



**Coming Attractions**

**CHAPTER MEETING NOTICE**

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**Thursday, January 13, 2005**

FEBRUARY 3, 2005

Early Season Tax Update

at

**THE STERLING AT BETHPAGE**

345 Hicksville Road , Bethpage, NY  
(516) 931-7600

Panel

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**AGENDA**

MARCH 3, 2005

Late Season Tax Problems

**Board Meeting 4:00 PM—5:30 PM**  
**Networking/Dinner Hour 5:30 PM—7:00 PM**  
**Program 7:00 PM—9:00 PM**

Round Table

\*\*\*\*\*

**PROGRAM**

APRIL 7, 2005

NO MEETING

**BANKERS & FINANCIAL STATEMENTS**

Presented by

**Joseph G. Perri, ESQ.**

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## PRESIDENT'S MESSAGE

Hi again! The Board, the Committee Chairs and I wish health, happiness and prosperity to you and those close to you during the holidays and the coming year.



The Tax Symposium was a terrific success. Please take the opportunity to personally thank those who volunteered their time so generously to make things better for all of us. Some of the key people include Ross Kass, Scott Sanders, Eliot Lebenhart, Harold Ogulnick, and Karen Giunta. There are just too many volunteers to mention all by name.

In the December Chapter meeting, we tried out a new format. We opened with a 1-½ cocktail hour and heavy hors d'oeuvres, and finished with a CPE session concerning retirement plan design and tax planning. Please let us know if you liked this approach.

During 2005, I'm going to try to bear in mind the following. I'm printing it here, thinking that it may be of general interest...

"Dear Accounting Professional:\*

Why don't you make it easy for me to do business with you?

I am a small businessman who needs some help growing my business. I work 12 hours a day and I need someone who can step in and help me get control of my life again and help me steer my business in the right direction.

Please understand that I really WANT to do business with you. I'm looking for the right phrases, emotions, or actions that subtly confirm for me my overwhelming desire to HIRE YOUR FIRM. I'm looking for reasons to

say "YES" to you, not "no." I don't want to spend my time selecting a CPA. But you're not making it easy.

- I buy accounting services once in a blue moon. Help guide me through the process. What services should I want and for what reasons? I really know little about accounting other than that it is something I have to buy to keep me in compliance with the government. Is there something more I could derive from a relationship with you? Is my business too small for your firm? Do you have the staff to assist me with the day-to-day accounting functions? Tell me what I should be looking for. Tell me how you have helped others like me. Help me understand the relevance of your services to my quality of life and income.
- I don't know what to ask to determine if and why I would want a relationship with you. You know which questions I should be asking. Share them with me. I don't know what my budget is for your services because I don't know what it will take to get me where I want to be. Based on what you know about me, tell me the low, medium, and high range of what it could cost, what my commitment and responsibilities will be. Help me understand what benefits I would derive at each level and how each level might help me achieve my income and quality of life goals.
- My customers buy my product for a fixed price. My time is based on how efficient I may or may not be. I can budget and forget my worries with a fixed price from you. Can you accommodate my desire to forget my worries?
- I expect you to be technically competent – that's not a big selling point.
- The issue is how can you customize your knowledge and experience to work with me to create a result I am happy to pay you for, not how can I change my needs to fit what you have to sell.
- Your firm has been around for 40 years?



## MEMBERS' CORNER

BY STANLEY TEPPER, CPA, MBA



### Section 529 Savings Account Plans

Business Week Magazine recently discussed a college break. If you own a **Coverdell Education Savings Account** or state-sponsored **529 savings account** – both of which allow investments to grow tax-free you'll have an easier time qualifying for aid, thanks to a recent clarification of the federal aid formula. As long as a parent sets up a **Coverdell**, the U.S. Education Dept. now says it will be treated like a 529 and considered parental property. That's important, since in calculating how much a family can afford to pay for college, the feds count up to 5.64% of a parent's assets, compared with 35% of a student's assets. Before this ruling, the Coverdell – which caps annual savings at \$2,000 per child, vs. total savings of as much as \$300,000 in a 529 – had been deemed student property. Better still, withdrawals from a Coverdell or 529 will no longer count against you.

**Elder Law** – The quarterly newsletter published by the law firm of Lamson & Petroff [(212) 447-8690] is the source for the following Medicaid notes.

