at 490-91. The court cited Conn. Gen. Stat. 1949 2096(r), which grants exemptions to the sales tax for sales and use of materials "which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly… in an industrial plant in the process of the manufacture of tangible personal property to be sold." Id. [↑](#footnote-ref-137)
137. 137 Id. at 184-85, 140 A.2d at 491 (citing United Aircraft Corp. v. O'Connor, 141 Conn. 530, 107 A.2d 398 (1954)). [↑](#footnote-ref-138)
138. 138 Id. at 185, 140 A.2d at 491. [↑](#footnote-ref-139)
139. 139 United Aircraft Corp., 145 Conn. at 186, 140 A.2d at 491-92. [↑](#footnote-ref-140)
140. 140 Id. (citing 2096(r)). [↑](#footnote-ref-141)
141. 141 Id. [↑](#footnote-ref-142)
142. 142 Id. at 187, 140 A.2d at 492. [↑](#footnote-ref-143)
143. 143 See supra note 128 and accompanying text. [↑](#footnote-ref-144)
144. 144 Avco Mfg. Corp., 145 Conn. at 175, 140 A.2d at 486. [↑](#footnote-ref-145)
145. 145 Id. at 169, 140 A.2d at 484 (quoting the Connecticut Sales and Use Tax Act, 2091(3), which "defined "sale' as meaning and including "[a]ny transfer of title, exchange, barter, conditional or otherwise, in any manner or any means whatsoever, of tangible personal property for a consideration'"). Id. [↑](#footnote-ref-146)
146. 146 Avco Mfg. Corp., 145 Conn. at 174, 140 A.2d at 485 (stating, "[t]he Connecticut statute involved here… expressly exempts sales of tangible personal property to the United States and further specifically provides that the use of such property, to be subject to the use tax, must be incident to ownership"). Id. [↑](#footnote-ref-147)
147. 147 Avco Mfg. Corp., 145 Conn. at 169, 140 A.2d at 483. [↑](#footnote-ref-148)
148. 148 United States v. New Mexico, 455 U.S. 720, 737 (1982). [↑](#footnote-ref-149)
149. 149 See supra text accompanying note 86. [↑](#footnote-ref-150)
150. 150 New Mexico, 455 U.S. at 742. [↑](#footnote-ref-151)
151. 151 United Aircraft Corp., 145 Conn. at 186, 140 A.2d at 491-92. [↑](#footnote-ref-152)
152. 152 Id. at 182, 140 A.2d. at 489. [↑](#footnote-ref-153)
153. 153 See supra note 39 & 100, and accompanying text. [↑](#footnote-ref-154)
154. 154 United Aircraft Corp. v. Connelly, 145 Conn. 176, 140 A.2d 486 (1958). [↑](#footnote-ref-155)
155. 155 United Technologies Corp., 1995 WL 321864, at \*1. UTC sold Norden to Westinghouse in 1994, which sold it to Northrup Grumman in 1996. UTC Wins One Part of Tax Dispute, Hartford Courant, Aug. 3, 1996, at F1. [↑](#footnote-ref-156)
156. 156 United Technologies Corp. 1995 WL 321864, at \*3. Beside UTC and Norden, assessments were made against UTC's Hamilton Standard, Sikorsky Aircraft, Research Center, and Power Systems Divisions. [↑](#footnote-ref-157)
157. 157 Id. at \*1. [↑](#footnote-ref-158)
158. 158 See Consolidated Stipulation for Reservation of the Following Cases: UTC v. Groppo, Norden Systems. Inc. v. Groppo, No. CV86-0321340S, May 12, 1993, P 8. The parties reserved several questions of law to the Connecticut Court of Appeals, which refused to issue a decision because factual issues remained in question. See United Technologies Corp. v. Groppo, 35 Conn. App. 72, 644 A.2d 1309 (1994). [↑](#footnote-ref-159)
159. 159 Consolidated Stipulation for Reservation of the Following Cases: UTC v. Groppo, Norden Systems, Inc. v. Groppo, No. CV86-03213405, May 12, 1993 P 8 (citing DAR, 32 C.F.R. 7-203.21 (1984); NPR, 41 C.F.R. 13.703 (1984); and FAR, 48 C.F.R. 52.245-5 (1996)). [↑](#footnote-ref-160)
