NCCPAP

The National Conference of CPA Practitioners

Nassau/Suffolk Chapter   Volume 8, Issue 5   June/July 2011

Educational Committee Planning Meeting - June 13th

Location: N/S NCCPAP Chapter Office

RSVP a Must

Come and have a say on your educational needs

Date	**Thursday, June 23, 2011 - All Day**
Topic	**ACCOUNTING & AUDITING UPDATE**
Speaker	**George I. Victor, CPA of Giambalvo, Giammarese & Stalzer**
Credits	**8 CPE/A&A**
Location	Holiday Inn, Plainview
Time	Time: Breakfast & Registration 7:45AM Program: 8:00 AM-5:00 PM
Cost :	Program includes: Continental Breakfast, Buffet Lunch, Coffee Breaks and Materials
Members	On or before Friday, June 17 - $245.00, After Friday, June 17 - $270.00
Non-Members	On or before Friday, June 17 - $300.00, After Friday, June 17 - $325.00

Date	**Wednesday, June 29, 2011 - MAP Meeting**
Topic	**HOW TO SURVIVE YOUR CLIENT'S SALES TAX AUDIT**
Moderators	**Sandra G. Johnson, CPA of Sandra G. Johnson CPA** **Douglas Sinetar, CPA of Douglas Sinetar CPA PC**
Speaker	**Mark Stone, CPA of Sales Tax Defense**
Credits	**2 CPE/MAP/ADVISORY SERVICES**
Location	On Parade Diner, Woodbury
Time	Registration: 7:45 AM, Program: 8:00 - 10:00 AM
Cost	On or before Friday, June 24 - $25.00, After Friday, June 24 - $35.00

Date	**Thursday, July 7, 2011 - Chapter Meeting**
Topic	**NEW YORK STATE TAX UPDATE**
Speakers	Mark Klein, Esq. of Hodgson Russ, LLP
Credits	2 CPE/Tax
Location	Holiday Inn , Plainview
Time	Registration: 5:30 PM, Program: 7:00 - 9:00 PM
Cost : Members	On or before Friday, July 1 - $50.00, After Friday, July 1 - $60.00
Non-Members	On or before Friday, July 1 - $75.00, After Friday, July 1 - $85.00

N/S NCCPAP - ALWAYS STRIVING TO MEET THE NEEDS OF OUR MEMBERS

To register for any of our meetings, please visit http://www.ns-nccpap.org

PRESIDENT'S MESSAGE

It looks like spring has finally sprung. Though summer is now only a few days away, I was fortunate to enjoy a few days of spring a little earlier that most of us on Long Island. I joined NCCPAP National in Washington D.C. May 11-May 13 for their Spring Conference and their annual visit to the Hill. NCCPAP National meets with representatives from both houses of Congress and several of the Tax Committee members visit with high ranking representatives of the Internal Revenue Service. The purpose of these meetings is to reinforce our views and our commitment to our congressional and IRS agendas. I won't detail here what's on the agendas because you can find them on NCCPAP National's website. Please take the time to look them up. This year, we were delighted to be able to go into our meetings knowing that the 1st item on our agenda had already been accomplished – the repeal of the 1099 reporting burden. This could not have occurred without the work of National's tax committee and the members of the Nassau/Suffolk chapter. This is not the first time that the work of our organization had resulted in our jobs being more efficient and profitable. The Tax Committee is always looking for new agenda items. As I said at the May chapter meeting, there is no possibility that all of our members' past tax season went perfectly. If yours didn't, then you must have an agenda item that should be forwarded to the National Tax Committee.

At the quarterly national meetings, when we are not visiting representatives of Congress, we attend various NCCPAP committee meetings such as Issues, Tax, and Membership etc. which last about one to two hours each. Each meeting has about 20-40 attendees. I personally attend about six meetings per conference. The meetings are chaired by a chairperson under Robert's Rules of Order. (I used to think that these were Bob Markman's rules.) I have a preference for the informal meetings that take place in the hotel lobby or over dinner. That is where I get a feel for where our organization and our industry is heading. The next quarterly meeting is in Philadelphia, in August. If you would like to join us or need more details, please contact Etta in our office.

