

# The Trusted Professional

THE NEWSPAPER OF THE NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

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## IRS guidance offers relief for small businesses on HRAs, Form 3115

BY CHRIS GAETANO  
*Trusted Professional Staff*

Amid warnings of severe processing delays at the IRS this tax season, the preparer community got a pleasant surprise in February, when the service released new guidance offering relief from two tax provisions that CPAs considered particularly onerous.

The first piece of guidance, Rev. Proc. 2015-20, allows small businesses to comply with the new tangible property regulations through a simplified procedure, in lieu of filing IRS Form 3115, Application for Change in Accounting Method. The tangible property regulations, which were

approved in 2013, essentially govern what counts as either a repair or an improvement and, therefore, what can and cannot be depreciated over time. One significant aspect of the rules is a finer definition of what actually counts as a unit of property. Whereas the preparer would previously count the whole building as a unit, under the new rules, a building is divided into discrete units that include categories such as electricity; plumbing; or the heating, ventilating and air conditioning (HVAC) system.

Since much of what was outlined in the new regulations requires a change in accounting methods, the taxpayer would have needed to fill out Form 3115, which informs the IRS of such modifications, according to



IRS Commissioner John A. Koskinen. Though he and other officials have, for several months, cautioned that this tax season would be one of the worst for preparers, the IRS recently offered CPAs some relief with two new pieces of guidance.

Photo courtesy of the House Committee on Oversight and Government Reform

Jonathan M. Horn, chair of the NYSSCPA's Relations with the IRS Committee.

The form, Horn noted, was initially intended to make the process easier, as the alternative to filling it out was to get di-

rect approval from the IRS. However, he said, completing the document is actual-

See IRS, on page 3

## Paying homage to an iconic leader, Society launches educational fund

BY ALONZA ROBERTSON  
*Trusted Professional Correspondent*

The NYSSCPA is launching a new educational fund, in honor of its late 2009–2010 president, David J. Moynihan, that will encompass all of the Society's college accounting scholarships and high school accounting introduction programs.

Moynihan, an audit partner in The Bonadio Group's Syracuse office, was widely considered an icon in the profession for his dedication to quality, as well as his embrace of progressive regulatory reforms and commitment to young people's education. He passed away in January after a year-long battle with cancer at age 59.

A 32-year member of the Society, Moyni-

han led the organization during a time of immense change: New York had just passed the Accountancy Reform Law, the first significant amendment to the state's law regulating the CPA profession in more than 50 years, and he was at the Society's helm as the State Education Department was in the final stages of implementing new regulations.

He also represented the Society as the state drafted rules for New York's first peer review oversight program, and was one of the first CPAs to be appointed to New York state's Quality Review Oversight Committee, charged with monitoring the state's mandatory peer review program for public accounting firms.

The Moynihan Fund will provide funding to the Society's existing Excellence in Accounting Scholarship and Career Op-

portunities in the Accounting Profession (COAP) programs.

Donations will be collected through traditional methods, such as a donation check-off feature online or paper invoice when members pay dues, as well as through a newly launched crowdfunding site, [www.GoFundMe.com/carryitforward](http://www.GoFundMe.com/carryitforward), and, in the future, a text-to-give platform. Donations will also be collected during special pledging programs at Society events, including the annual dinner in May and the Society's Open House holiday event in December.

The NYSSCPA has set the fund's 12-month fund-raising goal at \$100,000, with an even bigger long-term objective.

"In honor of Dave's memory as a transfor-

mative professional and generous friend, we have set a goal of raising \$500,000 during the next five years," said Joanne S. Barry, the NYSSCPA's executive director and CEO.

The Society will formally launch the "Carry It Forward" campaign to promote the fund at its Annual Election Meeting and Dinner, which will be held on May 14 at the Event Hotel in New York City.

"We look forward to having our members, their friends and others who loved and appreciated Dave join us in this worthwhile endeavor," Barry said. "We're excited to be both expanding the reach of our educational programs and honoring his legacy."

To learn more about the fund and how you can support it, email [carryitforward@nysscpa.org](mailto:carryitforward@nysscpa.org).

**CARRY FORWARD**  
The Moynihan Fund

### INSIDE THIS EDITION

Opinion.....	2
Advocacy.....	4
Tech.....	6
Industry Calendar.....	9
Risk Management .....	10
Chapter News.....	11
Chapter CPE and Events .....	12

#### TECH

Best practices for testing cybersecurity risk management programs



PAGE 6

#### RISK MANAGEMENT

How to avoid a common source of professional liability claims



PAGE 10

#### CPA ROUNDTABLE

What's the difference between being a hard worker and being a workaholic?



PAGE 15

# PRESIDENT'S COMMENTARY

## Carry It Forward

Last month, I told you that the Society was hard at work thinking of a fitting way to honor **David J. Moynihan**, the NYSSCPA's 2009–2010 president. Since Dave passed away in January, so many of us had the same question: How do we continue his legacy? Dave was a man of action as well as ideas, a big-picture thinker who never shied away from rolling up his sleeves. As an organization, we knew that whatever we did to pay homage to him would have to embody those same characteristics.

I'm proud to say that we've come up with a plan that does capture Dave's spirit: The Moynihan Fund, which will encompass our Foundation for Accounting Education scholarships, Career Opportunities in the Accounting Profession (COAP) scholarships and any other financial aid or recognition that we offer students.

Dave was a passionate advocate of education, both for accounting students and

professionals in practice. He was a founder of the Syracuse Chapter's COAP program and also served on its board.

Indeed, he was an enthusiastic supporter of aspiring CPAs:

As President-elect **Joseph M. Falbo Jr.** recalls, Dave developed a reputation for taking time to help young staffers at the office prepare for the CPA exam.

Moreover, Dave also believed in using the special

knowledge and skill set that only a CPA can acquire to advance the community. Through The Moynihan Fund, we'll be encouraging accounting students not only to be technically proficient, but to think broadly about what it means to be a leader and how they can use their talents to improve the world around them.

The fund will officially be unveiled in coming weeks, with opportunities to do-

nate both on the crowdfunding website [www.GoFundMe.com/carryitforward](http://www.GoFundMe.com/carryitforward) and the Society's homepage. We're

seeking to raise \$100,000 in our first year, and will announce the results of our efforts at our Annual Election Meeting and Dinner on May 14.

You have an important part to play in this. The theme of our campaign as we introduce the fund to

members and the public is Carry it Forward, and we hope you'll do exactly that, by spreading the word about it in your social and professional networks.

If we succeed, we'll not only have honored Dave in the best way possible, but we will have also helped to bring the next generation of leaders to the profession.



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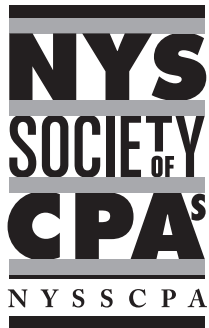
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## IRS

Continued from front page

ly “a huge amount of work.” The full form includes eight pages of complex questions that, if answered incorrectly, could create the impression that the taxpayer is trying to dupe the IRS. What’s more, Horn added, the process requires “looking back to all your depreciation and expense decisions from the beginning of time for all property you own and asking, ‘Did I do it right and, if not, what’s the adjustment value?’”

Daniel Gibson, a managing partner from Iselin, N.J., knows well the anxieties that come with completing the form. “When you even mention Form 3115 to an accountant, it’s a frightening experience, because you’re looking at [pages] of pure misery.”

To add insult to injury, Gibson noted that Form 3115 often won’t even communicate any significant economic changes unless the preparer plans to take a particularly aggressive tax position—the form doesn’t change enforcement or regulations, only how people comply with those regulations. Horn made a similar point, saying that the form demands a lot of work for what often becomes a minimal or nominal adjustment.

Stakeholders brought these concerns up with the IRS, and, in response, the service released Rev. Proc. 2015-20 on Feb. 13. Under this guidance, small businesses that are allowed to bypass Form 3115 are defined as those with total assets of less than \$10 million or average annual gross receipts of \$10 million or less for the prior three taxable years.

Still, both Gibson and Horn said that just because a small business isn’t *required* to file Form 3115, it doesn’t mean it can’t anyway. There could be cases where going through all the hassle would actually be worth it for a client. For example, the form can be useful if a client has “ghost assets,” that is, assets that may have been replaced or even disposed of, but are still on the fixed-asset schedule and are being depreciated.

“There’s a chance to do a partial disposition election to really clean up your depreciation schedules, but [you can’t proceed] if you take advantage of the relief and don’t file a 3115 for these accounting changes,” Horn said.

He added that the form can also allow a taxpayer to expense something that, in the

past, had been depreciated and, in doing so, get a sizable deduction. For more information on the IRS’s simplified procedure for Form 3115, visit [nysscpa.org](http://nysscpa.org). The Society has created a special toolkit that includes a 1-CPE-credit webcast about the updates.

**HRAs gets temporary reprieve**

The second piece of guidance, Notice 2015-17, concerns health reimbursement accounts (HRAs), which allow employers to set aside pretax dollars specifically for their employees to pay medical expenses or purchase individual health insurance. The guidance concerns both how S corporations interact with these plans, as well as businesses as a whole.

Under IRS rules, when S corporations (closely held corporate entities) utilized these types of accounts, those who were 2 percent-or-greater partners in the entity needed to count the value of the insurance, whether paid for by the company or reimbursed to the individual owner, on the W-2 form as income. This was required even though it was largely a wash, as the rules also allowed 2 percent-or-greater partners to deduct the value of the insurance on their Form 1040s.

With the passage of the Affordable Care Act (ACA), however, these sorts of accounts were no longer valid—under the ACA, HRAs were considered a group plan and, as such, were subject to the minimal essential coverage standard. Minimal essential coverage means that a plan must have certain qualities to be considered in compliance with the ACA, such as affordability, fair premiums and a minimum coverage value. Due to the nature of HRAs, they were not considered to be in compliance with the ACA and continuing to use them would invite significant penalties—specifically, a \$100-per-employee-per-day excise tax.

