



# The National Conference of CPA Practitioners

Nassau/Suffolk Chapter

Volume 6, Issue 6 July 2009

## Highlights

### [Page 2](#)

Executive Vice President's Message, Notes from the Editors

### [Page 3](#)

Meeting Schedule

### [Page 4](#)

MAP, Now If You Feel That You Can't Go On...

### [Page 5](#)

Metropolitan Commuter Transportation Mobility Tax

### [Page 6-7](#)

The Process Of Change - What It Really Takes

### [Page 7](#)

From the NCCPAP Tax Committee

### [Page 8-9](#)

Real Estate and Tax: Are There Solutions in These Tough Times?

### [Page 9](#)

Do You Need ..., Have a Problem with NYS?, Good & Welfare

### [Page 10](#)

The Fast and Ever Changing World of Sales and Use Taxes

### [Page 11](#)

Ad - ADP

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### Date

**Thursday, July 9, 2009**

### Topic

**CRIMINAL INTENT & YOU**

### Speaker

Bernard Mark, Esq. of Kestenbaum & Mark  
2 CPE/TAX

### Credits

### Location

Holiday Inn @ Plainview

### Time

Dinner/Networking: 5:30 - 7:00 PM

Program: 7:00 - 9:00 PM

### Cost Members

On or before Friday, July 3 - \$50.00

After Friday, July 3 - \$60.00

### Non-Members

On or before Friday, July 3 - \$75.00

After Friday, July 3 - \$85.00

If you become a member of NCCPAP we will refund you \$25.00!

### Date

**Wednesday, July, 29, 2009**

### Topic

**DEVELOPING A WEB-SITE & MARKETING APPROACH**

### Moderators

Gary Sanders, CPA & Michael Rubinstein, CPA

### Speaker

Chandra Bhunsali of Accountants World

### Credits

2 CPE/Advisory Services

### Location

On Parade Diner - Woodbury

### Time

Registration: 7:30 AM

Program: 8:00 - 10:00 AM

### Cost

On or before Friday, July 24 - \$20.00

After Friday, July 24 - \$30.00

**For Full Schedule of Meetings see page 3**

**Nassau/Suffolk Chapter of NCCPAP is happy to announce that our website has changed! Please visit us at [www.ns-nccpap.org](http://www.ns-nccpap.org)**

**SUBMISSION DATE FOR MATERIALS TO BE INCLUDED IN THE NEXT NEWSLETTER IS JUNE 20!**

To register for any of our meetings, please visit

<http://www.ns-nccpap.org/register-online/index.html>

**EXECUTIVE VICE PRESIDENT'S COLUMN****NOTES FROM THE EDITORS**

A member's question came to the Chapter's Office asking:

"What does N/S NCCPAP membership do for me and why should I continue my membership?"

This question started me thinking of the many advantages that NCCPAP provides to its members.

First of all, the NCCPAP Mission Statement dictates that we:

1. Advocate on issues and matters which affect our members - the practicing CPA
2. Monitor, anticipate and respond to changes in the profession.
3. Promote the exchange of ideas and information among our members.
4. Provide a means for our members to develop and maintain skills necessary to be successful in the competitive business environment.

We have recently advanced our mission in the interests of our members in several important ways:

NCCPAP representatives attended a meeting of New York legislators and provided information as to why mobility is important to smaller CPA Practitioners. We are reaping the benefits of their efforts.

NCCPAP recently held its quarterly National meeting in Washington DC. NCCPAP members attended meetings with IRS representatives and Congressional representatives on Capitol Hill to present our IRS and Congressional IRS agendas. (Our agendas had been distributed to members in the April/May 2009 Issue of the National newsletter and can be found on the National website [www.nccpap.org](http://www.nccpap.org).) These agendas were created from ideas presented by our members and are the best example of "grassroots" advocacy. The National Tax Policy Committee is committed to keeping our electveed representatives aware of our issues.

