NCCPAP Newsletter

Nassau/Suffolk Chapter

Volume 3 • Issue 1 • July 2021

ISSUE HIGHLIGHTS

The Longest Tax Season Ever

Upcoming Meeting

July 21, 2021

New York's 2021-2022 Budget Bill and
Its Response to Recent Federal Tax Legislation

with Speakers Mark S. Klein, Esq. & Joseph N. Endres, Esq.

Overview

This seminar will cover the latest developments in New York State's 2020-2021 budget bill, including NY's response to TCJA and the CARES Act. We will discuss the new SALT cap workaround, while also highlighting new decisions, rulings, and administrative releases affecting New York's personal income, sales, and corporate taxes. We'll also focus on some common misconceptions about residency and wage allocation for people who fled NY during the pandemic. Finally, we will review various tax incentive programs, as well as recent changes in New York's abandoned property law and enforcement.

Cost

Members: $50 / Non-Members $100

Credits

2 CPE TAX

Register Now

and view all of our future programs

Mark Klein and his associates at Hodgson Russ have been great friends and resources to NCCPAP for many years.

We appreciate the information they provided on Economic Nexus, and various state charts, all of which appear with links on pages 17 & 18.

Greetings from the Editor

By Gary Sanders

As our cover indicates, this has been the longest tax season ever.

We all needed to take a deep breath, and hopefully vacation, after what turned out to be almost a two-year tax season.

I am not going to repeat all of the complexities and hurdles that we all needed to work with.

I would rather focus on where we as individuals and practitioners go from this point forward.

As challenging as the last two years have been, it was also rewarding in that we have realized more than ever, how much we value our relationships with family, clients, associates, and colleagues.

The loyalty of our clients and friends and the relationships built, are valued more now than ever before.

I recently heard an interview about learning how we change and need to evaluate ourselves in light of recovering from the last two years of the pandemic.

There are so many questions, and life changing issues we must now face:

- Why do we undertake the stress and pressure of what we do.?
- What is it that we strive to accomplish?
- How do we go about meeting our personal and professional goals?
- Know your value in everything you do
- Be confident in all that you do professionally and in all other aspects of your life.
- Most Important—know your YOU—and what you believe in and stand for.

Interestingly, our organization always was, and continues to cherish these thoughts and values, and our leaders strive to assist our members in achieving these answers.

I am proud that this newsletter reflects the insight of some of our finest educators and contains articles to make sure that we as practitioners have as much information as possible; with the ability to ask questions.

We are planning many new summer programs to reflect our needs for Practice Planning, A&A, and Ethics. Our education and symposium committee have planned many programs.
As we hopefully turn to our "new normal", we are confident that our chapter of NCCPAP will always be a voice to our profession and members.

We will always be about "MEMBER HELPING MEMBER."

Have a great summer!

Gary Sanders, *CPA is President of the firm Gary Sanders CPA PC in North Bellmore. Gary has served as Past President of the Nassau/Suffolk Chapter and as President of the Educational Foundation. He currently serves as the managing editor of our Chapter Newsletter.*

Message from the Educational Foundation President

A Season of Takeaways

By Andrea Parness

It has been a while since we included our MAP meeting Take-A-Ways in our quarterly newsletters. The great content always made it so hard to limit our bullet points to the optimum five and usually less than 20 ideas. One benefit to producing recorded live streamed seminars is that so many of us were easily able to attend and our take-aways were recorded in the chats! As most of us were working remotely we were also able to be a bit more flexible as we scheduled meeting times and topics. We continue to hear from many members that the NCCPAP support during these times was critical for them.

I have started many blog posts and articles quoting my firm's favorite saying: "It's not a problem, it's an opportunity". Please do not mistake us for optimists, we recognize the value of evaluating a situation and altering existing processes, something we and the rest of the world had to do beginning March 2020. How cool that these crazy times have elevated the accounting profession to "essential" as, through our efforts employees kept their jobs, businesses were able to pull through, and business owners knew they really had a caring business advocate, not just a number cruncher.

What are my other Covid-19 Take-A-Ways?

- Access to insight into changing laws and guidance on a timely basis is critical. Every time a new law or IFR came out I knew we NCCPAP leaders: Robert Brown, Bob Goldfarb, Mark Stewart and I would be dissecting them and discussing the ramifications with our prime supporters: Neil Katz and Robert Barnett, among others. We had the inside track and were quickly able to share the information with our members, staff and clients. Even having no guidance was guidance!
- Gratitude to have a solid business. Feeling gratitude is hard to muster when we are working so many hours without an end in sight. Consider those who are not as fortunate, those whose business suffered, who were forced to move in with relatives, who were forced to draw from retirement accounts and those who for the first time in their lives applied for unemployment.
- Confirmation that advocating for something you believe in can really make a difference. My firm subscribed to the AICPA PPP funding portal and early on were assigned a liaison who answered our emails and telephone calls. He took our concerns to heart and arranged for a meeting with the Director of Communications and Public Relations of CPA.com (via Zoom of course). One of my staff members and I explained our frustration with long approval wait times and unreconciled error codes. We reminded them that each application represented a small business, small business owner, their employees, their ability to support their family, etc. I requested that they remind their reviewers of the human element; maybe then these "sticky" applications would not be pushed aside. This resonated with them and they shared my client stories with the small business committee of the House Ways and Means Committee during their meetings, this directly resulted with the extension of the funding deadline to May 31st.
- I really do "Love my Job". We teased about the cover of the January issue of the Journal of Accountancy but what a great feeling I have when I work with clients whose first words are either "your staff has been so supportive and patient", "I will follow your recommendations, I trust you 100%", or "I really appreciate your efforts on my behalf". Knowing that we were able to do so much good for people we really care about and hearing how much they appreciate our efforts gives me the ability to continue.
- Manage client and staff expectations and communicate consistently and people will be grateful. We may not have all of the answers, we may not be able to help them obtain grants or stimulus funding, but as long as we keep our clients in the loop they recognize our value.
- Be nimble and open to changing firm processes. This is a no brainer in the face of challenges such as we have seen over the last sixteen months and counting.

