ANALYSIS: A closer look at Pippins vs. KPMG LLP

BY JONATHAN A. WEXLER, ESQ. Trusted Professional Contributor

In November, a New York district court judge ruled that a firm’s unlicensed audit associates are properly classified as exempt employees under the federal Fair Labor Standards Act (FLSA) and, therefore, are not entitled to overtime pay. The decision came in the case of Campbell vs. PricewaterhouseCoopers LLP, in which KPMG associates sued the firm, under the FLSA and New York labor law, for allegedly failing to compensate them for time worked in excess of 40 hours a week. Whether an accounting firm’s professional staff is properly classified as exempt or nonexempt under the FLSA is of considerable importance to the profession. Indeed, in recent years, there have been several class-action lawsuits brought by junior and midlevel accounting associates against their employers alleging violations of the overtime payment requirements. This includes a 2006 federal suit, Campbell vs. PricewaterhouseCoopers LLP, in which 2,000 unlicensed accounting associates in California alleged that they had been misclassified by PricewaterhouseCoopers (PwC) and were owed overtime pay. In 2008, the district court found that, because these associates were not CPAs, they could not qualify for the professional exemption under California law. However, in 2011 an appeals court reversed the ruling and sent the case back to the lower court for further proceedings, and the case is still in litigation.

The FLSA recognizes certain white-collar exemptions to the law’s general requirement that employees be paid time and one-half premium for hours worked in excess of 40 hours a week. This includes an exception for “learned professionals,” a category the court in Pippins said junior-level audit associates qualify for. Pippins is one of a few court decisions to provide some detailed analysis with respect to the application of the “professional” exemption to junior-level accounting employees.

See Pippins, on page 13

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PRESIDENT’S COMMENTARY

With change comes opportunity

I n an organization as old as ours, the tug of tradition can be strong. But I believe we have shown as a Society that it’s possible to honor the past while embracing the modern and seizing opportunities to innovate. This has been the underlying theme during preparations for a move back to the neighborhood in which the NYSSCPA was founded, Manhattan’s Financial District, and into office space on Wall Street that will allow us to greatly expand our technological capabilities and have greater connectivity with our diverse membership. It’s also clear in the evolution of another important Society initiative—our outreach meetings with chapters.

For decades, the NYSSCPA had scheduled what were once known as “visits,” in which the Society’s executive director, president and president-elect travel from city to city and visit with each chapter. These meetings have changed with time. A decade ago, when the state began requiring CPAs to take ethics courses in order to maintain their licenses, the Society began its current practice of pairing each visit with a two-credit ethics course, as a way to offer additional value to members. Shortly thereafter, these visits were rebranded as town hall meetings.

I began City College Downtown—now known as Baruch College—in the fall of 1941, but had my education interrupted in February 1943 by World War II. After serving 37 months in a Combat Engineer Battalion in General Patton’s Third Army, I was able to finish my accounting education and graduate in June 1947. I was elevated to partners. Therefore, when I passed the fourth part of the CPA exam in November 1950, I decided to open my own practice.

I believe that it was 1952 when I joined the New York State Society of CPAs. Since I had acquired a number of long-distance trucking companies as clients, I applied for membership in the Land Transport Committee—which I would later become chairman of—and also became a member of the Metropolitan Motor Carrier Accountants. Obviously, in the 65 years I have been practicing accounting, I have seen many changes in our profession—some not to my liking. In the early part of my career, no accounting firms were sued for indiscretions, no accounting firms were forced out of business and no accounting firms were allowed to advertise their wares. Of course, many changes were inevitable with the advent of computers and their fantastic ability to aid us in our practices.

Edward Gotbetter, CPA
Great Neck, N.Y.

Let me highlight the accomplishments of our firm, the first third of Pres. Gary’s tenure—the NYSSCPA year in review:

1. A robust, 150-person staff—led by 23 partners—employs many of society members who have risen to positions of leadership.
2. Through the merger with PCMA, the NYSSCPA now has almost 20,000 members.
3. CPA licensure was passed in New York.
4. Year-end support for the NYSSCPA’s PAC.
5. The Trustee Professional (TPP) is published on a timely basis.
6. The NYSSCPA’s website was introduced, and its functionality was enhanced.
7. The NYSSCPA’s CPA in a Day conference was established.
8. The NYSSCPA acquired two prominent CPA publications: CPA Practice Advisor and Accountant Today.
9. Accreditation was established for the NYSSCPA’s webinars.
10. The NYSSCPA began publishing articles on newsletters and blogs.
11. The NYSSCPA began publishing the NYSSCPA Journal—a monthly magazine—online.
12. The NYSSCPA began publishing the Trustee Professional—NYSSCPA’s quarterly magazine.
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Shared memories

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That accounting firm employed about 35 staff members. In the late ‘40s and ‘50s, there were no computers. We were armed with adding machines, calculators and comptometers. Tax returns were prepared by a staff of four seated at a long table. One man prepared the tax return, the second checked his work, the third wrote the tax return longhand using carbon paper and the fourth man checked his writing. During that era, staff members were not elevated to partners. Therefore, when I passed the fourth part of the CPA exam in November 1950, I decided to open my own practice.

I believe that it was 1952 when I joined the New York State Society of CPAs. Since I had acquired a number of long-distance trucking companies as clients, I applied for membership in the Land Transport Committee—which I would later become chairman of—and also became a member of the Metropolitan Motor Carrier Accountants. Obviously, in the 65 years I have been practicing accounting, I have seen many changes in our profession—some not to my liking. In the early part of my career, no accounting firms were sued for indiscretions, no accounting firms were forced out of business and no accounting firms were allowed to advertise their wares. Of course, many changes were inevitable with the advent of computers and their fantastic ability to aid us in our practices.

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Understanding that the most important aspect of the chapter visit is the exchange of information, this year we reformatted the meetings to allow for more of this type of engagement. In the past, chapter visits often revolved around presentations or speeches given by Society leaders, and while this helped convey important organizational updates, it often left members in the role of a passive audience, limiting the opportunity for two-way conversation.

The primary focus of our visits, this year and going forward, has been Society leadership with the chapter region’s CPA firm managing partners and chapter leaders. These more intimate settings allowed us to have a true dialogue, one in which we were able to better communicate our legislative and strategic plans, and gather insight into the specific concerns of members with whom we do not always have a direct connection, with an eye towards problem solving and sharing ideas. This new format also directly addresses a desire that a number of chapters and NYSSCPA board members have expressed: that we open the lines of communication with firm leaders whose decisions have a tremendous impact on our members. We’ve been pleased with what the meetings have yielded so far, from in-depth discussion of how the profession can best attract and retain young people and the benefits of onsite educational programming, to the importance of member participation in NYSSCPA activities such as the PAC and our communications pipeline. The feedback we’ve received will help the Society in making its services more relevant.

In the interest of sparking helpful dialogue outside of those chapter meetings, I’d like to remind members that it is easier than ever for their voices to be heard. You can communicate with Society leadership at any time, through your chapter representatives and committee leaders, or by contacting me at the email address listed below. Our most effective means of improvement is through the adventure of open, two-way communication, so please take advantage of the opportunity to share and learn.

I’m appreciative of the gains we’ve made over the past few years, and excited for the ones that lie ahead for us all.

president@nysscpa.org

LETTERS TO THE EDITOR

Shared memories

I read with interest the article by Salvatore J. Morrone “I Remember It Well,” in “A Changing Landscape,” January 2013. Though I predate Morrone by more than 25 years, it brought back memories of my beginnings in the accounting profession, which I’ve since chronicled in a book titled, And You Thought Accounting Was Boring, or the Debit Is the Side Towards the Window.

Gail M. Kinsella
BY CHRIS GAETANO
Trusted Professional Staff

In January, Camille Siano Enders was named the state’s new taxpayer rights advocate (TRA), a role in which she’ll serve as mediator between the state Tax Department and the taxpayer. She is the only second person to fill the post since it was established in 2009, and succeeds Jack Trachtenberg, who left last February to work in the private sector. Siano Enders is an attorney, and her background includes work with nonprofits and public service, in addition to private sector litigation. Most recently, she was the acting deputy director of administrative review at the New York State Workers’ Compensation Board.

In announcing her appointment, New York state Commissioner of Taxation and Finance Thomas H. Mattox emphasized Siano Enders’s range of experience and her advocacy roles, which, he said, “will allow her to engage immediately in assisting taxpayers, promoting taxpayer rights and identifying opportunities to improve the state’s tax administration system.”

Trusted Professional staff reporter Chris Gaetano spoke with Siano Enders four days after she took office about what she hopes to accomplish and the issues vying for her attention. (Turn to our CPA Roundtable on page 21 of this issue to see what NYSSCPA members think Siano Enders should tackle first.)

How has your background prepared you for your role as taxpayer rights advocate?

I think there are two primary aspects of my background that will serve me well. First and foremost is my background in advocacy. Throughout my career, I’ve done pro bono legal work because I was concerned that the average person couldn’t access the legal system without having the economic means to engage it. I could see that many middle- and lower-income families weren’t getting the representation they needed. Over the years, my pro bono work has spanned from individual cases to larger projects. This aspect of my professional experience has prepared me well for the advocacy work I’ll be doing here on behalf of taxpayers.

The other aspect of my professional background that will be useful in this role will be my management experience. At the Workers’ Compensation Board, I led a very successful team that worked to resolve appeals. All of us were fully committed to our efforts to help people. These cases are about injured people trying to keep food on the table and shelter over their heads, so it’s important that they are resolved timely and correctly. Essentially, that role was a combination of management and advocacy.

Most recently at Workers’ Comp, I was a deputy director, which provided me with experience in managing a staff that’s engaged in work quite similar to the work of the Taxpayer Advocates’ Office. I had 45 employees in my office and was charged with shaping policy and procedures for the department and agency. This aspect of my management experience aligns with the Advocates’ role to address not only individual cases, but systemic issues as well.

Can you tell us more about your advocacy work? What type of pro bono were you doing?

In 2010, I was appointed to the Task Force to Expand Access to Civil Legal Services in New York, which reviewed unmet legal needs and recommended additional coverage of the TRA office. Mr. Trachtenberg was charged with getting the Advocate’s Office off the ground. He started with a proposal and built it into the functional office that it is today. Since its start just over two years ago, the office has resolved more than 3,300 cases. Now that the office is well-established and a great team is in place, my job is to further its work. For instance, one of my first priorities will be to increase the accessibility of the office to taxpayers who are not yet aware of our services.

In what ways do you feel that your tenure will differ from that of your predecessor, Jack Trachtenberg?

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What issues are you most interested in addressing, and how will this interest be reflected throughout your time as TRA?

Right now, my role is to digest all of the information I’m receiving from a variety of sources. But I will say this: The better I do my job—which is to shape the department’s policies and procedures around the needs of taxpayers—the more likely it will be that the issues are resolved early on, before they ever get to my office.

In general, what would you say are your biggest priorities?

Initially, my priority will be to listen, listen, listen—to my staff; to the preparers, such as you; to the taxpayers themselves. Over the next few months, I’ll be on a listening tour across the state. I’ve already received invitations to many events, and most importantly for now, at those events I’ll be listening. And again, as you can guess from my background, ensuring that our services are available and easily accessible to the average taxpayer will also be a huge initial priority for me.

