



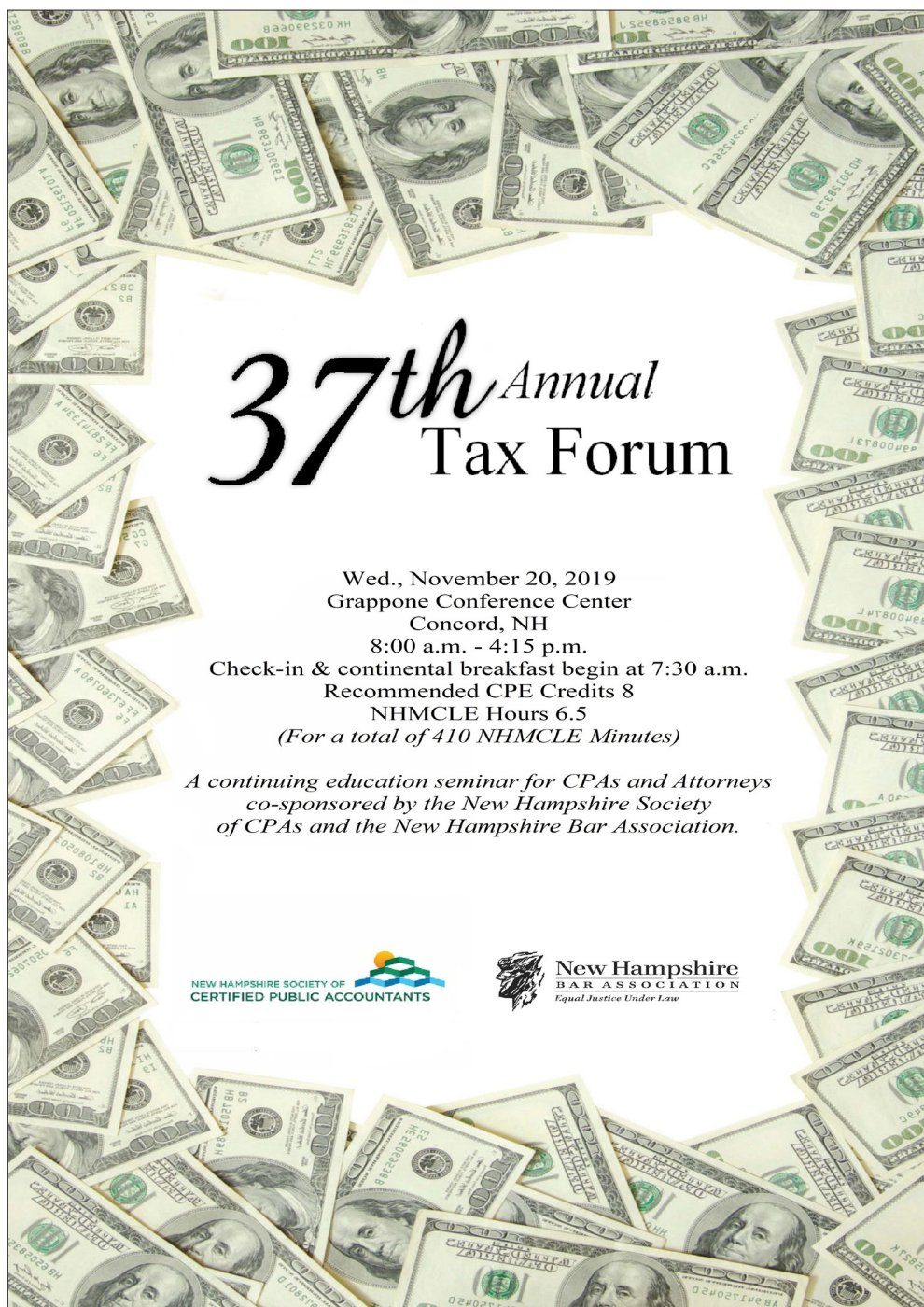
NEW HAMPSHIRE SOCIETY OF
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CONNECTION

Fall/Winter 2019

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NHSCPA CONNECTION

A publication of the

New Hampshire Society of CPAs

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From the President



Edward C. David, CPA
2019-20 NHSCPA President

As the calendar turns from summer to fall, many of us in Public Accounting are working on year-end tax planning, client advisory services and planning our year-end field work for our upcoming audits and reviews. At the same time, we have the upcoming holiday season and should be looking forward to finding some time to relax and have fun. We all need to recharge before tax season and try to remember that our number one client should always be our family. Remember to take the time to spend with loved ones and know that a loyal client will never leave you because you did not immediately respond to them. Shut off your phone, don't check your emails and go have fun. You deserve it!

As the President of the Board, I am required to attend National AICPA Council meetings and the next one will be held in Seattle, WA this October. I will be joined by Nina Chang, President Elect; Juliana Summers, Finance Manager; Karl Heafield, Council member and Joel Olbricht, AICPA Board member. Our winter newsletter will have a recap of the council meeting including current advocacy efforts, professional development and national initiatives so stay tuned.

On a local level, we will be having our Concord Town Hall on October 24th which is just a couple of days after we return from the AICPA Council. Please review the information on our website for the agenda, and know that it will be extremely dynamic and informative. The Town Hall also provides an opportunity for Society staff and board members to meet with our members in differing regions of the state. In the past, I have attended the Seacoast Town Hall as a guest, so this will be my first opportunity to participate as a panel member. Joining me on the panel will be: Robin Abbott, Joel Olbricht, Teresa Rosenberger of Devine Strategies and NH DRA Commissioner Lindsey Stepp who will be demonstrating Granite Tax Connect (RIMS) which launches its initial stage live on October 28th.

Our CPE program is robust and we will have many local and national speakers who will be presenting this fall. Please check the CPE calendar and sign up for some great education and peer interaction as this is truly one of the best ways to stay connected with our peers and professional contacts while learning.

The Society continues to do a great job with reaching out to our sponsors, re-vamping our activities, enhancing networking opportunities, ongoing advocacy at the state and national level and providing continuing professional education. Our Society, relative to many others, is in great shape both financially and with our team of Robin, Juliana, and now with our newest staff member, Kevin.

Best wishes for the upcoming Holidays!

Sincerely,

Edward C. David
2019-2020 President
NH Society of CPAs



Robin Abbott, CEO

Greetings from NHSCPA!

We've had a very busy summer which highlighted activities such as our signature Emerging Leaders' Summit, Women's Golf Tournament, Young Professional Networking Events and presence at a multitude of career fairs including our very own the last week of September. Each event reminds me of the breadth of support and services we offer

to a wide range of members including students, professionals and retirees alike. It's always great to hear such positive feedback about our outreach especially from our members who have been such incredible supporters for many years. Thank you all for continuing to contribute and collaborate with us and with all of our business partners.

I want to also take a moment to welcome our newest colleague here at the Society, Kevin Philpot, who will be taking on the role of CPE and Event Coordinator. Kevin is a recent graduate of UNH and someone who has achieved a great amount of success in the area of design, technology and communications among other accomplishments. His skills will undoubtedly add to our visibility and future growth particularly as it increases in the area of web based communications including live-streaming video, website management, and design creation and implementation. Please consider taking a moment to say hello to Kevin the next time you're in our offices or at an

upcoming event. We are very excited to welcome him to our team.

Our CPE calendar is very busy over the next few months and we are diligently working at creating a spring calendar including local speakers – which is always well received. If you have any ideas regarding content and areas of interest, please reach out and let us know. We are always happy to highlight new speakers and professional material particularly as it relates to timely issues and industry trends. We strive to offer the highest quality of education while anticipating unforeseen needs of our members and their required CPE needs and your guidance and suggestions help us achieve this goal.

As always, we could not build on our success without your membership and support and are extremely grateful for our corporate sponsors who have committed their resources to enhancing our member benefits and experiences. Please take a moment to review our list of sponsors and consider making an introduction or referral as you see fit when planning services for yourself or your clients.

With continuous gratitude,

A stylized, handwritten signature in black ink, appearing to read 'Robin Abbott'.

Robin Abbott, CEO
NH Society of CPAs

New Hampshire Society of CPA Receives 2019 Best of Manchester Award



New Hampshire Society of CPA has been selected for the 2019 Best of Manchester Award in the Certified Public Accountant category by the Manchester Award Program.

Each year, the Manchester Award Program identifies companies that we believe have achieved exceptional marketing success in their local community and business category. These are local companies that enhance the positive image of small business through service to their customers and our community. These exceptional companies help make the Manchester area a great place to live, work and play.

Various sources of information were gathered and analyzed to choose the winners in each category. The 2019 Manchester Award Program focuses on quality, not quantity. Winners are determined based on the information gathered both internally by

the Manchester Award Program and data provided by third parties.

