



The National Conference of CPA Practitioners

Nassau/Suffolk Chapter

Volume 8, Issue 6

July/August 2011

Date **Thursday, July 7, 2011 - Chapter Meeting**
Topic **NEW YORK STATE TAX UPDATE**
Speaker **Mark S. 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
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Date **Wednesday, July 27, 2011 - MAP**
Topic **TECHNOLOGY FOR CPAS -
DON'T GET LEFT BEHIND**
Moderators **Sandra G. Johnson, CPA of Sandra G. Johnson CPA
Douglas Sinetar, CPA of Douglas Sinetar CPA PC
Larry Schweitzer of CMIT Solutions of East Nassau**
Speaker **Larry Schweitzer of CMIT Solutions of East Nassau**
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, July 22 - \$25.00, After Friday, July 22 - \$35.00
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Date **Thursday, August 11, 2011 - Chapter Meeting**
Topic **CRIMINAL TAX UPDATE/TAX CRIMES**
Speaker **Bernard S. Mark, Esq. of Kestenbaum & Mark**
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, Aug. 5 - \$50.00, After Friday, Aug. 5 - \$60.00
Non-Members On or before Friday, Aug. 5 - \$75.00, After Friday, Aug. 5 - \$85.00
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Date **Thursday, August 18, 2011 - Half Day**
Topic **ETHICS UPDATE AND REVIEW**
Speaker **Thomas Manisero, Esq of Wilson Elser Moskowitz Edelman & Dicker LLP**
Credits 4 CPE/Ethics
Location Holiday Inn, Plainview
Time Registration: 7:30 AM, Program: 8:00 - 12:00 NOON
Cost : Members On or before Friday, Aug. 12 - \$135, After Friday, Aug. 12 - \$150, Walk In Fee - \$175
Non-Members On or before Friday, Aug. 12 - \$160, After Friday, Aug. 12 - \$175, Walk In Fee - \$200

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

Our thanks to Robert Goldfarb, CPA for filling in for Bruce Berkowitz by supplying this article.

Dear Member:

I am pleased to announce that the New York State legislature, in one of its final acts of the current session which just recently ended, included legislation that NCCPAP had been pushing for enactment for many years. The legislation that was recently passed is what is commonly known as the "CPA mobility rule". Several weeks ago, we asked NCCPAP members, throughout the State, to write to their State Senators and Assembly member urging them to vote in favor of this legislation. Due to these efforts and those of Alan Feldstein, NCCPAP Rockland/Westchester Chapter, Herb Schoenfeld and Bob Goldfarb (both from the Nassau/Suffolk Chapter) this legislation was finally approved. As it stands as of this writing, we are awaiting the signature of the Governor, whose signature we are hopeful for, but it is not guaranteed. Mobility legislation is now important principally for New York CPAs because 47 other states have mobility legislation which allows out-of-state CPAs to work within their states without the need to pass the CPA examination in their particular state. Additionally, in many of the states surrounding New York, there are provisions that would have resulted in retaliatory sanctions which were to prevent New York CPAs from practicing in their states. This would have been detrimental to our practices and would have prevented us from servicing many of our clients that have operations in Connecticut, Massachusetts and New Jersey.

On a national level, NCCPAP has been intimately involved in the debate regarding the need for different reporting standards for smaller, privately-owned companies. It has become abundantly clear that the profession needs different reporting standards for small versus large-sized companies in order to make the company's financial statement more cost effective and more meaningful for its readers.

The Chapter has also been extremely busy preparing for our upcoming 2011 Long Island Tax Symposium – to be held this year on November 16, 17 and 18. We are looking forward to an even larger and more relevant symposium. While the educational program is still in the development stage, we know that the program is shaping up to include areas of practice of significant importance to all of us. Among other things, new to this year will be the opportunity to meet with problem resolution officers from New York State. This is a fantastic addition to the symposium and we are grateful to Yvonne Cort for making this happen. We must also thank Bob Goldfarb, Chair of the Symposium, for his hard work as well as all of the members of his committee – Ross Kass, Karen Giunta, Harold Ogulnick, Steve Sternlieb, Paula Sheppard, Ruthanne Corazzini, Barry Zalk, Stuart Lang, Donald Ingram, Gary Sanders, Michael Rubinstein and, of course our dedicated and very hard working staff, Kathy Casey and Etta Gelbien. This year's symposium is shaping up to be our best one yet.