160. 160 United Technologies Corp., 1995 WL 321864, at \*1. [↑](#footnote-ref-161)
161. 161 Id. at \*4. [↑](#footnote-ref-162)
162. 162 Id. at \*1. [↑](#footnote-ref-163)
163. 163 See Consolidated Stipulation for Reservation of the Following Cases: UTC v. Groppo, Norden Sys. Inc. v. Groppo, No. CV86-0321340S, May 12, 1993, P 6. [↑](#footnote-ref-164)
164. 164 See FAR, 48 C.F.R. 16.301-1 (1996); DAR, 32 C.F.R. 3-405.1 (1984); and NPR, 41 C.F.R. 3.405-1 (1984) (all titled "Cost-Reimbursement Type-Contracts - General"). [↑](#footnote-ref-165)
165. 165 See FAR, 48 C.F.R. 52.216-7 (1996), "Allowable Cost and Payment"; DAR, 32 C.F.R. 7-203.4 (1984), "Allowable Cost, Fixed Fee and Payment"; and NPR, 41 C.F.R. 7.203-4 (1984), "Allowable Cost, Fixed Fee and Payment" (contractors were permitted to request payment no more than every two weeks). [↑](#footnote-ref-166)
166. 166 See FAR, 48 C.F.R. 52.232-20 (1996), "Limitation of Cost"; DAR, 32 C.F.R. 7-203.3 (1984), "Limitation of Cost Funds"; and NPR, 41 C.F.R. 7.203-3 (1984) "Limitation of Cost" (providing that the contractor has no obligation to continue work under the contract in excess of the authorized funds unless they were increased by the Government). [↑](#footnote-ref-167)
167. 167 See FAR, 48 C.F.R. 52.245-5 (1996), "Government Property (Cost-Reimbursement, Time and Material or Labor-Hour Contracts)"; DAR, 32 C.F.R. 7-402.25 (1984), "Government Property (Cost-Reimbursement, Nonprofit)," and NPR, 41 C.F.R. 13.703, 41 (1984), "Government Property (Cost-Reimbursement)." [↑](#footnote-ref-168)
168. 168 United Technologies Corp. v. Groppo, No. CV86-0321340, 1995 WL 321864, at \*1 (Conn. Super. Tax., May 19, 1995). [↑](#footnote-ref-169)
169. 169 Id. [↑](#footnote-ref-170)
170. 170 Id. [↑](#footnote-ref-171)
171. 171 Id. [↑](#footnote-ref-172)
172. 172 United Technologies Corp., 1995 WL 321864, at \*1-\*2. [↑](#footnote-ref-173)
173. 173 Id. [↑](#footnote-ref-174)
174. 174 Id. at \*2-\*3. [↑](#footnote-ref-175)
175. 175 Id. at \*2. [↑](#footnote-ref-176)
176. 176 United Technologies Corp., 1995 WL 321864, at \*3. [↑](#footnote-ref-177)
177. 177 Id. at \*4. [↑](#footnote-ref-178)
178. 178 Id. [↑](#footnote-ref-179)
179. 179 Id. [↑](#footnote-ref-180)
180. 180 United Technologies Corp., 1995 WL 321864, at \*4. [↑](#footnote-ref-181)
181. 181 Id. at \*4-\*5 (citing Robert Emmet & Son ***Oil*** & Supply Co. v. Sullivan, 158 Conn. 234, 239, 259 A.2d 636, 639 (1969); and Avco Mfg. Corp. v. Connelly, 145 Conn. 161, 171, 140 A.2d 479, 484 (1958)). The court summarized the applicable provisions of the tax code:

     Connecticut's sales tax statute, General Statutes 12-408, provides, in relevant part: "(1)… For the privilege of making any sales as defined in subsection (2) of [] 12-407, at retail, in this state for a consideration, a tax is hereby imposed on all retailers at the rate of six per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any services constituting a sale in accordance with subsection (2) of [] 12-407.' Subsection (2) of 12-408 provides, in relevant part: "Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer and such tax reimbursement… shall be paid by the consumer to the retailer and each retailer shall collect from the consumer the full amount of the tax.' General Statutes 12-407(2) defines "sale' as "(a) Any transfer of title, exchange or