“The big thing people forget is that this excise tax applies to everyone, not just large employers,” Horn said. “You can have two employees and still be subject to the excise tax.”

Employers thought they had a work-around, Horn said, by making the reimbursement additional taxable income, however, the federal government said that this still violates the ACA. Indeed, the IRS eventually released guidance that said it

# Quicktake

## What you need to know about the new IRS guidance, in a nutshell.

**Form 3115:**

- Small taxpayers—that is, those with assets of less than \$10 million or average gross annual receipts of \$10 million or less for the prior three taxable years—do not have to file a Form 3115 to satisfy new tangible property regulations.
- Small taxpayers do retain the option of using the form, however, in case it makes financial sense for them to do so.

**Health Reimbursement Accounts:**

- Businesses with under 50 employees may continue to use Health Reimbursement Accounts (HRAs), without incurring penalties from the Affordable Care Act, until June 2015.
- 2 percent-or-greater shareholders in S corporations may continue to use HRAs until the IRS releases specific guidance on the matter.

didn’t matter whether the reimbursement came before or after tax—it’s still reimbursement, and therefore out of bounds for the ACA. According to Horn, this meant that, suddenly, many businesses were facing the possibility of massive penalties.

In response to numerous concerns voiced to the IRS, the government released 2015-17 on Feb. 18. In that guidance, the service said that it stands by the original position that HRAs are not in compliance with the ACA but, because of the confusion and the time required to transition to a new system, no business under 50 employees will be penalized if it continues using HRAs through June of this year.

Essentially, “They said, ‘We’re standing by our guidance, HRAs don’t work and you’ve got until June to fix it,’” Horn said.

In addition to this measure for small businesses, S corporations got additional relief for their investors holding 2 percent or more shares. Like other business entities subject to this rule, the IRS relief allows S corporations to avoid the penalties for running an HRA, but unlike other stakeholders, their relief will last until the IRS comes out with additional guidance specifically pertaining to them, according to **Scott M. Cheslowitz**, a member of the NYSSCPA’s Closely Held and S Corporations Committee.

“The notice, with respect to S corporation arrangements, basically now says, ‘We’re not going to hit you with the penalty, Mr. or Ms. 2 percent-or-greater shareholder, through at least 2015,’” he said.

This also means that these same shareholders, basically employees, would still pick up income on their W-2 from the reimbursements, but would then be able to deduct it when filing their 1040s. Cheslowitz praised the release, saying the IRS made the right call.

“They heard the comments from the preparer community, and they acted responsibly,” he said.

Horn added, however, that it would be best for practitioners to encourage their clients to transition to a new type of plan, or even drop coverage and simply give everyone the money to buy something off the exchange.

Both Cheslowitz and Horn said that, as happy as they are about the new IRS guidance, they do wish the timing had been different.

“It was really refreshing to see, within three days, the IRS come out with two reasonable pieces of guidance that resolve, at least partially, huge filing season issues,” Horn said. “The bad news was they could have done this months ago and saved everyone a lot of agita.”

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# Society supports FASB proposal on practical expedient-valued investments

BY CHRIS GAETANO  
*Trusted Professional Staff*

The NYSSCPA expressed support for a proposal by the Financial Accounting Standards Board (FASB) that, if approved, would make it easier to consistently categorize investments in the fair value hierarchy. The Society weighed in with a Jan. 15 comment letter written by members of its Financial Accounting Standards Committee.

The FASB's proposal, "Fair Value Measurement (Topic 820): Disclosures for Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent)," was released in October. In essence, it is an attempt to standardize where investments valued using the practical expedient fall within the fair value hierarchy—that is, the level of judgment used in estimating the fair values of assets or liabilities. With the practical expedient, an investment's fair value is measured based on the net asset value of the investee.

According to the FASB, investments valued using the practical expedient are currently categorized within the fair value hierarchy based on three factors: whether the investment is redeemable at net asset value on the measurement date; never redeemable with the investee at net asset value; or redeemable with the investee at the net asset value at a future date. If it's the latter, the reporting entity must take into account the length of time until those investments become redeemable in determining where within the fair value hierarchy that investment will fall. However, the board said, this has produced inconsistencies in practice.

As an alternative, the FASB has proposed altogether eliminating the requirement that investments valued using the practical expedient be categorized within the fair value hierarchy. It would also remove the requirement that entities make certain

disclosures for all investments that are eligible to be measured at fair value using the practical expedient; disclosures would only be required to do so if the entity decided to go ahead and classify that investment within the fair value hierarchy.

"Removing those investments from the fair value hierarchy not only would eliminate the diversity in practice in how investments measured at net asset value (or its equivalent) with future redemption dates are classified, but also would ensure that all investments categorized in the fair value hierarchy would be classified using a consistent approach," the FASB said.

Moreover, the board felt the change would provide greater transparency to financial statement users.

Overall, the Society expressed support for the measure.

"It makes things easier for the reporting entity and for the auditor, by providing a set of guidelines that everyone understands and everyone can apply," said **Craig T. Goodman**, vice chair of the Financial Accounting Standards Committee and one of the letter's authors.

However, the Society did disagree with the FASB's suggestion that the standard, if approved, should be applied retrospectively. While the FASB said "the retrospective approach would require investments for which fair value is measured at net asset value using the practical expedient to be removed from the fair value hierarchy in all periods presented in the entity's financial statements," the Society felt that "because the Proposed Update would not have an effect on the investment valuation of assets measured using the practical expedient, we do not believe retrospective application should be required, but we believe retrospective application should be optional."

The effective date, if approved, will be determined after feedback and other considerations have been accounted for.

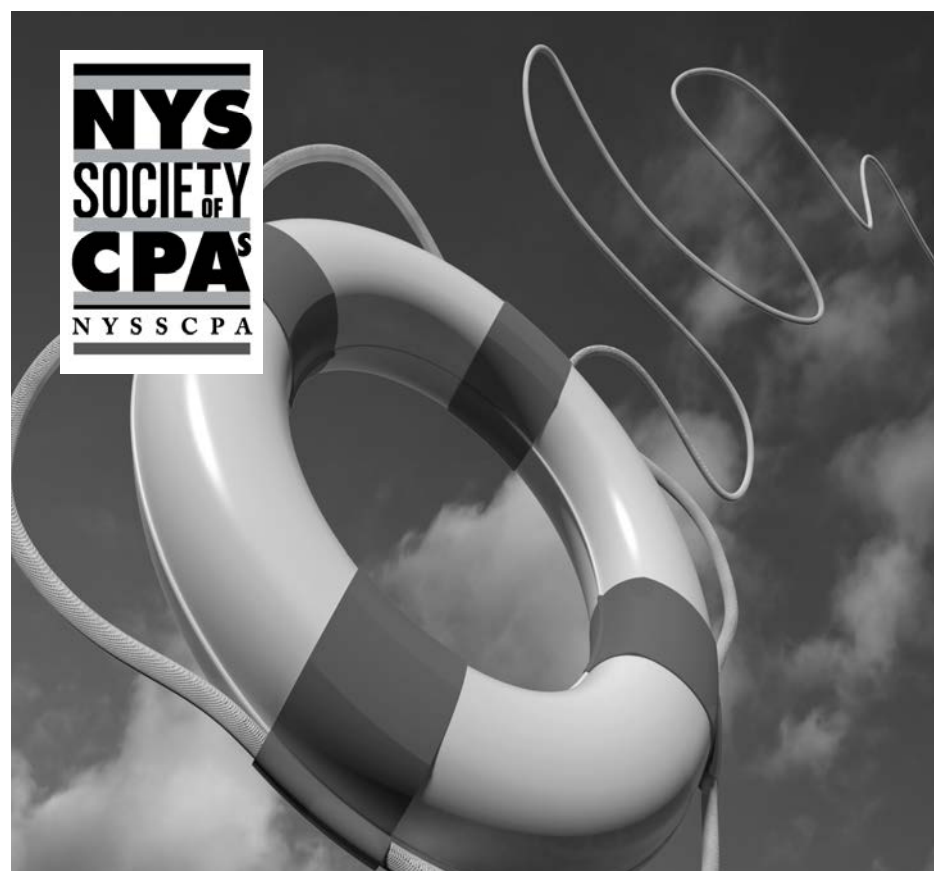
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## NYSSCPA comment letters

The following list includes all comment letters released by the NYSSCPA between Feb. 1 and Feb. 28. To read all comment letters published by the Society, visit [nysscpa.org/page/society-comment-letters](http://nysscpa.org/page/society-comment-letters).

Comments to the FASB on a Proposed Accounting Standards Update—Financial Services—Investment Companies (Topic 946): Disclosures About Investments in Other Investment Companies: Released Feb. 17 — Comments on a proposed accounting standards update, the objective of which is to provide guidance that clarifies the scope of disclosure requirements in current GAAP related to investments in other investment companies.

Comments to the IESBA on a Consultation Paper: Improving the Structure of the Code of Ethics for Professional Accountants: Released Feb. 4 — Comments to the International Ethics Standards Board for Accountants (IESBA) on a consultation paper that seeks input from stakeholders on approaches that could be taken to improve the clarity and usability of the Code, thereby facilitating its adoption, effective implementation, and consistent application.



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# NYSSCPA agrees with limited partnership plan, but not retrospective application

BY CHRIS GAETANO  
Trusted Professional Staff

Though the NYSSCPA largely agreed with a Financial Accounting Standards Board (FASB) proposal meant to resolve certain inconsistencies in how earnings within master limited partnerships (MLP) are handled, it did raise concerns about the board's plan to implement these changes retrospectively.