Wishing you a great Summer,

Robert Goldfarb, CPA

Disclaimer

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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

July 7, 2011*	New York State Update	2 CPE/Tax	Holiday Inn
July 27, 2011	Technology for CPAs – Don't Get Left Behind	2 CPE/MAP/ADVISORY SERVICES	On Parade Diner
August 11, 2011*	Criminal Tax Update/Tax Crimes	2 CPE/Tax	Holiday Inn
August 18, 2011	Ethics Update and Review	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

**Save the Follow Dates For Future MAP Meetings:
Wednesdays: August 31, September 21, November 2 & December 14**

* Chapter Meeting

All Meetings Subject to Change

MESSAGE FROM THE EDUCATION CHAIRMAN

On June 13th, we held our organizational meeting, and I am proud to announce that over fifteen members attended to help select topics for the 2012 chapter meetings. We were literally inundated with creative suggestions and were able to collectively decide upon those which were most relevant for the next membership year. The 2012 chapter meetings will continue our long-standing tradition of providing timely and relevant information to our members.



I again wanted to thank my fellow panel participants featured in our May 17th "Sale of Business" program. It was a tremendous success and represents a groundbreaking first for our historical archives. It was a test project with our first webinar. I predict this will be an important method of presenting not only the Symposium, but our chapter meetings and MAP meetings as well. Our recent seminar involving business factoring and financing was also a tremendous success with several interesting speakers and their respective outlooks. This presentation was especially relevant in today's difficult economic times.

I am also pleased that on June 23rd we had our 2011 Accounting and Auditing Update, which was presented by George Victor, CPA. On July 7th, Mark Klein will host a New York State Update. Mark needs no introduction as he is an extremely sought-after speaker and has come to us from Albany. Let's make sure to give him a warm welcome. In August, Bernard Mark will host a "Criminal Tax Update/Tax Crimes". As we are all aware, both New York State and the Internal Revenue Service have become increasingly focused on criminal prosecutions and "sting" operations. Bernie is one of our true stars and let's take this opportunity to learn the best methods to avoid these sanctions. Rounding out the summer will be our August 18th half-day ethics presentation, which is always well attended and highly regarded.

I want to take this opportunity to wish everyone an enjoyable summer. I look forward to seeing everyone at our chapter meetings.

Robert Barnett, CPA, Esq

UPDATED PROCEDURES FOR RETROACTIVE REINSTATEMENT OF NON-PROFIT STATUS

Over 275,000 non-profit organizations have lost their tax exempt status due to failure to file information returns. Organizations that failed to file would likely have found the cost of refiling prohibitively expensive under older procedures. Pursuant to IRC § 6033 small tax-exempt entities must file annual informational returns. In its discretion, the IRS has recently raised the minimum threshold, and has provided that entities with receipts of less than \$50,000 are not required to file Form 990. This change provides welcome relief as the new Form 990 is extremely complex. If an entity fails to file its annual return or notice for three consecutive years, its non-profit status will be automatically revoked in the third year of noncompliance. Moreover, loss of exemption creates adverse tax consequences, including income taxation and loss of charitable deductions for contributors. Through a recent Revenue Procedure effective June 9, 2011, and the issuance of two notices, the IRS has provided a less costly means for small non-profits to regain tax-exempt status, and has clarified the requisite procedure.

For small organizations that were eligible to file a Form 990-N e-Postcard, an application for reinstatement is valid if postmarked no later than December 31, 2012. Even if the organization was not initially required to apply for tax-exempt status, the organization must submit such an application in order to apply for reinstatement. The application fee for transitional relief is \$100, and upon a successful reapplication, the IRS will reinstate non-profit status retroactive to the date it was revoked.

For entities that do not meet the above criteria, but have lost non-profit status for failure to file for three consecutive years pursuant section 6033(j), Notice 2011-44 details the necessary procedure for retroactive reinstatement. Reasonable cause for failure must be shown, together with a written statement of the safeguards in place to prevent future failures, evidence to substantiate the material aspects of the claim, properly completed informational returns and 990-EZ forms for the taxable years during which the failure to file took place, and for any years thereafter. An original declaration must also be executed and signed by a director or other officer authorized to sign on behalf of the organization. By following the aforementioned procedures, retroactive reinstatement will minimize any adverse consequences to an organization and its donors that may have resulted from a prior failure to file.

Robert S. Barnett, CPA, JD, MS (Taxation) is a Partner at Capell Barnett Matalon & Schoenfeld LLP in Jericho, New York, where he heads the Tax and Estate Planning Departments. Rebecca Traub, a summer associate, assisted in the research and preparation of this article.