barter… of tangible personal property for a consideration;… [and] (i) the rendering of certain services for a consideration.' The sales tax is considered to be a debt from the consumer to the vendor/retailer, and is added to the original sales price. General Statutes 12-408 (2); Connecticut's use tax statute, General Statutes 12-411 provides, in relevant part: "An excise tax is hereby imposed on the storage, acceptance, consumption or any other use in this state of tangible personal property purchased from any retailer for storage, acceptance, consumption or any other use in this state.' [↑](#footnote-ref-182)
182. 182 Id. at \*5. [↑](#footnote-ref-183)
183. 183 Id. (citing Conn. Gen. Stat. 12-412 (1993)). Section 12-412 provides:

     Taxes imposed by this chapter shall not apply to the gross receipts from the sale of and the storage, use or other consumption in this state with respect to the following items: (1)… (A) Sales of tangible personal property or services to the United States. (2)… Sales of tangible personal property or services which this state is prohibited from taxing under the constitution or laws of the United States. [↑](#footnote-ref-184)
184. 184 United Technologies Corp., 1995 WL 321864, at \*5 (quoting South Carolina v. Baker, 485 U.S. 505, 523 (1988)). [↑](#footnote-ref-185)
185. 185 Baker, 485 U.S. at 507-08. [↑](#footnote-ref-186)
186. 186 United Technologies Corp., 1995 WL 321864, at \*5. [↑](#footnote-ref-187)
187. 187 Id. at \*5. [↑](#footnote-ref-188)
188. 188 Id. at \*6. [↑](#footnote-ref-189)
189. 189 Id. (The court cited the issue in Avco Mfg. Corp. as: "When did the United States acquire title[,] and [d]id title pass from the vendors to the plaintiff or directly to the United States?" (quoting Avco Mfg. Corp. v. Connelly, 145 Conn. 161, 168, 140 A.2d 479, 483 (1958)). [↑](#footnote-ref-190)
190. 190 United Technologies Corp., 1995 WL 321864, at \*6. [↑](#footnote-ref-191)
191. 191 Avco Mfg. Corp., 145 Conn. at 169, 140 A.2d at 484. [↑](#footnote-ref-192)
192. 192 United Technologies Corp., 1995 WL 321864, at \*6. [↑](#footnote-ref-193)
193. 193 Id. The court noted that in Avco Mfg. Corp., "even though the word "agent' was not expressly used in the contracts, Avco was acting as the agent of the government and, therefore, title to the facilities was in the government, not the contractor." Id. (citation omitted). But see Avco Mfg. Corp., 145 Conn. at 171, 140 A.2d. at 484 ("[T]he present plaintiff was duly authorized by the government to act on its behalf in acquiring the facilities, even though the word "agent' was not expressly used in the contracts."). [↑](#footnote-ref-194)
194. 194 Avco Mfg. Corp., 145 Conn. at 171, 140 A.2d at 484. The court stated: "it is obvious from the circumstances previously enumerated from the findings that the present plaintiff was duly authorized...." Id. (emphasis added). [↑](#footnote-ref-195)
195. 195 Id. at 169, 140 A.2d at 483. The court held that the United States was the purchaser because it was:

     clearly the intention of the plaintiff and the government in view of the language used by them in the facilities contracts and in the purchase orders, applications for bills of lading and other documents related to the contracts [and] [t]heir intention is ascertained "from the language used, interpreted in the light of the situation of the parties and the circumstances surrounding them.'