“Think of myself as a problem solver. There’s an opportunity here to solve problems at the individual case level and at the broader systemic level. Neither will be without their challenges. But I look forward to meeting those challenges and making the system better, overall.”

—Camille Siano Enders, New York taxpayer rights advocate

www.TRUSTEDPROFESSIONAL.com
Deadline looms for FAE, Society student scholarships

BY ANNA RAKOVSKY
Trusted Professional Staff

Promising college students have until next month to apply for the FAE’s annual Excellence in Accounting Scholarship. The award, which was established in 1990, assists deserving undergraduates who hope to enter the profession.

To be eligible, an applicant must be a U.S. citizen or permanent resident, have declared a major in accounting, and be accepted by or accepted to a New York state college or university that offers an accounting program. In addition, candidates must also have completed a minimum of 72 credit hours by April 1, 2013, and 84 credits by the start of the fall 2013 semester. Though the awards are based heavily on financial need, applicants are expected to meet high academic standards, which include maintaining a cumulative grade point average of 3.0 or better.

The FAE Scholarship Awards Committee, which consists of 10 members, gives scholarships to about 50 students a year, including scholarships of $2,500 per academic year for full-time students (12 credits or more per semester) and $1,250 for part-time students (at least six credits per semester). The application is available at www.nysscpa.org/page/future-cpas/college-scholarship and consists of four sections: Personal Information, Personal Statements, Financial Aid Information and Campus Verification. Completed applications may be submitted on behalf of students by a registered college’s FAE Campus Liaison, with a maximum of three applications per liaison. For students who do not have a campus liaison, completed applications may be submitted by their school’s accounting department chair. Applications can either be emailed to laxisa@nysscpa.org or faxed to 866-495-1354. All sections of the application must be received by the NYSSCPA by April 1, 2013.

NYSSCPA members support the next generation of CPAs at the local level as well, with some chapters offering their own monetary awards to students. (See pages 24–25 of this issue of The Trusted Professional for more on what the Society’s chapters are doing to encourage future CPAs.) For example, the Nassau Chapter, which donated $1,000 to the FAE Excellence in Accounting Scholarship fund, in collaboration with the FAE, awarded three students more than $500 each in scholarships last year. The Buffalo Chapter offers a $2,500 student scholarship, and the Westchester Chapter has announced that they will be awarding six $1,000 scholarships and two $500 scholarships, applications for which should be sent to Mark G. Leeds, chair of the Westchester Chapter Scholarship Committee, by April 19.

“We believe that it is important to recognize our future accounting CPA leaders,” Nassau Chapter President Lisa A. Haynie said of the awards. Westchester Chapter President Denise M. Stefano agreed, noting that “in offering these scholarships to deserving students, we emphasize the importance of the CPA credential and bring the prestige of the NYSSCPA organization to the forefront of the accounting profession.”

For more information on scholarships or any other chapter awards, please visit the individual chapter pages at www.nysscpa.org.

annarovsky@nysscpa.org

NYSSCPA prepares for move downtown

BY ROBERT BUSWEILER
Trusted Professional Correspondent

After several years of careful study and evaluation, the NYSSCPA has officially chosen a new location for its New York City headquarters. The new base of operations will be located at 14 Wall Street, in the heart of Manhattan’s Financial District. The Society expects to move its staff and equipment by August, but preparations are already underway to ensure a smooth transition.

The Society has its roots in the Wall Street area. When the NYSSCPA was founded in 1897, it was based out of then–NYSSCPA Secretary Arthur W. Teel’s office at 11 Wall Street, which is where the New York Stock Exchange is currently located. NYSSCPA Executive Director Joanne S. Barry called the move “a smart fiscal decision that prioritizes the NYSSCPA of the future,” and said that membership dues would have gone solely to rent, rather than to upgrading the technological infrastructure, if the Society had chosen to remain in its current locale.

An improved infrastructure will enhance the membership experience, she said, by allowing for greater connectivity: members throughout the state will be able to fully partake in the Society’s offerings, regardless of their location. “While we are returning to our roots, the improved technological infrastructure in our new office location will move the Society into the 21st century and allow us to better serve the membership,” she said. “Society leadership has worked hard to rebuild the NYSSCPA into an organization that can respond to the immediate professional needs of today’s CPAs, while also remaining nimble in the heart of the Financial District and at the forefront of the expanding business community in downtown Manhattan.”

Stay tuned to the Society’s website, www.nysscpa.org, for the latest in what is sure to be an exciting chapter in the organization’s history.

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—Joanne S. Barry, NYSSCPA executive director

The NYSSCPA’s new offices at 14 Wall Street.

"The improved technological infrastructure in our new office location will move the Society into the 21st century."

The Trusted Professional

Society News

March 2013 | The Trusted Professional | www.trustedprofessional.com
BY CHRIS GAETANO

mislabeling employees as independent contractors can have enormous financial repercussions for businesses, especially now that the IRS has taken a greater interest in how companies distinguish between the two, according to Avery E. Neumark, a member of the NYSSCPA’s Employee Benefits Committee.

Speaking at the FAE’s Employee Benefits Conference on Jan. 31, Neumark said that misclassifications have become a focus of the IRS in recent years, because they can mean a significant amount of lost tax revenue for state and federal governments to recoup.

The United States Department of Labor (DOL) estimates that up to 30 percent of employers misclassify employees as independent contractors, he said, a move that is often used to avoid the expense of taking on workers as full employees. Unlike employees, independent contractors don’t receive benefits like pension coverage, health insurance or overtime, and aren’t counted when it comes to Social Security or Medicare taxes.

“In this economic environment, there really is an incentive to misclassify,” Neumark said. “The IRS agent may find mismatches between 941s and W2s, or evidence of worker misclassifications in the entity’s SEC filings.”

Still, Neumark said, using Section 530 currently represents the best chance that independent contractors instead of employees. “If you can meet the tests of Section 530,” he said, “there’s a good shot that [the worker is] an employee.”

Another factor is financial: Does the worker control his or her own tools and supplies? Do workers get reimbursed for business expenses? If not, then the worker is probably an employee, according to Neumark.

The final part of the test examines the relationship between the worker and the employer. Neumark said that if there are benefits for the workers involved, like insurance or pensions, then “you’re dead in the water” if those workers are classified as independent contractors instead of employees.

Still, Neumark said, using Section 530 currently represents the best chance that employers have in proving that their independent contractors aren’t employees, and therefore don’t owe employment taxes. “If you can meet the tests of Section 530,” he said, “you have won.”

“The contractors] feel they’re employees. Yes, they own their truck and are supposed to have their own hours, the typical common law differences, but they feel they’re getting something regulated and guided by the company that [they’re not real independent contractors] and therefore they want what employees get,” he said.

Failure to correctly differentiate employees from contractors can draw unwelcome attention from the IRS in a number of ways, Neumark said. He noted that the IRS has conducted more than 6,000 employment tax compliance audits since 2009, but also detects misclassifications through audits that aren’t focused on employment taxes. For example, he said, during the course of a corporate tax audit, an IRS agent may find mismatches between 941s and W2s, or evidence of worker misclassifications in the entity’s SEC filings.

On top of this, he said, in 2011, the IRS entered into an information-sharing agreement with numerous state governments, including New York, as well as the federal DOL, that will allow the service to be alerted when there has been a failure to remit unemployment insurance or workers’ comp premiums.

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The costs of getting caught can quickly add up, Neumark said. “This is significant money here—the federal tax rates, the [Federal Insurance Contributions Act] tax rates, state tax rates, and even the new 0.9 [percent] going up in the Medicare [tax],” not to mention any penalties, all of which a business would be responsible for.

The complicating factor, however, is that there is no clear consensus on what, exactly, an employee is. The answer depends upon who is asked, according to Neumark, as different government agencies have different definitions. “There’s a definition for federal tax purposes, labor purposes, [Equal Opportunity Employment Commission] purposes, [National Labor Relations Board] purposes, and state purposes,” he noted.

The Government Accountability Office has been pushing for a standardized definition, but until that happens, Neumark said, the key to surviving a challenge is to use Section 530 of the Tax Equity and Fiscal Responsibility Act.

Unlike a previous test that had 20 factors, Section 530 has a three-factor test to evaluate employee status, Neumark said. One factor is control: Does the business have the right to direct and control the worker? Does the business have the right to control how the work is done, provide training for the worker, or require procedures and methods? If so, he said, “there’s a good shot that [the worker is] an employee.”

Another factor is financial: Does the worker control his or her own tools and supplies? Do workers get reimbursed for business expenses? If not, then the worker is probably an employee, according to Neumark.

The final part of the test examines the relationship between the worker and the employer. Neumark said that if there are benefits for the workers involved, like insurance or pensions, then “you’re dead in the water” if those workers are classified as independent contractors instead of employees.

Still, Neumark said, using Section 530 currently represents the best chance that employers have in proving that their independent contractors aren’t employees, and therefore don’t owe employment taxes. “If you can meet the tests of Section 530,” he said, “you have won.”

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Social impact investing—investments made to create a positive social or environmental impact, beyond financial return for the investor—is becoming increasingly popular within the nonprofit sector, according to Diana Ayton-Shenker, founder and CEO of the consulting firm Global Momenta. She made her comments as part of a panel discussion about the trend during the FAE’s Family Office Conference on Feb. 5.

Ayton-Shenker cited a 2012 survey on the impact investment market done by J.P. Morgan and the Global Impact Investing Network, which found that among 99 investors—including fund managers, development finance institutions, foundations, diversified financial institutions and others with at least $10 million committed to impact investment—$8 billion had been committed to social impact investing, with $9 billion expected to be allocated this year.

Unlike social entrepreneurship, which Ayton-Shenker defined as starting a business, company or hybrid organization for social ends, social impact investing is “enabling [those types of ventures] with financing.” She used as an example the Calvert Global Water Fund, which provides funding opportunities and equity securities for water-related companies and ventures that explore ways to secure clean water for people without access to it, rather than building the equipment or digging the wells themselves.

She said that with initiatives such as these—which are sometimes called double—or triple-bottom line investments, or blended value investments—investors are looking at companies or hybrid organizations “with at least $10 million committed to impact investment” as social impact investing.

Ayton-Shenker said this may heighten impact investing as organizations search for new and novel revenue streams that help accomplish their mission while bolstering the organization’s ability to fund itself, at the same time.

If the sector is going to see part of its traditional revenue restricted, “there’s going to need to be a new business model for the nonprofit delivery system,” she said.

Making sense of the metrics

During the session, Bauer expressed some concerns about overanalyzing philanthropic giving, especially when it comes to measuring performance. “I’m wary of top-down, foundation-driven measurement,” he said. “I am far more interested in nonprofits on the ground who know what’s going on, on a day-to-day basis, and know what it takes to address issues like eliminating poverty.”

Bauer used Meals on Wheels as an example. It distributes meals to homebound people like the elderly and chronically ill and, he added, there are people in philanthropy who ask what the impact is—whether the recipients of the meals are getting healthier, or whether uptake for medication is better as a result. “We just need to be very careful,” he said. “We have to keep in mind that sometimes, the process is the product in the sector, and that’s important,” Bauer said. “Where we can measure we should, but I really want nonprofits to drive that discussion.”

We’re leaving all that money for social good on the sidelines,” he said, adding that there is a need to bring forward new ideas and methods that programs, whether they have a profit motive or not, can use to create better and more effective environmental and social change.