Our members are also extremely active at the local level. A group of experienced practitioners from the Chapter attended the local IRS Liaison committee. This group presented many practical suggestions to increase the efficiency of tax administration. Our recent advocacy has included streamlining the automated return process system (e-file), power of attorney efficiency, advocacy for consistent penalty abatement procedures and other issues experienced by all of us.

The camaraderie of fellow practitioners, the ability to ask questions of experienced practitioners and the sharing of experiences is of significant value to our members. The willingness of our members to help each other is truly amazing and occurs with regularity at all our meetings.

*Robert Barnett, Esq. CPA*

In case you have just arrived to our planet, General Motors has filed for Chapter 11 Bankruptcy protection. This of course has been expected to occur and is of little surprise.

To members of our Chapter, this certainly does not seem to have any relevance in our lives or in our practices. However, the trickle down effect of this to other businesses and geographic areas will certainly reach down to affect each of us. The current status of GM certainly has no bearing on any activity or planning within the Nassau/Suffolk Chapter of NCCPAP. At this point you, as the reader, might be wondering why we write about this bankruptcy which is so far removed from our lives? What can we gain as practitioners?

This is not the forum to discuss any political implications, government intervention, or to discuss the future stability of the company. As editors, we want to focus on the lessons to be learned.

In order for our firms to advance and grow, we must constantly explore new and better technology. As we pointed out last month, we must be able to identify what our clients need, and be sure that we meet these needs in every respect. Further, we need to explore forms of marketing, such as Facebook and Twitter, that many of us have never even used. We need to evaluate and improve the methods of our workflow, work papers, and working time! We can all learn from the fall of General Motors to be more reactive to customers, technology, financial situations, staff, and the changing world.

Our Chapter is no exception, as our officers and directors meet regularly to evaluate how to improve and enhance every level of service to better serve our members in assisting them to implement all of these improvements in their practices. We have formed task forces to re-evaluate technology, seminars, and simply how to better serve our members.

As you read your newsletter, you will see articles from MAP, Education Committees, and articles pertaining to the furtherance of your practice. Please take a moment to post some of these upcoming meetings to your calendar, and register NOW.

In our commitment to help our members in achieving these long-term goals, we have one simple request...the same request we have made in prior articles...Please become involved in attending our meetings, giving us your input, and possibly join one of our many committees. Finally, when you come to a meeting bring a friend or staff associate!!!

*Alfonso Mollica, CPA  
Gary Sanders, CPA*

**CHAPTER POLICY**

THE FEE FOR EARLY BIRD REGISTRATIONS IS:  
\$50.00 WITH \*PRE-REGISTRATION AND \$60.00 REGULAR REGISTRATION, OR AT THE DOOR REGISTRATION.

\*PRE-REGISTRATION MEANS: A COMPLETED REGISTRATION FORM WITH PAYMENT AND POST MARKED, FAXED OR E-MAILED TO THE N/S CHAPTER OFFICE THE FRIDAY PROCEEDING THE CHAPTER MEETING WHICH YOU ARE PLANNING TO ATTEND.

A PRE-PAID REGISTRANT WHO CANNOT ATTEND THE CHAPTER MEETING 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 DAY.