1. IRS issues guidance on how organizations can apply to reinstate their tax-exempt status. News Release IR-2011-63 (June 9, 2011) (A list of non-profits that have lost their tax exempt status will be made available on the IRS website at www.irs.gov)
- 2 Rev. Proc. 2011-8, 2011-1 IRB 237 (The cost of refiling for small organizations was either \$400 or \$850, not including legal fees and other potential costs associated with regaining non-profit status)
- 3 Rev. Proc. 2011-15, 2011-3 IRB 322 (January 13, 2011) (Effective for tax years beginning on or after January 1, 2010, organizations with gross receipts of less than \$50,000 are no longer required to file Form 990 or 990-EZ, but may instead file the Form 990-N e-postcard, increasing the previous filing threshold which was \$25,000.)
- 4 See Rev. Proc. 2011-36

MAP UPDATE



Hi, hope everyone had a great Father's Day! Boy, the summer is moving fast. Did everyone get their FBAR filings done for June 30TH? What about sales tax? Does everyone like filing sales tax electronically?

Our June 29th meeting of MAP featured Mark Stone of Sales Tax Defense teaching us about Surviving Sales Tax Audit.

On July 27, Larry Schweitzer, President of CMIT Solutions of East Nassau, will discuss "Technology for CPAs – Don't Get Left Behind - How Technology Will Make a CPA'S Life Easier" This will be interesting in light of the Blackberry era. Many of us can manage our practices from off site locations after Tax Season but find ourselves chained to our desks during tax season. Larry will show us how technology can make our lives easier all year round.

See you at the beach!

Doug Sinetar, CPA

CASH & CARRY – CPA BEWARE!

Some years ago I received a phone call from a client referral. The gentleman on the other end of the phone, I'll call him Jim, said he was certain one or more employees was stealing from him but he could not prove it. Could I help? Jim had built a very successful retail store in New York City and after 40 years of hard work decided to retire, leaving the operations of his business to his two sons while he travelled the world.

The older of the two sons, Cal, had worked at the store since high school. At the ripe old age of 27, Cal was resented by some of the older employees who had spent most of their adult lives working for the business. The younger son, John, was all of 19 and while mature beyond his years, lacked the experience and respect needed to run the business. I could easily see how an employee might resent having these two young men as the new bosses and possibly feel justified in stealing.

Jim suspected the controller and the bookkeeper. Both were highly skilled at their jobs and the two sons were more than happy to give the entire accounting function over to these trusted employees. The controller and the bookkeeper recorded the cash, safeguarded the cash, deposited the cash and reconciled the cash. No one ever checked their work!

The day arrived to start the investigation and I drove to the client's store. As I pulled into the parking lot, I saw a huge sign over the store "CASH & CARRY." A fraudster's paradise! I requested all bank statements, deposit slips, cancelled checks, etc. I signed on to QuickBooks and 20 minutes later discovered exactly what had occurred. In the examination of four years worth of deposit slips, not one of them had an entry on the top line for cash and currency. The controller and the bookkeeper never deposited a penny of cash into the bank. The estimated amount stolen by the controller and bookkeeper, over a four year period, was \$1million. As the investigation continued, the controller and bookkeeper became more and more visibly nervous. Neither showed up for work on the third day of the investigation.

As with many white collar crimes, other than losing their jobs, nothing happened to the two fraudsters. Neither repaid a cent of what they had stolen and neither faced criminal prosecution. It turned out that Jim and his sons had stolen an equivalent amount of money from the business and their attorney strongly advised against pursuing the criminals.

Where was the CPA in all of this? The CPA firm is a well known mid-sized firm here on Long Island. The firm was retained to come in at year-end to prepare financial statements for the bank and to prepare corporate tax returns. The fee for these services was \$30,000. According to Jim, the CPA accepted \$25,000 since he was paid in cash! Luckily for the CPA, Jim did not pursue a malpractice suit.

We live in a litigious society and as CPA's we are all at risk. How do we protect ourselves from this type of situation? First, we cannot ignore the warning signs. Look for signs of the Fraud Triangle.

The Fraud Triangle describes the three factors that are present in every fraud situation. They are motive, rationalization and opportunity. Motive is the need to commit the fraud or need for money. Rationalization is the justification to the fraudster to commit the fraud. Opportunity is the situation that allows the fraud to occur.

In Jim's business, I clearly saw all three factors. Both of the fraudsters had motive, they both needed money. The controller had married a woman who came from a wealthy family and he had expressed to others that he needed to keep her in the lifestyle to which she was accustomed. The bookkeeper's wife had a drug addiction and had spent quite some time in rehabilitation.

The two men watched as the owners stole from the cash register before turning the deposits over to the controller. They watched as Jim travelled the world and his young sons came and went as they pleased, spending money frivolously. It was easy to imagine how they could have rationalized being entitled to the money since they were doing all the hard work.

Opportunity for the fraudsters couldn't have been easier. There was almost no internal control in the business. No one checked their work. The two worked together to steal the money and made sure they never took days off at the same time.

How do we protect our practices against this type of situation? First, it is important to educate our clients. More fraud occurs in small business than in corporate America. Small business owners must understand the importance of internal controls and the risks associated with ignoring them. It is our duty to discuss these issues with our clients and to educate them.