The Society made the comments in a Jan. 15 letter written by members of its Financial Accounting Standards Committee. The FASB's exposure draft, "Proposed Accounting Standards Update—Earnings per Share (Topic 260): Effects on Historical Earnings per Unit of Master Limited Partnership Dropdown Transactions," was released in October.

The proposal takes aim at instances in which a general partner transfers or "drops down" net assets to an MLP—a type of partnership that is invested in by other limited partnerships (LP) and has no individual shareholders—and records it as a transaction between entities under common control.

MLPs are formed for several different reasons. For example, someone who is aiming to eventually form a partnership, but is still gathering investments, may create an MLP to hold the investments so that they can later be dropped down into the partnership. Or a general partner may form an MLP in order to have several feeder groups with different investment objectives that can later be dropped down into that person's portfolio.

According to **Margaret A. Wood**, an NYSSCPA past president and one of the comment letter's authors, entities consistently account for these dropdowns as a transaction under common control, which is treated as a merger.

It's what happens next that seems to be causing the inconsistencies in practice that the FASB hopes to prevent. Restatement of previously issued financial statements is required to reflect the merger transaction. However, some partnerships allocate all of the past earnings or losses prior to the "drop down" date to the general partners' account and do not restate the limited partners' accounts. Others, however, restate the accounts of general and limited partners—as well as incentive holders—to reflect the earnings or losses prior to the dropdown date, as if the investment had been held by all partners and incentive holders for the period held by the general partner, according to Wood.

If implemented, the FASB proposal would specify that earnings of a transferred business before the date of a drop-down transaction would be allocated entirely to the general partner interest. The previously

reported earnings per unit of the limited partners would not change as a result of the dropdown transaction, though the proposal would require qualitative disclosures about how the rights to the earnings differ before and after the dropdown transaction occurs.

While the Society agreed with the proposal, it disagreed with the board's suggestion that it be applied retrospectively, mainly because it would mean conducting time-consuming

restatements and resettlements for transactions that may have occurred many years ago by partnerships that could even be in the middle of winding down.

"The restatement would require restatement at the master partnership level and restatement by the limited partnerships that are investing in the master partnership," Wood said. This, in turn, would require restatement of each of

the investee LP's general partner, limited partner and incentive holders individual partners equity accounts.

"You don't want to go back and have to restate every partner's equity ... especially for the older and more mature partnerships," she added. "We think it's more work and not worth the benefit."

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## THE NYSSCPA'S 118<sup>TH</sup> ANNUAL ELECTION MEETING & DINNER

### THURSDAY, MAY 14, 2015

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## Under the Microscope

### How to test an organization's cybersecurity risk management program

BY JOEL LANZ, CPA/CITP, CFF, CISA, CISM, CISSP, CFE

The audit committee season is now under way, and though first-quarter meetings usually focus on financial statement matters, there's a good chance that the client's ability to effectively mitigate cybersecurity risk will come up for discussion.

Given the surge in threats and the media attention surrounding them, cybersecurity risk is increasingly being viewed as a key business issue. More and more, boards and audit committees, whether to demonstrate regulatory compliance or to protect the company's brand and image in the marketplace, are raising questions about an entity's risk management programs and how extensively they've been tested. In addition, if your client is part of a regulated industry such as financial services or health care, for example, they will likely need to address cybersecurity testing in order to demonstrate compliance with regulatory requirements.

Unfortunately, there's confusion about the scope of different security tests and the

extent to which they can be relied upon for governance and other oversight activities, including determining compliance with contractual requirements.

This is quite understandable, since there are no generally accepted standards for performing security testing. Many times, entities can only differentiate between testing services offered by competing providers by considering the total cost or the amount of effort involved. Obviously, this is not an optimal solution for those with governance responsibilities.

Although not a generally accepted stan-

dard as in the audit sense, the National Institute of Standards and Technology (NIST) Special Publication 800-115, *Technical Guide to Information Security Testing and Assessment*, serves as a reputable reference within

the information security community and provides guidance that government agencies should adhere to, as well as best practices for the industry in general. Many security professionals rely on NIST publications, as they are free of commercial prejudices that may be included in other nonindependently developed methodologies. Although not subject to the same scrutiny as our profession's auditing standards, the special publications produced by the NIST are also exposed for public comment, thereby providing some public recognition and acceptance.

perform the testing, typically, on a quarterly basis. However, the cost of the software has declined so much that even midsized companies now invest in it in order to identify vulnerabilities on a more frequent basis, usually monthly.

Though this testing continues to be a popular component of services provided by security consultants, as it mitigates the risk of some of the most critical threats that companies face, it does have some downsides. For one, vulnerability assessment does not take into account human or social engineering

More and more, boards and audit committees, whether to demonstrate regulatory compliance or to protect the company's brand and image in the marketplace, are raising questions about an entity's risk management programs and how extensively they've been tested.

#### The most common types of testing

There are three terms frequently associated with cybersecurity testing, and while they are often used interchangeably, they mean very different things: vulnerability assessment, penetration—or “pen”—testing and security audit. Some consultants add to the confusion by combining the terms—for example, by using the phrase “penetration assessment”—which enables them to circumvent some hard discussions about the proposed scope and the actual testing performed. Here's a closer look at the differences between the approaches.

**Vulnerability assessment.** Vulnerability assessment is typically performed by employing some type of software that runs against the network. It identifies missing security patches and in some—but not all—cases, software misconfigurations. When first developed, it was commonly employed by security consultants while performing an annual review of vulnerabilities.

In the past, this technique was prohibitively expensive. As a result, it was largely just the companies with complex environments that would invest in the software and

lapses that are frequently cited as critical means of exploiting a system. Another criticism is that the technology staff is usually aware that this testing is occurring and can, therefore, prepare for it, which they would not be able to do if an actual hacker was trying to access technology resources.

**Penetration testing.** For many executives and others involved in governance, the concept of penetration testing is very appealing. Under this type of testing, the company is subjected to similar types of probes and exploitation that simulate what a hacker would actually use in order to gain access to company resources. Methods used in penetration testing are not limited to automated solutions, as is the case with vulnerability assessment. For example, testers may choose to use social engineering techniques, or procedures that are specifically geared to facilitate the disclosure of sensitive information (e.g., passwords) by users. The ability to demonstrate actual weaknesses that a hacker would exploit to the board, management or those with operational responsibilities

See Tech, on page 8



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For more on what your organization can do to effectively evaluate and manage cyber risks, see “COSO in the Cyber Age,” a research report released by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in January. Read the full document at [www.COSO.org](http://www.COSO.org).

# Understanding the “innocent spouse” defense against fraud penalties

BY MEGAN L. BRACKNEY, J.D., LL.M.

Practitioners should be aware that the Internal Revenue Code (IRC) Section 6663 fraud penalty is a personal penalty that applies individually to taxpayers. If the IRS finds fraud on a jointly filed federal income tax return, it does not mean the penalty should be automatically imposed on both spouses. Thus, if the IRS proposes to impose the penalty on both spouses, it should prove by clear and convincing evidence that each spouse, individually, engaged in fraud. An “innocent spouse” should not be subject to the penalty. Here, we’ll address the innocent spouse defense to the fraud penalty, how to raise the defense, as well as the ethical considerations of a practitioner, with respect to the potential conflicts of interest of representing both spouses.

## Fraud penalty standards

IRC Section 6663(a) imposes a penalty equal to 75 percent of any part of an underpayment of tax required to be shown on a return that is attributable to fraud. Fraud is defined as “an intentional wrongdoing designed to evade tax believed to be owing” [see *Niedringhaus vs. Comm’r*, 99 T.C. 202, 210 (1992)]. To establish fraud, the IRS must prove that the taxpayer intended to evade taxes known to be owing by conduct intended to conceal, mislead or otherwise prevent the collection of taxes. Irresponsible or negligent conduct is insufficient to establish an intent to avoid taxes (see *Zipp vs. Comm’r*, T.C. Memo 1998-371).

Fraud cannot be imputed or presumed (see *Said vs. Comm’r*, T.C. Memo 2003-148). Rather, the IRS must prove fraud by independent evidence [see *Beaver vs. Commissioner*, 55 T.C. 85, 92 (1990)]. In other words, the IRS must establish by clear and convincing evidence that some part of the underpayment was attributable to fraud [see *Stone vs. Comm’r*, 56 T.C. 213, 220 (1971)]. Circumstances indicative of fraudulent intent, commonly referred to as “badges of fraud,” include, but are not limited to, 1) understating income; 2) maintaining inadequate records; 3) giving implausible or inconsistent explanations of behavior; 4) concealing income or assets; 5) failing to cooperate with tax authorities; 6) engaging in illegal activities; 7) providing incomplete or misleading information to one’s tax preparer; 8) giving testimony that lacks credibility; 9) filing false documents, including filing false income tax returns; 10) failing to file tax returns and 11) dealing in cash [see *Spies vs. United States*, 317 U.S. 492, 499 (1943) and *Recklitis vs. Commissioner*, 91 T.C. 874, 910 (1988)].

## Issues of fraud on a joint return

Generally, spouses are jointly and severally liable for the tax owing on a jointly filed federal income tax return [IRC Section 601 3(d)(3)]. Joint and several liability does not apply to the fraud penalty, however, because it is “not an impersonal provision” but is “intended to deter wrongful conduct and should be imposed only on the wrongdoer” [IRS Field Service Advice (FSA) 200126019]. Accordingly, the fraud of one spouse cannot be imputed to the other [see *Norris vs. Comm’r*, T.C. Memo 2011-161]. As the following language of IRC Section 6663(c) states, the fraud penalty is imposed on each spouse separately: “In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.” In other words, the IRS has the burden of proving that some part of each underpayment is due to the fraud of each spouse individually [see *Ortiz vs. Comm’r*, T.C. Memo 1998-141].