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

## **MEETING SCHEDULE FOR 2009**

Holiday Inn @ Plainview  
215 Sunnyside Blvd  
Plainview, NY 11803

On Parade Diner  
7980 Jericho Turnpike  
Woodbury, NY 11797

*Subject to Change*

July 9*		Criminal Intent and You	2 CPE/TAX	Holiday Inn
July 29	MAP Bkft	Developing a Web-Site & Marketing Approach	2 CPE/Advisory Services	On Parade
Aug. 6*		Estate Planning Checklist for CPA's	2 CPE/TAX	Holiday Inn
Aug. 12	MAP Bkft	How to Prepare for Peer & Quality Review	2 CPE/Advisory Services	On Parade
Aug. 20		Ethics	4 CPE/ETHICS	Holiday Inn
Speaker: Thomas R Manisero, Esq. of Wilson Elser Moskowitz Edelman & Dicker LLP Time: Registration/Breakfast: 7:30 AM Program: 8:00 AM-12:00 Noon Cost: Members: On or before Friday, July 31 \$135 On or before Friday, Aug. 14 \$150 At the Door \$175 Non-Members: On or before Friday, July 31 \$160 On or before Friday, Aug. 14 \$175 At the Door \$200				
Sept. 3*		NYS Tax Update	2 CPE/TAX	Holiday Inn
Sept. 23	MAP Bkft	Computer Security Issues	2 CPE/Advisory Services	On Parade
Oct. 1*		Compilation, Review & Projections	2 CPE/A&A	Holiday Inn
Oct. 20	Bkft	Partnership	2 CPE/TAX	On Parade
Oct. 28	MAP Bkft	Workmen's Compensation Issues for the CPA	2 CPE/Advisory Services	On Parade
Nov. 18-20		Long Island Tax Practitioner Symposium		Crest Hollow
Dec. 3*		Not for Profit Update	2 CPE/TAX	Holiday Inn

\* Chapter Meeting

### **Bring a Fellow CPA to any Chapter Meeting and you receive a \$25 gas card FREE**

**The only requirements are that he/she be a Partner or  
an Owner of a CPA practice, and not be a current NCCPAP Member!!!**

**It is a win-win all round. "You will enable your friend to learn, first hand,  
about the tremendous benefits that NCCPAP membership can bring to his/her practice."**

**In addition, he/she gets a Free Dinner and Free CPE Credits!!!**

**You get a \$25.00 gas card and the satisfaction of knowing  
that you may have helped improve his/her practice.**

**The Chapter may gain a new member!!!!**

**Call in advance so that we can welcome your guest.  
Help us to grow our Chapter.**



## **WHO AND WHAT IS MAP ANYWAY ????**



Each month this column focuses on the meetings that have just taken place, and those that will be taking place.

In this month's Notes from the Editors, there is a great deal of focus on the concepts of improving the stature of our practices....

We realize that many members and prospective members do not even know about our MAP Committee..... or even what it stands for...

We want to take a moment to go back to basics...MAP stands for Management of Accounting Practice... What exactly does that mean??? What does it entail??? In essence, who are we?

Our sole responsibility is to raise topics of relevance on a monthly basis that we believe CPA owners, and managers need to maintain and enhance their practices. We also relate these topics to professional staff that need to know what their seniors are seeking. This sounds easy, but then of course, how do you determine topics of universal interest.

The selection of topics is carefully designed to approach different needs and vary in content, based on what CPA's indicate they want to hear about from a practice management perspective...Past meetings have reflected topics such as Staff retention, Practice Succession, College planning, and of course how to manage all aspects of your practice from engagement letters thru collections. Together we continue to learn how to secure the client, maintain the client, perform the tax and financial statements, and one of our key concerns - how to bill and collect.

We strive to make these meetings meaningful by featuring our own members as facilitators and discussion leaders as much as possible. Any guest speaker is always reminded that they are speaking foremost as an educator of their topic, and not in a sales capacity. The goal of the MAP Committee is to gain as much interaction and exchange of ideas from the attendees as possible. This is accomplished via open discussion and our consistent format of questions and answers.

Finally, as any past attendee will attest, we strive to start promptly, and complete all meetings by 10AM, being cognizant of the full schedules we all have.

Our next meeting, to be held on July 29th, will focus on developing a Web-Site and new ideas to approach marketing. We will feature guest speakers from various sources to educate us on what we need to do for a successful plan.

If you have never attended a MAP meeting, this summer is a perfect time to start. All meetings are at On Parade Diner on Jericho Turnpike in Woodbury from 8:00 AM thru 10:00 AM.