When I consider how hard we all worked through what seemed and still seems as the "never ending tax season" I realize that we really are a powerful group. We too are small business owners, forced to quickly adapt during the height of our workload. We Nassau/Suffolk Chapter leaders and technical advisors felt committed to each other, our members, the accounting community and small business community at large and were successful in meeting that challenge.
I believe we will each emerge from this much stronger and better, we just need a vacation and of course more guidance!

Andrea Parness, CPA *is owner of A Parness Company CPA, a niche market CPA firm based in Belle Harbor, Queens, NY. Her firm offers cloud accounting software conversions, integrations, support, virtual CFO services, business coaching and advisory services, accounting firm support and medical office consulting, and tax minimization planning.* *Andrea@AParnessCPA.com* *https://aparnesscpa.com* *(718)-318-2677*

Message from the Nassau/Suffolk Chapter President

By Robert Brown

Once again we made it through another tax season round one. I'm not sure whether we got a one month extension, or a shortening of tax season round two, as it seems to have given the clients an extra month to procrastinate! Somehow, despite all the obstacles, we always get it done. Hopefully, you all have either taken some time off, or you are planning to soon.

If we have been a little quiet at the Nassau/Suffolk Chapter the last couple of months, we just want you to know, we are still here. Like all of you, our goal is to help one another, and through this COVID-19 pandemic, what we do has worked better than ever. When I say, "we," I mean each and every member and I thank you all for that. Everything we do continues to get more challenging, and we all keep rising to the occasion.

While we did give you some respite from the numerous education programs that we presented last year, that vacation is over. While in the past, educational programs were scheduled six months to a year in advance, so much is changing so quickly and we all need to be on top of it. With that in mind, we are putting on a program on July 21st on tNew York's 2021-2022 Budget Bill and its Response to Recent Federal Tax Legislation. With the state and local issues looming large, we hope to see you all at this program!

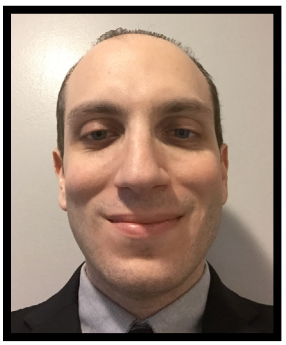
I promised myself I would keep this brief! Please reach out if we can help, if you have ideas, or if you would like to volunteer.

Enjoy your summer!

Robert N. Brown, CPA, CGMA *is the owner of Robert N. Brown, C.P.A., in Jericho, NY. He has spent more than 35 years in public practice serving small to middle market companies, and individuals in the areas of tax preparation, tax planning, tax controversy, estate planning, multi-state taxation, tax representation, financial statement preparation and management advisory services. He is a frequent lecturer to accountants and other professionals on tax, accounting and management matters.*

An Update From Our National Quarterly Conference

By Mark A. Stewart, Jr., CPA, National President, NCCPAP



NCCPAP held its National Quarterly Conference on June 7th, 8th and 9th. Due to the change in the 2021 individual tax deadline, we had pushed back our meeting dates by one month. It was wonderful to finally see all my good friends again as it had been a long time since the beginning of tax season when we last met! We would like to let you know about noteworthy items that we decided on during these meetings.

NCCPAP leadership is currently planning a series of virtual meetings with Congressional and IRS leadership in late July. Please let me or our National Tax Committee co-chairs, Steve Mankowski and Sandy Zinman, know of issues you would like us to bring to the table. When you bring an issue to us, please provide three distinct sections that describe the "problem", the "tax law background" and your "recommended solution" to the issue at hand.

We are all encouraged by the fact that the COVID-19 situation in the country is improving. To that end, we are targeting our late October meetings to once again be in person! This will be a wonderful coming-back-out celebration for NCCPAP, as it will coincide with our NCCPAP National officer installations. Over the summer we will announce more details as to our plans for October.

For those of you that are not on our regular fiscal year dues cycle, which runs from May 1st to April 30th each year, we will be converting you over to that dues cycle. We will be reaching out to each member firm to assist in this transition.

Our Scholarship Committee has decided to add another $1,000 scholarship, which will be in honor of the founding members of NCCPAP. We now will have four annual $1,000 scholarships. We are excited to revive our scholarship program after many years of being dormant.

Our Journal Committee is planning to partner with CPAs in academia looking to join NCCPAP and at the same time publish in our National Journal, to help promote NCCPAP membership across the country. We are honored to have Joseph Foy joining NCCPAP and our Journal Committee. For those of you that do not know Joe, he is the Associate Director of Online Business Programs and Assistant Professor at the School of Professional Studies for the City University of New York.

Our longtime National Administrator, Patricia Sornberger, retired on May 1st. We wish her well in retirement and thank her again for her many years of wonderful service to the Organization. We also want to thank Kathy Casey, the Educational Foundation and the Nassau/Suffolk Chapter who assisted us so very generously while we searched for a new National Administrator.

Our new National Administrator is Alexandra Visone, who started with us on June 1st. We are very excited to have Alex on our team. Alex has extensive experience in administration and graphic design. She will be a great addition to NCCPAP!