About Manchester Award Program
The Manchester Award Program is an annual awards program honoring the achievements and accomplishments of local businesses throughout the Manchester area. Recognition is given to those companies that have shown the ability to use their best practices and implemented programs to generate competitive advantages and long-term value.

The Manchester Award Program was established to recognize the best of local businesses in our community. Our organization works exclusively with local business owners, trade groups, professional associations and other business advertising and marketing groups. Our mission is to recognize the small business community's contributions to the U.S. economy.



Hello all!

My name is Kevin Philpot and I am happy to announce that I am joining the NHSCPA team and will be taking on the role of Marketing and Events Coordinator. I am excited to bring my skills to the Society and build strong relationships within the business and professional community.

As for a little background about myself, I am a twenty two year old communication student from the University of New Hampshire with interests in digital design, media and marketing. I was born in New Orleans, LA and now live in Manchester, NH, which was quite a change of scenery, but I thoroughly enjoy New Hampshire. In my free time, some of my hobbies include music production, video production, graphic/3D design and playing hockey. For those who watch hockey, I am a Detroit Red Wings fan but do also enjoy watching the Boston Bruins. As far as pets go, I own a thirteen year old Shar-Pei/Pitbull mix and she is the sweetest dog anyone could imagine. I look forward to becoming part of the NHSCPA community and the many opportunities ahead! Please feel free to reach out to me if I can be of assistance or if you have any ideas related to our future growth and development. My email is kphilpot@nhscpa.org



**WE WANT
TO KNOW!**

Let us know about new hires, promotions, awards, and any community service events in which you and your firm participate in. Send your news to: kphilpot@nhscpa.org

Welcome the NHSCPA's newest members!

Kathleen Robart

Nicole Zheng

Kaitlin Morin

Ying Simpson

Cameron Broughton

Gin Gar Bo

Paula Baxley

Kymberly Messersmith

Zachery Oliver

Joseph Krug

Michael Jurnak

Steven Geer

Douglas Greene

Ariana Lampes

Lillian Young

Alexander Gamache

Rebecca Simoneau

Ashey Budd

Kaylee Cavagnaro

Rebekah Kissner

Melanie Loos

Devin Duhaime

Douglass Whittlesey

Catherin Francis

Tim Healy

Benjamin Nadeau

Madeline Moynihan

Charles Carter

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Jenna Bortolussi

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Ashley Mical

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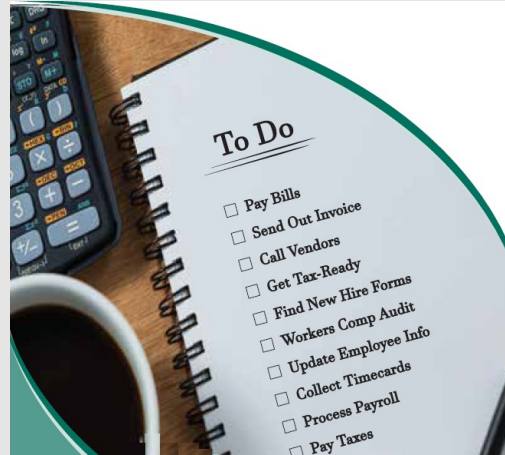
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Legislative Update

By Teresa Rosenberger, NHSCPA Legislative Consultant

NH Society of CPA's Legislative Report September, 2019
Fall is here and the Legislature is back at work after a nice break for most. The Governor and the House and Senate Leadership have come to a resolution for a final budget. As you know, the House and the Senate passed a budget that they both finally agreed upon. The Governor, as predicted, vetoed the compromise budget. The House and Senate then passed a continuing resolution that would allow the State to operate for 3 months under the FY 19 budget dollars. That continuing resolution was expiring at the end of September so the pressure was on to find a compromise; otherwise the NH State Government would shut down. Are we really becoming Washington? The House and Senate both met on September 19th for veto day and were assuming they would also have a new budget bill. The Democrats tried to bring in a new budget bill on veto day, however, since neither the Governor nor the Republican leadership were part of the drafting of the new Democratic budget, they refused to vote to let the new budget bill be introduced. The clock was ticking and now what. The House and Senate decided to come back in session on September 25th hoping to avert a crisis and hoping the Governor, House and Senate leadership could find a workable budget compromise. The rumors were flying as there still seemed to be no resolution. Clearly business tax cuts were a main sticking point as well as lower than expected revenues coming in, so what to cut. It was almost the 13th hour, Tuesday night, the 24th, when the Governor, House and Senate negotiators finally reached an agreement. Now the chore was to convince the House and Senate to allow a new budget bill to be introduced which means a 2/3rds vote of all present. Then they only needed a majority vote of the House and Senate to pass. With a little theatre from the ultra conservatives who did not like the compromise budget, the new budget and trailer bill, HB 3 and HB 4, passed both the House and Senate with only a few no votes. We have a budget. It is not retroactive, however.

What is important for CPA's in the budget?

- › Conformity with the Federal 2018 IRS code is in the budget;
- › Market-based sourcing is in the budget; also SB 190, which is market-based sourcing bill, has been signed into law;
- › Single sales factor sourcing is in the budget; and
- › Maintaining the current BPT rate of 7.9% and the BET rate of 0.6% through FY 2020. On January 1, 2021, the rates can go up to 7.9% for the BPT and 0.675% for the BET if the FY 2020 revenues are below plan by 6% or more. The rates can also go down to 7.5% for the BPT and 0.5% for the BET if the revenues for FY 2020 are above plan by 6% or more.
- › Provisions relative to global intangible low-taxed income (GILTI) to the BPT.

Bill	Title	Sponsor
LSR 2173	Relative to The Authority Of Limited Liability Company Members or Managers to Execute Real Property Transactions.	Rep. Robert Harb
LSR 2198	Allowing Municipalities to Collect An Occupancy Fee From Operators Of Local Room Rentals.	Rep. Michael Edgar
LSR 2233	Relative to The Semi-annual or Quarterly Collection Of Taxes In Certain Municipalities.	Rep. Julie Gilman; Rep. Marjorie Porter
LSR 2251	Establishing A Committee to Study The Filing Of Certain Organizational Income Reports with The Secretary Of State.	Rep. Kenneth Wells; Rep. Chris Balch; Rep. Kat McGhee; et al.
LSR 2289	Relative to The Tax Expenditure Report.	Rep. Patrick Abrami; Rep. Richard Ames
LSR 2290	Relative to Electronic Filings Of Meals and Rooms Tax Returns and Interest On Payments Of State Taxes.	Rep. Richard Ames
LSR 2294	Relative to Reports On Education Tax Credit Scholarships.	Rep. Linda Tanner
LSR 2407	Relative to Information On Meals and Rooms Tax Revenues In Each Municipality.	Rep. Tom Loughman
LSR 2487	Relative to Unitary Combined Reporting On A Worldwide Basis Under The Business Profits Tax.	Rep. Thomas Schamberg
LSR 2488	Relating to Taxation. Providing That A New State Broad-based Tax May Be Enacted Only to Reduce Property Taxes.	Rep. Thomas Schamberg
LSR 2517	Relative to Tax Rates and Credits.	Rep. Jerry Stringham
LSR 2524	Relative to Community Revitalization Tax Relief Incentives.	Rep. Casey Conley
LSR 2549	Relative to Deductions From The Business Profits Tax For Investment In New Hampshire Designated Economic Opportunity Zones.	Rep. Werner Horn
LSR 2577	Relative to Filing Of Business Profits Tax Returns.	Rep. Susan Almy
LSR 2630	Relative to Business Tax Conformity to The Internal Revenue Code.	Rep. Richard Ames
LSR 2716	Relative to The Taxation Of Accessory Dwelling Units.	Rep. Harrison Kanzler
LSR 2717	Relative to The Meals and Rooms Tax.	Rep. Harrison Kanzler

What bills are now Law?

- › SB 190 – modifies the apportionment to NH of sales of a business organization with activities in other states and the apportionment of dividends of a business enterprise based on sales within NH (Market-based sales).
Signed into Law.
- › SB 242 – Wayfair bill; Prohibits other states from requesting private consumer information from, conducting examinations of, or imposing sales and use tax collection obligations on sellers in NH, unless the other state provides notice to the NH Attorney General. It allows sellers to comply with any directive from other state taxing authorities, while preserving the seller's rights under the statute, if the seller determines that such compliance is in the seller's best interest. It also creates a Commission to monitor the changes in State and Federal legislation on

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Legislative Update

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- › tax collection from NH sellers.
Signed into Law.
- › SB 270 – allows a BPT tax credit for donations to technical and career schools not to exceed an aggregate of \$500,000 in any fiscal year.
Signed into Law.

What has not passed but could be back next year?