**You need not be a member of NCCPAP to attend - So Bring a Friend!**

*Michael Rubinstein Co-Chairman*

*Gary Sanders Co-Chairman*

### **NOW IF YOU FEEL THAT YOU CAN'T GO ON....**

As the economy fluctuates, so do our goals and aspirations. Some of us desire to sell what is usually our largest asset - our practice, and retire or simply relocate. Without a successor in place, we need to look for a buyer. Our Chapter's desire is that you consider your fellow members in this Chapter before you place all hope in an outside broker where either you or the buyer ends up paying a huge commission. Many of us joined NCCPAP for like-minded reasons, either to be amongst true peers in the profession, those who understand the regional aspects of NYC-LI business or simply to attend inexpensive conferences and CPE geared to what we are - the nuts-and-bolts of the accounting profession. Whatever the reason, doesn't it make sense to give a fellow member the 1st crack at continuing your practice and servicing your hard-won clientele?

For further information email: [newsletter@ns-nccpap.org](mailto:newsletter@ns-nccpap.org)

## **METROPOLITAN COMMUTER TRANSPORTATION MOBILITY TAX** **(PAYROLL TAX DEDICATED FOR MTA PURPOSES)**

The Metropolitan Commuter Transportation Mobility Tax (MCTMT) is a new tax imposed on certain employers and self-employed individuals engaging in business within the Metropolitan Commuter Transportation District (MCTD). This department administers the tax for the Metropolitan Transportation Authority.

The MCTD includes New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island), Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester counties.

### ***The tax applies to:***

- Employers required to withhold New York State income tax from employee wages and whose payroll expense exceeds \$2,500 in any calendar quarter
- Individuals with net earnings from self-employment allocated to the MCTD that exceed \$10,000 for the tax year. (This includes partners in partnerships and members of an LLC treated as a partnership.)

### ***Tax rate***

Employers: .34% of an employer's payroll expense for employees employed within the MCTD

- Individuals: .34% of net earnings from self-employment allocated to the MCTD during the tax year

### ***Effective dates***

- Employers other than public school districts: March 1, 2009
- Public school districts: September 1, 2009
- Individuals: Tax years beginning on or after January 1, 2009 (calculated on 10/12 of your net-earnings from self-employment allocated to the MCTD for the 2009 tax year)

### ***Initial payment for 2009***

**Employers** (other than employers required to file through the Promptax program)

- Due date: November 2, 2009 \*
- Initial payment period: March 1, 2009 - September 30, 2009. Public schools have a different initial payment period: September 1, 2009 - September 30, 2009.

**Employers who are required withholding tax Promptax filers** (other than public school districts)

- Due date: Same date their 1st withholding tax Promptax payment is due on or after October 31, 2009.
- Initial payment period: March 1, 2009 through and including the payroll date for which the Promptax payment was made.

### ***Individuals***

- Due date: November 2, 2009 \*

\* The due date moves to November 2 because October 31, 2009 falls on a Saturday.

### ***For more information:***

- See [TSB-M-09\(1\)MCTMT, Metropolitan Commuter Transportation Mobility Tax](#)

## **THE PROCESS OF CHANGE - WHAT IT REALLY TAKES**

If your firm is not achieving controlled profitable growth at a rate of 20% per year or more, if you are struggling to find and retain top-notch staff, if partners are working harder to keep less, if fees are an issue with your clients, if you feel you are struggling to maintain mediocre growth - doing what you've always done will only create more of the same. Hoping to create a different result by doing what you've always done is Einstein's definition of insanity.

To create a different result requires change. Change is difficult. What specific changes to make to create your desired result is another issue. That journey begins by clearly defining specific results in terms of income and quality of life sought for the partners and staff. What are the results that you want? What changes must be introduced to achieve them? How long will it take? What is the cost vs. the benefit? How will you create the change? How will you know where to begin? How will you overcome inertia? How will you know when you arrive? Who will make the decision? When?