Please mark you calendar as follows for our upcoming National quarterly meetings:
August 4th - 6th,2021 (virtual conference)
October 20th - 22nd,2021 – Hastings-On-Hudson, NY
January 3rd – 5th, 2022 – Palm Beach Gardens, FL
May 11th - 13th, 2022 – Bethesda, MD

I hope all of you get a little time to decompress this summer. For all of us it has felt like one never ending tax season since the pandemic started. I am proud of the work NCCPAP has done this past year plus during the pandemic. We have been in the news countless times, often quoted first before other major accounting organizations in National publications including the New York Times. I want to thank each and every one of you for making NCCPAP shine during the pandemic!

Mark A Stewart Jr., CPA *is the current President of the National Conference of CPA Practitioners (NCCPAP). Before serving as President, Mark has served for many years in the positions of Executive Vice President, Secretary and Chair of the Issues Committee for NCCPAP. Mark is the also the Immediate Past President of the Westchester/Rockland County New York Chapter of the National Conference of CPA Practitioners.*

Telecommuting: New York Brings the Taxes Home

By Yvonne R. Cort

What was once cutting edge is now routine, and an increase in remote working and telecommuting is probably here to stay. For those workers who live in another state and commute to New York, or those who have moved – or plan to move - out of New York, the question posed to the tax professional is: am I obligated to pay tax to New York when I'm hardly ever there?

It's a reasonable question. It is not uncommon for a taxing jurisdiction to look at the physical location of the employee at the time the services were rendered. As a result, a nonresident employee who works from home might pay tax to the state where he or she lives, rather than where his or her employer's office is located.

The New York telecommuting rule is more restrictive and more complicated. New York evaluates whether the nonresident employee working at home is doing so for convenience or from necessity. In applying the convenience/necessity test, the State considers whether the employer has established a bona fide employer office at the nonresident's telecommuting location. If not, then in general, the income is considered New York source income.

New York State issued guidance, which can be found on the NYS Dept of Taxation and Finance website here, directly addressing nonresidents who are telecommuting from outside the State, due to the pandemic. There was no discussion of the government lockdown or "convenience". If the nonresident's primary office is located in New York State, then the days spent telecommuting are treated as days worked in New York. However, if the taxpayer can show that the employer has established a bona fide employer office at the taxpayer's home or the place from which he or she is telecommuting, then the income earned would not be subject to New York State income tax. In other words, the usual telecommuting rules apply even when remote working is due to the pandemic.

Pursuant to the State's tax memorandum from 2006, TSB-M-06(5)I , referenced in the State tax guidance, the taxpayer must meet numerous factors in order for his or her home to qualify as a bona fide employer office. The test is detailed and fact sensitive; and the requirements are not easily satisfied.

As an indication of the State's strong enforcement of the telecommuting rule for 2020 income, there has been anecdotal reporting of increased audits and requests for information related to filed 2020 nonresident income tax returns, where the nonresident works for a NYS employer.

There is an exception, which is often overlooked. The convenience/necessity rule applies to nonresidents who perform services both in and outside of New York State. A nonresident who performs personal services wholly outside of New York State is not subject to NYS tax on that compensation, even if the employer is a resident individual, partnership or corporation. 20 CRR-NY 132.4 (b).

There is a glimmer of hope for telecommuting taxpayers. The State of New Hampshire has brought a lawsuit against Massachusetts in the U. S. Supreme Court, asserting that Massachusetts is unconstitutionally exceeding its authority, by taxing New Hampshire residents who work from home for Massachusetts employers. If the Supreme Court agrees to hear the case, and its decision is in favor of New Hampshire, there likely will be repercussions for New York's telecommuting rule.

Until then, due to the difficulty of meeting New York's telecommuting requirements, most nonresident taxpayers should be prepared to continue to pay New York State tax while working from home for a New York employer.

Yvonne R. Cort, Esq., *is a Partner with Capell Barnett Matalon & Schoenfeld. Yvonne can be contacted by email at ycort@cbmslaw.com*

Make Mediating Your Business: How the Mediation Process Works in Busines

By Elizabeth Vaz and Francine Love

As professional advisors, you often witness your clients handling disputes in their businesses. It can be a disagreement between a customer, a vendor, or–even more troubling and dramatic–a dispute inside your client's business, particularly a family-owned one.
Because you're trusted with their most sacred data, their finances, you are often asked to assist with a resolution. However, you know that to venture into such territory is fraught with danger to the relationship. What if you do resolve the situation? Or, worse, what if you resolve it in the "wrong way" in the eyes of your client?

Still, you know that litigation is for the most part messy and expensive. That cure is worse than the affliction. You know about arbitration, but you know that often lawyers treat it as a mini-litigation, and while it is private, it can also be very expensive and time-consuming.

There is an alternative that you can recommend to your client: Mediation.

"What is all the hype about mediation anyway?" This line, or some derivative of it, is often heard by mediators across the country. It is heard from many litigation attorneys who say they do not believe mediation works. It is heard from potential participants who say they feel confused as to how the process can work for them. And, at times, it is heard from judges who feel that the process does not afford certain legal protections to the participants.

And yet there are also many positive reactions to mediation–and not just for purely legal issues; it should be a tool you recommend to clients who need help with dispute resolution. Mediation is not just the less formal alternative to litigation, nor is it an unnecessary way station on the path to arbitration. Mediation can effectively and efficiently bring an end to conflict and help the parties come to a better understanding.