     Id. (quoting United Aircraft Corp. v. O'Connor, 141 Conn. 530, 538, 107 A.2d 398, 402 (1954)). [↑](#footnote-ref-196)
196. 196 United Technologies Corp., 1995 WL 321864, at \*6. Here, the court completes its transformation of the language in Avco Mfg. Corp., from "duly authorized," through "deemed to be an agent," to now simply calling Avco an "agent." Id. [↑](#footnote-ref-197)
197. 197 Avco Mfg. Corp., 145 Conn. at 164, 140 A.2d at 481 (citations and internal quotations omitted). [↑](#footnote-ref-198)
198. 198 United Technologies Corp., 1995 WL 321864, at \*6. [↑](#footnote-ref-199)
199. 199 Avco Mfg. Corp., 145 Conn. at 166-67, 140 A.2d at 482. [↑](#footnote-ref-200)
200. 200 United Technologies Corp., 1995 WL 321864, at \*7. [↑](#footnote-ref-201)
201. 201 Avco Mfg. Corp., 145 Conn. at 169, 140 A.2d at 483. The Avco court used its facts and Connecticut statutes to show how the line of cases from ***Kern***-Limerick to Murray did not apply to Connecticut and Avco. [↑](#footnote-ref-202)
202. 202 United Technologies Corp., 1995 WL 321864, at \*7. [↑](#footnote-ref-203)
203. 203 Id. (emphasis added). [↑](#footnote-ref-204)
204. 204 Id. (citing Conn. Gen. Stat. 12-407(2)(a) (1995), which states that ""sale' and "selling' mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration"). [↑](#footnote-ref-205)
205. 205 United Technologies Corp., 1995 WL 321864, at \*7. [↑](#footnote-ref-206)
206. 206 Avco Mfg. Corp., 145 Conn. at 165, 140 A.2d at 481-82. [↑](#footnote-ref-207)
207. 207 United Technologies Corp., 1995 WL 321864, at \*7 (citing State ex. rel. Thompson-Stearns-Roger v. Schaffner, 489 S.W.2d 207 (Mo. 1973)). [↑](#footnote-ref-208)
208. 208 Id. at \*7. [↑](#footnote-ref-209)
209. 209 Id. at \*8. [↑](#footnote-ref-210)
210. 210 Conn. Gen. Stat. 12-407(3) (1995). [↑](#footnote-ref-211)
211. 211 Conn. Gen. Stat. 12-408(1) (1995). [↑](#footnote-ref-212)
212. 212 United Technologies Corp., 1995 WL 321864, at \*8 (citing Fusco-Amatruda Co. v. Tax Comm'r, 168 Conn. 597, 601, 362 A.2d 847, 850 (1975)). [↑](#footnote-ref-213)
213. 213 Fusco-Amatruda Co. v. Tax Comm'r, 168 Conn. 597, 609, 362 A.2d 847, 854 (1975). [↑](#footnote-ref-214)
214. 214 Id. at 602, 362 A.2d. 847, 851 (citing Avco Mfg. Corp. v. Connelly, 145 Conn. 169, 175, 140 A.2d 479, 486 (1958)). [↑](#footnote-ref-215)
215. 215 See supra text accompanying note 167. [↑](#footnote-ref-216)
216. 216 465 N.E.2d 430 (Ohio 1984). [↑](#footnote-ref-217)
217. 217 Id. at 432 (emphasis added). [↑](#footnote-ref-218)
218. 218 Id. [↑](#footnote-ref-219)
219. 219 United Technologies Corp. v. Groppo, No. CV86-0321340, 1995 WL 321864, at \*8 (Conn. Super. Tax., May 19, 1995). [↑](#footnote-ref-220)
220. 220 See Brief of Plaintiffs-Appellants, United Technologies Corp. v. Groppo, 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). The plaintiffs' and defendant's briefs were addressed to the Appellate Court, but were not required to be resubmitted to the Connecticut Supreme Court when the appeal was transferred from the Appellate Court to the Connecticut Supreme Court. [↑](#footnote-ref-221)
221. 221 Brief of Plaintiffs-Appellants at 9, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-222)
222. 222 Id. at 10-14. [↑](#footnote-ref-223)
223. 223 Id. at 15-16. [↑](#footnote-ref-224)
224. 224 Id. [↑](#footnote-ref-225)
225. 225 Brief of Plaintiffs-Appellants at 20, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-226)
226. 226 Id. at 22 (UTC advanced a similar argument for services). [↑](#footnote-ref-227)
227. 227 Id. at 23-24. [↑](#footnote-ref-228)
228. 228 Id. at 24-25. [↑](#footnote-ref-229)