- 1) **Nursing Home Personal Injury Award Exemption**—Money received by a Medicaid applicant or recipient as the result of a legal action against a nursing home because of improper or inadequate treatment is not counted as income or asset for purposes of Medicaid eligibility.
- 2) **Joint Bank Accounts Avoid Probate But Not Medicaid**—Joint bank accounts (or other joint assets) are often created for convenience and to avoid probate. Normally, either joint owner may make deposits and withdrawals. Joint accounts are typically treated under New York State law as survivorship accounts, such as when one joint owner dies; the surviving owner becomes the sole owner of the account. But joint accounts are generally not valid tools when planning for Medicaid eligibility. In New York State, a joint savings account is presumed to belong entirely to the Medicaid applicant.
- 3) **Transferring the Home**—An individual's home – a house, cooperative or condominium apartment – is an "exempt" resource for purposes of determining initial Medicaid eligibility.

Ultimately, however, Medicaid may place a lien on the sale proceeds of the home and take back from the sale the amount it spent on behalf of the Medicaid recipient. For this reason, the home must be considered an asset, and appropriate steps must be taken to transfer it. Transfers to a spouse and certain specified individuals will not trigger a penalty period for purposes of Medicaid nursing-home eligibility, but transfers to any other person will. Generally, it is inappropriate to simply transfer ownership of a house or apartment directly to another person when planning for long-term care. Such a transfer may incur a substantial period of ineligibility, and it may trigger a costly capital – gains tax. The more attractive alternative is to transfer the home to a trust with the provision that the occupant or occupants have the right to continue to live there for the remainder of his, her or their lives. This provision will eliminate the tax liability and diminish the penalty period for nursing-home eligibility. The trust agreement will include instructions about how the home will pass to heirs after the death of the occupant or occupants. No probate will be necessary.

**Executive Compensation** – A recent article in attorney David L. Silverman's [(516) 466-5900] monthly newsletter cited "non compliance" in many companies, which the IRS has identified and intends to audit.

**Deferred compensation.** The IRS will focus on timing issues involving employer deductions and recognition of income by the employee in non-qualified plans.

**Stock-based compensation.** The IRS will determine whether income was properly recognized at the time of vesting of non-qualified stock options and restricted stock.

**Split-dollar life insurance.** Emphasis will be placed on determining whether executives have reported the proper amount of income.

**Golden parachutes.** Payments made on a change in control of public companies, which could result in a denial of a deduction, will be examined.

**\$1 million cap on executive salary.** Exceptions to the \$1million limit, such as

performance-based compensation, will be reviewed.

**Family limited partnerships.** Deferral techniques, involving the transfer of corporate stock options to FLPs, which the IRS characterizes as tax shelters, will be scrutinized.

**Employee leasing.** The Service will attempt to target the improper use of a professional service corporation to avoid income and employment taxes.

**Corporate benefits.** IRS will determine whether the imputed value of (i) housing allowances; (ii) use of corporate aircraft and automobiles; and (iii) club dues has been or should be reported as income. IRS will also review issues involving proper allocation of expenses between personal and business use.

**Tapping an IRA** - *Business Week* quoted our chapter's member Ed Slott in revealing a "Little-Known Internal Revenue Service regulation." A recent change makes it easier for IRA beneficiaries to extend the benefits of such additions. The change applies to named non-spouse beneficiaries when the account owner dies before the required age to begin distributions (generally age 70½). Before, such beneficiaries had to withdraw all funds within five years unless they specifically opted for payments based on their own life expectancy. With the rule change, the beneficiaries automatically get the benefit of life-expectancy payouts unless they choose the five-year-rule-something Ed Slott, editor of *Ed Slott's IRA Advisor* newsletter, says you should never do. Remember, he says, you can always take more than the minimum under life expectancy - withdrawing everything in five years, or even fewer, if that's what you want. You just don't have to. Instead, you can let the money continue to grow tax-deferred.

**Student Loan Interest** - *Medical Economics Magazine* discussed a good deed that won't pay off. If you help your child repay a student loan, you probably won't be allowed to deduct any interest on it, say new IRS regulations. Parents can make the deduction only if they cosigned the loan. But your kids might be able to deduct any interest payments you made for them, as long as you don't claim them as dependents on your federal tax return. The new rules became effective on May 7, 2004.