Some of the most common reasons that mediation is such a successful and meaningful process are:

- Input and control: In court, there is one decision maker–the judge. He or she casts the final decision related to the matter before them. In contrast, mediation allows the participants to have control over the final settlement outcome, creating great potential for a win-win scenario.
- Cost savings: Taking a matter to court, with each side paying separate legal fees plus court costs, can end up costing tens of thousands of dollars for each party. In mediation, both parties share the costs and there is more control over the budget.
- Time: Court cases are often lengthy and drawn out. There is no control over the timeline once the matter is in court. Mediation can be done according to the schedule of the parties and can move as quickly, or slowly, as they wish.
- Preserving Relationships: Most disputes involve family, friends, employees, and longtime clients. Mediation can help the parties develop solutions based upon mutual interests rather than adversarial positions.
- Confidential: Most courtrooms are open to the public so the information being discussed can be heard by anyone. In the mediation process, the information and exchanges shared stay between the parties and the resolution remains private and confidential.

Mediation works in a multiple of different arenas: from resolving neighborhood disputes or tenant disagreements to high conflict family drama and business disagreements within families of closely held companies. Mediation skills can also be instrumental in drafting agreements about how companies will operate, how decision-making will be handled, or how succession will take place upon different triggering events.
In most of these situations, the underlying foundation is the need of the participants to be acknowledged, validated, and heard. Business owners tend to place a high value on building and preserving relationships, and using mediation strategically is the way to do so. By referring your clients to a mediation process, rather than letting disagreements fester, or intervening into a potentially explosive situation, you can serve the needs of your client and protect your own practice. Mediation should be considered another powerful tool at your disposal.

Elizabeth Vaz, *a professionally trained attorney and mediator, and* ***Francine Love****, a business attorney, have recently launched their Business Mediation practice within Francine's law firm. Liz can be reached at 844-785-2900 or e.vaz@vazlaw.com and Francine at 516–697-4828 or Francine@lovelawfirmpllc.com.*

The Pressure Is On: Penalties and Penalty Abatement

By Karen Tenenbaum and Stelios Karatzias

A taxpayer who has been noncompliant with their tax obligations will ordinarily find their tax liability to be greater than the actual taxes owed. The main source of this increased assessment stems from two additional factors imposed by the Internal Revenue Service and New York State; the first is accrued interest and the second is penalties. A process known as a penalty abatement can alleviate the pressure of the penalties.

What Can Trigger Penalties?
The IRS and NYS consider the following actions to justify the enforcement of penalties:

- Failing to file a tax return,
- Failing to pay on time,
- Failing to deposit certain taxes as required,
- Other penalties as applicable

The purpose of implementing penalties is to encourage compliance and expedite the taxpayer's resolution of their outstanding liability. The IRS and NYS believe that taxpayers will take proactive steps to avoid an increasing balance.

What Is a Penalty Abatement?
A penalty abatement is the forgiveness of penalties and penalty interest a taxpayer has accumulated on their tax returns. In circumstances where a penalty abatement is approved, the taxpayer is still obligated to pay their underlying tax liability and any accrued interest but will be absolved of abated penalties.

Who Qualifies for Relief?
The IRS recognizes three main classifications for penalty abatement.

- An IRS Administrative Waiver and First Time Penalty Abatement is offered to taxpayers who did not have a previous obligation to file or have not been subject to a penalty for the three preceding tax years. Additionally, the taxpayer must be compliant with all required returns and have either paid or arranged to pay any tax due. Note that NYS does not have a first time penalty abatement.
- A penalty abatement under Reasonable Cause is for taxpayers who can demonstrate they have reasonable cause for failing to meet their tax obligation. The IRS and NYS identify many grounds that would provide sound reasons for noncompliance including fire, casualty and natural disasters; inability to obtain records; death, serious illness, or injury to either the taxpayer or an immediate family member; or any other reason that would establish that a taxpayer used all ordinary business care and prudence to meet their tax obligation but was unable to do so.
- An IRS Statutory Exception allows abatement of any penalties where the taxpayer has relied upon the erroneous written advice of the IRS. When requesting relief, the taxpayer may need to provide proof of their written request for advice, the erroneous written advice they relied on that was furnished by the IRS, and the report, if any, of tax adjustments identifying the penalty or addition to tax, and the item(s) relating to the erroneous advice. NYS has a similar provision.

Conclusion
The application of penalties by the IRS or NYS helps ensure tax compliance. However, in appropriate cases, both agencies are willing to grant penalty abatement to qualified taxpayers. As a result, it is essential for tax practitioners to be aware of the rules governing penalty abatement and provide the appropriate documentation to the IRS or NYS in order to limit clients' tax liability.

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Reporting of Cryptocurrency is the New FBAR, but Worse

By Scott Ahroni

Many of us can recall a time not so long ago when our clients first told us about their previously undisclosed foreign bank accounts. In response, we rushed to learn and file FBARs and voluntary disclosures. This year we are seemingly reliving that nightmare, only this time it's with virtual currency reporting, often referred to as "cryptocurrency". Given that cryptocurrency can be difficult to trace and has an inherently pseudo-anonymous aspect to it, the U.S. Treasury, Department of Justice and the IRS believe that taxpayers may be using cryptocurrency to hide taxable income from the IRS. As further discussed below, to combat these perceived abuses, there are now numerous reporting obligations imposed on taxpayers and businesses that held, received and used cryptocurrency. Additional reporting obligations have also recently been announced by the U.S. Treasury to take effect in 2023. Finally, and unlike FBARs, virtual currency not only creates reporting obligations but income tax reporting obligations as well.

What is Crypto?