He added that the nonprofit sector is going to become more important, as cash-strapped governments dismantle social services that people rely on, but noted that the sector itself will also be negatively affected by this dismantling, since it receives a good deal of government funding. Ayton-Shenker said this may heighten impact investing as organizations search for new and novel revenue streams that help accomplish their mission while bolstering the organization’s ability to fund itself, at the same time.

In the end, however, Ayton-Shenker said that as investors “shake out what will work and what doesn’t, [impact investing] can be very important, not only as a revenue stream for the nonprofit sector that needs to change [from] business as usual, but also as a means of addressing and solving social problems.”

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By Chris Gaetano

Twitter: @nysscpa, hashtag #socialimpact and your comments may appear in an upcoming issue.
NYSSCPA supports ethics proposal, suggests tweaks

BY CHRIS GAETANO
Trusted Professional Staff

The NYSSCPA generally approves of the proposed changes to the AICPA’s Code of Professional Conduct that would make Interpretation 102-4, Subordination of Judgment by a Member, more relevant to those in public practice, but it raised concerns about the lack of definitions relating to threats and safeguards in the institute’s exposure draft and pushed for more guidance in certain areas. The Society expressed its views in a comment letter published on Jan. 14.

The proposal is the conclusion of a process that began with an AICPA task force that, according to the exposure draft text, was rule,” which prohibits a member from knowingly misrepresenting facts or subordinating his or her judgment to others when performing professional services. “They wanted to ensure there’s flexibility in the rules to accommodate for various situations. So whether you work in a public accounting firm or in the private sector, one can look to the Code for guidance to deal with an infinite number of circumstances surrounding subordination of judgment,” said Salvatore A. Collemi, a member of the Society’s Professional Ethics Committee and one of the letter’s authors.

The NYSSCPA felt that the exposure draft could be well served by providing definitions of the threats and safeguards about which the draft speaks, as well as guidance for how they and objectivity and form a conclusion, after appropriate research or consultation, about whether the result of the position taken by the supervisor failed to comply with professional standards, when applicable; created a material misrepresentation of facts; or violated applicable laws or regulations. If the member concludes that the position is not in compliance with professional standards, but does not violate laws and regulations and does not result in material misstatement of fact, then the threat would not be considered significant.

If, however, the member concludes that the position does result in material misrepresentation of facts, or a violation of applicable laws or regulations, then the threats would be considered significant, according to the action was not taken or that no safeguards can eliminate or reduce the threats to an acceptable level, the exposure draft indicated that one should consider “his or her continuing relationship with the organization.”

The NYSSCPA, however, brought up the possibility that the member may erroneously conclude that a position taken is not in compliance with professional standards or applicable laws, rules or regulations due to factors such as lack of professional experience, recent changes in laws, rules or regulations, or not knowing certain organizational policies and procedures.

Because of this, the Society wrote, “If a member reaching an incorrect conclusion was not satisfied with the discussion with his or

“They wanted to ensure there’s flexibility in the rules to accommodate for various situations. So whether you work in a public accounting firm or in the private sector, one can look to the Code for guidance to deal with an infinite number of circumstances surrounding subordination of judgment.”

— Salvatore A. Collemi, Professional Ethics Committee

formed in January 2012 and charged with broadening integrity and objectivity rules in order to be more inclusive of CPA's in public practice. The AICPA's exposure draft, released on Nov. 16, noted that the current rules interpretation is geared more toward members in industry, with examples in the current guidance focusing on issues such as disputes relating to the preparation of financial statements or disagreements with supervisors.

The proposed revision, however, would widen the interpretation to include, among other things, differences of opinion with supervisors over the application of professional standards such as the application of accounting principles and auditing standards, or other relevant professional standards, including standards applicable to tax and consulting services, or applicable laws or regulations. In its exposure draft, the AICPA said that these differences of opinion "could result in self-interest, familiarity and undue influence threats to the member's compliance with the Integrity and Objectivity can be considered in the assessment process. "The Society suggested adding the existing definitions of threats and safeguards explained in the AICPA's Guide for Compliance with the Rules 102-505, a nonauthoritative publication—which include familiarity threat, self-interest threat and undue influence threat—but with some modifications to incorporate volunteers by adding "other relevant third party" in addition to the clients and employers that are already included.

Moreover, the NYSSCPA felt it was unclear whether the scope of the revised interpretation applies to the subordination of judgment between members and their clients, or is limited only to interactions within their own organization, and asked for clarification on this matter in the final release.

Seeking additional guidance

According to the exposure draft, when differences between an AICPA member and a supervising authority, the member should assess any identified threats to his or her integrity proposal. In this case, the proposal states that "the member should discuss his or her concerns with the supervisor and, if the difference of opinion is still not resolved, with the appropriate higher level of management within the organization. If no action is taken there, the member should either consider safeguards to ensure that the threats to Integrity and Objectivity are eliminated or reduced to an acceptable level, or if the appropriate action was not taken or that no safeguards can eliminate or reduce the threats to an acceptable level, the exposure draft indicated that one should consider "his or her continuing relationship with the organization.”

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NYSSCPA comment letters

The following includes all comment letters released by the NYSSCPA between Feb. 1 and Feb. 28, 2013. To read all comment letters published by the NYSSCPA, visit http://www.nysscpa.org/page/society-comment-letters.

Comments to the IRS on Proposed Regulations Under Section 1.1411, Relating to the Net Investment Income Tax: Released Feb. 27—Comments on proposed regulations (REG-130507-11) providing guidance for the net investment tax imposed under Section 1411. Section 1411 was added by the Health Care and Education Reconciliation Act of 2010, effective for tax years beginning after Dec. 31, 2012, and imposes a 3.8% tax on “net investment income” of higher income individuals and certain estates and trusts to fund the Act.
Society backs AICPA efforts to clarify SSARS

BY CHRIS GAETANO
Trusted Professional Staff

In a comment letter published on Jan. 14, the NYSSCPA expressed support for a measure proposed by the AICPA to do for accounting and review services what the Clarity Project did for auditing.

“We support the AICPA’s continuous efforts to make the compilation and review standards align with the evolving roles of accountants serving their clients and easier for practitioners to read, understand and apply,” the Society said in its letter.

The comment letter was written in response to an AICPA exposure draft that was released on Nov. 15, in which the institute proposed modifications to paragraphs 1.07–.08 and 3.01–.73 of Statement on Standards for Accounting and Review Services (SSARS) 19, Compilation and Review Engagements, that it said would result in standards that are “easier to use, understand, and implement.”

The proposal was specifically framed by the AICPA to be accounting and review services answer to the Auditing Standards Board Clarity Project, a redrafting and recodification of U.S. Generally Accepted Auditing Standards (GAAS), that was intended to help auditors better understand and improve their compliance with GAAS and move toward converging GAAS with International Standards on Auditing. According to the institute’s exposure draft, the Accounting and Review Services Committee had determined that by undertaking a similar clarity project, it “would serve the public interest by having all of the professional literature for audits, reviews, and compilations drafted using the same conventions.”

The comment letter focused, in part, on an area in which the Society agreed with the AICPA, involving the use of engagement letters. Current standards require that accountants document the understanding with management regarding the services they’ll be performing for review engagements through written communication, though it doesn’t require that the communication be signed by either the accountant or management. The AICPA proposal, however, would require that the letter be signed by the accountant or their firm and management, or whoever is responsible for governance within the entity.

“The explicit requirement to obtain a signed engagement letter for review engagements helps to document the understanding between the accountant and a client clearly with mutual acknowledgements of each party’s responsibilities under the review engagement,” the Society wrote. “In addition, the signatures of both parties signify their agreement to fulfill the tasks and the terms as written in the engagement letter.”

The NYSSCPA also praised the idea of requiring the use of headings that clearly distinguish each section of the report throughout the accountant’s review.

“This will make it easier for the financial statement user to understand the purpose of the various sections throughout the accountant’s review report [which will] draw special attention to the readers to those sections such as ‘emphasis-of-matter’ and ‘other-matter’ paragraphs/sections,” the Society noted.

The exposure draft also introduced and defined a new term, “required supplementary information,” which is financial information included in a tax return, as well as other historical financial information that may be reviewed in accordance with the SSARS. While not meant to be part of the basic financial statements, this information can be vital in placing basic financial statements in appropriate operational, economic or historical context, according to the exposure draft.

What, specifically, counts as required supplementary information, the exposure draft said, is up to the “designated accounting standard setter.”

The Society felt that the introduction of this term was a good idea, as “it provides guidance on when the accountant should include an ‘other-matter’ paragraph in the review report with regard to the ‘required supplementary information’ (and) helps eliminate any confusion and unintentional misunderstandings under the current review standard.”

If the proposal is approved, the AICPA expects that it will be effective for financial statements for periods ending on or after Dec. 15, 2014.

Kenneth K. Chan, chair of the NYSSCPA’s Accounting and Review Services Committee and one of the letter’s principal authors, said the proposal does what it set out to do.

“I think it does make things more understandable, and it makes certain requirements explicit, like getting a signed engagement letter,” he said. “Even though it’s understood that you should get a signed engagement letter, when they made the original standard, they didn’t make that clear. They’ve spelled it out in the exposure draft.”

cgaetano@nysscpa.org
IRS tangible property temporary regs offer flexibility

BY CHRIS GAETANO
Trusted Professional Staff

Businesses have a good deal of flexibility in complying with temporary IRS regulations on building repairs and maintenance expenses, and can, to an extent, determine which parts of the guidance they want to comply with, or whether they’ll adopt these regulations entirely before the IRS puts a more permanent framework in place sometime this year, according to Thomas C. Yeates, a speaker at the AICPA’s Business Taxation Conference on Jan. 29.

Yeates, the national director of cost segregation at Ernst & Young LLP, said the tangible property regulations, which would apply to when a tangible property expense can and cannot be deducted, were first issued at the end of 2011, followed by transitional guidance in March 2012 and, most recently, a notice in November that allows taxpayers to adopt pieces of the temporary regulations, for guidance in March 2012 and, most recently, a notice in November that allows taxpayers to adopt pieces of the temporary regulations, for the time being. When the IRS does implement its permanent rules, they’ll be applicable to tax years beginning on or after Jan. 1, 2014. Yeates said that allows for great flexibility in business tax planning.

“Taxpayers can cherry pick ... what changes they would like to adopt early,” he said. “In fact, the service is being flexible enough that they will allow you to adopt favorable changes early and unfavorable changes in 2014.”

However, he added, the regulations specify that a later adoption only works if an entity doesn’t split individual changes, meaning that they cannot adopt one part of a particular change early and ignore the rest of it. If the entity wants to adopt a revised section, it needs to adopt all of that section, though it can still pick and choose among sections.

The most recent version of the regulations offers four possible changes that can be adopted. The first involves materials and supplies. Yeates said it includes a section that defines what a material or supply is component parts acquired separately for an existing unit of property, as well as fuel, water, lubricants and similar items reasonably expected to be consumed in 12 months or less as well as guidance on when a taxpayer would actually deduct them. This, he noted, is relatively straightforward.

“What’s a bit more complex is the addition of the option to apply the de minimis rule to certain deductions. What this means is that if the taxpayer has the applicable financial statements and a written accounting policy establishing a capitalization threshold that is consistently followed, then he or she can use the book value (the value at which an asset is carried on the balance sheet) in expensing materials and supplies. Yeates added, however, that there is a limit to how much can be expensed—either 1 percent of federal gross receipts of the regarded entity or 2 percent of book depreciation and amortization, whichever is higher. He said that comments so far have indicated that practitioners have generally disliked this ceiling. Still, the IRS has said that while the ceiling might change, it’s not going to go away, and it will never have 100 percent book conformity.