I thought our May chapter meeting on 'How to Close a Business Deal' was wonderfully presented. Robert Barnett put together a terrific panel of attorneys that really worked out well. I can't tell you how many lawyer jokes are in my head right now. I left the meeting with a lower anxiety of being sued thanks to the panel's expertise.

Don't forget that we are presenting an all day Accounting and Auditing session on June 23, 2011. If you are preparing any financial statements, you need on the average of 14 credits per year in A & A. Don't wait until the end of the year to get these credits. Our symposium in November will be a perfect opportunity for you to get your remaining credits.

I assume everyone is still catching up from tax season since I haven't received invites for golfing yet. As you can probably tell, I like informal golf meetings also.

Bruce Berkowitz, CPA

POLICY

THE FEES FOR REGISTRATIONS ARE:
CHAPTER MEETING (2 CPE): $50.00 WITH *PRE-REGISTRATION AND $60.00 REGULAR REGISTRATION, AND/OR AT THE DOOR REGISTRATION.
MAP MEETING: $25.00 WITH *PRE-REGISTRATION AND $35.00 REGULAR REGISTRATION, AND/OR AT THE DOOR REGISTRATION.
SEMINARS AND OTHER PROGRAMS: TBD

*PRE-REGISTRATION MEANS: A COMPLETED REGISTRATION FORM WITH PAYMENT AND POSTMARKED, FAXED OR E-MAILED TO THE N/S CHAPTER OFFICE THE FRIDAY PROCEEDING (Unless otherwise noted) THE CHAPTER MEETING, MAP MEETING AND/OR SEMINAR THAT YOU ARE PLANNING TO ATTEND.

CANCELLATION AND REFUND POLICY

A PRE-PAID REGISTRANT WHO CANNOT ATTEND THE CHAPTER MEETING, MAP MEETING AND/OR SEMINAR WILL BE ISSUED A CREDIT TO BE USED BY THE REGISTRANT ONLY FOR A FUTURE MEETING (OF EQUAL VALUE) HELD WITHIN ONE YEAR OF THE MISSED MEETING. CANCELLATION NOTICE MUST BE GIVEN TO N/S NCCPAP CHAPTER OFFICE BY THE END OF THE CHAPTER MEETING, MAP MEETING AND/OR SEMINAR DAY.

MEETING SCHEDULE 2011

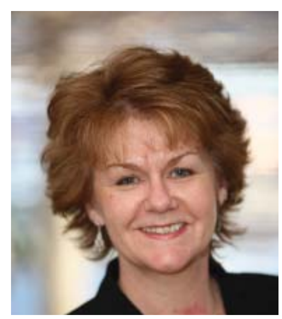
Holiday Inn @ Plainview
215 Sunnyside Blvd
Plainview, NY 11803

On Parade Diner
7980 Jericho Turnpike
Woodbury, NY 11797

June 23, 2011	ALL DAY - Accounting & Auditing Update	8 CPE/A&A	Holiday Inn
June 29, 2011	How to Survive Your Client's Sales Tax Audit	2 CPE/MAP/ADVISORY SERVICES	On Parade Diner
July 7, 2011*	New York State Update	2 CPE/Tax	Holiday Inn
July 27, 2011	Technology for CPA's – Don't Get Left Behind	2 CPE/MAP/ADVISORY SERVICES	On Parade Diner
August 11, 2011*	Crimes and Your Clients?	2 CPE/Tax	Holiday Inn
August 18, 2011	Ethics	4 CPE/Ethics 7:30-12:00 NOON	Holiday Inn
September 8, 2011*	Workers' Comp Update	2 CPE/Tax	Holiday Inn
October 6, 2011*	Compilations and Review	2 CPE/A&A	Holiday Inn
November 16, 17 & 18, 2011	2011 Long Island Tax Professionals Symposium		Crest Hollow Country Club
December 1, 2011*	Estate Topic	2 CPE/Tax	Holiday Inn

* Chapter Meeting All Meetings Subject to Change

MAP UPDATE



The MAP committee is in full swing following a long tax season. May's meeting focused on protecting your practice from client fraud issues. Ken Gross from Pace Professional Services discussed issues such as protecting your practice against client employee fraud, privacy and data security and how to effectively use your malpractice insurance company. Our committee members shared stories, asked questions and learned a tremendous amount from this meeting.