Significantly, IRC Section 6663(c) relief and the “innocent spouse provisions” (IRC Section 6015) were enacted at the same time. The legislative history indicates Congress’s concern about the injustice of imposing a fraud penalty attributable to one spouse on the “innocent spouse” [IRS FSA 200126019, citing H.R. Rep. No. 1734, 91st Cong., 2d Sess. (1970) and S. Rep. No. 1537, 91st Cong., 2d Sess. (1970)].

This “innocent spouse” fraud penalty protection, however, has no effect on the unlimited statute of limitations for fraud. In general, there is a three-year statute of limitations (beginning on the later of the due date of the return or the date on which it was filed for the IRS to assess additional tax) [IRC Section 6501(a)]. If the return is “false or fraudulent,” with the intent to evade tax, however, the IRS has an unlimited amount of time to assess additional tax [IRC Section 6501(c) (1)]. Unlike the fraud penalty, proof of fraudulent intent of either spouse on a joint return will extend the statute of limitations to both taxpayers. The rationale for this distinction is that the indefinite extension of the statute of limitations is “an impersonal provision applying to the situation arising from a fraudulent return” [IRS FSA 200126019, quoting *Weinstein vs. Comm’r*, 33 BTA 105, 107 (1935)]. As explained in the legislative history of IRC Section 6663(c), “Congress carved out an exception to the principle of joint and several liability on a joint return to prevent imposition of the fraud penalty on an innocent spouse, but left intact the prior case law under which the period of limitations is kept open as to both spouses even if only one spouse committed the fraud” (IRS FSA 200126019).

## A crash course in income taxes



The NYSSCPA has partnered with Per Scholas, a South Bronx-based nonprofit that offers free IT job training and certification, to provide a series of “all-you-need-to-know” seminars about income taxes. Society members Adam Baruch and Robert H. Moses led the first workshop in January, teaching more than 40 students about basic tax terminology, determining income, standard deductions, itemizing and Higher Education and Lifelong Learning credits.

*Norris vs. Comm’r*, T.C. Memo 2011-16 illustrates the disparity of these concepts. That case involved spouses filing fraudulent joint returns. There, the Tax Court considered whether the statute of limitations on assessment should be extended due to fraud and whether the fraud penalty should be imposed on both spouses. In the tax years in issue, the husband had been engaged in the operation of illegal poker machines. On joint returns for a number of tax years, there was an understatement of tax attributable

to the husband’s failure to report gambling income, as well as other mistakes—unrelated to the illegal gambling—that the wife had made in preparing the tax returns. With respect to one of those tax years, the husband pleaded guilty to tax evasion under IRC Section 7201.

But for the fraud, the general three-year statute of limitations would have expired, and thus, one issue was whether an inno-

See Spouse, on page 8

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# Spouse

Continued from page 7

cent spouse who had nothing to do with the fraud would, nonetheless, be responsible for the underlying tax liability assessed beyond the expiration of the three-year statute of limitations. Even though the wife had committed no fraud, the Tax Court held that as a joint filer, she was jointly and severally liable for the underlying tax deficiency because her husband's fraud had caused the statute of limitations for assessment to remain open.

As to the imposition of the fraud penalty on the wife, the Tax Court concluded that the IRS's evidence of her state of mind failed to meet the burden of proof that she had committed fraud. Acknowledging that the wife was aware of the illegal poker machines, the Tax Court, nevertheless, found that the IRS did not prove that she had knowledge of the specifics of the operations, and that the underreporting—unrelated to the illegal gambling income—attributable to her was due to an innocent mistake.

In another nuance, if the IRS imposes a fraud penalty against only one spouse, the negligence penalty cannot be imposed on the nonculpable spouse. In *Said*, despite conceding that the taxpayer was not liable for the fraud penalty imposed on the taxpayer's husband, the IRS attempted to impose the IRC 6662(a) accuracy-related penalty on her. In rejecting the application of the penalty, the Tax Court explained that the penalty did not apply to the spouse because the accuracy penalty can only be imposed if any portion of an underpayment is subject to the fraud penalty. In this regard, the Tax Court stated, "[w]here a joint return is filed and one spouse is found liable for the fraud penalty,

imposing the accuracy-related penalty on the other spouse would result in 'impermissible stacking'" [*Said*, quoting *Zaban vs. Comm'r*, T.C. Memo 1997-479)].

## Raising the IRC Section 6663(c) defense

There are various ways to raise the IRC Section 6663(c) fraud defense on behalf of an innocent spouse. Significantly, in examining a joint tax return, some revenue agents may not be aware of the fraud defense and simply impose the fraud penalty on both spouses without considering the conduct of each spouse separately. Accordingly, during the audit, the practitioner should alert the revenue agent to the possible application of IRC Section 6663(c), as well as to the *Internal Revenue Manual* (IRM), which makes it clear that "the civil fraud penalty may be asserted only on one spouse, unless there is sufficient evidence that both spouses participated in the fraudulent act(s) resulting in the underpayment reported in their joint return" [IRM 25.1.61 (11-05-2014)]. The IRM requires a penalty write-up, including "detailed description of all applicable badges of fraud" [IRM 25.1.6.3(3) (11-05-2014)]. The penalty write-up should address the badges of fraud as they apply to each spouse.

Ultimately, the revenue agent should not propose the imposition of the fraud penalty against both spouses without determining each spouse's culpability individually. If the revenue agent intends to propose the imposition of the fraud penalty on one or both spouses, the penalty write-up should document the reasons. If the revenue agent is unable to identify sufficient badges of fraud, the fraud penalty should not be imposed on an innocent spouse [IRM 8.2.10.3.6.3.4 (06-27-2013)].

If the spouse is unable to convince the revenue agent not to propose the imposition of the fraud penalty, the spouse should appeal and raise the issue to the appeals officer. Pursuant to the IRM, an appeals officer must withdraw a proposed assessment of the fraud penalty if the proposed assessment is "without appropriate development and explanation" [IRM 5.15.12.23.7 (05-22-2012)]. If the spouse does not succeed on appeal, upon the issuance by the IRS of a 90-day letter, the aggrieved spouse can raise the issue in a Tax Court petition for redetermination of a deficiency.

Because IRC Section 6663(c) was enacted contemporaneously with the IRC Section 6015 innocent spouse relief, it might seem that the defense to the fraud penalty should be raised in a request for innocent spouse relief. Such an assumption is not correct, since the IRC Section 6015 innocent spouse relief does not apply to penalties or interest separate from the tax [IRM 5.15.12.23.7 (05-22-2012)]. Instead, IRC Section 6015 provides a mechanism to stop collection action against an innocent spouse and does not provide a forum to challenge the underlying deficiency (such as an assessment of the fraud penalty). Thus, even though a grant of innocent spouse relief would sweep away the underlying fraud penalty, fraud penalty relief, in and of itself, cannot be granted through an innocent spouse application. This is important because a taxpayer who is not granted total innocent spouse relief for some reason (i.e., if the taxpayer had actual knowledge of the item giving rise to the deficiency or the equities do not warrant relief) will not be relieved of the fraud penalty if the IRC Section 6663(c) defense is not raised at the appropriate time.

Moreover, the taxpayer has the burden of proof with respect to IRC Section 6015

innocent spouse relief (*Johnson vs. Comm'r*, T.C. Memo 2014-240). Conversely, under IRC Section 6663(c), the IRS has the burden of proving fraud. So, it may be more difficult for the taxpayer to achieve the collateral relief from an underlying fraud penalty through an innocent spouse claim. Finally, if a spouse intends to pursue innocent spouse relief for the tax liability, she will be in a better position to succeed if she has successfully defended the imposition of the fraud penalty.

## The potential conflict of interest

As with any joint representation, a practitioner representing both spouses should consider whether there is a conflict of interest. Pursuant to Treasury Department Circular 230 (governing practice before the IRS), a practitioner should not represent a client before the IRS if the representation involves a conflict of interest, which exists if: "(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client" [31 CFR (*Code of Federal Regulations*) Section 10.29(a)].

The scenario described in this article, that is, one spouse challenging the imposition of the fraud penalty that, if successful, would cause the entire penalty to be imposed on the other spouse, certainly raises a red flag for a potential conflict of interest. However, the conflict of interest is waivable by the clients if the practitioner is able provide "competent and diligent representation" to both parties [Circular 230, Section 10.29(b)].

Accordingly, before a practitioner agrees to represent both spouses in an audit or Tax Court case involving a potential IRC Section 6663(c) defense, he should discuss possible outcomes with the clients. Then, upon determining if there is an actual waivable or nonwaivable conflict between them, the clients can make an informed decision as to whether joint representation is possible.

*Megan L. Brackney, J.D., LL.M., a former assistant U.S. attorney for the Southern District of New York, joined Kostelanetz & Fink, LLP, in 2004, and concentrates her practice in the areas of tax controversies, civil and white-collar criminal litigation.*

*This story originally appeared in the NYSSCPA's Tax Stringer.*

# Tech

Continued from page 6

provides a realistic incentive to quickly remediate issues. However, since the scope of a penetration test is not subject to generally accepted standards, test results, especially when a penetration did not occur, cannot always be relied upon. What's more, because of the lack of standards, buyers of such services need to pay particular attention to the proposed scope and ensure that it addresses the needs of the organization.

**Security audit.** When performing a security audit, entities review all of the processes that support information security risk management. Depending on the need, the audit can be supplemented with either a vulnerability assessment or penetration testing, though the former is more likely

to occur. In addition to technical considerations, the security audit also considers managerial and other governance-related activities. Frameworks such as Control Objectives for Information and Related Technology (COBIT), created by the international professional association ISACA, or standards from the International Organization for Standardization (ISO) can be used to define the engagement's scope. Alternatively, the AICPA's Trust Services framework can also be used as a guide to help define appropriate scoping issues.