“So, we will see changes on this, but it’s a question of how much change we will get and how useful the changes will be,” he said.

The second changed section, which Yeates said is comparatively uncontroversial, involves acquisition costs. Basically, the regulation states that any cost that facilitates the acquisition of property must be capitalized. He explained that by “property,” the IRS means items like real estate; power equipment, machinery, or other companies, rather than desks, chairs and computers.

“What they’re really addressing here are acquisitions that come with facilitative costs like legal costs, and structuring costs and advisory brokerage, title searches, title perfection,” he said.

An additional section addresses improvements and repairs, and the first change is to the definition of a unit of property, as it relates to real property.

Previously, according to Yeates, assets that were seen as functionally independent were considered the same unit of property. However, the new definition is much more granular, with many individual assets now considered a unit of property in and of themselves. For example, under the old rules, a building might be considered a single unit of property, whereas now, the heating, plumbing, gas and electrical wiring might each be considered its own unit.

Moreover, under the old rules, taxpayers who were looking at a repair, for example, trying to determine whether it’s a capital expenditure or a deduction, would assess whether it extended the useful life of the building or increased its value. If the answer was no, then the item was an expense. Under the new rules, though, the question is whether the repair “caused a betterment or restoration,” and the focus is on the smaller component, not on the building itself.

Still, Yeates noted that this more granular definition of a unit of property is not absolute; there are exceptions. For example, when looking at a house, he said, the roof is not considered separate from the building.

The last change involves dispositions getting rid of an asset or security, whether through direct sale or some other method; this has changed greatly from the initial regulations, Yeates added. Under the old rules, he said, real property could not be divided into components for depreciation or disposition, meaning that “there was a regulation that basically said if you have a disposition of a structural component, the taxpayer may not recognize the disposition.” In that case, if a taxpayer replaced the building’s roof, it wouldn’t count as a repair but, rather, as a capital expenditure, and the old roof could not be disposed of, meaning that “you essentially got two roofs depreciated and could in fact have more than two roofs depreciated, even though there’s only one on the building.”

Now, he said, a disposition of a structural component of real property is a mandatory disposition, “so if you replace your roof ... or any of those items in which you would say it’s really part of the building and its structural component, the general rule would be: You must take a disposition for that replacement.”

Yeates added that the IRS expects to have final versions of the regulations out by late spring or early summer, though he also said that this is seen as a very aggressive timeline and “we may not get regulations that early.” However, “it does seem, based on everything being said and where they are, we will see final regulations issued in 2013.”

“The service is being flexible enough that they will allow you to adopt favorable changes early and unfavorable changes in 2014.”

– Thomas C. Yeates, national director of cost segregation, Ernst & Young LLP

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Fill out an application online or contact Nereida Gomez, Manager, Committee and Administrative Services, at 212-719-8358 or ngomez@nysscpa.org, to find out more information.
FAE speaker: tax treaty benefits are complex

BY CHRIS GAEHTO
Trustee Professional Staff

Making use of international tax treaties—agreements between countries on how income from one to the other will be handled by the authorities—can provide great benefits for companies with a presence overseas, according to Stanley C. Ruchelman, a speaker at the second day of FAE’s International Taxation Conference, held Jan. 24–25. However, he said, there have been a panoply of new rules and regulations that have raised the bar for entities that want to set themselves up as international corporations.

“If you are to have a corporate charter was enough, but that’s not the rule anymore and it hasn’t been for many, many years,” he added. Ruchelman, an attorney whose practice focuses on tax planning for privately held companies, opened his presentation by remarking that many clients seem to get bad advice on tax treaties at cocktail parties. This, he said, leads to the kinds of conversations he was sure many in the audience were familiar with.

“You client is doing a joint venture with someone from Russia, and they’re going to come in with an Irish company or a Dutch company and [think] that should work because ‘don’t we have a tax treaty with them or something?” he said.

“[It’s] a great plan and I wish I had thought of it [before the law changed 50 years ago],” he added. Ruchelman emphasized the importance of ensuring that international tax planning is done properly in order to both maximize the benefits and to avoid the traps that “are commonly encountered by people who get most of their tax advice at cocktail parties.”

He brought up a case involving a company set up in the Bahamas that established a tax structure and created a Honduran subsidiary that bought bonds, received the interest and claimed the treaty benefit. The Honduran subsidiary, he said, had no assets or cash flows other than the note and the interest on the note. However, when it bought bonds belonging to a U.S. entity, it would give its own note, creating a back-to-back arrangement. The IRS argued that the Honduran company was basically a conduit arrangement because it held onto funds for only a short amount of time and, further, never actually received the interest when dealing with a U.S. entity. The IRS, he said, was ultimately victorious and, following the case, the service released Revenue Ruling 84-152 in 1984, which the IRS brings to bear when attacking other conduit arrangements.

Essentially, the IRS will go after an entity if it appears that its existence is mainly geared toward moving money around to more favorable places, according to Ruchelman. This is because of limitations on benefit (LOB) provisions, which, he said, are written into virtually every U.S. income tax treaty with other countries and are meant specifically to prevent treaty shopping by providing additional conditions for benefiting from the deal.

“The LOB provision said it’s not enough to have a corporate charter to get treaty benefits—you must have some form of meaningful contact with the country for the company resident there to claim benefits under the U.S. income tax treaty,” he said. Because LOB provisions vary from country to country, he cautioned that it’s important to be aware of them and to study and understand their impacts, though he warned that some are more complex and may need multiple readings in order to fully understand them. As Ruchelman put it, “The treaty with the Netherlands is byzantine.”

Other areas of concern

Treaties aren’t the only factor that firms should examine when doing international tax planning. Ruchelman added that it was also important to consider local statutes that may affect the potential benefits of interacting with a treaty country.

For example, he said, if there’s a subsidiary in France that an entity wants to own through a holding company in, for example, Switzerland or Cyprus, in order to benefit from not having withholding taxes on dividends, companies need to account not just for the treaty but also for the domestic law concept of “abuse of treaty.” So, if the aforementioned Swiss or Cypriot holding company controls a number of subsidiaries across Europe, the French may start to wonder exactly what business it actually conducts by itself, which could lead to awkward situations.

“Where there’s treaty shopping, the IRS likes to do treaty chopping.”

– Stanley C. Ruchelman, tax attorney

Much of the planning in this area has to do with tax treaties, which Ruchelman said allows for a greater level of activity before ordinary tax rates start to apply. He explained that, over the years, the IRS has become increasingly hostile to a practice called “treaty shopping,” where an entity will structure itself in a particular country to take advantage of that nation’s favorable tax treaties with another jurisdiction, regardless of whether the company’s home country actually has a treaty with the jurisdiction.

“Where there’s treaty shopping, the IRS likes to do treaty chopping,” he said. For example, he said, it’s not uncommon for a company to form a corporation in a country with a favorable tax treaty and do a back-to-back investment structure—which usually involves loans being made between two entities in different countries—that might reduce withholding tax from 30 percent to 5 percent in the treaty country. Ruchelman said that “the IRS would attempt to attack this in many ways.”

The French may say this Swiss company is a shell [and] we don’t want to give benefits to it, because even if it is the focal point of the ownership, we’re not looking at operations in other countries,” Ruchelman explained. “So, if you think you’ve got a U.S. client and a U.S. taxpayer [who] form a company in a jurisdiction to jump around Europe, … the holding company may not necessarily be entitled to treaty benefits in France or Germany or Spain,” he said.

He added that entire industries have cropped up to prove that a company has the tax authorities overseas say, “this is in English; we don’t know how to read English.” … So you need to get a transfer pricing study with a database in the home country, or you are out of luck,” he said.

In general, Ruchelman advised that entities should try to anticipate problems with their international structure in order to avoid running afoul of the authorities. “I have a giggle test when doing tax planning,” he said. “I have to be prepared to present and defend my client to the IRS, and if I find, when I explain why we went to country X, that I start laughing or giggling, I’ve lost my case. So, I have to look forward to determine whether the giggle standard is met.”

“If the foreign government may argue that the tax authorities overseas say, ‘this is in English; we don’t know how to read English,’ … So you need to get a transfer pricing study with a database in the home country, or you are out of luck,” he said.
State cites UCC in determining when a lease is a purchase

BY RICHARD J. KORETO

Trusted Professional Correspondent

BOTH OWNERS AND USERS OF EQUIPMENT may find financial and practical advantages in a leasing model in some situations, but an outright transfer of ownership in a sale better in others. In fact, some companies have created models that incorporate the best of each choice, blurring the distinction. But New York approaches the sales tax in each situation differently, so no matter how thin the line gets between the two models, it still has to be drawn.

In Advisory Opinion TSb-A-13(5)S, the New York State Department of Taxation and Finance (NYSDTF) took a close look at an equipment rental business in a case that hinged heavily on definitions of terms. The petitioner purchases various kinds of equipment at the request of its customers, which it then hands over to the customer, under a lease agreement. The customer, under the terms of the agreement, is responsible for maintaining the equipment and must insure the equipment against loss. The petitioner collects the full selling price from the customer and takes responsibility for the equipment at the request of its customers, which it then hands over to the customer, under a lease agreement. The lessee is bound to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

Keeping these termination agreements in mind, NYSDTF Deputy Counsel Deborah R. Liebman wondered if the relationship between the petitioner and its customers was a lease—or, despite language to the contrary, actually a sale.

Finance (NYSJDF) took a close look at an equipment rental business in a case that hinged heavily on definitions of terms. The petitioner purchases various kinds of equipment at the request of its customers, which it then hands over to the customer, under a lease agreement. The customer, under the terms of the agreement, is responsible for maintaining the equipment and must insure the equipment against loss. The petitioner collects the full selling price from the customer and takes responsibility for the equipment at the request of its customers, which it then hands over to the customer, under a lease agreement. The lessee is bound to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

Keeping these termination agreements in mind, NYSDTF Deputy Counsel Deborah R. Liebman wondered if the relationship between the petitioner and its customers was a lease—or, despite language to the contrary, actually a sale. She noted that if the money paid is really part of a security agreement, the deal would be an outright sale, and thus the collection of tax on the full proceeds would be required at the outset of the agreement. However, if this was a true lease, the lessee would only have to collect sales and use tax when each payment came due, under the agreement. Liebman cited New York Codes, Rules and Regulations (NYCRR) Section 526.7[c][3], which says that “A lease which has been entered into merely as a security agreement, but which does not in fact represent a transaction in which there has been a transfer of possession from the lessor to the lessee, is not a ‘sale’ within the meaning of the Tax Law.”

What is ‘security’ anyway?

And just what is meant by “security agreement” in this context? To further explore this, Liebman had to go beyond both state tax law and the NYCRR. For a complete understanding of the definition, she needed to turn to the state’s Uniform Commercial Code (UCC). She noted that a lease qualifies as a “security agreement” if the lease is not cancellable by the lessee prior to the end of the lease period and at least one of the four following conditions is met:

• The original term of the lease is equal to or greater than the remaining economic life of the goods.
• The lessee is bound to renew the lease for the remaining economic life of the goods or is irrevocable, thus passing the “not cancellable” test.
• The “buy for $1 or turn it in” provision falls under the fourth bullet point, above. The “must buy for $1” provision falls under the second bullet point.