The journey begins with a decision. There are three frogs on a lily pad; one decides to jump. How many frogs are left? The correct answer is three. Deciding to jump is vastly different from jumping. A trap that firms fall into is confusing making a decision with creating results. We tend to become obsessed with making the right decision (paralysis by analysis) which in itself becomes a major obstacle. Did we make the right decision? Did we have all the information requisite to make the decision? Is it possible that a better decision could have been made if better information were produced? It's always better to make the right decision rather than the wrong decision. We forget the simple fact that a decision by itself changes nothing. Did you implement the decision? Did you do anything? A decision is the beginning of the process of doing, not the end of the process.

Doing something actually requires.... doing something. Doing makes things happen. The currently popular concept of knowledge management advocates gaining intellectual capital to grow your firm. Learn forensic accounting, hire MBAs, develop niche specific knowledge, and get additional certifications. The AICPA is advocating an internationally recognized certification and has added specialty designations for business valuation and web trust among others. What advocates seem to forget is that knowledge is only useful if you do something with it. There is a huge knowing-doing gap. Doing something actually means doing something! It means addressing the hard and scary work of making something happen. It's much easier and safer to sit around and have meetings and intellectual conversations, to add to your library, build databases, train for additional certifications, invest in technical infrastructure - and never actually implement anything.

Doing means learning. Learning means making mistakes. Learning means tolerating inefficiency. Learning means tolerating failure. Learning requires encouraging and teaching people to try things they've never done before, to try things beyond their existing abilities. The only way people learn is by doing things they've never done before. If we only do what we already know how to do, we won't ever learn anything. The firm culture must make learning and stretching the envelope mandatory. It must acknowledge and support effort. Repeated effort and doing creates change.

There is no easy way to encourage people to learn. They must be motivated to learn for their own reasons, not the firms'. You must address the WIIFM factor (What's In It For Me - the radio station we all listen to in our minds). You must accept the fact there's always going to be a trade-off between efficiency and learning. Learners are never as proficient as experts. Learning comes at a price. One price is the experts might not get to use their expertise and that the learners might make mistakes. If you really want to build a learning organization, you must be prepared to make the investment.

The biggest obstacle to learning is fear. The most powerful and pervasive emotion in the workplace today is fear - fear of feeling foolish, fear of clients, fear of billing, fear of failure, fear of peer pressure, the accountant's cultural fear of making a mistake. Learning requires tolerating people who make mistakes. Learning means tolerating inefficiency. Learning means tolerating failure. To move from knowing to doing you need to change your firm culture to the opposite of traditional thinking. You must build a culture of forgiveness. A tolerance for error and failure must be built into the firm culture, not for accounting

specific issues but for growth and development. Traditional culture says "quality is the absence of defects as defined by management or professional edict." (We believe "Quality is the presence of value as defined by the customer.") The entire culture of the profession, right down to the name itself, has developed around the concept of accountability. If you are to be held accountable for every mistake that you make, how many chances are you going to take? If you live in a culture that reveres perfection, how will you handle the mistakes of the learning process? How eager will you be to convert your ideas into actions?

That's the way we've always done it. Another huge obstacle to cultural change is professional (or corporate) memory. The underlying emotion is, again, fear. "This is the way we do things around here, it's the way of the profession" overrides "this is the right way to do things." Mistakes are the bane of the profession. The best way to avoid mistakes is to continue to do things the way they have always been done. That's fine for the attest function. It vastly limits non-attest functions and severely restricts change. Eventually, like with hourly billing, what was originally adopted as means to an end, becomes the end itself. What are created are sacred cows - things that are taken for granted, belief systems, processes, practices, rules you perceive will help you get things done. In truth, all they do is create obstacles to getting things done.