229. 229 Brief of Plaintiffs-Appellants at 25-29, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-230)
230. 230 Id. at 30. [↑](#footnote-ref-231)
231. 231 Id. at 30-31. [↑](#footnote-ref-232)
232. 232 Id. at 31-32 (citing Fusco-Amatruda Co. v. Tax Comm'r, 168 Conn. 597, 362 A.2d. 847 (1975)). [↑](#footnote-ref-233)
233. 233 Brief of Plaintiffs-Appellants at 31-32, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-234)
234. 234 Id. at 32. See also Fusco-Amatruda, 168 Conn. at 601, 362 A.2d. at 851. [↑](#footnote-ref-235)
235. 235 Brief of Plaintiffs-Appellants at 33, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-236)
236. 236 Id. at 33-34 (citing White Oak Corp. v. Department of Revenue Servs., 198 Conn. 413, 503 A.2d 582 (1986)). [↑](#footnote-ref-237)
237. 237 Brief of Defendant-Appellee at 1, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-238)
238. 238 Id. See supra note 224 and accompanying text. [↑](#footnote-ref-239)
239. 239 See supra note 228 and accompanying text. [↑](#footnote-ref-240)
240. 240 Brief of Defendant-Appellee at 3-4, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-241)
241. 241 Id. at 5 (citing White Oak Corp. v. Department of Revenue Servs., 198 Conn. 413, 503 A.2d. 582 (1986)) and American Totalisator v. Dubno, 210 Conn. 401, 555 A.2d 414 (1989), to support the contention that contractors are the consumers of property they purchase to fulfill their contracts, and so are liable for the sales and use tax). [↑](#footnote-ref-242)
242. 242 Brief of Defendant-Appellee at 6-10, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-243)
243. 243 Id. at 10-11. [↑](#footnote-ref-244)
244. 244 Id. at 12. [↑](#footnote-ref-245)
245. 245 Id. at 12-13. [↑](#footnote-ref-246)
246. 246 Brief of Defendant-Appellee at 13, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-247)
247. 247 Id. [↑](#footnote-ref-248)
248. 248 Id. at 15-16. [↑](#footnote-ref-249)
249. 249 Id. at 16. [↑](#footnote-ref-250)
250. 250 Brief of Defendant-Appellee at 19-20, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229) (quoting Laurence H. Tribe, American Constitutional Law 519 (2d ed. (1988)); But see id. at 520-21. ("[W]hen Congress is silent, a decision to make immunity turn on the legal incidence of the tax under a state's own laws avoids both the hazards inherent in ad hoc determinations, and unnecessary collisions between state law and federal instrumentalities...." (emphasis added)). [↑](#footnote-ref-251)
251. 251 Brief of Defendant-Appellee at 21, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). Other cases cited by the DRS in support of its New Mexico doctrine include United States v. California, 507 U.S. 746, (1993); Maecon, Inc. v. State Dept. of Taxation, 761 P.2d 411 (Nev. 1988); United States v. Hawkins County, Tenn., 859 F.2d 20 (6th Cir. 1988); and NLO, Inc. v. Limbach, 613 N.E.2d 193 (Ohio 1993). [↑](#footnote-ref-252)
252. 252 Brief of Defendant-Appellee at 23, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-253)
253. 253 Id. at 23-24. [↑](#footnote-ref-254)
254. 254 Id. at 24. [↑](#footnote-ref-255)
255. 255 Id. (citing American Totalisator v. Dubno, 210 Conn. 401, 555 A.2d 414 (1989); Sizemore v. Intergraph Corp., 596 So.2d 6 (Ala. Civ. App. 1991)). But see Dresser Industries, Inc. v. Lindley, 65 N.E.2d 430 (Ohio 1984) (holding that under a government contract, a purchase for resale had taken place because "title automatically vested in the government"). [↑](#footnote-ref-256)
256. 256 Brief of Defendant-Appellee at 25-26, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). But see supra note 84, and note 86 and accompanying text (referring to commentaries criticizing the Supreme Court for not overruling ***Kern***-Limerick). [↑](#footnote-ref-257)