Therefore, the petitioner’s lease is a security agreement, not a true lease. The transactions are outright sales, no matter which termination provision applies. The petitioner must collect tax at the outset of the lease on the full amount due.

This case has implications for companies involved in leasing: The complexities of the arrangement do matter, regardless of what you call the terms—legal definitions are legal definitions. But, even more generally, the case shows how tax rules do not exist in a vacuum. Although many cases are based completely, or almost completely, on tax laws and regulations, this one shows the effects of other guidance—in this situation, the UCC—on taxation. Sometimes, out-of-the-(tax) box thinking is necessary.
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- Elect the 2013–2014 NYSSCPA officers and directors

Reception: 7th Floor Foyer, 5:00 p.m.
Meeting and Dinner: Astor Ballroom, 6:00 p.m.

For Society members wishing to attend the meeting portion only, seating will be provided at 6:00 p.m. The time for the business meeting is approximate. RSVP by April 19.

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Member-Get-a-Member Contest

CONTEST ENDS SOON: MAY 31, 2013

How to Participate: For every member you recruit, you’ll get an entry into a drawing to win a weekend hotel stay for two at any Affinia Hotel (transportation included) and a gift certificate for dinner at Carmine’s in New York City. When you recruit 3 members, you’ll receive an L.L. Bean outdoor blanket with our NYSSCPA logo. Recruit 10 members and get a $150 cash gift card. Members with 15 recruitments will be rewarded with an iPad. Questions? Contact Lisa Axisa at laxisa@nysscpa.org.

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Additional Rules
- Associate Student member recruitments are not eligible for this contest.
- Travel, including airfare, will be included in the grand prize, as per the NYSSCPA Committee and Board Member Travel Reimbursement Policy rules regarding transportation.
- The grand prize is valued at approximately $1,200. Members can enter the drawing by recruiting new members per the instructions above, or by writing to Lisa Axisa, NYSSCPA, 3 Park Avenue, 18th Floor, New York, NY 10016. Entries by letter are limited to one per member.
The Montalvos’ concerns were layered. They had no insurance for their lost inventory. Their landlord had no insurance to cover repairs to the store where they’ve operated since 2005. They wanted to apply for a FEMA assistance loan, but had not filed business losses, property valuations, amended tax returns, commercial leases, relicensing and other general business issues.

“I could really still sense the fear and pain that this storm inflicted on these people’s lives,” said John Paul Crocenzi, a Nassau Chapter member who, along with Rockland County-based CPA Steve Shindler, counselled the Montalvos that day. He noted that he and his seven months’ pregnant wife and four-year-old daughter had been lucky, only losing power for three days as a result of the storm, “I wanted to volunteer because I felt that my life wasn’t affected by Hurricane Sandy like many of the learned professional members in addition. But Crocenzi learned that Mother Nature had not been as kind to the couple.

Other members who joined in the Coney Island clinic, and another that was co-sponsored by the City of New York’s Business Services Division and CPA for help with issues beyond taxes,” Bwerinofa said. “I found the day to be enriching and, in some ways, fun.”

Several NYSSCPA members have also volunteered to provide assistance to the IRS’s Volunteer Income Tax Assistance/Tax Counseling for the Elderly (VITA/TCE) program in New York City, Westchester and Rockland counties, and Long Island.

The volunteers will assist taxpayers earning less than $50,000 who come to a VITA/TCE site with a casualty loss that may have been related to Superstorm Sandy. The coordinators at the VITA/TCE site will then take the taxpayers’ contact information and then refer to one of the NYSSCPA CPA volunteers for follow-up. The need for services is great because the casualty-loss expertise is out of the scope of the current program volunteers.

If you would like to join the Superstorm Sandy volunteer effort, or provide assistance to the IRS’s Volunteer Income Tax Assistance/Tax Counseling for the Elderly (VITA/TCE) program, please contact NYSSCPA Media Relations Manager Alonza Robertson at 212-719-8405, or via email at arobertson@nysscpa.org.

Jonathan A. Wester, Esq., is a shareholder at Vedder Price and a member of the firm’s Labor and Employment practice area in its New York office. He represents private-sector, not-for-profits and public-sector clients in litigation matters in federal and state courts and before such administrative agencies as the Equal Employment Opportunity Commission, the New York State Division of Human Rights, the National Labor Relations Board and the New York State Department of Labor.
Bridging the gap
How IT and those who rely most on the department can best work together

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

ike any other department at a firm, IT’s success hinges on its ability to manage relationships with a variety of stakeholders. However, it faces some unique challenges along the way. For one, because of its complicated vocabulary and rapidly changing nature, IT—and how to best utilize it—may not be fully understood by higher-ups. And given the significant costs associated with external IT vendors as well as businesses’ increasing reliance on them, the ability of the department to successfully deal with outside suppliers has taken on heightened importance. Here are the most critical relationships that IT governance will have and some ideas on how they can be enhanced.

Owners/executives
The typical setup: It goes without saying, but as the group that “pays the bills,” owners and executives are the IT department’s ultimate customers. Unfortunately, some of them don’t view IT as an essential and strategic component of the business, which can leave the IT manager, who does see the value that the department adds, frustrated.

How to improve it: It’s incumbent upon IT to communicate the types of services that the department will perform and how it will perform them, in a language those outside the department can understand. Most workers, obviously, want to make their employer happy: IT can do this by highlighting opportunities for executives to take advantage of technology in a cost-efficient manner. Executives, for their part, should work with IT managers to develop an annual IT plan so that resources are effectively allotted. And as with any relationship, avoiding surprises and ensuring that IT understands the priorities of a firm’s leadership are key.

Users
The typical setup: The relationship between the IT department and users routinely fluctuates between love and hate. Users often gripe about the inadequacy of IT or even blame it for their inability to achieve business objectives. IT, on the other hand, might feel that the department is the scapegoat when organization breakdowns or failures in business development or service delivery occur. Instead, IT would prefer to emphasize its own efforts to ensure smooth transitions and a standard approach to addressing technology.

How to improve it: In many organizations, executives believe the customer—in this case, the user—is always right. However, as with non-IT-related business relationships, this isn’t always the case, and a larger perspective of what’s best for the enterprise that extends beyond the interests of an individual department or a vocal set of users may need to be adopted.

Still, in the end, a solid relationship between the two groups is critical to the success of the department. The strategic use of vendors can also help the department to more effectively address business strategies by leveraging outside expertise and industry experience to facilitate the introduction of technology solutions.

Vendors
The typical setup: In many companies, vendors are assuming greater roles, especially in the performance of IT department services. As a result, the ability to manage those vendors that have been contracted to provide service delivery is critical to the success of the department. The strategic use of vendors can also help the department to more effectively address business strategies by leveraging outside expertise and industry experience in order to facilitate the introduction of technology solutions.

How to improve it: As stated in this column in the January 2013 Trusted Professional, implementing an appropriate oversight program is the best way to ensure that the IT vendor performs according to expectations. (This is especially important when data requiring regulatory-mandated levels of protection are shared with a third party.) All vendor relationships should be subject to a legally binding contract that clearly defines the responsibilities between the company and the vendor, including appropriate provisions that specify expectations as to service delivery. Service-level agreements can be used to supplement the contract and provide the day-to-day details needed to effectively monitor the relationship. It should also be noted that many organizations give users department management responsibility for overseeing technology service providers that impact their business. In these situations, an overall enterprise-wide IT vendor management process should be adapted to help ensure the achievement of and alignment with corporate objectives.

Joel Lanz, CPA/CITP, CFF, CISA, 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 Technology Assurance and Banking committee, and The CPA Journal Editorial Board. He is a past chair of the Technology Assurance Committee. Mr. Lanz can be reached at jlanz@joellanzcpa.com.

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Tech
Considering a merger or acquisition?

Use this checklist to ensure you're asking all the right questions

By Ric Rosario, CPA

Many of the problems arising from CPA firm mergers and acquisitions can be traced back to insufficient due diligence, critical thinking, foresight and planning. The first step toward successfully combining firms should be to clarify and agree on the reasons for your own firm’s interest in a potential merger. The partners should consider what they want, and don’t want, from a merger; characteristics and practices that would produce a good fit (among partners, staff and clients); the pros and cons of a merger with a smaller firm, a larger firm and a firm of equivalent size; and timelines, as well as who will be responsible for which functions, and how confidential different activities will remain.

Before merging—or even performing joint work, which can entail a degree of joint liability—develop a familiarity and comfort level with the other firm’s culture, quality controls, type of practice and client mix. Interview personnel at all levels of the firm, as well as key clients, attorneys and others who are familiar with it. Ask the questions below in order to gain a better sense of the two firms’ compatibility and assess risk.

History

- What is the other firm’s claims and litigation history?
- Are there pending liability issues?
  (Speak with the other firm’s attorneys and ask if they are willing to put the status of pending liability issues in writing.)
- What are the results of the most recent peer review?
- Does the other firm have frequent mergers/splits?
  If so, why so often?
- Is the other firm’s CPE current?
  What type of CPE do their CPAs take?
  Is the type relevant to their practice, or did they take low-quality CPE just to meet requirements?
- Has the other firm had a license or certificate suspended or revoked?
- Has it ever faced disciplinary action by a state or federal regulator, e.g., any board of accountancy, the NASD, the SEC, the PCAOB, a state CPA society, the AICPA or other organizations?
  (You might also consider obtaining background investigation reports on the key partners, but be sure to tell them if you do.)
- What information can your state board of accountancy give you about the firm?
- What kind of prior insurance, if any, does the firm carry?

Scope

- Is the firm’s work compatible with yours? Does its work complement yours?
  Will you be working with or against each other?
- Does the firm specialize in a certain area of practice?
  (If you are unfamiliar with the area, speak with others who know it well.
  You may even want to take CPE and attend discussion groups
  in order to familiarize yourself with the area.)
- Is their practice area more “hazardous” than yours?
- Are the rewards worth the risks associated with the deal if it falls apart?
  (Do a risk–benefit analysis.)
- Would it help if the parties got a second, independent opinion?

Risk Exposures

As an owner in a merging firm, sole proprietorship, partnership or corporation, you may have a new set of risk exposures. Think these concerns through:

- What will your liability be, based on the new focus of your practice?
- What rules of your state board of accountancy pertain to your new area of practice?
- Do you have joint and several liability exposure for all work undertaken, as CPAs do in some states?

Consider the ramifications of your options carefully. Extended reporting coverage (ERC), also known as “tail” coverage, covers past work performed up until the date of a merger or dissolution. Find out from your insurance carrier or agent—
- whether ERC is available to you,
- what period of time the ERC covers,
- the cost of ERC,
- the coverage limit under the current policy and ERC,
- who has consent to settle claims for prior work,
- whether there are differences in prior acts dates,
- what insured limits and deductible the new firm will carry,
- how the deductible will be divided and
- who pays the premiums and/or deductible.

Another common question that arises from changes in firm ownership is whether the firm covers a new partner’s past work, assuming your current insurer approves coverage for the new partner. There are, however, benefits and drawbacks, such as the following:
- Although you are assuming all the liabilities, you haven’t benefited from any revenue from this work.
- A claim on past work can impair your current policy limits.
- Coverage is usually written to cover firms and not individuals or owners. Covering a new partner’s past work means covering a prior entity, and some of the owners may not be with your firm or even be known to you.
- The carrier may not agree to cover prior work.