- › HB 117 – increasing Interest and Dividends exemption and decreasing the R&D credits against the BPT and BET;
- › HB 653 – rooms and meals tax for short term room rentals Airbnb;
- › HB 686 – funding an adequate education with a 5% capital gains tax;
- › SB 223 – increasing the minimum gross business income required to file BPT.

What is dead?

- › State tax on all payroll over Federal Social Security cap at Social Security rate of 6.2%;
- › Income tax;
- › Sales Tax; and
- › Allowing municipalities to collect a fee from Airbnb rentals of up to 2% per occupancy per 24 hour period.

As of this writing the Society is not introducing any legislation for 2020. However, if you know of any issues that we should address in legislation for 2020, please let us know soon. The House filing period has ended, however, and the Senate filing period for bills to be introduced in 2020 opens October 16th and closes October 30th.

Enjoy the fall colors.

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Much Ado about something: Data Privacy and Security Compliance in the 21ST Century

BY DOUGLASS G VERGE, SHEEHAN PHINNEY BASS & GREEN PA



Like it or not, we live in a digital world. The 21st century is the information age. And even if one were inclined to go off the grid, so to speak, there really is no escaping the fact that our personal information is still accessible. Think about it - our banks, credit card companies, even the merchants we deal with, are “on the grid.”

As part of the World Wide Web, the third parties holding our private information have a responsibility to keep that information confidential and to protect it from unauthorized disclosure. In many cases they have that obligation by virtue of contracts or obligations assumed pursuant to their own privacy policies. However, in many cases they are obligated by law to maintain confidentiality of, and to protect, our personal information.

What are these laws? Well, they are numerous and varied. And, they exist both within the United States and elsewhere. Interestingly, unlike Europe or Canada, for example, the United States does not have a national data privacy law of a general nature. The United States does have national privacy laws that are specific to particular industries. For instance, the Health Insurance Portability and Accountability Act of 1996 (HIPPA) applies to the use and disclosure of individuals’ health information (called “protected health information”) by organizations subject to the Privacy Rule (i.e., “covered entities” - health care providers, health plans, health care clearinghouses). The Gramm-Leach-Bliley Act requires financial institutions - companies that offer consumers financial products or services like loans, financial or investment advice, or insurance - to explain their information-sharing practices to their customers and to safeguard sensitive data. The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children’s education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (“eligible student”).

But what about everyday personal information not covered by these types of laws or requirements? Some countries or regions have their own privacy laws. For example, with regard to personal information of natural persons (individuals) located in the European Economic Area (EEA) (including the European Union (EU)), the recently enacted General Data Protection Regulation (GDPR) applies. Our

neighbor, Canada, has the Personal Information Protection and Electronic Documents Act (PIPEDA).

In the United States, protection of personal information apart from the specific situations such as those identified above is left to each individual state. One of the most comprehensive state data privacy and security laws is the recently enacted California Consumer Privacy Act of 2018 (CCPA). In some respects it is similar to the GDPR. It applies to the collection of personal information about natural persons who are California residents.

What exactly is the personal information that is covered by these laws? In a nutshell, it is virtually any kind of information that can directly or indirectly identify a natural person. Obviously personal information includes name, address, telephone number, email address, Social Security number, and bank account and credit card numbers, but that is not all. For instance, laws such as the GDPR say that personal information also includes IP addresses (even though IP addresses in reality identify a device rather than a particular person). Even if particular personal information alone could not be used to identify an individual, if different pieces of information could be combined to identify a person, then each such piece of information is considered personal information under the applicable law.

Each law must be reviewed to determine whether it even applies to a particular business. For example the GDPR applies to the processing of personal data (a) in the context of the activities of an establishment of a controller or a processor in the EEA, regardless of whether the processing takes place in the EEA or not (an establishment is basically a physical presence, and conceivably could include even shared office space), (b) the processing of personal data of data subjects who are in the EEA by a controller or processor not established in the EEA, where the processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the EEA, or (c) to the monitoring of such data subjects’ behavior as far as their behavior takes place within the EEA. It is important to keep in mind that the GDPR applies to the processing of any individuals’ data while they are in the EEA - it is not limited to citizens of the EEA.

In comparison, the CCPA applies to any for profit “business” (essentially any type of entity or business structure) that (a) itself or through others collects consumers’ personal information and that alone, or jointly with others, determines the

[continued on page 10 >>](#)

Legislative Update

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purposes and means of the processing of consumers' personal information, (b) does business in the State of California, and (c) satisfies one or more of the following thresholds: (i) has annual gross revenues in excess of \$25,000,000, or (b) alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices, or (c) derives 50 percent or more of its annual revenues from selling consumers' personal information.

Some questions a business might be pondering are:

1. Why do I even need to worry about these laws?

Businesses that fall within the scope of coverage of the various data privacy and security laws must comply with their requirements or risk potentially substantial liability, from both governmental enforcement authorities and individuals. For example, financial penalties under the GDPR for failure to comply can be as high as the greater of 4% of the business' annual revenues for the prior year or €20 million. In California, each violation of the law can cost the business up to \$2,500, and if intentional, up to \$7500. Additionally, the business could potentially be subject to injunctive relief or other types of sanctions. Furthermore, compliance likely will instill confidence in the minds of individuals doing business with the company as to security of their personal information.

2. What are the chances that a government authority or individual would come after us if we don't comply?

The answer - unknown. As to the GDPR, for example, while conceivably a small or medium-sized business in the United States might not be high on the priority list for the GDPR enforcement authorities (at least at present), noncompliance is a gamble with extremely high stakes. There is some indication that fines might be the preferred method for gaining compliance. If there is a good faith effort at compliance but literal noncompliance, perhaps a warning would be given before a fine or other more serious action is taken. Obviously, it would be significantly easier for an action to be taken by a California governmental authority or individual, as the existence of lawsuits against out of state companies in other contexts indicates.

3. How would the liability even be enforced against us in our home state?

With regard to the GDPR, conceivably various international treaties could be invoked to enforce an order or judgment obtained in the EEA against business located in the United States. Also, it is conceivable that the EEA

authorities could prohibit a business from transacting business in the EEA or impose other sanctions. With regard to individual states, such as California, risk of enforcement is substantially higher. There are procedures in place for enforcement of judgments in states other than the state where the judgment has been obtained. Given the California authorities' propensity to seek redress from businesses outside of California (for example with regard to enforcement of Proposition 65), risk of enforcement of the CCPA is probably not negligible.

The old saying "an ounce of prevention is worth a pound of cure" is very pertinent in the case of complying with various data privacy and security laws. Not only will compliance afford a business protection against potential financial (and other) exposure, it will instill confidence in the minds of individuals dealing with the business. Compliance is not something to be ignored, but rather something to be embraced.



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2019 Annual Women's Golf Tournament



This year, the New Hampshire Society for CPAs held the Fifth Annual Women's Golf Tournament with the New Hampshire Women's Bar Association! Thank you to everyone who was able to attend and for those who volunteered their time!

The 2019 NHSCPA and NHWBA Golf Tournament winners were Ellen Musinky from UNH, Franklin Pierce School of Law, Sarah Youngclaus Smith from Youngclaus & Company and Christina Hickey from Youngclaus & Company. The winner of the longest drive was Sarah Bee from Merrill Lynch and the winner of closest to the pin was Vera Buck from Bernstein Shur.



Chair, Shannon Hudson and her team

Hoffman-Haas Fellowship Now Accepting Applications

The Hoffman-Haas Fellowship is a great opportunity for future community leaders to engage in learning about being effective nonprofit board leaders. Through presentations from national speakers, mentoring by nonprofit and community leaders, and dialogues about the hot board topics of today, the Hoffman-Haas Fellowship strives to populate New Hampshire nonprofit boards with inspired, prepared, and ready-to-be-engaged board leaders.

In addition to giving back to your community, research shows that volunteering helps develop important professional skills:

- › Negotiation and influencing
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The next cohort begins in spring 2020 and will meet in Manchester.

Learn more and apply at NHNonprofits.org/Fellowship





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Maggie Frizzell
Staff Accountant



Chris Byrne
Office Administrator

same team. new name.

NEW LOGO F.A.Q.

Why the change?

Michelle McVetty's promotion to partner earlier this year led us to explore a meaningful transformation of our name and logo. After much consideration and reflection we arrived at a name that honors where we live, work and play, here in New Hampshire's North Country.

How did you decide on your name?

Finding the right name is not as easy as you think. The search for a new name involved everyone in the firm brainstorming meaningful ideas at a special retreat. We wanted the name to reflect our firm, to be distinctive yet down to earth. Although the retreat was inspiring, it didn't lead to a name. Next we explored different languages, translating name ideas to create an aura of mystery. We posted promising ones around the office, but still nothing grabbed us. Soon after, one of our staff suggested "Coös" and that was the spark! Back to our roots.