257. 257 Brief of Defendant-Appellee at 26, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-258)
258. 258 Id. at 27. [↑](#footnote-ref-259)
259. 259 Id. at 28-29 (citing White Oak Corp. v. Department of Revenue Servs., 198 Conn. 413, 503 A.2d 582 (1986) and American Totalisator Co. v. Dubno, 210 Conn. 401, 555 A.2d 414 (1989)). [↑](#footnote-ref-260)
260. 260 Reply Brief of Plaintiffs-Appellants at 2, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). See also supra note 227. [↑](#footnote-ref-261)
261. 261 Reply Brief of Plaintiffs-Appellants at 3, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229) (citing Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450, 460 (1995)). [↑](#footnote-ref-262)
262. 262 Id. [↑](#footnote-ref-263)
263. 263 Id. at 4 (citing Conn. Gen. Stat. 12-408(2)). [↑](#footnote-ref-264)
264. 264 Id. at 5. [↑](#footnote-ref-265)
265. 265 Brief of Plaintiffs-Appellants at 24-25, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). See also supra text accompanying note 228. [↑](#footnote-ref-266)
266. 266 Brief of Defendant-Appellee at 3-4, United Technologies Corp, 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). See also supra text accompanying note 240. [↑](#footnote-ref-267)
267. 267 Reply Brief of Plaintiffs-Appellants at 7, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-268)
268. 268 Id. at 7-8. [↑](#footnote-ref-269)
269. 269 Brief of Defendant-Appellee at 13, United Technologies Corp, 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). See also supra text accompanying note 246. [↑](#footnote-ref-270)
270. 270 Reply Brief of Plaintiffs-Appellants at 8-9, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-271)
271. 271 Id. at 9 (citing Conn. Gen. Stat. 12-407(5)) (emphasis added). [↑](#footnote-ref-272)
272. 272 Id. at 9-10. [↑](#footnote-ref-273)
273. 273 See Brief of Plaintiffs-Appellants at 33-34, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229) (citing White Oak Corp. v. Department of Revenue Servs., 198 Conn. 413, 503 A.2d 582 (1986)). See also supra text accompanying notes 236 & 241. [↑](#footnote-ref-274)
274. 274 Reply Brief of Plaintiffs-Appellants at 10, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229). [↑](#footnote-ref-275)
275. 275 Id. at 11 (citing American Totalisator Co. v. Dubno, 210 Conn. 401, 406-07, 555 A.2d 414, 417 (1989)). See also Brief of Plaintiffs-Appellants at 20, United Technologies Corp., 238 Conn. 761, 680 A.2d1297 (1996) (No. A.C. 15229); and supra text accompanying note 227. [↑](#footnote-ref-276)
276. 276 Reply Brief of Plaintiffs-Appellants at 12-13, United Technologies Corp., 238 Conn. 761, 680 A.2d 1297 (1996) (No. A.C. 15229) (citing Maecon, Inc. v. State Dept. of Taxation, 761 P.2d 411 (Nev. 1988)). [↑](#footnote-ref-277)
277. 277 Id. at 13 (citing United States v. Hawkins County, Tennessee, 859 F.2d 20 (6th Cir. 1988)). [↑](#footnote-ref-278)
278. 278 Id. at 14 (citing Conn. Gen. Stat. 12-407(5)) and NLO, Inc. v. Limbach, 613 N.E.2d 193 (Ohio 1993)). [↑](#footnote-ref-279)
279. 279 United Technologies Corp., 238 Conn. at 777-78, 680 A.2d at 1305. The decision was written by Justice Callahan with Justices Berdon, Norcott, Katz, and Palmer, concurring. Id. [↑](#footnote-ref-280)
280. 280 Id at 762-63 nn.1-5, 680 A.2d at 1298-99 nn.1-5. [↑](#footnote-ref-281)
281. 281 Id. at 764, 680 A.2d at 1299. [↑](#footnote-ref-282)