Cryptocurrency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. There are many different types of cryptocurrency with the most common being "convertible" virtual currency. Bitcoin is one example of a convertible virtual currency. Convertible virtual currency has an equivalent value in real currency and can be exchanged into U.S. dollars, Euros, and other real or virtual currencies.

Reporting Obligations

The most significant reporting obligation we have seen the government impose to date is found on the front-page of Form 1040. Anyone that is required to file a Form 1040 is now required to answer "yes or no" to the following question:

"At any time during [the tax year], did you receive, sell, send, exchange or otherwise acquire any financial interest in any virtual currency?"

While the question appears simple, we know from our experiences with foreign bank accounts that the failure to properly answer "yes or no" on Schedule B has led to the IRS successfully asserting the FBAR "willful penalty". A "no" response to this question (under penalties of perjury) could also be used against the taxpayer in future proceedings. Finally, practitioners should be aware that this same question was previously listed on Schedule 1 of Form 1040 in 2019. If a practitioner believes that their client had virtual currency in 2019 and it was not reported, they should consider a voluntary disclosure to the IRS for 2019 before submitting Form 1040 for 2020.

On May 20, 2021, the Treasury Department issued The American Families Plan Tax Compliance Agenda which includes expanded reporting requirements for various cryptocurrency transactions. According to the Agenda, beginning in tax year 2023, the IRS would extend cash reporting obligations of $10,000 or more to businesses that receive equivalent values in cryptocurrency. Thus, any business that receives crypto assets with a fair market value of more than $10,000 must report the exchange to the IRS. Additionally, financial institutions, including crypto asset exchanges and custodians would be required to annually report gross inflows and outflows on all business and personal crypto-accounts or wallets.

Finally, FinCEN Notice 2020-2 states that foreign accounts holding virtual currency are not reportable accounts for now, but that FinCEN intends to propose amendments to the regulations implementing the Bank Secrecy Act (BSA) to include virtual currency as reportable.

(Continued)

Reporting of Cryptocurrency is the New FBAR ,but Worse

By Scott Ahroni

(Continued)

Enforcement Campaign
The IRS has also included crypto-transactions on its audit campaign list and has initiated Operation Hidden Treasure which is a partnership between the civil office of fraud enforcement and the criminal investigations unit aimed at identifying the owners of crypto that are possibly committing tax evasion. In furtherance of Operation Hidden Treasure, the IRS has been successful in getting John Doe summonses enforced on several crypto-currency exchange companies, including Circle and Kraken. Unlike a typical summons which seeks information about a particular taxpayer, a John Doe summons does not identify the names of the taxpayers but rather identifies a certain group of taxpayers without knowing any of their names. For example, the John Doe summons issued to Kraken sought any "user" of any virtual currency who conducted at least the equivalent of $20,000 in transactions in cryptocurrency during the years 2016 to 2020.

Income Tax Obligations
Not only does crypto carry with it reporting obligations, but there are also tax consequences when taxpayers receive and exchange virtual currency. Under U.S. tax law, virtual currency is treated as property and, therefore, any sale of virtual currency will produce either gain or loss to the taxpayer. In addition, the receipt of virtual currency as payment for goods or services is also treated as income.

Takeaway
If you or your clients are engaged in using, receiving or selling virtual currencies, you should familiarize yourself with the reporting and income tax obligations currently imposed and proposed by the U.S. Treasury, FinCEN and the IRS.

Scott Ahroni, Esq., LL.M. (Tax), *is a partner at Robinson Brog where his practice focuses on Federal, NYS and NYC tax controversies, representing clients in civil audits and criminal investigations. Mr. Ahroni also assists his clients with tax planning for both domestic and cross-border transactions. Scott can be reached at ssa@robinsonbrog.com and at 212-603-6332*

Business Valuation – Timing is Everything

By Nannette Watts

Timing is everything. As it is in life, so it is in business valuation. The International Glossary of Business Valuation Terms defines the appraisal date, effective date or the valuation date as the "specific point in time as of which the valuator's opinion of value applies."

If we think of this in terms of fair market value (the price in cash equivalents, between a hypothetical willing and able buyer and seller, acting at arm's-length, neither under compulsion and both having reasonable knowledge of the relevant facts), facts and circumstances will influence these decisions to buy or sell.

Depending on the purpose of the appraisal, the valuation date will be guided by tax code or case law. For shareholder actions, it may be the day before the wrongdoing took place. In divorce, the business valuation date is the date of commencement of the divorce action, with additional appraisals at the date of marriage or dates of interim gifts in family-owned businesses. For estates, the date of death applies or perhaps the alternate valuation date six months later.

Setting the valuation date based on expectations of value is common play. Like any other buy/sell decision, depending on the situation, participants may want to take advantage of high or low valuations.
For an estate, considering a lower valuation result at the alternate date will result in a decreased gross estate value followed by less estate tax. The beneficiaries will now have that same amount as their cost basis in the asset they receive, potentially resulting in higher capital gains taxes when the asset is sold. In a matrimonial or business divorce situation, the business owner may desire a lower valuation, while the soon to be ex, a higher one.

Appraisers contemplate what is frequently referred to as "known or knowable" as of the valuation date. By way of example, a business being appraised as of June 30 loses its largest customer on July 9. The financials as of June 30 do not yet reflect the impact of that loss and, if the event was not known, the projections and forecasts would not either. Yet, if the customer had notified the business owner on June 15, it would have been "known" as of the valuation date, although perhaps not yet reflected in the operating results. If the customer filed for bankruptcy on June 28, but did not notify the business owner, that could be a "knowable" event. Drawing the line in the sand regarding what was "knowable" is not as readily discernible as "known" and circumstances must dictate.