**Real Estate Tax Law Change**- A quarterly newsletter from CAPELL & VISHNICK, LLP, [(516) 437-4385], a firm. Which has furnished speakers for our chapter's tax seminars, discusses New York Tax Law Changes.

Effective September 1, 2003, New York State Tax Law Section 663 imposed an estimated personal income tax upon all nonresidents of New York State who sell or transfer real property located within New York. All sellers must be aware of this new law because failing to follow its requirements will mean that your closing will be adjourned and the county clerk will not be able to record your deed.

**How the Law Works:** Prior to the new law, the seller or transfer of real property located in New York State was required to pay a state transfer tax of \$4 per \$1,000 of consideration received. Now, in addition to that tax, a seller or transfer who is not a resident of New York State is required to pay an estimated personal income tax of 7.7 percent of the profit from the sale at closing. The estimated personal income tax is calculated by multiplying the gain from the sale of the property by the highest applicable rate of New York State personal income tax in effect for the taxable year. Even if the sale resulted in a loss, the necessary forms must still be completed and submitted. Although this law appears to burden only sellers, purchasers should also be familiar with it because a deed will not be accepted for recording unless the seller either certifies that he or she is a resident or pays the estimated personal income tax at closing. Therefore, if a seller is not aware of this new law, the closing could be adjourned or delayed until the necessary documentation is prepared.

**To Whom Does the Law Apply?** The law applies only to transfers of a fee simple interest by an individual, estate or trust. Therefore, entities such as corporations and limited liability companies are not subject to the new tax requirements. In addition, the law does not apply to the transfer of any interest that is less than a fee simple interest. Therefore, the transfer of a life estate will not trigger the new tax. In certain circumstances, non-resident sellers are exempt from the new tax. Among those exclusions are sales in lieu of foreclosure without additional consideration and situations in which the seller used the property as his or her principal residence for two of the prior five years. These exclusions highlight the

Continued from previous page

importance of defining the term “resident.” For purposes of this law, resident is defined as a person who is domiciled or maintains a permanent place of abode within New York State. For trusts and estates, the residence of the fiduciary (i.e., trustee, executor or administrator) is irrelevant. Rather, the state looks to see if the decedent was a resident of New York in the case of an estate, or if the property was transferred into a trust by a New York resident, in which case the estate and trust are considered residents and therefore not subject to the tax.

**Bequeaths to Grandchildren-** A Florida newspaper reminded its readers that bequeathing property can be expensive for large estates. Amounts of \$1.5 million or more are subject to the generation-skipping transfer tax, as well as the estate tax. To help minimize the impact, a grandparent can make an annual gift of up to \$11,000 to a grandchild, tax-free.

**Levy on Social Security Benefits-** One of our chapter member’s client received a “Final notice before levy on Social Security Benefits.” The law allows the Internal Revenue Service to levy (take) up to 15% of Social Security benefits on account of unpaid Federal Income Taxes.

**States Without a State Income Tax-** According to *The New York Teacher Publication* there are nine states currently without a state income tax- Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington and Wyoming.

## 2004 Tax Symposium

All of the numbers surrounding the 2004 Long Island Tax Practitioner Symposium add up to an overwhelming success.

524 tax practitioners, from as far away as Boston and Florida, attended this annual event sponsored by our chapter. This is a 25 percent increase over last year.

41% of the 524 participants were from outside of NCCPAP. This clearly indicates that our partnership with other professional organizations is working and we are providing a quality, educational opportunity that is important to their business.

When we survey the attendees, 97 percent of those responding rated their overall satisfaction with the event a four (4) or a five (5) with five being the highest rating. The seminar sessions received equally positive comments.

On-line registration, a CD, which contained all of the educational materials needed, and a streamlined sign-in process the day of the event were among the innovations this year.

There were also a 25% increase in the number of exhibitors, who took the time to show us how their products and services could assist us in conducting our everyday business. We even had some holiday items available for purchase.

This event would never take place without the more than 120 volunteers who helped organize this symposium. They participated on all the committees including: Education, Sponsorship, Public Relations, Registration, and Reception.

These volunteers were the nuts and bolts of putting it all together. They came on Sunday and Monday evening before the event to pack bags and organize the seminar materials. They came at 6:00 a.m. on Tuesday, Wednesday and Thursday to help with sign in. They assisted with crowd control and with seating at lunch. In short, they were wherever they needed to be, whenever they were needed. The event would not be successful without their efforts.