282. 282 Id. at 765-66, 680 A.2d at 1299. The court noted that title vested immediately in the United States, and that such property would: (1) be limited to use in government contracts; (2) be accounted to the United States; (3) be accessible by the United States; (4) not be UTC's liability if lost or damaged (nor was UTC required to insure it); and (5) be disposed of as directed by the United States upon contract completion. Further, the court noted that such property was shipped from vendors to UTC at government expense. Id. [↑](#footnote-ref-283)
283. 283 United Technologies Corp., 238 Conn. at 766, 680 A.2d at 1300. Government purchased services included "testing, personnel, computer and data processing, stenographic, design and engineering services." [↑](#footnote-ref-284)
284. 284 United Technologies Corp., 238 Conn. at 767, 680 A.2d at 1300-01. This legal conclusion by the trial court was the basis for holding UTC liable for the sales and use tax. [↑](#footnote-ref-285)
285. 285 Id. at 767-68, 680 A.2d at 1301. [↑](#footnote-ref-286)
286. 286 Id. at 768-72, 680 A.2d at 1301-03. [↑](#footnote-ref-287)
287. 287 Id. at 771-72, 680 A.2d at 1302-03. [↑](#footnote-ref-288)
288. 288 United Technologies Corp., 238 Conn. at 768, 680 A.2d at 1301 (citation omitted). [↑](#footnote-ref-289)
289. 289 Id. at 771, 680 A.2d at 1303. [↑](#footnote-ref-290)
290. 290 Id. [↑](#footnote-ref-291)
291. 291 Id. (quoting United States v. New Mexico, 455 U.S. at 738 (1982)). [↑](#footnote-ref-292)
292. 292 United Technologies Corp., 238 Conn. at 771, 680 A.2d at 1303. The court noted that if the tax liability had been found to rest on the United States, immunity would be automatic and "the contractor's relationship to the government would have been irrelevant." Id. [↑](#footnote-ref-293)
293. 293 Id. at 772, 680 A.2d at 1303. [↑](#footnote-ref-294)
294. 294 Id. [↑](#footnote-ref-295)
295. 295 United Technologies Corp., 238 Conn. at 772, 680 A.2d at 1303 (emphasis added). [↑](#footnote-ref-296)
296. 296 Id. [↑](#footnote-ref-297)
297. 297 Id. at 772-73, 680 A.2d at 1303 (citations omitted). [↑](#footnote-ref-298)
298. 298 Id. The contract terms noted, relative to the tangible personal property were that the Government: held vested title, paid transportation costs, bore the risk of loss and had the right to disposition and management of the property. [↑](#footnote-ref-299)
299. 299 United Technologies Corp., 238 Conn. at 773, 680 A.2d at 1303. [↑](#footnote-ref-300)
300. 300 Id. [↑](#footnote-ref-301)
301. 301 Id. at 773-74, 680 A.2d at 1303-04 (citing Conn. Gen. Stat. 12-407(2)(i) (1995)). [↑](#footnote-ref-302)
302. 302 United Technologies Corp., 238 Conn. at 773-774, 680 A.2d at 1303-04 (explaining that UTC's claim was that if Avco was not affected by New Mexico, then services should remain exempt). [↑](#footnote-ref-303)
303. 303 Id. at 774, 680 A.2d at 1304. [↑](#footnote-ref-304)
304. 304 Id. [↑](#footnote-ref-305)
305. 305 United Technologies Corp., 238 Conn. at 774-775, 680 A.2d at 1303-04 n.19. [↑](#footnote-ref-306)
306. 306 Id. [↑](#footnote-ref-307)
307. 307 Id. (citing Conn. Gen. Stat. 12-407(3) (1995)). [↑](#footnote-ref-308)
308. 308 Id. (citing White Oak Corp. v. Department of Revenue Servs., 198 Conn. 413, 422, 503 A.2d 582, 587 (1986)). [↑](#footnote-ref-309)
309. 309 United Technologies Corp., 238 Conn. at 775, 680 A.2d at 1304 (quoting United Aircraft Corp. v. O'Connor, 141 Conn. 530, 539, 107 A.2d 398, 402 (1954)). [↑](#footnote-ref-310)
310. 310 Id. [↑](#footnote-ref-311)
311. 311 Id. at 775-76, 680 A.2d at 1304-05. (citing American Totalisator Co. v. Dubno, 210 Conn. 401, 555 A.2d 414 (1989)). [↑](#footnote-ref-312)
312. 312 Id. at 775-76, 680 A.2d at 1304-05 (quoting American Totalisator, 210 Conn. at 417-18, 555 A.2d at 421) (internal quotation marks omitted). [↑](#footnote-ref-313)