What is the origin of Cohos?

According to the History of Lancaster, NH, Cohoss is believed to be a Native American word for "a large and valuable tract of land along the Connecticut River." Over time, it was shortened to Coös and became the name of the northernmost county in New Hampshire. It is in this spirit that we adopted a version of the original spelling as our new name, with a logo that speaks to the unparalleled beauty of our surroundings.

Pronunciation guide:

Cohos [place name | co'awss] n.

1 Native American term [usually sp. Cohoss]. **2** A continuous hiking trail from the southern end of Coös County in the White Mountain National Forest to the northernmost border with Canada. **3 A team of accounting professionals dedicated to putting our clients' needs first, located on Main Street in Lancaster, New Hampshire, in the heart of Coös County.**

My business is great! Why do I need a business continuity plan?

BY JENNIFER ELDER

Your business is going great and you want to keep it that way. A business continuity plan is like insurance – you hope you never have to use it but it's priceless if you have to use it!

A business continuity plan or BCP is designed to help you respond to and recover from potential business disasters. A business disaster is defined as “an unplanned interruption of your business for an unacceptable period of time.” Physical damage from natural disasters is often the first thought that comes to mind. Yet, there are many financial effects that can have a substantial negative impact on an organization. Employees may not be able to come into work. Customers may not be able to get to your location. Data and records may be permanently lost. Utilities may be down for weeks. Suppliers may be displaced.

A good disaster response plan, also called a business continuity plan (BCP) addresses these potential issues from a broad perspective. But why go through the time and energy to create this type of plan? There are three reasons to plan – frequency, speed, and cost.

Disasters occur frequently!

Wildfires in California, hurricanes on the coast, tornados in the Midwest, blizzards in the North. From 2007 to 2016, across the globe there were 354 natural disasters. In 2017 alone there were 335.

According to the Federal Emergency Management Agency (FEMA), in 2017 disasters affected 8% of the population of the United States. If you were not affected personally, your family or friends likely were. 2017 saw FEMA responding to 59 major disasters and 16 emergency declarations.

Basically, there are two types of companies – those that have experienced a disaster and those that are going to.

Disasters happen quickly!

Many types of disasters have little or no warning: sabotage, internet outages, tornados, and earthquakes. When a disaster strikes, you and your employees are dealing with extreme levels of stress, anxiety, fear and sadness. You may be dealing with information overload or a complete lack of information.

The chaos alone is enough to make it harder to think clearly, quickly, and smartly. According to Earl Miller, a neuroscientist at Massachusetts Institute of Technology, switching between just two tasks can reduce your IQ by 10 points! Now imagine the effect if you are multi-tasking all day, all week, and under extreme stress.

Disaster Recovery is Expensive!

After a disaster, organizations may have to deal with many difficult financially impacting problems simultaneously. Loss of sales, loss of customers, loss of vendors, increased materials costs, decreased employee productivity, lack of employees, and damage to reputation can all occur. Then there's the added burden of dealing with increased financial needs while cash flows are reduced. You may need to pay for clean-up and replace damaged equipment and inventory. Material costs might also be much higher due to the sudden increase in demand. Sadly, many organizations mistakenly believe that insurance and/or government aid will be sufficient to get back up and running. Yes, once you've exceeded your deductible, your insurance will likely cover some of your expenses, but it likely won't cover them all. Plus, many disasters aren't covered without a specific rider. Yes, you might be insured, but sometimes the coverage and support you receive comes too late as it takes time for insurance companies to process claims. If the disaster affects many people, as is often the case with a hurricane or flood, you may wait as long as six months to two years to receive full payment. By then, your doors could be closed. As one might anticipate, bankruptcy filings increase substantially in the five years following a disaster. Robert Lawless, a professor at the University of Nevada at Las Vegas, reports that, in states directly hit by a hurricane, they go up by 50 percent. For states with tangential damage, there is still a 20 percent increase.

Do You Have a Business Continuity Plan?

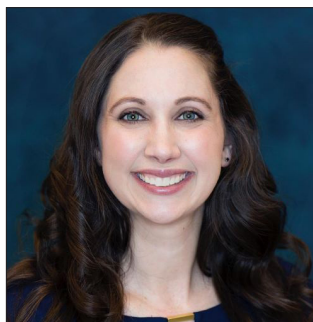
Businesses with a business continuity plan have a plan (and know how to use it) to reduce damage and get back to business faster. FEMA estimates that 40-60 percent of all businesses never reopen after a disaster. In fact, one study conducted by the University of Texas Center for Research on Information Systems found that, after suffering a catastrophic data loss, 43 percent of companies never reopen and 51 percent close within two years. Regardless of whether the number is 40 percent, 43 percent, or even 25 percent, the question you need to concentrate on is whether or not your company can survive!



Howell Valuation, LLC welcomes new employees

To accommodate growth, Howell Valuation, LLC recently hired two employees and expanded its office space in Exeter. Casey Gray joined the firm as an Executive Assistant. She previously worked for Target Corporation as an Executive Team Leader with roles in Sales and Human Resources. Casey graduated from the University of New Hampshire and lives in Exeter with her husband and two children. Alyson Van De Water joined the firm as an Associate Analyst. She previously worked for the University of New Hampshire in the Planned Giving department. Alyson earned her Bachelors and MBA degrees from the University of New Hampshire. She lives in Stratham with her husband and three children.

Howell Valuation, LLC was formed in 2003 and provides business valuation services throughout New England for Employee Stock Ownership Plans, estate/gift taxes, buy-sell matters, shareholder disputes, marital dissolution, economic damages and succession planning.



Casey Gray
Executive Assistant



Alyson Van De Water
Associate Analyst



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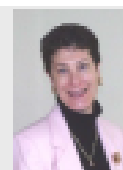
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Tax Relief for Accidental Americans

BY SHIVA KARIMI

The IRS announced a new tax relief program on September 6, 2019 geared towards “Accidental Americans.”

Accidental Americans are individuals who are U.S. citizens, either by birth in the U.S. or through other eligibility for U.S. citizenship, but have very limited ties to the U.S. Sometimes Accidental Americans do not realize they are U.S. citizens until adulthood, or are entirely unaware of their U.S. citizenship until an event brings it to their attention. One of the difficulties faced by accidental Americans is their obligation under U.S. tax laws. U.S. citizens are subject to worldwide income tax, no matter where they live. The U.S. is one of very few countries with this obligation imposed upon its citizens. Complying with these laws is complex and burdensome.

Various U.S. laws have created measures to enforce the tax obligations of U.S. citizens. Notably, in 2010, the U.S. passed the Foreign Account Tax Compliance Act (FATCA), which requires all non-U.S. foreign financial institutions to search their records for individuals with connections to the U.S. and report their assets and identities to the U.S. Department of Treasury. This caused a record number of U.S. citizens to attempt to renounce their U.S. citizenship. However, there are numerous tax obligations that come with expatriation.

On September 6, 2019, the IRS announced a new tax relief program that is targeted towards Accidental Americans.

The program applies to individuals who:

- › Relinquished U.S. citizenship after March 18, 2010.
- › Had a net worth of under \$2 million at the time of expatriation and at the time of submission.
- › Had an aggregate U.S. tax liability of \$25,000 or less, for a certain time period, after allowance of credits for foreign tax.
- › Have not willfully failed to file taxes.
- › Have never filed a U.S. tax return as a U.S. tax resident.

Individuals who are eligible for this tax relief must file tax returns and any required reports for the year of expatriation and the preceding five years, and certify that their previous failure was not willful. Fulfilling these requirements will alleviate an individual's liabilities under U.S. anti-expatriation rules.



Shiva Karimi is the Managing Director of McLane Middleton's Boston office and a member of the firm's Immigration Practice Group. Her practice focuses on business immigration law. She advises employers and employees in developing creative and effective strategies for temporary and permanent immigration solutions. She also counsels employers in immigration compliance matters and assists employers in responding to audits and investigations. She represents clients across a range of industries including high technology, manufacturing, government, independent schools, non-profits, service businesses and families. Shiva can be reached in the firm's Boston office at (781) 904-2690 or shiva.karimi@mclane.com.

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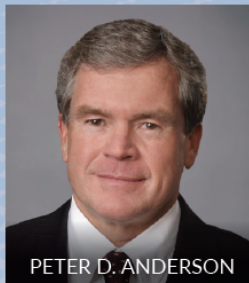
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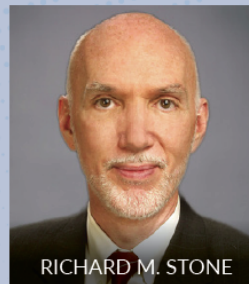
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Saving Your Bacon with Cloud Accounting

BY IRENE WACHSLER

It's Monday afternoon, November 25th and you just got off the phone with your best client. The owner, Shari, needs an up-to-date Profit & Loss statement ASAP. She's meeting with a banker for a business loan tomorrow. She wants to close the deal before Thanksgiving.