Our next meeting will be held on Wednesday, June 29 at 8:00 am at the On Parade Diner in Woodbury. The topic of discussion will be "How to Survive Your Client's Sales Tax Audit". Our speaker will be Mark Stone, CPA from Sales Tax Defense, LLC. In addition to learning how to prepare for a sales tax audit, we will discuss how to avoid an audit and how to deal with the new electronic filing requirements.

Our co-chairs are in the process of planning the meetings for the next year and need your help. On Wednesday, June 8 at 6:00 pm at the NCCPAP offices in Mineola, we will join with the Education committee to brainstorm topics for the upcoming year. If you have topics you would like to have addressed at the MAP meetings, please email Sandy Johnson at sjohnson@sgjcpa.com or call 516-409-1120.

Doug Sinetar, CPA & Sandra Johnson, CPA

MOM'S HOUSE – SAVED FROM ESTATE TAX

A recent case, Estate of Sylvia Riese, et al. v. Commissioner, TCM 2011-60 (March 16, 2011) provides some very interesting guidance for New York estates. Sylvia Riese established a qualified personal residence trust (QPRT), in which she reserved a three year right to live in her house. At the end of the three years, the house was to pass to two trusts for the benefit of her daughters.

A taxpayer will often create a QPRT in order to obtain a discount in the valuation of the resulting gift. The Internal Revenue tables provide actuarial computations of the gift value based upon the current interest rate, the term of the trust and the Settlor's age. Another advantage of a QPRT is that the client does not need to pay rent during the chosen trust term. It is important at the end of the QPRT term that proper formalities are observed.

One of the required formalities is that if mom is to continue to reside in the house after the QPRT term ends, fair market rent must be paid by her to the daughters' trusts. In addition, it is important that real estate title formalities be observed transferring title from the QPRT to the trusts which were created for the benefit of the daughters. By following these formalities, the Internal Revenue Service is prevented from including the property in the mother's estate. If fair market rent is not paid, the Internal Revenue Service frequently asserts an attack under IRC §2036; that there was an implied agreement among the family allowing mom to live in the house rent free. The finding of such an implied agreement would constitute the retention of a disqualified power, resulting in estate inclusion. In Riese, neither of the above formalities were observed.

What is fascinating about this recent case is that the tax court looked at New York State law and determined that even though rent was not paid, the decedent was nonetheless obligated to pay the rent. The court construed mom's occupancy as a tenancy at will and such tenancy bears the obligation to pay rent. The court further determined that the parties intended to create a lease but were unable to do so because mom died only six months after the QPRT terminated. It is interesting to note that, in addition to the court not requiring that the property be brought back into mom's estate under IRC §2036, the court found that the estate was entitled to a deduction under IRC §2053 for the unpaid rent as a result of mom's failure to pay rent after the QPRT terminated. This was a tremendous result for the taxpayer.

It would be advisable for clients to implement a rental agreement at the inception of a QPRT in order to help prove that rent was intended to be paid at the termination of the QPRT. This concept of paying rent after the QPRT has ended needs to be clearly explained, as many parents fail to properly pay rent, causing the risk of estate inclusion. The Riese decision may provide guidance on demonstrating the requisite intent; but too much reliance on this case is not warranted due to the fact that the time period was merely six months.

Presented by Robert S. Barnett, CPA, JD, MS (Taxation) & Brian Chirichigno, Esq. Robert S. Barnett is a Partner at Capell Barnett Matalon & Schoenfeld LLP in Jericho, New York, where he heads the Tax and Estate Planning Departments. Brian Chirichigno is an associate of the firm active in the Estate Planning and Estate Administration Departments.

GOOD & WELFARE

Our congratulations to

Eliot & Jane Lebenhart, on the birth of their first grandchild, Max Dylan Warsaw, born on May 24, 2011

Our Good & Welfare Chairman is Stephen Sternlieb ssternliebcpa@attg.net

NEW QUESTION ON 2010 FORM IT-201 MAY LEAD TO MORE RESIDENCY AUDITS

It's common knowledge that New York State has a budget crisis and the State is on the lookout for more revenue. The NYS Department of Taxation and Finance has been using sophisticated data mining techniques to locate residents who the Department suspects may have failed to pay the correct amount of tax. Now a low-tech method may yield additional funds for the government.