Given resource constraints, organizations typically need to choose one type of testing rather than perform all three. Moreover, each organization faces its own particular kind of risk and, as a result, needs to decide what best suits its needs. Generally, I rec-

ommend that clients do a vulnerability assessment, if they have not done so, in order to quickly assess the state of their technical security. I then recommend a security audit in order to ensure that all processes and policies are in place, so as to reduce the risk to an acceptable level. Only after they have done everything they can to manage their security risk, do I feel that penetration testing is cost-effective and will help provide the client with a new perspective to test the effectiveness of its security strategies.

*Joel Lanz, CPA/CITP, CFF, CISA, CISM, CISSP, CFE, is the sole proprietor of Joel Lanz, CPA P.C., and an adjunct professor at SUNY-College at Old Westbury. He is a member of the NYSSCPA's Technology Assurance Committee and The CPA Journal Editorial Board.*

# Tech

Continued from page 6

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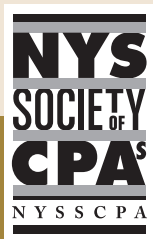
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Every chapter of the New York State Society of CPAs has a NextGen Committee, and extends membership to young CPAs throughout the state.

Find out how to become involved by contacting Tekecha Morgan at [tmorgan@nysscpa.org](mailto:tmorgan@nysscpa.org) or call 212-719-8425.

## For NYSSCPA members, tax season help is just a click or call away

### Trusted Professional Staff Report

**H**aving trouble getting answers this tax season? Two highly interactive—and free—member benefits may lead you to the clarification or guidance you need: the technical hotline, run by volunteers from more than 41 NYSSCPA technical committees, and Exchange, the Society's social networking platform, which members often use to crowdsource their tax season challenges.

Hotline volunteers are available year-round to answer technical questions in a number of practice areas, including tax, accounting and auditing, and industry. So far this tax season, inquiries have touched upon such topics as the new IRS guidance regarding Form 3115 and tangible property regulations, distributions to shareholders within S corporations, New York sales tax and the Affordable Care Act.

Last fiscal year, sole practitioners made up the majority of callers, though CPA firm owners and employees, as well as members with an industry or education specialty, also contacted the hotline for assistance.

To take advantage of the hotline, call 212-719-8309 or email your questions to [technical@nysscpa.org](mailto:technical@nysscpa.org). Once a query is received, a Society staffer determines which committee volunteer would be most appropriate in assisting the inquirer and provides the volunteer's contact informa-

tion. Typically, a volunteer offers guidance by making referrals to standards-setting bodies or to authoritative literature.

Within the last few months, tax-related conversations on Exchange have also run the gamut. For example, one poster recently sought clarification on abandoned spouse rules to see if a head-of-household filing could be used. One member responded by sharing her own experiences researching the topic, while another directed the inquirer to 26 U.S. Code Section 7703, which, she said, contained clear answers for determining marital status.

Of course, the best way to see what Exchange is all about is to jump right in, by visiting <http://exchange.nysscpa.org/home>. There's no elaborate registration procedure—simply log in with your NYSSCPA membership number and email address. (If you have forgotten your login credentials or need assistance, the Society can help.) Once you're in, you can post messages and share files 24/7.

To find references to specific tax related issues across the site's various communities, which consist of NYSSCPA chapters and committees, simply use the search bar across the top of the page.

*Hotline responses are not intended as a substitute for a member's own research and judgment, and do not reflect the opinions of the NYSSCPA, the committee or the volunteer providing the assistance.*

### UPCOMING INDUSTRY COMMITTEE MEETINGS

Construction Contractors	Thurs., April 23
Emerging Tech Entrepreneurial	Wed., April 29
Entertainment, Arts & Sports	Wed., April 29
Internal Audit	Mon., April 20
Small Business Outreach	Thurs., April 23
Stock Brokerage	Tues., April 21

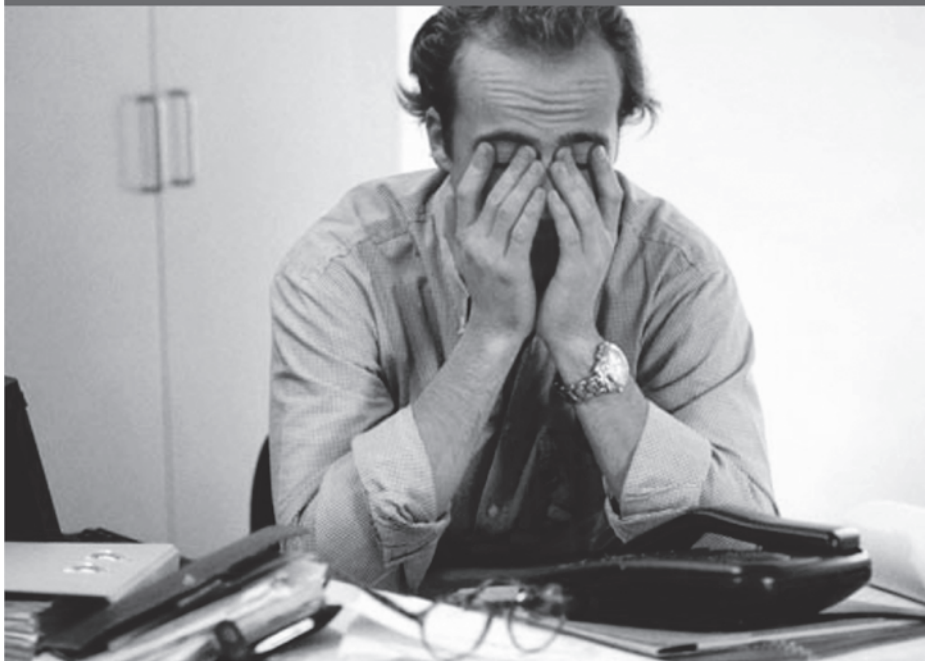
This is a partial listing, which is subject to change. For a complete and updated listing of meetings, visit [www.nysscpa.org](http://www.nysscpa.org), click on "About Us," and choose "Committees" from the drop-down menu.

**Interested in joining a committee?** Fill out an application online or contact Nereida Gomez, Manager, Committees, at 212-719-8358 or [ngomez@nysscpa.org](mailto:ngomez@nysscpa.org), to find out more information.

### UPCOMING CONFERENCES

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## Working on an estate tax return? What you need to know to avoid a common source of professional liability claims

BY ANTHONY J. COOPER, J.D.

Late-filing penalties for estate tax returns are frequently used as grounds for professional liability claims against CPAs, in large part because of their cost: Given the steeply progressive tax rates for estate tax and rapidly accruing penalties, these can exceed \$300,000.

There are several factors that may cause a preparer to miss the deadline, the most common of which is the irregular filing due date for estate tax returns—it comes nine months after the decedent's date of death, rather than, for example, April 15 or Oct. 15.

To avoid such penalties, consider the following:

- 1) **Implement a due date tracking system.** This can be as simple as a calendar devoted solely to estate tax return due dates.
- 2) **Have at least one person be primarily responsible** for tracking estate tax return

time. In one case involving a large estate inherited by the client, the bulk of the estate was a majority partnership in a successful business, but the newer minority partners felt that their interests had been undervalued, compared to the majority interest.

The dispute went into litigation right in the middle of tax season, and the CPA delegated the monitoring of the litigation to his assistant, who became ill before he could log the estate tax return due date on the calendar devoted to such due dates. About a year later, the litigation had been resolved, and the due date had been missed by several months. The late payment penalties came to about \$200,000.

If you know that the return is not going to be filed on time, it is critical to 1) estimate the amount of estate tax that will be owed, based on the best information you have; 2) make sure that this tax is paid to the IRS before the due date of the re-



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filing deadlines, rather than having each tax partner or tax manager track his or her own deadlines.

3) **Continually review the estate tax return tracking system** to ensure that your firm meets any impending due dates.

While the estate tax return filing calendar is simple and cheap, it can be effective in reminding your firm of the impending due dates, as long as it's placed in a conspicuous, frequently viewed location.

Another common cause of late filings for estate tax returns or failing to pay estate taxes on time—and the resulting penalties—is the failure of the estate to provide adequate and timely information about estate assets in order to prepare a return or to marshal assets to pay the tax. The CPA who has been retained to prepare the return is left holding the bag when large penalties are assessed, due to the negligence of the estate's executor, trustee or attorneys.

Sometimes, there are disputes about estate assets or other complications that can distract the CPA from filing the return on

turn [nine months after the date of death] along with the extension of time to file; and 3) document your file with correspondence to the client, outlining the nature of the estimate and why it was necessary.

If cooperation from the estate or its agents is lacking, consider disengaging well in advance of the return filing due date, payment due dates or extended due dates. If disengagement is not possible, consider timely filing the estate tax return, based on estimates when the information needed to create a complete return is missing or not available.

*Anthony J. Cooper, J.D., is a tax specialist with Camico ([www.camico.com](http://www.camico.com)), responsible for providing policyholders with information regarding corporate income, gift and estate tax issues*

**For information on the Camico program, call Camico directly at 800-652-1772, or contact: (Upstate) Reggie DeJean, Lawley Service, Inc., 716-849-8618, and (Downstate) Dan Hudson, Chesapeake Professional Liability Brokers, Inc., 410-757-1932.**

# CHAPTER NEWS

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## Buffalo congratulates new officers, gears up for Annual Education Night

BY THOMAS BURNS  
*Buffalo Chapter President*

**W**ith the Buffalo Chapter hard at work planning several events that will take place after busy season, I have a special request for members: to think of ideas for a signature event. It could be attending a professional sporting event as a group, or holding a whiskey tasting event, a clambake or anything else that would attract a big turnout and allow our members to celebrate their membership in the NYSSCPA. I participate in a monthly “presidents’ call” with the Society’s 14 other chapter presidents. During our last call, we were each assigned some homework: to envision the kind of events we’d like to

have define our chapter and, also, to think outside the box about the activities we hold. By the time you read this, my assignment will have been due, but I welcome your ideas and hope you will send them to me at the e-mail address below.