Remember, firms should always consult with their insurance carriers or agents regarding coverage options and the many other risk management issues to be considered in planning for a successful merger or acquisition.
Making your case
How to initiate difficult conversations with colleagues and managers, and hook your audience during a presentation

BY PEI-CEN LIN, CPA, SPHR

Q: I’ve been asked to give a presentation for the first time at an upcoming firm event. How can I engage my audience and keep their attention?

A: For starters, focus on people rather than PowerPoint. Your audience, and not your slide deck, is the most important element of your presentation, and you’ll win big if you can find ways to more fully incorporate them or demonstrate that you’re eager to connect.

This starts with something as basic as maintaining eye contact. In fact, you may even want to consider memorizing your content, so there’ll be no need to take your eyes off of the audience to consult your notes. It also means that you should avoid turning your back to the audience at any point during the presentation. If you’re using a flipchart, do your writing in advance, or ask a volunteer in the room to assist you. (At the very least, you’ll keep their attention?)

Finally, remember that a presentation doesn’t just boil down to what you say, but how you say it. The opposite of a dry monotone that sends an audience to sleep is what we call “vocal variety,” or varying the pitch, tone, volume and rate of your speaking voice. This could mean emphasizing key words or adding in pauses to get a point across. Moreover, be sure to speak with energy and conviction. If you are passionate about your subject and your presentation, it’ll work in your favor.

Q: I feel overwhelmed by my workload, but I’m worried that asking for help will be seen as a sign of weakness or incompetence. How can I broach this with my supervisor without his thinking that I can’t do my job?

A: Asking for help is a sign of maturity. It shows that you’re conscientious about completing the assignment on time and within budget, and maintaining a high level of quality. (After all, if you muddle through, your supervisors—they’ll appreciate that you are cognizant of the big picture.)

Q: A member of my firm whom I work closely with has a terrible communications style—he’s argumentative and given to complaining. It sometimes affects our ability to tackle projects together. How can I improve how we communicate and work together?

A: Start by having a candid conversation with him—there’s always the possibility that he’s unaware of how his style may be affecting you or the work. Explain to him that you want to give him the project your optimal performance, but his communication style is inducing a negative impact. So that he doesn’t feel attacked, avoid assigning blame and, instead, frame the conversation as an opportunity for you both to work more effectively and efficiently together. It will help, too, if you can be specific in pinpointing the issues, so come prepared with examples of when the argumentative and complaining behaviors hindered the project’s progress. For example, did a one-hour meeting turn into two hours, thus wasting time and energy? Or did an argumentative discussion cut short efforts to come up with a strategy that might have benefited the project?

Ask for his understanding and help to better focus on completing the project, and also for suggestions on how the two of you can improve your communications. Then, make a few suggestions of your own. At the end, try to come to a mutual agreement on how to proceed.

It’s commendable that you want to demonstrate competence and put forth your best effort, but don’t take it upon yourself to make the call for what is best for the engagement or project team as a whole.

It’s not your father’s retirement.
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New name and new focus for Higher Education Committee

BY RICHARD J. KORETO
Trusted Professional Correspondent

The NYSSCPA’s Higher Education Committee has a new name: It officially became the Academic Advancement and Higher Education Committee, at the end of 2012. According to committee Chair Alexander K. Buchholz, the expanded name was chosen to better describe the committee’s overall mission, which, he said, is to provide a forum for the discussion of curricular and professional issues in accounting education and to make recommendations regarding these issues to the Society’s leadership.

“This is a critical time in the accounting profession,” Buchholz explained. “The time, energy and investment we make with our next generation of CPAs are crucial to the continued success of the profession as a whole.”

The membership is also changing. Buchholz said that the committee is encouraging not only academics but practitioners who are interested in helping to mold future CPAs to join. “[We have] always welcomed diversity…. And our conference, while geared to academics primarily, has a lot of interesting topics for practitioners as well,” he said, noting that the committee’s 30 members already include professionals who aren’t full-time faculty. Buchholz added that he’d like students to join the committee, and even those who don’t live within easy traveling distance of New York City, where the committee meetings are held once a month, are welcome, since committee members can participate via teleconference or by attending virtual meetings.

From the membership at large, the committee would like to hear suggestions for improvements in accounting programs, Buchholz said. It’s specifically looking for input from practitioners such as managers, seniors and experienced associates from firms of all sizes; first-year associates who have graduated within the past year or two; and deans and chairs from colleges and universities who have either added or modified courses to address the new changes in the accounting environment.

The committee offers CPE technical sessions on certain topics, and holds an annual conference, which will take place this year on April 19. According to Buchholz, topics that will be addressed there include an accounting and audit update, a status update on IFRS and accounting information systems. A keynote speaker from the Federal Reserve is slated to discuss various developments in anti-money laundering, while a panel of various academics and practitioners, including some from Ernst & Young and KPMG will discuss various ways to ensure that students are being prepared to enter the real world armed with all the necessary tools to survive.

Practitioners who want to speak at an Academic Advancement and Higher Education Committee meeting should email Buchholz at abuchholz@brooklyn.cuny.edu. Those interested in joining this or any other Society committee can do so on the Society’s website: www.nysscpa.org/2013committeeservices/application.htm.

“‘The time, energy and investment we make with our next generation of CPAs are crucial to the continued success of the profession as a whole.’

— Alexander K. Buchholz, Academic Advancement and Higher Education Committee

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Committees host SEC reps during joint CPE session

BY CHRIS GAETANO
Trusted Professional Staff

Committees host SEC reps during joint CPE session

In a first-of-its-kind meeting, members of four NYSSCPA committees—Investment Management, Family Office, Investment Companies, Private Equity and Venture Capital—held a joint continuing professional education session on Jan. 8. The event featured speakers from the SEC, who provided regulatory updates, as well as a portfolio manager from an asset management company who gave an overview of due diligence in investment management.

Christina K. Catalina, the Investment Companies Committee chair, said that she and Dow Braun, the Investment Management Committee chair, often worked together on projects. When they discussed holding a joint session, Braun suggested they invite other committees to take part, with the goal of sharing resources and networking, she said.

From there, Catalina said, they sought out SEC staff members Jaime Eichen, chief accountant for the commission’s Division of Investment Management, and Megan Monroe, the assistant chief accountant in the same division, as well as Chris Heasman, a director and portfolio manager and analyst from Lazard Asset Management LLC, as speakers because “we wanted to find a collective topic that we would all be interested in.”

During the session, Monroe discussed the division’s observations regarding the disclosure requirements contained in ASU 2011-04, a new standard that went into effect at the end of 2011 and pertains mainly to fair value measurement and disclosure requirements.

In terms of quantitative disclosures, she said that the staff had observed that filers were using an excessively wide range of unobservable inputs in their tabular disclosure and suggested that they also provide a weighted average of the range. She added that in disclosing the type of unobservable inputs in the tabular disclosure, more consistency and specificity were needed, and reminded attendees that all significant unobservable inputs used in the valuation should be included in the disclosure.

Monroe said the staff had also observed that some investment companies don’t appear to address their valuation process for level three measurements in the footnote disclosures and, furthermore, sometimes omitted disclosures regarding the interrelationship between unobservable inputs used and how those interrelationships might magnify or mitigate the effect that changes in these inputs would have on fair value.

Eichen offered examples of when funds lacked appropriate valuation and why. For instance, she referenced a business development company (BDC) that she said had overvalued its portfolio, made up mostly of debt securities of noncontrolled portfolio companies and collateralized loan obligations. According to Eichen, the BDC’s valuations did not comply with Generally Accepted Accounting Principles; because they did not take market transactions and recent quotes into consideration, they did not, therefore, represent fair value.

Moreover, she said, the valuations of debt securities of noncontrolled companies did not represent a current exit price since the company used the enterprise value methodology, which calculated whether, in the event of a default or liquidation of the issuer, the company would receive full repayment of its loan. This ultimately caused the company to restate its financial statements as well as several of their 10-Qs. The company eventually settled toward the end of last year.

Heasman recommended that background checks be conducted at least annually on fund managers, noting that his company has declined numerous investments because of what comes out in them.

“Those are managers out there today … who have generated extraordinary returns and done very well for their investments, but one thing we found was when you see a pattern of behavior that suggests they may not be the best fiduciary, you don’t want to invest with them,” he said. This, he added, has helped keep the company away from fund managers who “have not behaved well when things get tough."

“You can do all the due diligence you like … but if you don’t take into account the behavioral components revealed through background checks and reference checks, you’re setting yourself up for a problem at some point,” he said.

Another component of operational due diligence is random visits. Heasman said that representatives from his company will sometimes drop in to see how things are going, which has occasionally uncovered major concerns about those they have invested in. The surprise factor, he added, was important because if people know about an appointment in advance, events can be staged. As an example, he referenced a time when some people from his company went to inspect a warehouse that was supposedly full of goods. They found that the warehouse was actually empty, though there were workers walking around in overalls. When the workers were asked where the goods were, they said they had been shipped out the previous night.

“Turned out that a lot of those people were hired actors!” he said.

Heasman also described an instance in which his company had vetted a manager in Dallas. It seemed strange, he said, that this manager’s office was in a strip mall and the address seemed to belong to a hair salon.

“When we checked, we found the back office was where this fund operated. We knocked and saw a bunch of people with their feet on the desk and no computers on,” he said. Later, it turned out this same manager was found to have defrauded the Art Institute of Chicago for $40 million.

“Still, Heasman mentioned that events like these have been getting less frequent in more recent years. The environment was a lot less regulated in the past, he said, meaning that it was easier for people to launch a fund and attract investments.