New York State law provides that a taxpayer is a resident of the State and thereby taxed on his worldwide income when he is domiciled in the State, or when he is a statutory resident of the State. A statutory resident is defined as someone who may be domiciled elsewhere, but maintains a permanent place of abode in the State, and spends more than 183 days in the State. Similar law applies in determining whether someone is a resident of New York City and thus subject to NYC income tax.

For some years now, the NYS Resident Income Tax Return (long form) Form IT-201 has contained a question related to whether a taxpayer maintains living quarters in New York City. The 2010 Form IT-201 has added a question requiring the taxpayer to state the number of days that he is in NYC. See 2010 Form IT-201 This one-line change to a common tax form may drastically increase the number and nature of residency audits with respect to NYC income tax, with a corresponding increase in assessments.

It is possible that the Department will use the day count answer on the tax return as a tool for audit selection. Even if the number of days is significantly under 183, the Department may gamble that the taxpayer is not able to prove all of the days spent outside New York City, and commence an audit to determine NYC residency.

Counting days spent in New York City seems like a simple exercise, and the State's instructions are relatively brief regarding this portion of the tax return. In fact, the critical issue of day count may require a detailed review of documents and is not easily determined. Numerous residency audits turn on this point. The recent Robertson decision (Matter of Robertson, DTA No. 822004, ALJ October 15, 2009, affirmed by TAT September 23, 2010) concluded that the taxpayer was not liable for NYC tax of approximately $27 million, based on the location of the taxpayer on just two days.

Many questions are raised by the change in the Form IT-201, such as the weight that will be accorded in an audit to the day count shown on the signed tax return, and the Department's policy regarding the imposition of civil or perhaps criminal penalties for errors. Moreover, there may be an increased burden on the tax preparer in completing this part of the return accurately.

The 2010 Form IT-201 highlights the Department's focus on residency audits. The risk is that an inadvertent error or good-faith misunderstanding with respect to day count may result in a complicated, time-consuming and expensive audit - and perhaps an assessment.

*Yvonne R. Cort is counsel to the tax law firm of Karen J. Tenenbaum, P.C., 225 Old Country Road, Melville, NY, 11747, tel: (631) 465-5000. The firm focuses its practice on NYS and IRS tax controversies. Yvonne can be reached directly at ycort@litaxattorney.com.

ELDER CARE ALERT

The 2011-2012 Budget Bill passed by the New York State legislature and signed into law by Governor Cuomo last month made changes to the state Medicaid system, some of which may have a significant impact on Medicaid planning for seniors.

One such change involves Medicaid's authority to seek recovery of amounts paid on behalf of a Medicaid recipient. Until the passage of the recent budget bill, Medicaid had only been permitted to look to assets, if any, passing through the Medicaid recipient's probate estate on death. As a result, seniors planning for Medicaid community-based care services or nursing home care services have commonly used non-testamentary planning techniques, such as establishing living trusts and life estates, in order to protect their assets from claims by Medicaid upon their death. The new law expands Medicaid's ability to recover the cost of care provided to the Medicaid recipient. Non-testamentary assets, such as living trusts, pay-on-death accounts, joint bank accounts, and life estate interests are expected to be available for recovery by Medicaid. This legislation, however, prohibits recovery at a time when the deceased Medicaid recipient is survived by a spouse, minor child, or disabled child of any age.

The provisions of the legislation are unclear as to how Medicaid will value the assets passing outside of the Medicaid recipient's probate estate as well as the process by which Medicaid will seek recovery from these assets upon the death of the Medicaid recipient. Much of these uncertainties will be addressed by regulations to be issued in the next few months. However, what is clear is that it will be necessary to review and update the techniques that have been customarily used to protect assets so that they will be able to pass to the intended beneficiaries free of claims from Medicaid once the Medicaid recipient has passed away.

We will keep you apprised of this important issue as the new law and its effect on both existing and new asset preservation plans are clarified.

Presented by Stuart H. Schoenfeld, Esq. & Marissa Daidone, Esq. Stuart H. Schoenfeld is a Partner at Capell Barnett Matalon & Schoenfeld LLP in Jericho, New York, where he heads the Elder Care and Medicaid Planning Department. Marissa Daidone is an associate of the firm and is active in the Elder Care and Medicaid Planning Department.

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