The Buffalo Chapter is fortunate to have so many members who are willing to get involved in the Society at the state level. The 2014–2015 NYSSCPA Nominating Committee has reported that three local members have been nominated for positions on the Board of Directors, including **Patricia A. Johnson** for director as chapter representative, **Edward L. Arcara** for director-at-large and **Joseph M. Falbo Jr.**, the Society’s current president-elect who will automatically become president. The 2015–2016 officers and directors will be

electd during the 118th Annual Election Meeting and Dinner on May 14. The chapter is very proud to be represented by such outstanding professionals.

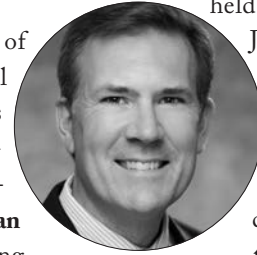
Please reserve the evening of April 21 to attend our Annual Education Night at Salvatore’s Italian Gardens. Our Cooperation with Educational Institutions Committee, led by **Dan Whelehan**, has been planning this special event to honor our top undergraduate and graduate accounting students from area colleges and universities. Our keynote speaker will be the 2014 Michael H. Urbach, CPA, Community Builders Award recipient, **Gerard T. “Jerry”**

**Mazurkiewicz**, who is a past president of the Buffalo Chapter.

The Summer Symposium will be held at the Millennium Hotel on July 21–22. The chapter’s A&A Committee is formalizing the speakers and agenda. The A&A Committee is also looking for new members, so please consider joining. More information about the Summer Symposium will be available soon.

Please let me know if you are interested in joining a committee or taking on a leadership position with the chapter board. We have many opportunities to help.

[tburns@lumsdencpa.com](mailto:tburns@lumsdencpa.com)



THOMAS BURNS  
*Buffalo Chapter President*

## With busy season in full swing, Manhattan/Bronx plans its springtime events

BY IRALMA POZO  
*Manhattan/Bronx Chapter President*

**B**usy season is here and, before you know it, spring will be too. This past January, our chapter held two exciting events. The first, a billiards and networking event, took place on Jan. 14 at Slate on 21st St. More than 30 board members, members and nonmembers enjoyed a night of billiards and ping-pong tournaments and mingling with colleagues. It was a great evening for both socializing and friendly competition. The board looks forward to hosting additional events like this in the future.

On Jan. 22, **Daniel Mazzola** presented

a two-credit CPE session on Social Security benefits. Its 36 attendees gained valuable insight into strategies for maximizing benefits. Topics of discussion included the advantages of waiting to collect benefits and a closer look at survivor’s benefits, divorce benefits and retirement benefits for those with spouses collecting disability. The chapter looks forward to working with **Mazzola** and the Society to bring information about these kinds of topics to our membership and possibly incorporate them into financial literacy efforts aimed at the public.

We’ll need your assistance in promoting the CPA profession this spring. On May 1, the chapter and its Promoting CPA

Careers Committee will be hosting our semi-annual Career Day for high schools. If you’re interested in speaking about your career experiences and educating high schools students about the profession, please contact **Barbara Marino** at [bmario@hackettgroup.com](mailto:bmario@hackettgroup.com) or **Steve Zelin** at [thesingingcpa@gmail.com](mailto:thesingingcpa@gmail.com).

### Stay up-to-date on upcoming events

Registration is now open for “All You Need to Know About Revenue Recognition,” a two-credit CPE session being held on April 21, and we’ve set a date of April 30 for our upcoming Poetry, Pizza and Music event. In addition,

the chapter board is working on several other exciting events for the rest of the fiscal year, including a session entitled “What Firms Wish New Hires and Employees Had Learned in College.”

Stop by our web page, [www.nysscpa.org/ManhattanBronx](http://www.nysscpa.org/ManhattanBronx), regularly for updates, as well as our Facebook page, <https://www.facebook.com/ManhattanBronxChapter>. If you aren’t receiving the chapter’s weekly digest, contact **Lelia Dickenson**, the Society’s manager of Chapter Relations, at [ldickenson@nysscpa.org](mailto:ldickenson@nysscpa.org).

[pozo.iralma@gmail.com](mailto:pozo.iralma@gmail.com)



IRALMA POZO  
*Manhattan/Bronx Chapter President*

## Annual golf outing merges opportunities to network with a good cause

BY FRANK FERRUCCI  
*Northeast Chapter Past President and Golf Outing Committee Chair*

**W**e’re pleased to announce that the chapter will be hosting its Second Annual Financial Professionals Golf Open on May 11 at the Edison Club in Rexford, N.Y. Join us for a day of food, golf and connect-

ing with the business community in our area while supporting a worthy cause. The net proceeds from the outing go to Capital Region Sponsor-A-Scholar, which helps economically disadvantaged young men and women to graduate from high school and attend college. Last year’s golf outing raised more than \$3,000 for college scholarships for students in the Capital Region.

Those of you who attended last year will

recall that we had fantastic weather to accompany the great golf. The tournament winners, **Kevin O’Leary**, **Marty Hull**, **John Decatur**, and **Mark Thornhill**, posted a low gross of 58. The longest drive contest was won by **Mike Stefanik** and **Peggy de Koning**. Closest to the line was awarded to **Jackie Young** and **Joe Buccioro**. Closest to the pin winners were **Marty Bonville**, **John Stafford**, **Marty Hull** and myself.

The First Annual Financial Professionals Golf Open last year was a great success, and the chapter hopes that you will continue to support this very worthy cause again this year. Please check the Northeast Chapter website for the registration flyer. We look forward to seeing everyone when the snow melts!

[fferrucci@wojeskico.com](mailto:fferrucci@wojeskico.com)

# CHAPTER EVENTS & CPE

## MANHATTAN/BRONX

All You Need to Know About Revenue Recognition and Annual Election Meeting

When: Apr. 21, 6–8 p.m. (5:30 p.m., registration)

Where: FAE Learning Center, 14 Wall St.

Cost: \$20 members; \$25 nonmembers;

\$10 additional walk-in fee

CPE: 2 (accounting)

Course Code: 29151508

Contact: Brad Niedzielski at bniedzielski@deloitte.com

Manhattan/Bronx Chapter Poetry and Pizza

When: Apr. 30, 6–8 p.m.

Where: FAE Learning Center, 14 Wall St.

Cost: \$10 members; \$20 nonmembers;

\$5 additional at door

Course Code: 45150505

Contact: William Aiken at billpoetry@aol.com

## NASSAU

62nd Annual Installation Dinner

When: May 7, 6:30 p.m.

Where: Crest Hollow Country Club,

8325 Jericho Turnpike, Woodbury

More details to follow

## NORTHEAST

Financial Professionals Golf Open

When: May 11, registration & buffet lunch; 11:30 a.m.,

shotgun start; 12:30 p.m., cocktails, awards & dinner;

5:30 p.m. (1-hour open bar sponsored by ADP)

Where: The Edison Club, 891 Riverview Road, Rexford

Cost: \$600, foursome; \$250, sponsor a hole; \$150,

individual golfer; \$50, cocktails & dinner only

Contact: Jim Conroy at jconroy@nybdc.com

or (518) 694-8548

RSVP by May 6

## ROCHESTER

15th Annual Counselor's Cup Golf Tournament

When: Jun. 16, 8 a.m., registration/breakfast; 9 a.m.,

shotgun start; 3 p.m., putt off/networking; 4 p.m.,

dinner/awards/raffles

Where: Bristol Harbour,

5410 Seneca Point Road, Canandaigua

Cost: \$125 per golfer; \$250, twosome; \$45 dinner only

(for non-golfers)

Contact: Nick Piehler at npiehler@daviekaplan.com or

(585) 454-4161

## WESTCHESTER

The NYSSCPA Miniature Golf Tournament

When: Apr. 22, 6–8 p.m.

Contact: William Zeboris at wzeboris@citricooperman.com

More details to follow

The NYSSCPA KanJam Tournament

When: May 6, 6–8 p.m.

Contact: William Zeboris at wzeboris@citricooperman.com

More details to follow

The YCPA Wine Tasting Event to Benefit Blythedale Children's Hospital

When: May 14, 5:30–8 p.m.

Where: Willow Ridge Country Club, 123 North St., Harrison

Cost: \$45 members; \$50 nonmembers in advance;

\$50/\$55 at door

Contact: Heather Oboda at hoboda@citricooperman.com

or (914) 949-2990 x3382

The Annual Golf Outing Event

When: Jun. 8, 11 a.m., registration

& brunch; 12:30 a.m., shotgun

start; 5:30 p.m., cocktail hour & hors d'oeuvres

Where: Willow Ridge Country Club,

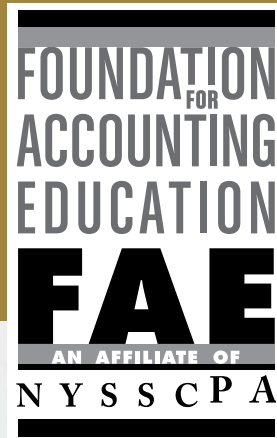
123 North St., Harrison

Cost: \$35 golf, \$150 for cocktail hour, buffet & dessert only

Course Code: 45110503

Contact: Jeffrey Schwartz at jeff@stantonandleone.com

or (914) 286-6908



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# Employee Benefits Conference

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AND THE PUBLIC TRUST

Hear directly from the DOL and other industry leaders on:

- DOL Audit Quality Enforcement Project Update, with DOL Chief Accountant Ian Dingwall
- How to Conduct a Quality EBP Audit
- Peer Review Preparation
- Fair Value Measurement: How It Relates to Employee Benefit Plans

## CPAs: Beware the Ides of March

BY WILLIAM H. ZEBORIS

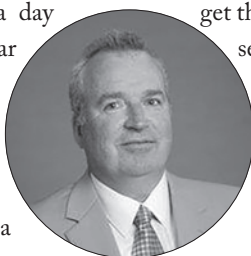
Westchester Chapter President

The Ides of March was a day on the Roman calendar that corresponds to the 15th of March. Many of us became familiar with the term through Shakespeare's *Julius Caesar*. In a pivotal scene, a soothsayer delivers a simple message to Caesar: "Beware the Ides of March." This admonition was intended to warn Caesar of his impending death. Of course, he did not heed the warning and was assassinated at a meeting of the Roman Senate on that day in 44 B.C.