Subsequent events are those conditions that arose after the valuation date. Valuation reports typically do not include a discussion of those events or conditions because a valuation is performed as of a point in time. But when the information is meaningful to the intended user, the valuation analyst has the option of disclosing such events in a separate section of their report to keep users informed.

And, just when you think you understand all these timing concerns in the context of business valuation, we are hit with the Covid pandemic and thrown all sorts of added curves. Each country, state, county, and industry have its own timeline of what was known or knowable. Businesses within the same industry and in the same neighborhood had different experiences – some shut down, some were essential - some adapted, some failed, some flourished. We cannot generalize, but instead need to look at each business on its own merits. We cannot necessarily foresee what the future holds for many businesses as we emerge to our "new normal", but we can make reasonable predictions based on our analysis, information provided, and expectations. Understanding the critical importance of the valuation date, the factors considered at that date and their impact on the business being appraised is key to any appraisal assignment.

Nannette Watts *currently serves on the Board of the Nassau/Suffolk Chapter of NCCPAP. She is a CPA and Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) by the AICPA. Nannette has been qualified as an expert in the courts of New York and is trained in mediation and collaborative divorce. She can be reached at nwatts@nwattscpa.com or 516-506-8224.*

Residency Issues During the Covid Pandemic

By Brian Gordon

The question that repeatedly comes up is: I left NY for most of 2020. Can I file as a NYS Nonresident?

There are two separate and distinct ways one can be considered a resident of NYS or NYC.

Statutory Resident:
You have a permanent place of abode (a residence) in NY and spend more than 183 days in NY. Any part of a day is counted as a day. This residence does not have to be your primary residence.

This is a fairly simple concept. There is some complexity when it comes to defining a permanent place of abode, but that is a subject for another article, and not relevant to this discussion.
Many people who ask the question above do not meet this definition of a NY resident, however, they may still meet the other definition of NY residence.

Domicile:
Domicile is the location of your primary residence. It is the jurisdiction as well as the residence itself. What is important to remember with regard to the question above is that domicile remains unchanged until you establish a new domicile elsewhere with the intention of making that your new permanent home. It cannot be a temporary move with an intention to return to NY. It does not have to be "for all time", but it must be at least an open-ended indefinite period. This remains true even if your home in NY is sold. I will say this again: Domicile remails unchanged until a new domicile is established.

Examples:

- You can sell your home in NY, buy a mobile home, travel the country for five years and your domicile remains NY and you have to file as a NY resident.

- You can take a job in another state on a two year assignment with the intention of returning to your NY residence. Your domicile remains NY and you have to file as a NY resident.

- You shift most of your time to your house on Cape Cod during the pandemic with the intention of shifting most of your time back to NY when the pandemic is over. Your domicile remains NY and you have to file as a NY resident.

Think of domicile as a huge, heavy anchor that is planted in your front yard. When you move to a temporary location or shift your time to a secondary residence, you do not take this anchor with you. Your domicile does not change. The reason that domicile audits are difficult is that the burden is on the person claiming a change of domicile to prove that the change was made. But once the NY Tax Department agrees that the change was made, if there is a subsequent audit the burden shifts to them to prove that the anchor was moved back.

Brian Gordon, CPA *is President of State Tax Audit Representation, Inc. His business is to help people with NYS Sales Tax audits, Residency Tax audits and other tax problems. Previously, and for many years Brian was an executive in the NYS Tax Department where he was involved in many high value tax audits. Brian is co-chair of the NCCPAP MAP Committee. He is a frequent speaker and writer on state tax audit issues.*

How to Take Advantage of the High Federal Gift & Estate Tax Exemption Before It's Too Late

By Nancy Burner

2020 was a monumental year that wrought changes throughout our society. There was a political shift in Washington, a world-wide pandemic, widespread unemployment, and amendments to state laws. This new year holds so much promise – for an end to the pandemic and unification of the country – and also the potential for more change. President Biden and Vice President Harris have put forth several proposals that would affect estate planning. One such proposal is to decrease the Federal estate tax exemption from the current level. Should Congress choose to advance these proposals, you will want to understand how it may affect your clients and what the options are for action.

Decreasing the Federal Gift and Estate Tax Exemption

Estate taxes are no longer an issue for most of our clients since the advent of the 2017 Federal Tax Cuts and Jobs Act ("the Act"). The federal estate and gift tax exemption in 2021 is $11.7 million. The Act states that the exemption level will "sunset" in 2026, at which point the exemption will be $5 million, indexed for inflation (likely to be about $6 million).

However, President Biden has proposed a return to 2009 levels, when the estate tax exemption was $3.5 million and the gift tax exemption was $1 million, with an increased maximum tax rate of 45%. If this comes to pass, your clients will potentially be subject to a steep gift and estate tax. With the current state of the economy, a decrease could be implemented before the sunset date of the Act and as early as this year.

The good news is that the IRS issued final regulations under IR-2019-189 that there will be no "clawback" for gifts made under the current increased estate and gift tax lifetime exemption. This leaves room for clients to take advantage of the high exemption while it is still available.

For those with assets in excess of $3.5 million dollars, a change in their estate plan may be necessary to be most tax efficient. Married couples should be planning in a way that uses the estate tax exemptions for both spouses. Additionally, lifetime gifting and trust planning may be prudent to decrease the amount of one's taxable estate, taking advantage of the elevated exemption.