You were planning on visiting Shari's office next week to close her monthly books. Your staff is on vacation this week (remember, it's Turkey Week). Your spouse booked a flight this evening to visit your in-laws. You...

This has happened to me. I'm willing to be that most of us have had a similar experience. But this will never happen to me again!

Why not?

We moved all of my critical business processes to the Internet / Cloud. Our client's accounting systems are in the Cloud. Our client's documents are in the Cloud. Our tax software is in the Cloud. My audit program software is in the Cloud.

I have a portable hotspot. I can work from almost anywhere in the world. I can shlep my laptop (usually don't, it's too heavy). Or I can take my iPad. Or I can lease / work on someone else's computer...

Plus no more heavy lifting. No more software installations / updates. No more data backups. No more worrying about offsite storage (no more trips to the bank safety deposit box).

You may be thinking...

Aren't you concerned about data security in the cloud?

We are. However, we tend to use well-established, Fortune 1000 companies. These companies have a lot more dollars and resources to protect their data (i.e. my data) in the cloud than I do on my personal computer. At the New York Accounting & Finance show this past July, I spoke with an Intuit representative. Intuit publishes QuickBooks Online (and QuickBooks Desktop). The rep told me that, last year, Intuit spent approximately \$400 million worldwide on data security.

\$400 million. That's a lot more money than we have to spend on data security.

Also, for each Cloud account that I have, I make sure that I have:

1. A very strong password that contains at least one special character, number, capital and lowercase numbers. According to Digital Guardian, "the average email address is associated with 130 accounts." Each online account that I have has a unique 20-character password. Same with those questions (your first car, your first job, etc.) I use Keeper to keep track of these passwords. AND
2. Two-step authentication. Microsoft, Intuit, Xero, and almost every software vendor has an Authenticator App which is synchronized with your smartphone. You need to enter the generated code from your phone's Authenticator App before you can login to your online account. You might also receive either a phone call or text with the generated code.

The first service that we moved to the cloud was accounting / bookkeeping – QuickBooks and Xero. If you're not ready to make the leap into the cloud, you should host your client's QuickBooks / Accounting System on the Cloud (or find someone else to host).

I moved my Accounting System to the Cloud

How can we expect our clients to use Cloud-based applications if my accounting firm doesn't use them?

During tax season, I meet with potential clients via either phone or face-to-face. We discuss each client's specific situation and I spend between 20 minutes to 1 hour. For those folks who have indicated that they would like to either schedule an appointment or have our firm prepare their taxes, using my iPad, I login to my Cloud Accounting application and email the potential client an invoice for a retainer fee.

While I'm still meeting with the potential client, they open up their email, click on the link to my invoice, and pay my invoice online using their credit card.

I've locked in new business and eliminated the free advice syndrome. Plus we have improved cash flow. And we're not chasing after a potential client.

continued on page 20 >>

Saving Your Bacon with Cloud Accounting

<<continued from page 19

Save Time with Cloud Accounting

How much is your time worth? You can establish both bank and credit card feeds in both Xero and QuickBooks. A feed establishes a link with your client's bank and then automatically downloads each transaction into your client's accounting system. You no longer have to manually enter the general ledger transactions into your client's accounting system.

Also, each platform allows you to create bank rules. A bank rule specifies which account a general ledger transaction should be posted against. For example, a bank rule might specify that all transactions from the vendor Verizon should be posted against the Telecommunications account.

No more traveling to your client's office to reconcile their books / accounting records. You can check in on your client's accounting system on a more timely basis without leaving your office. And the bank reconciliation work should be faster and easier because all the transactions from your client's bank and credit cards were automatically downloaded into your client's accounting system.

Your client's transactions are downloaded automatically. Hassle-free. You or your client no longer have to use QuickBooks DirectConnect or Web Connect. Nor does your client have to worry about potential data breaches / virus contamination when their QuickBooks server is connected to the Internet.

Plus your client's accounting information is up-to-date. Every day.

Easier to Spot Fraudulent Transactions

If you are utilizing bank rules, then fraudulent or unusual transactions will stick out like a sore thumb because they do not have a bank rule associated with them. You

can then examine this unusual transaction and reach out to your client to see if they recognize the vendor or the transaction.

You can also integrate your client's Cloud Accounting System with an automated bill payment system which can also reduce employee fraud. An automated bill payment system eliminates the manual task of writing checks and mailing the check to a vendor. Bill payments can be automatically deposited into a vendor's bank account instead of cutting a check to a third-party.

Also, your client doesn't need to maintain a large inventory of paper checks.

Easier to Prepare for Tax Season

Cloud Accounting should reduce both yours and your client's stress levels. No more sifting through shoeboxes of cash receipts or stacks of bank and credit cards. Also you don't have to worry about whether or not your client's accounting system has been reconciled through the end of the tax year. Or whether or not your client has recorded all of their business expenses. Remember, each transaction was already automatically downloaded into your client's accounting system.

All you need to do is import the trial balance into your tax software or print/data enter the trial balance/financial statements into your tax software. That's it. No more heavy lifting. Done.

You can still charge the same price for the tax return yet doing less manual bookkeeping/data entry labor. Frees up your valuable time for you to concentrate on other high-value tasks. More time to enjoy a relaxed dinner with your family or friends.

This is only the tip of the iceberg. Welcome to the power of cloud accounting!



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ACC 730	Financial Reporting Review Course
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Trends in the supply of accounting graduates by New Hampshire's colleges and universities

By Charles F. Malone, CPA and Kenneth R. Malone, CPA

Due to business expansion, retirements, and other turnover, every healthy organization needs to periodically bring in new blood to invigorate and grow the organization. Is your public accounting firm or company looking for entry level accountants? Most organizations recruit locally and the majority of college graduates begin their professional careers in the same state or region where they attended school. This is reflected in the composition of the current NHSCPA leadership team in which a review of the NHSCPA and employer websites indicates that at least 10 of the 16 current NHSCPA officers and directors earned one or more degrees from New Hampshire's colleges and universities and 6 members of the leadership team obtained one or more degrees from schools in the neighboring states of Massachusetts or Maine. Although the leadership team also includes graduates of New York and Florida institutions, it is clear that New Hampshire and bordering states' schools significantly contribute to New Hampshire's accounting community.

This article updates our prior reports on the supply of business and accounting graduates from New Hampshire's colleges and universities that were published in the Summer 2014 and Fall 2017 issues of the NHSCPA Connection. In addition to showing the trend in business and accounting graduates from the state's colleges and universities, the article identifies the schools supplying the graduates. We hope that this will be informative to New Hampshire's employers, academic institutions, and business educators.

According to The Chronicle of Higher Education Almanac of Higher Education 2018-19 (CHE), New Hampshire ranks 6th in the United States in per capita income and has the nation's lowest poverty rate. The educational attainment of the state's adult population significantly surpasses the national averages at the associates, bachelors, and graduate degree levels. New Hampshire's high school dropout rate of 2.4% is well below the national average of 4.1% and the percentage of the state's 18-24 year old residents attending college exceeds the national average. Almost half of the New Hampshire's residents who attend college go to out of state institutions. Only Vermont and the District of Columbia have a lower percentage of their residents attending college within their home estate (per CHE). Another major area of concern to the state's colleges and universities is the 15.2% predicted decline in number of NH high schools graduates during the period 2019 – 2029 (per CHE). On a positive note, New Hampshire ranks 4th nationally in the percentage of college freshmen coming from outside the state (per CHE).

Information Sources

The graduation statistics for the academic years 2017-2018 (the most recent available year), 2015-2016, and 2012-2013 were obtained from the United States Department of Education (USDE). The specialized business accreditation status for the schools was based on May 2019 website listings for the Association for the Advancement of Collegiate Schools of Business (AACSB), the Accreditation Council for Business Schools and Programs (ACBSP), and the International Assembly for Collegiate Business Education (IACBE). In June 2019, the websites for New Hampshire schools were reviewed to obtain additional information regarding the schools' business and accounting programs. Please note that schools frequently review their program offerings and some schools may have recently adopted academic program changes not yet shown on their websites.