March 15 is a perilous day for tax accountants as well, as all calendar-year corporate

tax returns are due to be filed or, at a minimum, extended. Those who have not heeded the warning will be frantically scrambling to get the information needed. Why does it seem like we are always struggling to meet a deadline? Some of it is our own doing for sure, but this year in particular we had some help from Uncle Sam.

On Feb. 13, the IRS issued Revenue Procedure 2015-20, which modified reporting requirements under the Tangible Property Regulations (known as the Repair Regs). The Repair Regs had just been finalized during the second half of 2014, and firms of all sizes spent an untold number of hours di-



WILLIAM H. ZEBORIS  
Westchester Chapter President

See *Ides of March*, page 13

Visit [www.nysscpa.org/eb15](http://www.nysscpa.org/eb15) or call  
800-537-3635 to register!

# Tax season difficulties pose opportunities for learning

BY MICHAEL MILISITS  
*Rockland Chapter President*

**T**his is the season ... tax season, of course. The Rockland Chapter wishes everyone good luck with the final push to finish off their 2015 tax busy season. We also ask for your help: We're gearing up for our 2015 CPE seminars and all those questions and problems that you're encountering right now will help us plan future sessions. Did you encounter difficulties reporting foreign accounts? Did you have

trouble with the new repair regulations? This is exactly the kind of information the chapter is looking for. We would love to hear from our members, so we ask that you take a few moments this tax season and write down any problems you might have had or some ideas for seminars that might benefit you, and forward that list to [mem@thehuntergroup.com](mailto:mem@thehuntergroup.com).

In addition, if there are any networking events you're interested in seeing our chapter host, please let us know. The Rockland Chapter realizes the value in networking with local business professionals, and we try

to provide you with a few events over the course of the year that allow for just that. We will be kicking off the 2015 year with our annual Officer Induction Dinner in May. It has been a fun and casual night in the past, and a great opportunity for you to get to know your chapter officers, board and local business professionals. Then join us in June for our first seminar of 2015, "Critical Issues Facing Senior Clients."

Once again, best wishes this tax season



MICHAEL MILISITS  
*Rockland Chapter President*

and I hope to see you all soon at our seminars and networking events. Anyone who is not currently getting our chapter e-mails or the NYSSCPA statewide e-mails, please send me your contact information; I will make sure you are added to our distribution list, and never miss an e-mail of upcoming events again.

[mem@thehuntergroup.com](mailto:mem@thehuntergroup.com)

# Suffolk Toys for Tots campaign proves it takes a village to help a child

BY CYNTHIA FINN BARRY  
*Suffolk Chapter Past President and Past Statewide Director*

**I**n the January issue of *The Trusted Professional*, you read about our chapter's Toys for Tots Program, which recently celebrated its 20th anniversary. Toys for Tots is the U.S. Marine Corps Reserve's premier community action program and one of the nation's flagship Christmas charitable causes. Over the years, it has become a traditional part of the annual holiday season for communities nationwide. The message of hope delivered through a shiny new toy at Christmas has a positive impact on children, their families and their communities. It's not the toy—it's what the toy does.

The generosity of the participants in our most recent program has demonstrated that so many of us are touched by the spirit of the campaign and its mission to provide new unused toys to underprivileged children at Christmas.

I am truly humbled to have participated in this wonderful program, along with so many giving volunteers, for 20 years. It is amazing when I take a step back and think of all of the children who have smiled on Christmas morning due to our efforts.

It has also been humbling to watch the program expand year after year. The Marines have had to change their method of pickup as the collection has grown in epic proportions. Our last pickup required two seven-ton trucks.

What began as a grassroots effort by the Suffolk Chapter Young CPAs Committee in 1995, with 10 member firms participating, has grown to encompass drop-off sites in Nassau, Queens, Brooklyn and Manhattan in addition to Suffolk, with more than 150 boxes this year! As always, one of the key factors that contributed to the success of the 2014 Toys for Tots campaign was the support provided by Sheehan & Company, CPA, PC and its employees; NYSSCPA member firms and their employees; local businesses; all branches of The First National Bank of Long Island; several branches of Valley National Bank; the Stony Brook University Accounting Society; and several client offices.

Once again we were extremely fortunate to have so many volunteers for the program—it is impossible to name them all without missing someone. Volunteers were needed to obtain boxes from grocery stores, assemble and wrap the boxes, distribute and pick the boxes up from the many locations, coordinate the collection efforts at each location, shop for toys and arrange the collection for the Marines. Several volunteers enlisted the efforts of their own children this year and educated them about helping those who are less fortunate.

The chapter extends its sincere appreciation to the following firms, local businesses and their employees and customers for helping to make a difference this holiday season for underprivileged children in our area:

Albrecht, Viggiano, Zureck & Company, P.C.  
American Physical Society  
Arizona Iced Tea  
Armao LLP  
Baker Tilly  
Ballys – Bay Shore  
BDO Seidman  
Brentwood Union Free School District  
C-Tech Collections  
Capital One  
Castle Financial Advisors, LLC  
Cerini and Associates  
Charles Barragato & Company  
Chase Bank – Port Jefferson  
Covati and Janhsen, CPAs PC  
CrossFit Rapture  
Cullen & Danowski, LLP  
DeTolla & DeTolla DDS, LLP  
DIT Cleaners  
Dr. Seymour  
Dynatech International  
Elwood Hardware  
Fairfield Properties Office  
First National Bank of Long Island  
Forest Hills Financial Group  
Frendolph Construction  
Friedman LLP  
Fuocco Group  
Gasteria  
Giambalvo, Stalzer & Co. CPA, PC  
Gold's Gym–Islip  
Grassi & Co., CPAs, P.C.  
Guildnet  
Hairtique  
Innovative Planning Services

Isrealoff Trattner & Co. PC  
JPMorgan Chase  
Knights of Columbus–Smithtown  
Long Island Housing Partnership  
Mama Santina's  
Marcum LLP  
Margolin, Winer & Evens LLP  
Moomjian & Waite, LLP  
New York Spine and Brain Surgery  
111 Deli–Hauppauge  
Owen Petersen & Co. LLP  
Robert J. Eckhardt & Co., P.C.  
Safety Swim – Bellmore  
Satty Levine & Ciacco CPA, PC  
Schwartz & Co, CPA  
Sheehan & Company, CPA, P.C.  
Signet Claim Solution  
SITA  
Stony Brook University Accounting Society  
Stony Brook University Medical Center  
Storage America  
Suffolk County District Attorney's Office  
Suffolk County National Bank  
Suffolk Ophthalmology  
Total Dental Care of Middle Island  
Toys 'R' Us – Bay Shore  
Tutor Time – Smithtown  
Valley National Bank  
WeiserMazars, LLP  
Woodhaven Nursing Home

Best wishes for a successful busy season!  
[cbarry@sheehanpcpa.com](mailto:cbarry@sheehanpcpa.com)

# Ides of March

*Continued from page 12*

gesting the rules and making arrangements to file the paperwork indicating a change in accounting method (Form 3115), which would be required to be filed with virtually every 2014 tax return.

Rev Proc 2015-20 was the IRS telling us, "never mind." It effectively removed the requirement to file Form 3115 from all but high-income taxpayers. Instead of spending all that time to figure out what questions on Form 3115 apply, how to get our software to produce the form and the logistics of filing

it both electronically with the return and on paper, as had been required, we could have been doing more productive work.

The work flow compression is bad enough, but please: no more rule changes midstream or last minute. Maybe IRS officials should actually ask a practicing accountant how the

proposed rules will impact the profession before they make it the law of the land.

Good luck getting your corporate returns in order, and then you can get ready for the Ides of April.