313. 313 United Technologies Corp., 238 Conn. at 776, 680 A.2d at 1305 (citing White Oak, Corp., 198 Conn. 413, 503 A.2d 582 (1986)). [↑](#footnote-ref-314)
314. 314 Id. at 776, 680 A.2d at 1305 (quoting White Oak Corp., 198 Conn. at 423, 503 A.2d at 587 (1986)). [↑](#footnote-ref-315)
315. 315 Id. 238 Conn. at 776-77, 680 A.2d at 1305 (citing Fusco-Amatruda Co. v. Tax Comm'r, 168 Conn. 597, 600-01, 362 A.2d 847, 850 (1975)). [↑](#footnote-ref-316)
316. 316 Id. [↑](#footnote-ref-317)
317. 317 United Technologies Corp., 238 Conn. at 777, 680 A.2d at 1305. [↑](#footnote-ref-318)
318. 318 Id. This contract was the one chosen by the trial court as representative of UTC's contracts. See United Technologies Corp. v. Groppo, No. CV86-0321340, 1995 WL 321864, at \*1 (Conn. Super. Tax., May 19, 1995). [↑](#footnote-ref-319)
319. 319 Id. (quoting from the UTC contract). [↑](#footnote-ref-320)
320. 320 Id. [↑](#footnote-ref-321)
321. 321 United Technologies Corp., 238 Conn. at 777, 680 A.2d at 1305. [↑](#footnote-ref-322)
322. 322 Id. (citing Conn. Gen. Stat. 12-407(3) (1995)). [↑](#footnote-ref-323)
323. 323 Conn. Gen. Stat. 12-412(78) (eff. July 1, 1993). [↑](#footnote-ref-324)
324. 324 United States v. New Mexico, 455 U.S. 720, 723 (1982). [↑](#footnote-ref-325)
325. 325 United Technologies Corp. v. Groppo, No. CV86-0321340, 1995 WL 321864, at \*1 (Conn. Super. Tax, May 19, 1995). [↑](#footnote-ref-326)
326. 326 United Aircraft Corp. v. Connelly, 145 Conn. 176, 185, 140 A.2d 486, 491 (1958). [↑](#footnote-ref-327)
327. 327 Avco Mfg. Corp. v. Connelly, 145 Conn. 161, 163-64, 140 A.2d 479, 481 (1958). [↑](#footnote-ref-328)
328. 328 United Aircraft Corp., 145 Conn. at 182, 140 A.2d at 490. [↑](#footnote-ref-329)
329. 329 United Technologies Corp., 238 Conn. at 772, 680 A.2d at 1303. [↑](#footnote-ref-330)
330. 330 Id. [↑](#footnote-ref-331)
331. 331 New Mexico, 455 U.S. at 733. [↑](#footnote-ref-332)
332. 332 Avco Mfg. Corp., 145 Conn. at 171-73, 140 A.2d at 484-85. [↑](#footnote-ref-333)
333. 333 United Technologies Corp., 238 Conn. at 772-73, 680 A.2d at 1303. [↑](#footnote-ref-334)
334. 334 New Mexico, 455 U.S. at 738. [↑](#footnote-ref-335)
335. 335 United Technologies Corp., 238 Conn. at 772-73, 680 A.2d at 1303. [↑](#footnote-ref-336)
336. 336 Id. at 765-66, 680 A.2d at 1299. [↑](#footnote-ref-337)
337. 337 See generally FAR, 48 C.F.R. pt. 45 (1996). [↑](#footnote-ref-338)
338. 338 See generally FAR, 48 C.F.R. pt. 49 (1996). [↑](#footnote-ref-339)
339. 339 See generally FAR, 48 C.F.R. pt. 45 (1996). [↑](#footnote-ref-340)
340. 340 New Mexico, 455 U.S. at 737. [↑](#footnote-ref-341)
341. 341 United Technologies Corp., 238 Conn. at 774, 680 A.2d at 1304. [↑](#footnote-ref-342)
342. 342 Id. at 773-75, 680 A.2d at 1303-04. [↑](#footnote-ref-343)
343. 343 Id. at 774-78, 680 A.2d at 1304-05. [↑](#footnote-ref-344)
344. 344 Id. at 766, 680 A.2d at 1300. [↑](#footnote-ref-345)
345. 345 United Technologies Corp., 238 Conn. at 777-78, 680 A.2d at 1305. [↑](#footnote-ref-346)
346. 346 See generally FAR, 48 C.F.R. pt. 27 (1996) for a discussion of intellectual property rights under government contracts. Representative contract clauses include FAR, 48 C.F.R. 52.227-12 (1996), "Patent Rights - Retention by the Contractor" (Long Form) (June 1989); and FAR, 48C.F.R. 52.227-14 (1996), "Rights in Data - General" (June 1987). [↑](#footnote-ref-347)
347. 347 See generally FAR, 48 C.F.R. pt. 27 (1996). [↑](#footnote-ref-348)
348. 348 See, e.g., United Technologies Corp., 238 Conn. 778, 680 A.2d 1305 (discussing the interest of the U.S. Army and the Department of Defense in using fuel cells). [↑](#footnote-ref-349)