Bachelors and Masters Graduates in Business and in Accounting in Academic Year 2017-2018

Table 1: NEW HAMPSHIRE BUSINESS AND ACCOUNTING BACHELORS AND MASTERS GRADUATES

School	Type	Specialized Business Accreditation	Business Bachelors Graduates 2017-2018	Business Masters Graduates 2017-2018	Accounting Bachelors Graduates 2017-2018	Accounting Masters Graduates 2017-2018	Accounting Major?		Accounting Concentration, Option, Minor, or Area?	Accounting Concentration, Option, Minor, or Area?
							Bachelors	Masters		
Anthony University-New England	Private		0	4	0	0	No	No	No	No
Colby-Sawyer College	Private	ACBSP	36	0	3	0	No	No	Yes	No
Dartmouth College	Private	AACSB	0	287	0	0	No	No	No	No
Franklin Pierce University	Private	IACBE	78*	45*	23*	0	Yes	Yes	Yes	No
Granite State College	Public		105*	30*	13*	0	Yes	No	No	No
Keene State College	Public		90	0	0	0	No	No	No	No
New England College	Private		59*	132*	20*	61*	Yes	Yes	Yes	No
Plymouth State University	Public	ACBSP	184	54*	14	13*	Yes	Yes	No	No
Ricci University	Private - Religious	ACBSP	30*	30*	0	0	No	No	No	No
Saint Anselm College	Private - Religious		104	0	10	0	Yes	No	Yes	No
Southern NH University	Private	ACBSP	2,885*	3,054*	539*	409*	Yes	Yes	Yes	Yes
UNH - Durham	Public	AACSB	611	145	0	27	No	Yes	Yes	No
UNH - Manchester	Public		28	0	0	0	No	No	Yes	No
Totals			4,210	3,781	622	510				

Table 1 provides information regarding graduates and programs at the 13 New Hampshire schools that conferred business and/or accounting degrees the academic year 2017-2018. These were the same schools that had business graduates in academic year 2015-2016. There were 4,210 business bachelors degrees awarded in 2017-2018, an increase of 1,613 (62%) from academic year 2015-2016. At the masters level, the reported number of business graduates increased by 890 (31%) during the same 2 year period. Note that the business graduate totals include accounting majors.

As shown in Table 1, there were 8 schools (Colby-Sawyer

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Trends in the supply...

<< continued from page 23

College, Franklin Pierce University, Granite State College, New England College, Plymouth State University, Saint Anselm College, Southern New Hampshire University, and UNH at Durham) that awarded accounting bachelors and/or accounting masters degrees. There were 622 accounting bachelors degrees awarded by 7 schools in academic year 2017-2018, an increase of 273 (80%) from academic year 2015-2016. The 510 accounting masters degrees conferred by 4 schools in the academic year 2017-2018 represents an increase of only 4 (less than 1%) during the two year period. Interestingly, accounting bachelors degrees as a percentage of business bachelors degrees increased from 13.3% in academic year 2015-2016 to 14.8% in academic year 2017-2018 while at the masters level accounting's percentage declined from 17.5% to 13.5%. This may indicate that many masters students seeking 150 credit hours for CPA licensure already completed sufficient accounting hours and opted to broaden their general business knowledge rather than obtaining an accounting masters degree.

Southern New Hampshire University (SNHU), one of the nation's 10 largest schools in enrollment, has continued to grow at a high rate. At the bachelors level, SNHU accounts for over 90% of the state's increase in business and accounting graduates. At the masters level, all of the increase is attributable to SNHU. That is, the number of masters graduates in accounting and all business majors experience would have decreased absent the increase by SNHU. From an employer perspective, it is important to recognize that although most of the schools offer distance education, according to the USDE over 90% of Southern New Hampshire University's overall enrollment at both the undergraduate and graduate levels is entirely distance education. While only 14% of SNHU's undergraduates are from New Hampshire (per USDE), the school is clearly contributing to the state's accounting profession as evidenced by the presence of at least 6 SNHU graduates in the NHSCPA's leadership team.

As noted in our prior articles, Table 1 understates the supply of qualified accounting graduates because the USDE data for accounting graduates does not include graduates who earned degrees with an accounting "concentration," "minor," "focus," "area of interest," or "option" (rather than a "major"). Table 1 identifies schools which, according to their June 2019 websites, offer these alternatives to an accounting "major." Figure 1 shows the trend in business and accounting graduates over the 3 academic years.

Associates Degree in Accounting Graduates in Academic Year 2017-2018

Graduates earning the associates degree in accounting have a variety of opportunities in public accounting, industry, government, and non-profits. The associates degree can be the ultimate objective or a step in the pathway to earning a bachelors degree.

Table 2:

School	Type	Specialized Business Accreditation	Accounting Associates Degree Graduates 2017-2018
Great Bay Community College	Public	ACBSP	10
Lakes Region Community College	Public		10
Manchester Community College	Public	ABBSP	21*
Nashua Community College	Public	ACBSP	12
New England College	Private		3*
NHII - Concord's Community College	Public	ACBSP	13*
River Valley Community College	Public	ACBSP	5
Southern New Hampshire University	Private	ACBSP	141*
White Mountains Community College	Public		8*
Total			223

As shown in Table 2, nine NH colleges spread across the state awarded a total of 223 associates degrees in accounting during the 2017-2018 academic year. This was an increase of 76 (52%) over the 147 awarded in the academic year 2015-2016. The supply of associates degrees in accounting has more than doubled since the academic year 2012-2013, when 102 associates degrees in accounting were conferred.

Conclusion

The supply of associates and bachelors degrees in accounting awarded by the state's colleges and universities has continued to grow at a high rate while the masters in accounting has stagnated since the academic year 2015-2016. It will be interesting to observe how the expected dramatic decline in high school graduates in New Hampshire and other northeastern states impacts the future supply of accounting graduates to serve New Hampshire's vibrant economy.

Charles F. Malone, Ph.D., CPA is on the accounting faculty at North Carolina A&T State University in Greensboro, North Carolina. Chuck is a New Hampshire native and inactive member of the New Hampshire Bar. Chuck can be contacted at malonec@ncat.edu.

Kenneth R. Malone, CPA is a retired partner in the firm of Malone, Dirubbo & Company, P.C. with offices in Laconia, Franklin, and Lincoln.

Are New Hampshire based businesses required to collect Sales & Use Taxes for a foreign state?

By Maurice P. Gilbert, CPA, MST

The answer to this question would appear to be simply no as long as the business had no physical presence in the particular state. This long standing interpretation requiring physical presence as the nexus standard, at least for sales and use tax purposes, was the status of the law under the U.S. Supreme Court precedent of *National Bellas Hess, Incorporated v. Department of Revenue of the State of Illinois*, 386 U.S. 753, 87 S Ct 1389, (05/08/1967) and *Quill Corporation v. North Dakota*, 504 U.S. 298, 112 S Ct 1904, (05/26/1992). Nexus is the connection that exists between the state taxing jurisdiction and the business that allows the state to constitutionally impose its taxing statutes on the business. The Use Tax is a companion tax to a Sales Tax for purchases made outside the customer's home state for use within their home state. The Use Tax is imposed on the customer and not the seller of the products or services. The business serves merely as a collection agent for the foreign state at the time the sale is made; however, if the tax is not properly collected by the seller, the foreign state can enforce the Use Tax liability against the business several years later when the business is unlikely to recover the tax from the individual consumer. Since New Hampshire never enacted such taxes, New Hampshire based businesses could simply avoid all of the issues associated with the collection and reporting of such taxes unless the business had a physi-

cal presence within a state that was imposing sales and use taxes on businesses operating within its boundary.

On June 21, 2018, the U. S. Supreme Court abruptly changed direction indicating that the physical presence requirement was not a necessary interpretation under the United States Constitution's Commerce Clause that a state must adhere to in order to meet the substantial nexus standard previously established. *South Dakota v. Wayfair, Inc.* U.S. Supreme Court, Dkt. 17-494, June 21, 2018. In its Opinion, the Court believed that the Quill determination was flawed and that it should be overturned. In doing so, the Court was essentially allowing the use of an economic presence, a concept used by most states for corporate income tax purposes, to determine whether or not there was a substantial nexus in existence between a taxing jurisdiction and a taxpayer. The elimination of the physical presence as a nexus requirement applies not only to sales using the Internet but also to sales to consumers of a neighboring state. Using advertising, a web site to promote their products within a state or other means to invite potential customers from a neighboring or more remote state may create a sufficient enough nexus standard to constitutionally allow the market state to require compliance with its taxing statute for Use Tax collection purposes.