[wzeboris@citricooperman.com](mailto:wzeboris@citricooperman.com)

# NOMINATING COMMITTEE REPORTS

## Nassau Chapter

The Nominating Committee is proud to announce the slate for the 2015–2016 fiscal year:

**OFFICERS**

- PRESIDENT: **Philip H. Kanyuk**, CPA
- PRESIDENT-ELECT: **Lynne M. Fuentes**, CPA
- VICE PRESIDENT: **Christine P. Hallahan**, CPA
- TREASURER: **Anthony Basile**, CPA
- SECRETARY: **Alex Resnick**, CPA

**DIRECTORS:**

- Jill Scher**, CPA, one-year term ending 5/31/16
- Kristina Albarella**, CPA, one-year term ending 5/31/16
- Mark Goldschmitt**, CPA, one-year term ending 5/31/16
- Cynthia Sze**, CPA, one-year term ending 5/31/16
- Michael Katz**, CPA, one-year term ending 5/31/16
- Mark Cuccia**, CPA, two-year term ending 5/31/17
- Joshua Sector**, CPA, two-year term ending 5/31/17
- Vivian Martinez**, CPA, two-year term ending 5/31/17

The following are automatically selected:

- DIRECTOR: **Robert Barnett**, CPA, Esq. (*immediate past president*)
- PRESIDENT: **Philip H. Kanyuk**, CPA

## Utica Chapter

The Utica Chapter board is proud to announce the slate for the 2015–2016 fiscal year:

**OFFICERS**

- PRESIDENT: **Chris Lambe**, CPA
- PRESIDENT-ELECT: **Maria Suppa**, CPA
- TREASURER: **William Ryan**, CPA
- SECRETARY: **Matt Krinkaus**, CPA

**DIRECTORS:**

- David Wojnas**, CPA, one-year term ending 5/31/16
- Eileen Hamlin**, CPA, one-year term ending 5/31/16
- Robert Ritz**, CPA, one-year term ending 5/31/16
- Steve Surace**, CPA, one-year term ending 5/31/16
- Scott Hosler**, CPA, one-year term ending 5/31/16
- Vicky Celia**, CPA, one-year term ending 5/31/16
- Lauryn Donovan**, CPA, one-year term ending 5/31/16
- Kim Connors**, CPA, one-year term ending 5/31/16

The following are automatically selected:

- DIRECTOR: **Brian Reese**, CPA (*immediate past president*)

## Rockland Chapter

The Nominating Committee is proud to announce the slate for the 2015–2016 fiscal year:

**OFFICERS**

- PRESIDENT: **Shari Berk**, CPA
- PRESIDENT-ELECT: **David Evangelista**, CPA
- VICE PRESIDENT: Open
- TREASURER: **Sharon Siegel**, CPA
- SECRETARY: **Janine Bautista**, CPA

**DIRECTORS:**

- Mitchell A. Davis**, CPA
- Mitchell Gusler**, CPA
- David R. Herman**, CPA
- William P. Hughes**, CPA
- Larry J. Shaffer**, CPA
- Open
- Open
- Open

The following are automatically selected:

- DIRECTOR: **Michael E. Milisits**, CPA (*immediate past president*)
- PRESIDENT: **Shari Berk**, CPA

## Westchester Chapter

The Nominating Committee of the Westchester Chapter has filed a report with the Secretary of the Chapter in accordance with the bylaws, certifying its nominations for officers and members of the Westchester Chapter Executive Board for the 2015–2016 year. All nominees have consented to serve if elected. The proposed slate of officers and directors:

- PRESIDENT: **Michele A. Lazzara**, CPA
- PRESIDENT-ELECT: **Catherine M. Censullo**, CPA
- VICE PRESIDENT: **Gina Goodenow**, CPA
- TREASURER: **Michael Herz**, CPA
- SECRETARY: **Heather Oboda**, CPA

Board members continuing in their two-year terms, which expire on May 31, 2016:

- Robert M. Winton**, CPA
- Douglas Ruttenberg**, CPA
- Gwendolyn Horn**, CPA
- Jeffrey Schwartz**, CPA

Board members starting new two-year terms, which expire on May 31, 2017:

- Edward Wells**, CPA
- Richard Terrano**, CPA
- Kelly Blacker**, CPA
- Matthew Katz**, CPA

Pursuant to the bylaws, current Chapter President **William H. Zeboris**, CPA will serve on the board as immediate past president. Any additional nominations from the floor other than those recommended by Nominating Committee must follow the following procedure: A current chapter member may be nominated via a formal notification to the chapter Secretary, such nomination being duly seconded by another chapter member, and the nominee must confirm that he or she will serve if elected. Additionally, a member can be nominated from the floor at the chapter election in May.

# CPA ROUNDTABLE

Interviews by Chris Gaetano

## What's the difference between being a hard worker and being a workaholic?



GEORGE I. VICTOR | Partner, *Great River*

Hard workers do what it takes to get the job done. They're punctual, communicate with others, are cognizant of what is needed and will make every effort to complete the task. They are not clock-watchers. They are not afraid to get their hands dirty, and they can be relied upon. Workaholics, by their nature, are hard workers. But for them, work is more of an obsession or compulsion that causes them to sacrifice other important matters, like family obligations or personal commitments. Their priorities are twisted. Workaholics may be very successful in the workplace, but at what cost?

Our profession requires dedication and hard work. It is a given that there will be times when you will need to put in the hours, stay late and make sacrifices. However, there is a balance that needs to be considered, especially when children come into the picture. You may not be able to make every baseball game or dance recital, but you should not let it get to a point where you're constantly missing family events because you chose to stay in the office to finish a report. You may believe that your child forgot about the time when you were not present for a baseball practice or play recital, but you have it backwards: A child may not remember when you were there, but he or she will always remember when you were *not* there.

[gvictor@ggscpas.com](mailto:gvictor@ggscpas.com)



NEIL A. GIBGOT | Managing Partner, *Great Neck*

There are certain times of the year—busy season, SEC filing deadlines, getting out the financial statements—when all bets are off and you need to do whatever's required. But I would say this: When that pace becomes the rule rather than the exception—when you're always busy and don't make time for your family—you're a workaholic and you're going to have all sorts of problems at home as a result of it. And I've found that when someone has a problem at home, it will ultimately cause a problem at work.

I don't want someone working seven days a week; workaholics tend to make errors they normally wouldn't because they're tired. It's counterproductive to producing good work, and that's what workaholics don't get: They may push out more work, yes, but by the time it's corrected, you wind up with less from them than someone who worked a nine-to-five day.

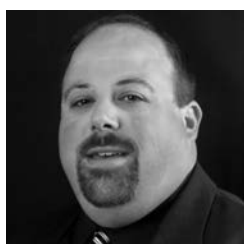
It's important that my staff sees that I take vacations, that I live well and that I spend a lot of time traveling in the off-season. I want to show them that, as a partner, you can both enjoy life and get your work done during the day. If people look at the partners and think only of how miserable it must be, then who in the world would want to become one at your firm? [neil@gw-cpa.com](mailto:neil@gw-cpa.com)



CHRISTINE A. LEARMAN | Sole Practitioner, *Grand Island*

I polled about a dozen people between the ages of 28 and 75. We concluded that the difference could be summed up in one word: happiness. If you know your priorities and set boundaries, have been properly trained to use effective time management tools and take advantage of ever-changing technological resources, then you can accomplish your tasks and still maintain a work-life balance. CPAs have a reputation for being workaholics. But we are at a crucial point in the history of our profession: As society changes and work-life balance becomes more important to retaining individuals in the workplace, seasoned CPAs must recognize that we, too, need to prioritize it and show younger professionals that it can be achieved.

[chris@chrislearmancpa.com](mailto:chris@chrislearmancpa.com)



SCOTT D. HOSLER | Manager, *Clinton*

Let's face it: We're CPAs. None of our kids or spouses are exactly happy that we're working 60-hour weeks this time of the year. It's the busy season, and we're all focused on our work. For the workaholic, though, busy season never ends. I'd say the line is drawn when work starts negatively affecting your personal life on an ongoing, consistent basis—when the pace that most CPAs keep up a few months out of the year is the pace that you keep up all year. Workaholics don't see their families, they don't have hobbies or other recreational activities, and they don't socialize—they just work.

I think you reach a certain point in the day—after you've been working long enough—when the law of diminishing returns starts taking over. You're getting work done, but if the quality is suffering because you're tired and can't concentrate, and we have to go over it again and correct your mistakes, is it really worth it? If workaholics are in the office 80 hours a week but you only get, say, 50 hours of actual quality from them, what good is it? You just end up with someone who's burned-out and, eventually, can't take it anymore. Any employer who sees this needs to step in. Intervening, in this case, is good for both the employee and for the firm itself.

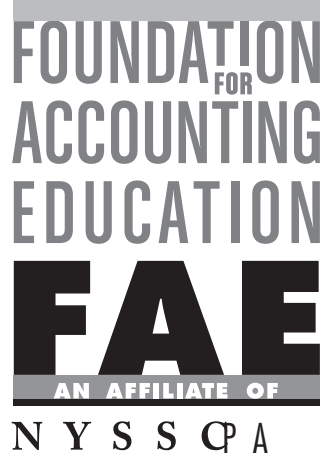
[shosler@bonadio.com](mailto:shosler@bonadio.com)



MARK A. COLELLA | Sole Practitioner, *Staten Island*

If your work is infringing upon your personal time to a significant degree, if you're in the office on the weekend and it's not even busy season, if you're constantly taking work home with you, if your wife and kids are always angry with you because you promised you'd do something with them but needed to get some work done instead, then I'd assume you're a workaholic. It's not good for employees, for their loved ones or even for the firm—that kind of punishing pace only makes for someone who is burned-out and not producing quality work because he's too tired. A situation like this definitely needs to be addressed at the firm level, because at that point, it becomes an issue of someone not being as productive as he or she should be.

[mcolella@procpagroup.com](mailto:mcolella@procpagroup.com)



# Save the Date for These Popular Conferences from FAE

<b>Date</b>	<b>Conference</b>	<b>Location</b>
5/4/15	Employee Benefits Conference	FAE Learning Center, NYC
5/5/15	Government Accounting and Auditing Conference	Albany Marriott
5/7/15	Broker/Dealer Conference	Citi Executive Conference Center
5/18/15	Business Valuation Conference	FAE Learning Center, NYC
5/19/15	Forensic Accounting & Litigation Services Conference	FAE Learning Center, NYC
5/21/15	Estate Planning Conference	Marriott Marquis at Times Square
6/17/15	Risk Management Conference	FAE Learning Center, NYC
6/25/15	IRS Practice and Procedures Conference	FAE Learning Center, NYC
7/8/15	Tax Planning for Individuals Conference	New York City Bar Association



Visit [nysscpa.org/faeconference](http://nysscpa.org/faeconference) or call 800-537-3635 to register.