“In those days, a lot of folks would use word of mouth to identify a good manager,” he said. “But those days are gone and, as a result of a number of instances I described, that sort of behavior and irregularities we encounter have declined significantly over the last few years.”
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the Great Recession was significantly longer than the typical postwar economic downturn, and have been tempered by other factors. For said, is that what is now colloquially known as lasting for a total of six quarters. Frustratingly slow, according to Richard Peach, senior vice president of the Federal Reserve Bank of New York. New York City, in their finding jobs. The Federal Reserve has increased, Peach added that it’s mostly in the realm of durable goods like cars and appliances, which represent necessities rather than discretionary purchases. Many consumers who bought these products delayed making the purchases at the height of the crisis and waited for a time when they felt more confident to buy, he said. Consumer confidence has also increased, and the credit needed to make large consumer purchases is opening up, people are still living austerely, especially compared to their spending on services, he noted. “Overall, the consumer is in a very frugal mode,” Peach said. “People aren’t really income is not growing all that rapidly,” he said. New York City on the mend Compared to the rest of the country, though, New York City has been surprisingly resilient since the crisis, according to Bram, with a downturn that was milder and shorter than expected. He said that New York City has seen much worse, such as the recession in the early ’90s, which was deeper and longer lasting; in that instance it took four years for the city to dig itself out of its economic recovery. The bottom line here is, except for this extraordinary circumstance, real disposable income is not growing all that rapidly,” he said. NYC doing better than expected Despite some encouraging signs, the pace of the country’s economic recovery in the wake of the 2008 recession continues to be frustratingly slow, according to Richard Peach, senior vice president of the Federal Reserve Bank of New York. New York City, however, has weathered the crisis better than analysts expected. Peach, along with Jason Bram, a New York Fed senior economist, gave an overview of U.S. economic health at a Jan. 31 event sponsored by the NYSSCPA’s Manhattan/Bronx Chapter at PricewaterhouseCoopers LLP’s New York headquarters. He noted that while gross domestic product levels are now slightly above the business-cycle peak they hit before the financial crisis began, “we haven’t [been able to move] back on a sustained basis to where we were before the recession.” One reason for the sluggish recovery, he said, is that what is now colloquially known as the Great Recession was significantly longer than the typical postwar economic downturn, lasting for a total of six quarters. Moreover, any hopeful signs of a rebound have been tempered by other factors. For example, while, technically, the unemployment rate has declined, Peach said this can be attributed more to Americans ceasing to look for work, rather than to an increase in their finding jobs. The Federal Reserve has concluded that people dropping out of the labor force make up the “bulk of the decline in unemployment,” he said. Similarly, while consumer spending has increased, Peach added that it’s mostly in the realm of durable goods like cars and appliances, which represent necessities rather than discretionary purchases. Many consumers who bought these products delayed making the purchases at the height of the crisis and waited for a time when they felt more confident to buy, he said. Consumer confidence has also increased, and the credit needed to make large consumer purchases is opening up, people are still living austerely, especially compared to their spending on services, he noted. “Overall, the consumer is in a very frugal mode,” Peach said. “People aren’t really

People in financial markets think the Fed is going to be operating at this very low interest rate ... for several more years. Unless we get surprised at the upside of the strength of private demand, we could be in this situation for some time to come.” —Richard Peach, senior vice president of the Federal Reserve Bank of New York

NY Fed: U.S. recovery slow, but NYC doing better than expected
What issues should Camille Siano Enders, the state’s newly appointed taxpayer rights advocate, tackle first?

JEFFREY S. GOLD | NASSAU CHAPTER

The taxpayer rights advocate basically has two missions: to deal with individual taxpayers who have unresolved problems, and to address systemic problems and improve the functioning of the department. For the purposes of this discussion, we’re really concerned with the latter, and in this realm, a few things come to mind. The first is in regard to the Office of the New York State Taxpayer Rights Advocate itself. The Society published a letter about two years ago, urging the governor to make the position of taxpayer rights advocate permanent. Apparently, it was originally established as an administrative or executively created position, but we’d like there to be a specific term of office. The office should have a legislative mandate, rather than just an executive one.

As chair of the New York, Multistate, and Local Taxation Committee, a systemic issue that we’ve been getting a lot of feedback on from members deals with the tone and tenor, as well as the extent of information requested in initial audit letters. I’ve heard complaints from practitioners that the boilerplate information request for the audit of a business lists 15 or 20 items, whereas they’re really only looking at one or two issues. The same applies to audit letters sent to individuals. Take audits of tuition credits, for example. I understand that the Tax Department is concerned about the potential for fraud in returns that claim this credit, and that’s why they request a questionnaire to document that a student is eligible for the credit. But they go on to ask, not only for Form 1098-T, but for all bursar bills and payment checks. If the taxpayer provides Form 1098-T, and it matches the copy that the Tax Department received from the IRS, that should adequately document payment. Asking taxpayers to also dig up every bill and check from three years earlier to support a $400 credit strikes me as overkill.

Additionally, I’d like the taxpayer rights advocate to focus on revising and updating New York state’s residency rules. For example, during a residency audit, the burden of proof is on the taxpayer to prove that he or she was not in New York state. Sometimes, this is very difficult; the taxpayer might not have swiped a credit card that day or used the phone, which means New York state automatically assumes that he was in New York that day.

COLLEEN BERRY | MID HUDSON CHAPTER

Right now, New York state has a very strict adherence to what, I believe, is form over substance. I think sometimes, when a situation may involve say, for example, taxes on the sale or resale of an item, where the information might be presented correctly but was on the wrong form, the taxpayer gets penalized. Another concern is that, lately, I’ve been seeing a lot of issues with Empire Zone credits. We’ve seen a number of instances where taxpayers e-file their returns with all the appropriate information but don’t get their refund. And when we call, New York state says that they never got the information—though they clearly did, since it was filed and we got word of the acceptance. So, while taxpayers are trying to build the economy and put people to work, they’re having these difficulties with the Tax Department. Almost all of our clients who have these credits have waited at least six months or more for the information to actually be processed. Then, a lot of these cases wind up getting audited, which means even more time waiting to get these credits.

Brian J. Gordon

As of late, there have been some controversial decisions on the statutory residence issue, including the recent case, Matter of Gaied, where a New Jersey resident who maintained a home for his parents in Staten Island was found to be a New York resident by the Appellate Court. I’ve seen so much disagreement on this issue, even at the appellate level, which tells you that there is some misunderstanding or confusion about what exactly qualifies as a permanent place of abode. The state addressed it in its guidelines, but the judges didn’t seem to follow those guidelines. Even the New York State Tax Appeals Tribunal has found both ways: First they found for the taxpayer, and then they found against the taxpayer, which tells you that there is some misunderstanding or confusion about what exactly qualifies as a permanent place of abode.

Overall, I’ve found the taxpayer rights advocate’s office to be very helpful in cases I have been involved with. However, it seems that they have not been granted enough authority. In certain cases, such as hardship cases, they should be given the authority to override certain decisions made by the tax authorities, when it will help the taxpayer. Also, when returns are not processed in a timely manner and you just keep getting the runaround from the state Tax Department, the taxpayer rights advocate should take the lead and help expedite returns when things go nowhere, rather than allow preparers to be transferred from one department to another, not even knowing the status of their return.

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CHAIM DEUTSCH | MANHATTAN/BRONX CHAPTER

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**FAE EVENTS and CPA OFFERINGS**

**Nassau**

**Annual Spring Joint Nassau/Suffolk Chapter Meeting**

**When:** Mar. 21, 6–8:30 p.m.

**Where:** Crest Hollow Country Club

**Cost:** $60 in advance; $70 at the door

**Contact:** Neal Korenberg at cpinto@ck-co.com or 516-937-9500

RSVP required by Mar. 14

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**60th Annual Installation Dinner**

**When:** May 9, 6:30 p.m.

**Where:** Crest Hollow Country Club, Woodbury

**Cost:** $99 per person

**Contact:** Jean Townsend at jtownsend@st-cpas.com or 516-938-5219

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**CPA Review Young CPAs Committee Session**

(Learn tips and tricks to help you pass the CPA Exam)

**Sponsored by Becker**

**When:** May 22, 6–8 p.m.

**Where:** Holtz Rubenstein Reminick LLP, 125 Baylis Road, Suite 300, Melville

**Cost:** $10 per person

**Contact:** Carmelina Hernandez at chernandez@markspaneth.com

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**Queens/Brooklyn**

**2013 Higher Education Conference**

Sponsored by the Academic Advancement and Higher Education Committee and the Queens/Brooklyn Chapter

**When:** April 19, 8 a.m.–4 p.m. (7:30 a.m. check-in)

**Where:** FAE Conference Center

**Cost:** $160 members; $200 nonmembers

**CPE:** 8 (accounting)

**Course Code:** 28105322

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**Rochester**

**Easy Access to FDIC Insurance for Safety-Conscious Investors**

**When:** May 1, 8:15–9:30 a.m. (7:45–8:45 a.m. check-in and networking breakfast)

**Where:** Rochester Institute of Technology, Saunders College of Business, Room 1225/1235

**Cost:** Free

**CPE:** 1 (advisory services)

**Course Code:** 29050301

**Contact:** Mary Murphy at yardig@yahoo.com

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**Understanding the Health Care Reform Act**

**When:** Mar. 7, 9-11 a.m.

**Where:** St. John Fisher College

**Cost:** $20 per person

**CPE:** 2 (specialized knowledge)

**Course Code:** 29050302

**Contact:** Thomas Zuber

See flyer for more information.

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**Suffolk**

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**Where:** Crest Hollow Country Club, 8325 Jericho Turnpike, Woodbury

**Cost:** $60 in advance; $70 at door

**Contact:** Neal Korenberg at cpinto@ck-co.com or 516-937-9500

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**TAX Stringer**

An NYSSCPA publication for tax pros written by tax pros.

On the first of each month, top CPAs, attorneys and other professionals write about the latest and most important tax developments for the members of the NYSSCPA in The Tax Stringer, the NYSSCPA’s electronic tax newsletter. From the tax implications of the ACA, to the recent controversy over the MCTMT, to special New York rules for flow-through entities, The Tax Stringer covers it all.

To sign up for this free member-only publication go to:

highroadsolution.com/nysscpa_preference_center/EmailSearch.aspx

Then type in your email.

You will see a list of NYSSCPA publications. Just check The Tax Stringer—and any other NYSSCPA publications you’d like to receive—and the Tax Stringer will arrive in your inbox starting with the next issue.
CPAs in the media: building an active presence

BY CHRIS GAETANO, Trusted Professional Staff

When John R. Lieberman was featured in a segment of “The Daily Show” last January, his second appearance on the program in the last few years, his sons thought “he was cool, for a couple of minutes.” But Lieberman, a New York City-based CPA, has long gotten kudos from colleagues for his ability to pop up just about anywhere.

He has served as a guest expert on network and cable TV for more than 20 years, offering a practitioner’s perspective on such topics as the tax strategies of high-net-worth individuals and the impact of the fiscal cliff deal on household finances. Though he was apprehensive when he first started doing media, a feeling that hasn’t completely dissipated (“I am nervous every single time,” he said), he also realized that the exposure could have several benefits for the profession, the public and the NYSSCPA itself. Not only would it be a way to share helpful information, but it would reinforce the idea of the CPA as the trusted professional, he said. What’s more, the visibility has increased his firm’s presence on a national and international level, he added, because “when people do Google or YouTube searches, they will see those interviews.”

But, with the right amount of preparation, and by working with the NYSSCPA Media Relations team, any Society member can reap the same benefits. Below are a few tips to help you do so.

1. Start building your rep.

Since establishing yourself in the media is all about building on previous appearances, Lieberman said, the first step is to begin cultivating a reputation as a qualified speaker. The good news is you can assemble a portfolio of public speaking engagements through the NYSSCPA. Start by asking the Society’s Media Relations department how you can partner with them. (See “How to work with NYSSCPA media relations” on this page for more information.) Joining a Society committee, volunteering to lead a session or panel discussion at a conference or chapter event, and writing articles for Society publications such as The CPA Journal or the Tax Stringer can also help to make you more visible. “Get involved locally, statewide and nationally,” said Lieberman, who is a past chair of the Entertainment and Sports Committee, and also served on several others. “Contribute, give, participate. People will see you and respect you.” From there, NYSSCPA Media Relations can help you establish yourself as an expert source in print and on the air.

2. Have ideas at the ready.

TV producers don’t have the knowledge or experiences of a CPA, so while they may have a notion of what they want to talk about, it will help if you can connect the dots. “We need to be able to explain to them the overall picture,” Lieberman said. “The important thing is to be helpful and open; do this enough, and the rest will follow.” When you’re thinking of ideas, keep in mind who the target audience is and what kind of information its members might find useful. “The audience for Bloomberg is a slightly different one than the audience for NY1 or the ‘CBS Evening News,’” he said.