Second, every CPA firm should evaluate its clients on an annual basis. A client that may have been a perfect fit when you were first retained may no longer be a good client for you. The change in ownership from father to sons in this story should have been a warning sign to the CPA firm. Inexperienced or unqualified management may be a deterrent in keeping a client. Lack of internal controls should also impact your decision whether or not to dismiss a client.

Next, keep your malpractice insurance policy current and utilize the services of your malpractice insurance company. A good malpractice insurance company offers a myriad of services including general risk management advice, education and training, engagement letter reviews and much more.

And finally, get more involved with NCCPAP. The May MAP committee meeting was all about protecting your practice from fraud in your client's business. Make it a point to come to chapter and committee meetings. Network with your peers; establish relationships with other CPA's who have similar practices to yours. By sharing with each other, each of our practices grows stronger. We can never fully protect ourselves from fraud committed by others but we can and should minimize the risk.

Article submitted by Sandra G. Johnson, CPA. Sandra can be reached at (516) 409-1120.

POSSIBLE PARTIAL RELIEF FROM NYS SALES TAX LIABILITY FOR LLC MEMBERS

Under New York State Tax Law, each and every limited liability company member has 100% personal responsibility for the LLC's NYS sales tax liability, including tax, interest, and penalties, regardless of the member's involvement with the business's affairs, or lack thereof. This strict liability for sales tax applies to members of a LLC. It does not apply, however, to most other individuals involved with non-LLC entities; these individuals, such as managers, directors, or officers, must first be found under a duty to act in order to be held personally responsible for an entity's unpaid NYS sales tax liability.

Recognizing the unfortunate and likely unintended consequences facing LLC members, New York State recently issued TSB-M-11(6)S, providing the possibility of much needed relief in this area. Under the new policy described in the TSB-M, which took effect March 9, 2011, qualified LLC members would not be personally liable for penalties on the business's unpaid sales tax. In addition, personal liability for the LLC's unpaid sales tax and interest is limited to the extent of the member's proportionate share, based on ownership interest or percentage of the distributive share of the LLC profits and losses, whichever is greater. LLC members are eligible for relief under the policy only if:

- (1) Their ownership interest and percentage share of the profits and losses of the LLC are less than 50%, and
 - (2) They were not under a duty to act on behalf of the company in complying with the Sales Tax Law.
- Members seeking relief must also cooperate with NYS tax authorities by identifying individuals involved in the day-to-day business affairs, to the extent reasonably possible. Of course, NYS understands passive investors may not have access to this information.

To illustrate the impact of this new policy, consider the following example:

American Restaurant LLC is located in New York and owes NYS \$100,000 for sales tax and interest, not including penalties. Mr. Jones, who lives in Missouri and has never set foot in New York, had seized an investment opportunity and became a 10% LLC member, also receiving 10% of the LLC profits and losses. Despite his lack of business involvement, Mr. Jones was assessed the full \$100,000 plus penalties as a responsible person simply because he is a LLC member. If Mr. Jones qualifies for relief under the new policy, he would only have to pay \$10,000 of the \$100,000 liability, and no penalties, to settle the responsible person assessment against him. Note that this payment is not credited against the liability of other responsible persons also eligible for relief.

An amendment to the Sales Tax Law has been proposed to add possible further relief and guidance for LLC members. In the meantime, this new policy has taken a significant step towards addressing potentially egregious consequences facing many LLC members, particularly those with small ownership interests and little to no involvement in the business's affairs.

Yvonne R. Cort, Esq. and Brad Polizzano, Esq., LL.M. (Taxation) are attorneys in the Melville, New York law firm of Karen J. Tenenbaum, P.C., 225 Old Country Road, Melville, New York 11747; (631) 465-5000. The law firm assists taxpayers in disputes with Federal and State tax authorities. For more information see the firm's website at www.litaxattorney.com or contact Yvonne or Brad at (631) 465 5000, email: ycort@litaxattorney.com or bpolizzano@litaxattorney.com.

GOOD & WELFARE

Our congratulations to

David J. Rothfeld on the wedding of his daughter, Debbie to Nick Kern.

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

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TAX TIDBIT

By Stanley Tepper, CPA

About five to six years ago when I was writing the "Members Corner" for our chapter I referred to a New York State "Claim for Nursing Home Assessment Credit." One of our members has already saved in excess of thirty thousand dollars for his clients because of this refundable credit.

Be familiar with Form IT-258 which contains the Nursing Home Credit.
For a copy you can contact Stan Tepper @ (516) 378-0560.

Submissions to our next newsletter must be made by
July 20th for the Aug Issue.

For Advertising Contract and Fees Contact the Office