[continued on page 25 >>](#)

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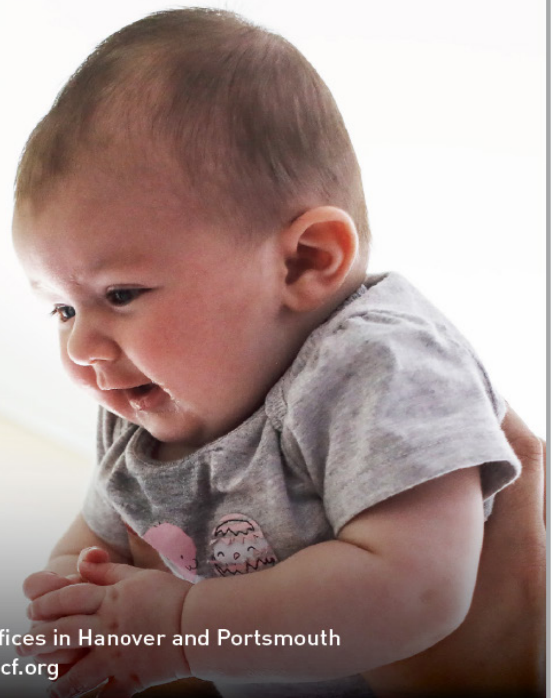
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While not declaring the South Dakota statute constitutional, the Court analyzed the various elements in the statutory language and indicated that requiring a minimum monetary or transactional level along with other features in the South Dakota law to minimize complexity existing in Sales & Use Tax statutes and seemed to imply that other states with such provisions would be constitutional. Since June 2018, most of the states have adopted statutes that reflect the South Dakota approach. The two types of potential tax collection agents that are identified in most of the newly adopted statutes are “remote sellers” and “marketplace facilitators”.

A remote seller is a business that actually provides the tangible personal property or service to the consumer while a marketplace facilitator is a business that is functioning more like an intermediary platform between the seller and the consumer, such as, but not limited to, Amazon or E-Bay. A vendor can be both a remote seller that sells the tangible personal property directly to a consumer in another state or it can at the same time be a user of services provided by a marketplace facilitator requiring that the vendor know and understand how each is treated under the laws of a particular state. In the marketplace facilitator arena, states differ on their approach with about half requiring that the marketplace facilitator be the collection agent for the transaction rather than the remote seller but other states place the collection requirement on the vendor itself. Businesses that use a market facilitator must carefully determine who has the collection and remittance of tax obligations based on the particular state’s statutes. Most of the states have adopted effective dates for their Use Tax collection provisions that are on or before July 1, 2019 and have also looked to enforce the collection requirement on a prospective basis limiting the exposure to periods after the U.S. Supreme Court decision in Wayfair (June 2018) since the Court indicated that retroactive enforcement would be a potential constitutional issue. Retroactive application does not mean that a state cannot collect the Use Tax for any period before the business files its first return but rather it means the period of time that is before the state was constitutionally permitted to apply it and in this case it would be June 2018.

WHAT SHOULD BUSINESSES AND THEIR TAX ADVISORS NOW CONSIDER?

Since businesses begin the Use Tax process as mere collection agents rather than the taxpayer, the sooner the businesses are compliant with the obligations imposed

by taxing states the less they are financially at risk on incurring a tax obligation of their own. Businesses should begin a review of their nexus status in the states where their gross instate receipts (before considering exemptions such as sales for resale) from the sale of tangible personal property or potentially taxable services exceed either \$100,000 or their individual in-state transaction level exceeds 200 in a taxable period. Some states that previously had a transactional level have since eliminated that requirement and now look only to the monetary level. The threshold levels generally apply on an annual basis so nexus may be established in one year but not the next requiring that the business be constantly aware of their activities in foreign states.

Many states look to the current year or prior year as the test period to determine whether their threshold has been met. If the current year is being used for the determination, the business would likely be required to register and start collecting the tax once the threshold has been met rather than on the previous sales for that year. Businesses should conduct a sales-by-state sales review at a minimum to determine where their exposure may be and to set up an orderly process to move forward. Businesses should also carefully review the states where the business files income tax returns. It is likely now that if there is nexus for use tax collection there is likely also nexus for income tax purposes or vice versa. If a business had not reviewed its income tax nexus standard in foreign taxing jurisdictions, the time may be appropriate to conduct both a review of income and use tax nexus in all of the states where business is being conducted.

The analysis will also require making business decisions based on the risks the business owner is willing to take in the area of compliance costs compared to an eventual tax liability. A number of the states imposing collection requirements on businesses do provide some assistance with the costs associated with the collection obligation as well as eliminating some of the burden by paying some of the costs associated with setting up the required systems for the remote seller to bill, collect and report the tax liability to the taxing jurisdiction. These states have contracted with a select group of tax compliance businesses referred to as Certified Service Providers (the “Providers”) to work with the remote seller to set up the required systems that will interface with the remote sellers’ current accounting systems, if possible so the remote seller can calculate the proper tax to bill the customer using the Providers software, include the

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tax amount on their customers' invoices, with the Providers accumulating the information for preparation and filing of the Use Tax returns in a timely manner, the handling of any subsequent audits by the taxing jurisdiction as well as holding the remote seller harmless for any errors caused by the Providers. Although this may not eliminate all of the compliance costs that may arise, it should diminish them significantly and likely eliminate the need for creating a new back office operation for the remote seller. Essentially, the business is outsourcing the back office operations to the Providers reducing the potential need to add significant costs in personnel, equipment and software.

After determining the potential obligations to collect Use Tax on behalf of various states, the business owner and their professional advisors will need to determine which products and/or services may be taxable in the various states and which of their customers may have exemptions from the tax available such as a sale for resale exemption. Not all of the states are consistent in the enumeration of taxable products or services, so this may be a bit tedious to undertake but is absolutely necessary to minimize the risks that will come up under a subsequent audit when the auditor discovers that it was not calculated properly. The business is not usually in a position to ask their customer to make up that difference resulting in the uncollected tax becoming the obligation of the remote seller. There are differences in definitions, taxability of the same or similar products and exemptions that exist between states so a one size fits all approach will not work.

A number of states (currently 24) with sales and use taxes have banded together to simplify this area of taxation by voluntarily entering into a multistate compact called the Streamlined Sales Tax Project (the "SSTP") under which the States follow common laws, regulations and policies eliminating a great deal of the complexity issues. In addition, these states generally impose a single tax at the state level rather than having them imposed at the various levels of government. In New England, Vermont and Rhode Island are members of the SSTP. Before beginning to collect, the business must register with the various states where it has nexus. Here again, the states that are part of the SSTP generally require a single registration form through the SSTP website to comply with this requirement. Sales tax states are trying to ease the burden on remote sellers in order to get the use tax collected since voluntary compliance by their own resident businesses and individuals does not work well, if at all.

Another area of great importance beyond the "internet sales" piece for New Hampshire businesses will be to look at their cross-border sales of tangible personal property. Businesses will need to examine their policies in the areas of marketing, customer service responsibilities at the time of sale, how much information the business obtains from the customer etc. in order to determine whether or not to collect the Use Tax for the neighboring state. Gone are the days that businesses can simply say "Shop New Hampshire Tax Free". That phrase may still be OK for remote sellers whose consumers walk in to their location, buy a product and walk out with it but it is doubtful that it will work with someone who has the product delivered (whether by common carrier or the businesses own truck) to a state with a Use Tax. It could also be an invitation for an audit from the neighboring state. Adopting policies and procedures will be helpful for staff training and potentially defending against assessments by taxing agencies.

WHAT ARE SOME RISKS THAT EXIST FOR A BUSINESS THAT FAILS TO COMPLY WITH THE USE TAX COLLECTION REQUIREMENT?

The greatest risk to the business for the failure to collect the Use Tax is the conversion of an agency tax collection responsibility to an actual tax liability for the remote seller. Since the business is not registering, collecting, reporting and remitting the Use Tax from its customers to the customer's home state or the state where the delivery took place, there is no statute of limitation protection on the imposition of the tax against the business at a future date some three, five or even ten years later. The state can seek to collect the tax from the business for any length of time permitted by their individual statutes since there is no federal standard in place to limit the state.

Although the foreign state's taxing agency may not have actual sales information from the business, states do have the ability and authority to make assessments based on the best information available to them should the business fail to provide the necessary data and it then becomes the responsibility of the business to dispute the information - not here in New Hampshire but rather in the foreign state making the assessment. The ability to challenge the information does have a time frame in which the challenge must be filed administratively and if that protest is not timely filed the estimated liability becomes final, subject to a judgement and

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collection action. Once it becomes final, the business is unlikely to be able to reduce that liability which in many cases may simply be higher than an actual calculation based on the evidence would have produced. The State then has the ability to collect on the debt from any assets that may be in the State, such as, but not limited to, a customer's future payments to the business, outsource the task to a national or regional collection agency or seek to have the courts in various states enforce their judgement which appears to be permitted under the United States Constitution's Article IV Section 1 assuming the liability is material enough to warrant these kinds of efforts.