Case Study

Harry and Barbara have an estate valued at $30 million dollars. They have two sons, with whom they share a close relationship and to whom they plan to leave their assets in equal shares. Their assets are as follows:

- Manhasset Home (primary residence) – owned in Harry's and Barbara's names - $1 million
- NYC Rental Properties – owned in an LLC of which Harry and Barbara are the only members - $20 million
- Sag Harbor Rental Property – owned in an LLC of which Harry and Barbara are the only members - $5 million
- Non-qualified Investments – owned in Harry's and Barbara's names - $2.5 million
- Traditional IRA – in Harry's name - $500,000
- Traditional IRA – in Barbara's name -$750,000
- Checking and Savings – owned in Harry's and Barbara's names - $250,000

In this family's case, given the current estate tax exemptions, and absent further planning, estate taxes will be due at the death of the second spouse. Given the temporary increase in the federal estate tax exemption to $11.7 million, Harry and Barbara should consider creating Spousal Limited Access Trusts ("SLATs") for the benefit of each other and their sons.

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How SLATs Work

A SLAT is an irrevocable trust created by one spouse for the benefit of the other during his or her lifetime. The SLAT can provide income and principal distributions for the benefit of the spouse and their children. Because this is a lifetime trust, the spouse who contributes the assets to the trust does not need to pass away for this trust to be effective. This is one of the differences between SLATs and other types of marital trusts that are only established upon the death of the first to die spouse. While the donor spouse makes an irrevocable gift to the trust and gives up any right to the funds, the beneficiary spouse, and their sons, are provided access to the gifted funds right away.

The purpose of the SLAT is to freeze the value of the transferred asset at its current value and exclude any appreciation from the estate of either spouse. For the family at hand, this plan should be put into place soon so Harry and Barbara can take advantage of the increased exemption amounts prior to the "sunset" or further legislative changes.

The rental properties already owned by LLCs are excellent assets to transfer to the SLATs. Each spouse could create a non-reciprocal SLAT for the other spouse. While the grantor spouse would not have access to the trust, the non-grantor spouse could be a beneficiary of income and principal.

We can achieve tax savings by taking advantage of discounts in value due to loss of control and lack of marketability of the corporate interests. In addition, the value of the assets would be frozen as of the date of the transfer and therefore, any appreciation in value during Harry and Barbara's lifetimes will be outside their taxable estates.

As with all estate planning, special consideration needs to be given to ensure the trusts do not run afoul of certain drafting errors. Among other concerns, the attorney must beware of the reciprocal trust doctrine when drafting as well as when funding the trusts. There are also some drawbacks to SLATs. For one, the donor spouse will lose the indirect access they enjoyed through the beneficiary spouse when the beneficiary spouse passes away. Another issue is the impact of a divorce on this type of planning. However, some of these concerns can be avoided with proper drafting.

SLATs are an excellent vehicle for married couples who want to take advantage of the unprecedented and elevated estate tax exemption. Every family situation is different, but for some couples a SLAT is a powerful tool that should be a central part of their estate plan.

Nancy Burner Esq. *is the founder of Burner Law Group P.C. established in 1995. With three offices located in New York City, East Setauket and Westhampton Beach, she serves a wide range of clients concerning matters of Elder Law, Estate Planning and Real Estate. She can be reached with any questions directly at nburner@burnerlaw.com or by calling the office at 631-941-3434*

IRS Spring 2021 Practitioner Liaison for New York

A meeting of the IRS Spring Practitioner Liaison for New York took place on May 20, 2021. Linda Henson, Senior Stakeholder Liaison for IRS Communication & Liaison Outreach (C&L) Field Operations and a long-time friend of NCCPAP, led the meeting.

Georgia Thomas, Stakeholder Liaison Area 4 Manager, reported that the IRS received 126,777,000 returns from May 8, 2020 to May 7, 2021 and processed 115,989,000 of them. The IRS is still experiencing service delays including live phone support, processing tax returns filed on paper, answering mail from taxpayers and reviewing tax returns, even for returns filed electronically. As of May 8, 2021 IRS had 16.9 million unprocessed individual returns in the pipeline. Unprocessed returns include those requiring correction to the Recovery Rebate Credit amount or validation of 2019 incomed used to figure the Earned income credit or the additional child tax credit. These returns do not require the IRS to correspond with the taxpayer but do require special handling by an IRS employee. As a result it is taking more than 21 days to issue any related refund. If any change is made the IRS will send an explanation to the taxpayer.

Evelyn Dyson-Lee, the IRS representative in charge of the Multilingual Initiative spoke about communicating with the IRS in other languages. Certain high volume web pages have been translated into Spanish, Chinese, Korean, Russian, Vietnamese and Haitian-Creole. The IRS has an interpretation service that can be reached at 833-553-9895. There is a form Schedule LEP to make a request for Change in Language Preference, listing 20 languages.

Next, Gary Bove, a supervisor Revenue Officer of Field Collection, spoke. He provided the fax number to send a Power of Attorney to the IRS (855-214-7519). There are two Civil Enforcement Advice and Support groups for New York. The Advisory Manager of the downstate group is Michael ScottodiClemente (212-436-1314). There is an IRS publication 4235, Collection Advisory Group Numbers and Addresses that lists the appropriate office to contact for various topics. Lien release and lien payoff balances are handled by the Central Lien Operation office (800-913-6050).

Chris Morell, the local Taxpayer Advocate, reported that all TAS offices are still closed but TAS assisters are available to help. The limited help may be available from TAS to help with refund delays. You can contact Mr. Morell at 631-654-6687 or Kristina Miller 631-654-6686.