So where do we begin? Begin by making a decision to do something. Be open to change. Begin by building a culture of action. Cultural change is evolution, not revolution. It takes time. Be prepared to make an investment in time and money. Be prepared to start doing. If the doing is consistent, you can expect a handsome return on your investment. If you expect the future to be better than the present, you need to begin now. Plan your work and work your plan. Remember your goal is better than, not optimal. Do something today better than you did yesterday. Enjoy the result. Gain confidence. Internalize the new behavior. Do something tomorrow that's better than today. Internalize the results and move ahead.

In successful firms there is no knowing/doing gap. There is no difference between how they think, who they are and what they do!

*This article was written by **Neil Guilmette**, Executive Director of **CPA Network Inc.** Neil can be reached at 631-751-6400 X 307 or at [Neil@CPANetwork.org](mailto:Neil@CPANetwork.org)*

## **FROM THE NCCPAP TAX COMMITTEE**

In May, NCCPAP had its annual National Board and Committees meeting in Washington, DC. In addition to our internal committee meetings, we met with the offices of various members of Congress, both in the House and Senate, as well as the IRS.

We explained to the legislative representatives that the issues we are bringing to their attention come from our membership which is composed entirely of Practicing CPAs. These issues come from doing work for our clients, from the small public company to the mom-and-pop businesses and individual taxpayers.

One response that we receive occasionally is that some of our issues are the same as the previous year. To this we reply, "That problem still exists!" (i.e. AMT). Nevertheless, we are always looking for NEW ISSUES to bring to the attention of Congress and the IRS.

We have all just come out of the busiest part of the year. If you have come across an issue that you would like to see addressed in 2010, please let us know. Write down both the problem and what you think the solution could be, and send it to the Tax Committee. My e-mail address is [neil@fishmanassoc.com](mailto:neil@fishmanassoc.com). Remember, our agenda items come from YOU.

**Please take the time to help us help you and your clients.**

*Neil H. Fishman  
Chairman, National Tax Policy Committee*

## **REAL ESTATE AND TAX: ARE THERE SOLUTIONS IN THESE TOUGH TIMES?**

Tax problems can come up in unexpected ways and be unwelcome surprises at a closing or even many years later as a consequence of a real estate purchase. The present article will look at the IRS and NYS tax liens that can encumber real property, and possible ways to resolve these issues, so that a real estate closing or a refinancing can proceed.

An IRS lien arises when a taxpayer neglects or refuses to pay any tax, after demand, including any penalties and interest on that tax (IRC Sec. 6321) . The lien is on all real or personal property and rights to property of the taxpayer. Known as a “silent lien” or “statutory lien,” the lien may be effective even though not filed. Due to limited space this article will not address the numerous potential issues associated with lien priorities (see e.g. IRM 5.17.2) .

Nevertheless, in general an IRS Notice of Federal Tax Lien must be filed in order to establish priority with respect to other filed liens. Even a filed lien, however, may not have priority against certain interests, known as “superpriorities.” These may include real property taxes and charges for public utilities. See IRC Sec. 6323 (b). Thus, at a real estate closing, the IRS will usually permit property taxes to be paid before federal tax liabilities are satisfied.

In New York State, the Department of Taxation and Finance may file warrants on unpaid assessments of tax, interest and penalties. The State’s policy is to file warrants as soon as feasible, so as to protect its interests. Upon request, the State may refrain from filing a warrant if full payment is coming soon.

A NYS warrant is a public record, and creates a lien against real and personal property of the taxpayer from the date it is docketed. A NYS tax warrant is generally enforceable for ten years against real property, and twenty years against personal property. Any voluntary or involuntary payment by the taxpayer on a warrant (other than through application of a refund) is considered by the State as an acknowledgment of the debt, sufficient to start anew a twenty-year collection period.