To sum it all up, Phil Weinper of Port Washington said, “everything about this event is terrific. You guys did a great job.”

### For Sale in the N/S Chapter Office:

**J.K. Lasser’s Books** 1 for \$ 10.00 or 3 for \$ 25.00  
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## TAX TIDBITS

From TODD NEWMAN, CPA-Tax Committee Chair

The Social Security Administration has announced their cost of living changes for 2005.

For 2005- The Social Security portion of the FICA and Self Employment taxes will apply to the first \$90,000 of wages and/or net earnings from self employment. This is up from the \$87,900 in 2004.

Due to the 1.4 percent cost of living adjustment, the average monthly benefit for retirees will increase to about \$955. The maximum benefit payable to someone retiring at the full retirement age rises to \$1,939. This is up \$14 over the 2004 maximum benefit amount).

The full retirement age continues to increase for those born after 1937. The full retirement age for those born in or before 1939, is 65 years and four months; for those born in or after 1940, the full retirement age is 65 years and six months.

Retirees under the age of full retirement can lose some or all of their SS benefits if they continue to work. Retirees under the full retirement age can earn up to \$12,000 in 2005 before benefits are lost. For every two dollars of earnings over the limit, retirees in this age category will lose one dollar of benefits.

If an individual attains full retirement age in 2005, an earnings limit of \$2,650 per month applies for each month that benefits commence before the full retirement age. For every three dollars in earnings over this limit, retirees will lose one dollar of benefits.

Retirees who are at least the full retirement age can earn any amount without causing a reduction in benefits. However, retirees who continue to work - regardless of age - of course continue to pay Social security and Medicare taxes on their earnings.

For amounts deferred in tax years beginning after December 31, 2004, new rules apply. Read through the American Jobs Creation Act of 2004 which was signed into law on October 22, 2004. There are penalties for

certain early distributions and delayed payouts. Remember, that as in the past, deferred amounts are subject to SS taxes and Medicare taxes in the year the money is earned, not in the year it is received.

Finally - one important item to note for those of us who prepare NYS corporate tax returns. There is an unusual provision in the NYS Tax Law known as the "presumption of distortion". Under this provision, the tax commissioner can require a corporation paying New York Tax to file a combined report that includes the proceeds of other corporations controlled by the taxpayer. In order to exercise that authority there are many elements that must be present. One of those elements is evidence that a "distortion of income" would result if the corporations were permitted to report their earnings separately. A presumption of distortion occurs "when the taxpayer reports on a separate basis if there are substantial intercorporate transactions among the corporations."

The company in this case was Sherwin Williams who set up Delaware holding companies to siphon taxable profits out of New York State. The critics of the maneuver say that this is typical of many corporations of all sizes - transfer valuable assets to holding companies out of state. The tax department states that this ruling would serve as "a building block in the department's attempt to thwart abusive corporate tax planning schemes."

An administrative law judge (in a 150-page decision) initially ruled in favor of the company. The Tax Appeals Tribunal reversed and ruled for the State (adding in another 118 pages in their decision). The NYS Appellate Court upheld the ruling against the taxpayer. The argument of Sherwin Williams was that this law violates its Commerce Clause and due process rights. You should also be aware that Sherwin Williams used the same arguments in the state of Massachusetts (Sherwin-Williams Co. v. Commissioner of Revenue, 438 Mass 71(2002) and in Massachusetts they were successful. In NYS the case was Sherwin-Williams 94107 and should be watched.

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Refer to back cover for Cancellation and Refund Policy for ALL Chapter Meeting and Seminars .

**GOOD & WELFARE COMMITTEE**

The Good and Welfare Committee exists to promote Good and Welfare and express congratulation or sympathy to a member, a family member of a member, or a friend of the Chapter, as appropriate.

Please be sure to contact Nat Eichner at (631) 724-4400 or the Chapter office when an event occurs.

**Correction**

The e-mail address for Stanley Tepper was printed incorrectly last month. The correct e-mail address is:

**sydtep27@aol.com**



A monthly publication of NCCPAP, Nassau/ Suffolk Chapter  
Ed Kliegman, CPA, Editor

Deadline to submit articles to NCCPAP-N/S office by mail to Etta, email at egeblen@ns-nccpap.org or by fax to 516-997-5155, is the **FIRST FRIDAY OF THE MONTH.**

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