Practitioner Priority Service assisters continue to work on client tax issues such as allocating misapplied payments, correcting math error issues, account adjustments, balance due and missing returns, etc. The resolution of collection delinquencies will now be exclusively handled by SB/SE Automated Collection System (ACS).

The IRS is almost ready to deploy a new portal called Tax Pro Account where tax professionals with a Power of Attorney will be able to add the client and send and receive communications with the IRS. The new portal is expected to open in July 2021.

Linda Henson reported that the liaison meeting will continue to be virtual so that practitioners in upstate New York as well as downstate can participate.

Prepared from the notes of the meeting taken by our liaisons, Carol Markman and Donald Ingram.

Economic Nexus Thresholds in Each State

After the U.S. Supreme Court's decision in South Dakota v. Wayfair Inc., states have been passing their respective economic nexus provisions. At issue in the case was a law passed by South Dakota that required an out-of-state seller, without a physical presence in the state, to collect and remit sales tax to South Dakota if it had either $100,000 of gross revenue from sales to South Dakota customers or more than 200 transactions in the state. The Supreme Court did not rule on whether South Dakota's law was valid, but it did hold that physical presence in a state is no longer required in order to impose a duty to collect and remit sales tax.

Many states now impose a similar threshold to that at issue in South Dakota v. Wayfair Inc., but the states have varying effective dates and definitions for what is included in the sales and transaction thresholds. While other states impose variations on this threshold.

Most recently, Florida joined the other 43 states that have passed economic nexus thresholds for sales and use tax purposes. At this point, the only other state that imposes a state sales tax that does not have an economic nexus provision is Missouri. The Missouri legislature passed a bill that would impose a sales and use tax collection obligation on out-of-state sellers and marketplace facilitators, but it has not yet been signed by the Governor. Under Missouri procedural law, because the bill was delivered to the Governor when the legislature was not in session, the Governor has 45 days from May 25, 2021 to act on the bill.

This chart lists each state's threshold, effective date, and definitions for what is included the sales and transactions threshold.

State Guidance on Telecommuting Issues Related to COVID-19

Due to the COVID-19 pandemic, millions of people have been telecommuting for over a year, either from their home state or elsewhere. Even as some states open their economies back up, it does not change the fact that companies have been allowing employees to telecommute for a significant amount of time. And many companies are allowing employees to telecommute on a more indefinite basis. Allowing employees to telecommute from states in which they do not normally work can create a host of issues for employers, but the two big tax issues relate to nexus and income tax.

First, will the presence of an employee working from home create taxable nexus for the employer in that state?

Second, for income tax purposes, which state is owed income tax when an employee is telecommuting from an out-of-state location?

Below is a chart that outlines how each state has responded to these two telecommuting issues thus far. It relies on Checkpoint's survey of and responses from all 50 states for some of the guidance. Here is a summary of each issue:

Will nexus be established by a work-at-home employee?
The term "nexus" generally refers to the nature and frequency of contacts that an out-of-state company must establish in a state before it becomes subject to that state's tax laws and jurisdiction. Some level of minimal contacts with the state is required under the U.S. Constitution before an out-of-state company is subject to the state's tax laws. And for sales tax purposes, physical presence is no longer required after the U.S. Supreme Court decision in South Dakota v. Wayfair. With the nexus threshold so low, most states have said that the presence of one to six telecommuters in the state would give rise to an income tax filing obligation for an out-of-state company. Our analysis highlights that many states have issued guidance saying that the presence of a telecommuting employee in the state, if her presence is a result of COVID-19, will NOT create nexus with the state. Some states have explicitly stated that this applies for purposes corporate income tax nexus, as well as sales tax nexus.

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What state gets to tax the work-at-home employee's wages?
For personal income tax purposes, most states have the rule that the employee's physical presence dictates where tax is due. So, for example, an employee working from his Michigan home for his employer in Illinois is required to pay Michigan income taxes, since he is physically present in Michigan doing work. Pre-COVID, there were six states that imposed a "convenience of the employer" rule that treated days worked-at-home outside the state as days worked in the state for purposes of determining nonresident withholding and personal income tax obligations. These states included New York, Delaware, Nebraska, Pennsylvania, and Arkansas, which eliminated its convenience rule this year, and also Connecticut, which applied the rule (effective 2019) only on a reciprocal basis, i.e., if the taxpayer's home state employed the rule. Under the "convenience of the employer" rule, if the employer or the employee's principal office is located in one of those states, then the employee's compensation earned while telecommuting will be treated as if earned in the employer's location, and not from the state in which the employee is telecommuting, if the employee is working remotely for her own convenience and not the employer's necessity.

Some states have decided not to change the employee's income tax obligations (and/or the employer's withholding obligations) based on the employee's temporary work in their home state—meaning that the tax will still go to the employer's state, i.e., the state where the employee regularly worked, pre-COVID. But a few others have said that they will continue to apply the physical-presence rule and impose tax on an employee who is working from home. This sets the stage for some double-tax results for employees and employers who straddle two states, who both want their tax. Click here to view the full chart.

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Congratulations to:

Our Chapter Treasurer, Paul Sadej, on his recent marriage and we wish him the best as an expectant Grandfather.

Norman Weisman, on the recent Bar mitzvah of his Grandson.

Marlene and Stephen Sternlieb on the engagement of their son Scott to Rachel Hublitz

Karen Tenenbuam on the celebration of her firm's 25th Year in Practice.

Matt Taus and his wife Jacqueline on the birth of their first child, Emily Page Taus.

And... A very special congratulations to each and every one of us for completing the longest continuous tax season in history!

Our Good & Welfare Chairman is Stephen Sternlieb, CPA steve@ssternliebcpa.com

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