If the IRS liabilities are old, the practitioner may wish to confirm that the liens are still in effect. An IRS lien remains in effect until the assessment is fully paid, or the lien is no longer legally enforceable, for example, as a result of the statute of limitations. Generally, the IRS can collect against assessed liabilities for ten years from the date of assessment. In rare instances the IRS may reduce its liens to judgment, thereby extending the time for collection. The statute of limitations also can be extended by various actions, such as filing an Offer in Compromise, bankruptcy, or filing a Collection Due Process request.

Sometimes the easiest way to resolve an IRS lien or NYS warrant is to pay the balance due and request a lien release or warrant satisfaction. The face amount of the lien or warrant, however, is not a reliable indicator of the payment needed. Accrued interest and penalties can increase a liability considerably; also, payment may have been made on the liability. The IRS and NYS will supply payoff letters on request.

Where the goal is to obtain a mortgage or to refinance, the taxpayer can request that the IRS subordinate its liens to those of the proposed lender. The subordination request can be made directly to the appropriate technical services unit at the IRS.

In December, 2008, the IRS Commissioner explicitly stated that due to the difficult economic times, the IRS was seeking to make it easier and faster for a homeowner to obtain the necessary subordinations (Press release IR-2008-141, 12/16/08). Resources were being redirected to permit a quicker turnaround time for responses, with a goal of an answer within thirty days.

There is no form for applying for a certificate of subordination. The request must identify the property clearly, provide detailed information about the liens to be subordinated or provide copies of the Notice of Federal Tax Lien, describe the interest that would take priority over the IRS lien and any other relevant encumbrances on the property, among other information (IRS Pub. 784).

It is crucial that the subordination request show adequate grounds for the IRS to grant the subordination, for example, that it will be easier for the IRS to collect the tax liabilities due, if the subordination is issued.

See IRC Sec. 6325(d). Often the IRS interprets this to require that any net proceeds from a refinancing be paid to the IRS, as a condition of the refinancing. There are guidelines for certain situations, such as the relatively new rules for subordination of accounts receivable ("Interim Guidance for Subordinations to Factors," 11/20/2008, updating IRM 5.12.3.13).

If the property is being sold to a third party, it may be necessary to obtain a discharge of the liens. This is not the same as a release, as the liens remain in full force and effect against the taxpayer, however, they are discharged as against the real property concerned. As with a subordination request, the taxpayer can apply with a letter to the appropriate IRS technical services unit.

If the technical services unit denies a request for a certificate of subordination or discharge, the taxpayer has an administrative right to appeal the decision with a Collection Appeals Program request, Form 9423 (IRM 5.19.8.1).

New York State also provides for subordinations of tax warrants if it can be shown that the State's position is enhanced by issuing the subordination. For example, if a refinancing would result in a significant payment to the State from the net proceeds of the subordination, the State may consider issuing the subordination.

As all of the above indicates, IRS and NYS tax liabilities do not have to get in the way of a smooth closing, and in fact the closing may be an opportunity to resolve long outstanding tax problems.

Footnotes:

1 All IRC references are to the U. S. Internal Revenue Code of 1986, as amended.

2 All IRM references are to the Internal Revenue Manual, available at [www.irs.gov](http://www.irs.gov).

\* A version of this article was previously published in the Nassau Lawyer, April 2009.

\*\* **Yvonne R. Cort, Esq.** is co-vice chair of the Tax Law Committee of the Nassau County Bar Association, and former chair of the IRS Liaison Committee (Garden City). She is a frequent speaker on IRS and NYS tax matters for numerous professional groups. Yvonne is admitted to the Bar in New York and Pennsylvania and is counsel with the Melville firm of **Karen J. Tenenbaum, P.C.**, where she focuses her practice on IRS and NYS tax controversies. Yvonne can be reached at [ycort@litaxattorney.com](mailto:ycort@litaxattorney.com), Karen J. Tenenbaum, P.C., 225 Old Country Road, Melville, NY 11747; tel. (631) 465-5000; fax (631) 465-5003; website: [www.litaxattorney.com](http://www.litaxattorney.com)

**DO YOU NEED CLERICAL OR LOW LEVEL STAFFING  
TO CATCH UP AFTER "THE SEASON"?**

**Contact your chapter office**

**We maintain resumes and contacts of accounting majors  
seeking summer employment and internships**

**Have a problem with NEW YORK STATE?**

**Let NCCPAP Know!**

We will make every effort to have your issue addressed by NYS.