3. Show up prepared.

For CPAs who do land a TV interview, Lieberman said that there should be one hour of preparation for every minute of airtime—work that usually involves going over any changes and updates in the subject matter being discussed, and figuring out how to modulate a message. “You’ll want to be able to communicate information in such a way that the audience will understand it,” he added. In this respect, he said, it’s a little like talking to a client about a complicated matter, though on TV “we usually have to do it in 15 seconds or less.”

4. Remember your purpose.

“The most important thing is to be a representative of the profession,” Lieberman said. “It’s not about John Lieberman but about communicating that the CPA is the trusted professional.” The producers will recognize your sincerity, he added, and they’ll come back to you because they know you’re interested in communicating important information and not just self promotion.

How to work with NYSSCPA media relations

BY ALONZA ROBERTSON

NYSSCPA Media Relations is focused on building an awareness of the role of New York CPAs for various constituencies. Think of it as advertising that uses an objective dialogue presented by a newspaper, television station or radio news show.

The NYSSCPA fields hundreds of calls a year from journalists, producers, bloggers and analysts, all looking for experts who can explain a wide range of accounting issues, including taxation, auditing, personal finance, forensic accounting, real estate and banking, as well as other industry-related topics. Time is also spent pitching story ideas to journalists in order to increase the visibility and credibility of the CPA profession with the public and the media in New York state and on a national level.

But the traditional news media is only one of many communications platforms we use to champion the NYSSCPA’s members. Others include the Internet—particularly social media like Facebook, YouTube and Twitter—accounting-related websites, forums and discussion groups. There are also events, including the Society’s quarterly Breakfast Briefings and conferences, as well as internal publications including The CPA Journal, The Trusted Professional and the Tax Stringer.

Regardless of the platform used to deliver our messages, successful public relations depends on the ability to champion, explain or educate articulately and with confidence. Ultimately, learning how to get readers and viewers to see you as a trusted and reliable resource builds your credibility. Building credibility not only enhances your personal brand as a CPA but also makes potential clients see you as the certified public accountant they really want to do business with.

For more information on how to get started with the media through the NYSSCPA, contact Alonza Robertson, NYSSCPA Media Relations Manager, at arobertson@nysscpa.org.

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Trusted Professional Correspondant

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Inaugural Scholarship

Chapter awards Theodore A. Wilson Inaugural Scholarship

Rockland Chapter plans events

BY ROMAN MATATO

Manhattan/Bronx Chapter Past President

At its holiday dinner on Dec. 18, 2012, the Manhattan/Bronx Chapter Board of Directors presented Tatiana Veselova with the Theodore A. Wilson Inaugural Scholarship Award, on behalf of the FAE Scholarship Awards Committee. The chapter is especially grateful for the many efforts of Past President Barry F. Doll and Founding President William Aiken, who endeavored to define and structure the scholarship to appropriately honor Wilson and his family. Wilson, who passed away in July 2010, served on the NYSSCPA’s FAE Scholarship Committee, as well as on the chapter’s executive board and local FAE Scholarship Committee. He is remembered for his generosity and spirit of volunteerism.

In attendance at the board dinner were Aiken and J. Michael Kirkland, the NYSSCPA’s President-elect and a chapter Past President, both of whom spoke fondly and highly of Wilson. Four other Manhattan/Bronx Chapter past presidents, in addition to current President Sherif Sakr, were also present.

Veselova was born in Yekaterinburg, Russia. The fourth-most populous city in Russia, it borders the Ural Mountains, and was home to the June 2009 inaugural BRIC summit. She expects to graduate with a bachelor’s degree in public accountancy from Baruch College of the City University of New York (CUNY), and plans to obtain her master’s degree in taxation. Currently, she is a hedge fund strategies tax intern at Goldman Sachs. This position, while certainly a reflection of Veselova’s own achievement, is perhaps also an occurrence of fortune, as BRIC is an acronym that Goldman Sachs Asset Management Retiring Chair Jim O’Neill coined in 2001 to refer to the rapidly developing countries of Brazil, Russia, India and China. Prior to her current assignment, Veselova interned in the accounting department of Brant Publications, Inc.

In Russia, she studied English, French, education and classical piano. After completing her native university education, she worked as a teaching assistant and linguist. Seeking greater challenges and opportunities, Veselova immigrated to the United States in 2004, and then enrolled at the Zicklin School of Business at Baruch.

Initially interested in finance and investments, she chose accounting as her major, because it was an area of great specificity, and also because financial statements reminded her of musical notes and sheet music.

The Manhattan/Bronx Chapter is proud to honor the memory of Theodore A. Wilson by presenting the inaugural scholarship award in his name to Veselova.

BY DAVID R. HERMAN

Rockland Chapter President

Unfazed by a hectic tax season, Rockland Chapter plans events

By now, many of us are well into tax season or are in the process of doing audits, which can be stressful. Hang in there.

This past year, the Rockland Chapter offered eight courses comprising more than 50 CPE credits, and is currently planning events for June. As usual, we plan on offering two to four three-credit classes, and will host our Annual All-Day Tax Update. If anyone has any ideas for courses they would like us to add, please contact either myself, at the email address below, or Shari E. Berk, at shari@seberkcpapc.com.

I want to thank all the board members and officers for chipping in and helping out during our most recent events. Good luck with the rest of tax season, and I look forward to seeing you at our upcoming events.

David R. Herman Rockland Chapter President

Recovery continued from page 20

Increased the demand for certain jobs. For instance, the construction industry saw a much higher gain in jobs than other sectors.

“It looks as if the negative effect of Sandy on the region lasted a month and, while I wouldn’t necessarily say it’s having a positive effect now, it looks like the negative effects have vanished since December,” he said, adding the caveat that this is an aggregate view and that certain parts of the city, like Brooklyn’s Red Hook neighborhood, “haven’t come back.”

Still, for the country as a whole, the figures remain worrisome. Peach noted that, according to the Fed’s data, the household sector has historically been a net saver due to factors like 401(k) plans. Businesses, on the other hand, are typically net demanders of credit, but in the aftermath of the crisis, they have also become net savers.

“So, now you have the private sector of the economy, both households and businesses, wanting to save more than they are investing. How do you keep the economy from going into a deep recession when that happens?” he asked.

The answer, so far, has been government. The federal government, Peach said, would like to begin saving more; it can’t, however, until businesses, households or both begin saving less.

“That’s the dilemma the U.S. economy is in at the moment,” he said.

This is why the Federal Reserve, Peach added, has been working to create an environment conducive to spending, so that households will buy more and businesses will borrow more.

“People in financial markets think the Fed is going to be operating at this very low interest rate, essentially zero-interest-rate policy, for several more years. Unless we get surprised at the upside of the strength of private demand, we could be in this situation for some time to come,” he concluded.

Reach more than 28,000 CPAs and other finance professionals throughout NYS

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For more information email Jeff Leonard at jeff@leonardmedia.com or call 215-675-9208, ext. 201.
When it comes to social media, we’re right there on the front lines.

Like us
Over 800 people are fans of the NYSSCPA on Facebook ...and we’d love to have you among them!

Follow us.
We also have a LinkedIn group that has over 2,000 members, so be sure to check out our LinkedIn company profile and join in.

Join the conversation.
Find out why more than 3,000 people are following us on Twitter—sign up to follow us and you can get daily updates from the NYSSCPA on regulatory actions, breaking financial news, upcoming events, and much more.

BUFFALO
Buffalo Chapter invests in the future of the profession

BY PATRICIA A. JOHNSON
Buffalo Chapter President

Supporting education, whether at the undergraduate, graduate or professional level, has long been an important initiative for the Buffalo Chapter. After reviewing the financial results of the current fiscal year’s activities, the chapter board voted to add an additional $2,500 scholarship for the 2013–2014 academic year, bringing the total number of scholarships supported by the chapter to four.

The scholarship initiative was started by Edward L. Arcara and has quickly become a tradition, with aid awarded in conjunction with the Foundation for Accounting Education’s (FAE) Excellence in Accounting Scholarship program. The recipients of the chapter scholarships are students pursuing accounting degrees at Western New York colleges and universities. They are invited to attend a chapter board meeting in order to learn more about the chapter, and are recognized at the Annual Education Night Dinner in April. The cost of meeting the educational requirement for licensing increased with the addition of the 150-hour requirement, and student scholarship winners appreciate the ability to defray some of the cost through these scholarship opportunities.

This investment in the future of the profession would not be possible without the support of our chapter members. Attendance at chapter events like the Summer Symposium continues to be strong, allowing the scholarship program to expand.

With the traditional busy season impacting the majority of our members, March and early April are quiet times for the chapter. As you look at your post-busy-season calendar, however, please reserve the evening of April 25 to attend the Annual Education Night Dinner, where the top undergraduate and graduate students from area colleges and universities will be honored.

The speaker for the evening will be Cliff Benson, chief development officer for the Buffalo Sabres hockey club. Prior to the dinner, a CPE session on pensions will be offered by Denise M. Gueli and Arcara.

Supporting the future leaders of the profession through your presence sends an important message about the value of involvement and offers a great opportunity for networking with future professionals.

Follow us on Twitter: twitter.com/nysscpa
Connect with us on LinkedIn: http://www.linkedin.com/groups?gid=481568&trk=hb_side_g
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NASSAU
Celebrate the end of tax season with Nassau

BY LISA A. HAYNIE
Nassau Chapter President

Although most CPAs are in the midst of busy season, the Nassau Chapter has been working steadily to plan events and provide you with up-to-date information that will help you with your practice.

On March 21, we’ll hold a joint Nassau/Suffolk networking event at the Crest Hollow Country Club, with state Sen. Jack Martins (R-Mineola) as our distinguished guest speaker. The senator, who was recently reappointed chair of the Senate Standing Committee on Local Governments, will be discussing the devastating effects of Superstorm Sandy on Long Island. The event begins at 6 p.m. Please take a much needed break from tax season by joining us for the latest information on the aftermath of the storm and issues related to the rebuilding of Long Island.

On Feb. 25–26 the Nassau Chapter Taxation Committee, in conjunction with Newday, hosted its annual live web tax chat session. Committee chairs Robert J. Schaffer, Robert Barnett and Lola Damante invited tax committee members of the Nassau and Suffolk Chapters, to answer numerous individual and small business tax questions from local taxpayers. Many thanks to volunteers Robert Schaffer, Don Crotty, Jack Angel, Jill Scher, Liz Vuozzo, Pamela Diamond, Gary Goldberg, Ruth Sattig Betz, Scott Sanders, Elliot Lavieties and Simon Hector for participating during this busy time.

Please mark your calendar for April 25, The Long Island Community Foundation, in cooperation with Farrell Fritz, P.C., Capell Barnett Marzon & Schoenfeld LLP, Martha Clara Vineyards, the Nassau County Bar Association – Attorney/Accountant Networking Group, and the National Conference of CPA Practitioners, has invited our chapter to join them the day in celebrating the end of tax season. This wonderful event will take place at the foundation’s historic Gold Coast Home and will include time for networking and a tour, followed by a technical presentation that will qualify for CPE and CLE credits.

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Please see our website for registration information for our upcoming events. We look forward to seeing you.
PROFESSIONAL OPPORTUNITIES

Young, energetic and dynamic husband and wife accounting team seeks retirement-minded practitioner with write-in and/or tax preparation practice in New York City area for merger and eventual buy-out. Contact: anthony@e-allc.com.

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PROFESSIONAL OPPORTUNITIES

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