Please contact: Andrew Hult, CPA , N/S NCCPAP Tax Liaison Chairman at  
(516) 565-1702 or email him at: [alhult@alhcompany.com](mailto:alhult@alhcompany.com)

**GOOD & WELFARE**

***Our heartfelt condolences to***

Bruce Berkowitz on the passing of his mother, Rosilyn Berkowitz  
Anthony Finazzo on the passing of his daughter, Suzanne Finazzo  
Alan Feldstein on the passing of his mother, Janet Feldstein Gaby

**Best wishes to**

Leon & Sally Alpern on their 65th Wedding Anniversary

Our Good & Welfare Chairman is Stephen Sternlieb [ssternliebcpa@attg.net](mailto:ssternliebcpa@attg.net)

## **THE FAST AND EVER CHANGING WORLD OF SALES AND USE TAXES**

Charles Darwin once said “It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change”. If you don’t think the same principle applies to businesses, you’d be mistaken. The recent changes made by the New York State Department of Taxation and Finance regarding sales and use taxes have businesses scrambling to keep up. Given that sales and use taxes are fiduciary liabilities, it is imperative that they be handled correctly.

One of the hottest topics in sales tax is the reclassification of what constitutes a sales tax vendor in New York State. Recently enacted legislation amending the tax law established that under certain conditions, out-of-state sellers of taxable personal property or taxable services affiliated with businesses in the State of New York are now considered sales tax vendors effective June 1, 2009.

Under this new legislation, if a business in New York (who, by the way, should be a registered sales tax vendor!) uses a trademark, service mark, or trade name in New York that is the same as that used by an out-of-state affiliate; the out-of-state affiliate qualifies as a sales tax vendor. Additionally, if an out-of-state business engages in activities that help develop or maintain a market in New York; such activities could create nexus with New York State.

This definition of nexus, or the minimum connection a business must have with a taxing jurisdiction whereby it is subject to that jurisdiction’s tax code, is more expansive than that of the landmark case *Quill v. North Dakota*. In the *Quill v. North Dakota* case, it was determined that a business must have a physical presence in a taxing jurisdiction in order to be subject to that jurisdiction’s tax code; even if only a traveling salesman in the state for a few days.

Be aware that not all the changes being made by the tax department are broad changes. Some changes, such as the changes made to the taxability of transportation services, are very specific. Effective June 1, 2009, sales tax must be imposed on transportation services including limousines, black cars, and other vehicles with a driver but services such as those provided by taxicabs, buses, and scheduled public transportation are not subject to sales tax.

And as if there weren’t enough tax traps and pitfalls to beware of, New York State has also changed a key component of their voluntary disclosure and compliance program. Prior to the new law, all returns filed in the program were confidential and would not be released to any other party; making this program a very viable option for many taxpayers behind on their filings and/or payments. However, effective as of April 7, 2009, the Tax Department is permitted to disclose any return or report filed by a taxpayer under the program to the Secretary of the Treasury of the United States, his/her delegates (including IRS representatives), or a proper tax officer of ANY state or city. This new approach can create a substantial amount of exposure on the Federal level.

As professionals, we have a responsibility to our clients to keep up with ever changing tax law. If these recent changes are any indication of what’s to come, there will be a lot of keeping up to do.

*This article is authored by **Joseph Calamia II** Senior Tax Specialist of **Sales Tax Defense LLC**. Joe is reachable at (516) 931-1500 or at [info@SalesTaxDefense.com](mailto:info@SalesTaxDefense.com).*



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