Purchasing and selling the business in a future year can be impacted by contingent liabilities for the failure to have complied with all of the tax responsibilities the business had – including to have properly collected Use Tax of foreign taxing jurisdictions from its customers. Counsel for purchasers of the business will raise the potential tax issues among others as they perform their due diligence in any proposed transaction. Failure to have complied with all tax obligations may affect the purchase price for the business, may require that the sellers indemnify the purchaser for a number of years after the transaction is closed to cover the possibility of a future audit causing the contingent liability to become an actual liability or it may require that the sellers place funds in escrow to cover the potential liability. Cleaning up these potential liabilities when the sale transaction has begun could delay it or cause the potential buyer to walk away.

IS THERE SOME PROTECTIVE LEGISLATION FOR NEW HAMPSHIRE SMALL BUSINESSES?

The New Hampshire Legislature in its 2019 session passed Senate Bill 242 which the Governor signed into law. The bill, entitled "An Act providing for protection of private customer information and rights of New Hampshire remote sellers in connection with certain foreign sales and use taxes" (RSA 78-E), places a number of "bumps in the road" for a foreign taxing jurisdiction to overcome if it wants to impose its collection obligations on a New Hampshire remote seller as well as some remedies for the business to avail itself of. It is too early to tell whether or not the foreign taxing agency will follow the requirements or if the remedies will withstand a legal challenge. I would advise businesses to examine the statutory language of RSA 78-E with their legal counsel

before determining how much protection it really provides.

Assuming that it provides complete protection from the collection responsibilities and any penalty for the failure to comply with the foreign states requirements is at best foolish and at worst setting the business up for tax liabilities from which it may be unable to overcome causing the business to cease operating. I would expect that the foreign states would not seek to spend significant resources to collect small total liabilities from individual New Hampshire remote sellers having established monetary threshold of \$100,000 that most states have adopted. Businesses should also remember that a foreign state taxing agency conducting an income tax audit (not covered by the provisions in RSA 78-E) of a business could obtain necessary information to make both an income tax and use tax assessment during the same audit.

In addition to newly enacted RSA 78-E, there is an older statute, RSA 78-D, that was enacted to protect consumer information from retail sales in 2009. I do not recall there being any challenges to that statute although it does not have the same requirements or remedies as the new one. Businesses should also review this statute with their legal counsel.

At the federal level, during the past several sessions of Congress, legislation has been introduced to require that physical presence be the nexus standard at least for Use Tax purposes and impose other limitations on the states. That kind of legislation was never enacted into law. There are a number proposed bills in the current session of Congress on this subject. One such piece of legislation (S. 2350) was introduced by New Hampshire Senator Shaheen and co-sponsored by Senators Hassan (NH), Wyden (OR) and Merkley (OR). Although the legislation does not attempt to prevent the other 45 states with sales and use taxes from collecting their taxes it does try to provide more time for businesses to comply as well as establish a small business exemption of \$10,000,000 in gross annual receipts. Small remote sellers in states without a sales and use tax could benefit greatly if Congress were to enact legislation that got more states to join the SSTP program or at least require them to reimbursement a remote seller for the start-up and operational costs associated with collecting their Use Tax obligations. The problem is created in the first place by the foreign states' inability to collect their own

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taxes from their own citizens.

IF I AM A TAX ADVISOR WHAT SHOULD I BE DOING WITH MY CLIENTS?

If you have not already advised all of your clients about the changes that are taking place in the areas of use tax and income tax nexus you must include that in your tax planning meetings this fall. Economic nexus in both areas of taxation has been evolving especially during the last several years. Because the physical presence standard was around for so long in the sales and use tax world, client businesses may not have followed in any detail the Wayfair matter or they may believe that the change only applies to internet sales so there is nothing to worry about for their business activities. Make the client aware of the complete elimination of the physical presence nexus standard and how that would impact their cross-border sales of tangible personal property for use tax purposes and how non-compliance will change their responsibility from collecting a tax from their customer to one they will end up being responsible for if they do not collect and remit it to the border state. While discussing the general topic of nexus, advisors should remember that Public Law 86-272 continues to exist but it has significant limitations to consider. The law only applies for purposes of net income taxation, only applies to the sale of tangible personal property and the only activity in the

state that is permitted is the mere solicitation of the sale. The performance of any other activity such as post-sale activities or the sale of services completely eliminates its protection for all activities within that state for the particular year.

It would not be unusual for a client to have modified their activities in states where returns were not previously required or expanded into new states where economic nexus has been established requiring compliance with that state's tax laws. Owners work on growing a successful business and do not necessarily concern themselves with the complex issues of state taxation – they leave that up to their advisors to keep them informed and out of harm's way from the taxing authority. Do not confuse the nexus standard and the apportionment standard in a state and do not assume that they mean the same thing. They are actually two independent requirements unless a state's taxing statute specifically links them together, frequently referred to as "factor-based economic nexus". There is no set monetary threshold in most of the states for income tax nexus matters as is the case in the use tax area since the Supreme Court issued its Wayfair decision in June 2018 although a few states have begun to adopt the same \$100,000 threshold referenced in the Wayfair decision. Hopefully more states will move in that direction and provide bright-line nexus standards that business owners and their advisors can easily understand.

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Restructuring business owners' federal tax structures to increase their section 199A pass-through deductions

By John M. Cunningham

I. INTRODUCTION

As readers will know, new Internal Revenue Code section 199A provides annual federal income tax pass-through deductions to owners of closely-held businesses of up to 20% of their net business income. However, as many as one third of all business owners cannot maximize their section 199A pass-through deductions, and, indeed, may not receive them at all, except with substantial restructuring. This restructuring will normally involve changing the federal tax structure of their business. It may also involve changing their other tax and business arrangements and sometimes even their personal arrangements. The purpose of this article is to provide basic guidelines for section 199A restructuring.

First, however, it will be useful to provide a brief review of:

- › The rules governing section 199A pass-through deduction computations; and
- › A powerful IRS proposed regulation, designated Prop. Reg. § 1.1402(a)-2 (the "Prop. Reg."), that determines the Self-Employment Tax liability of individuals who are members of entities taxable as partnerships.

The Prop. Reg. does not apply to partners in professional partnerships. However, since its issuance in 1997, it has been central to the structuring of non-professional entities taxable as partnerships. With the advent of section 199A, its importance has greatly increased.

II. SECTION 199A—BASIC PASS-THROUGH DEDUCTION COMPUTATION RULES

There are three main types of owners of closely-held businesses who can qualify for section 199A pass-through deductions—individuals, estates and certain types of trusts. Only owners of interests in pass-through entities—namely, sole proprietorships, S corporations and entities taxable as partnerships—may obtain these deductions. But of course it is possible for many shareholders of C corporations to convert their companies to pass-through entities and thus to qualify for section 199A pass-through deductions.

For section 199A purposes, it is convenient to divide the above three types of business owners into seven broad categories, each of which is governed by a separate section 199A pass-through deduction computation rule. For readers not already familiar with them, these seven categories and the computation rules that govern each are summarized in the [attached Exhibit A](#).

III. THE PROP. REG.

In connection with section 199A restructuring, it is often appropriate to apply the Prop. Reg. In essence, the Prop. Reg. provides that individuals who are partners of non-professional partnerships will not owe Self-Employment Tax on their shares of partnership income if:

- › They lack partnership contract-signing authority;
- › They work for 500 or fewer hours for their partnership during each relevant partnership taxable year; and
- › They are not personally liable for partnership debt under the governing LLC act.

However, the Prop. Reg. provides that individuals who fail any of these tests can nevertheless avoid SET on their shares of partnership income if, under their partnership agreement, they are members of an "investor" class in which 20% of the members meet these tests.

IV. THE SIX PRINCIPAL SITUATIONS IN WHICH TAXPAYERS MAY NEED SECTION 199A RESTRUCTURING

There are six main situations which taxpayers may need section 199A restructuring. For brevity, I will refer to the relevant taxpayer in the following paragraphs about these situations as "Mary Jones."

Situation 1: Mary's business is taxable as a C corporation. In this situation, Mary should probably convert the federal tax structure of her business to a pass-through federal tax structure, since, as noted, C corporation shareholders cannot receive section 199A pass-through deductions.

Situation 2: Mary's business is a business corporation, it is taxable under Subchapter S, it has only one owner, and Mary's taxable income does not exceed her threshold amount. The section 199A pass-through deduction computation rule applicable to Mary in this situation is section 199A(b)(2)(A). In this situation:

- › Mary should probably convert her business corporation to an LLC; and
- › Her LLC should probably elect to be a sole proprietorship.

However, if Mary can identify a suitable co-owner (such as, perhaps, her husband), she should consider converting her sole proprietorship to a partnership and taking advantage of the Prop. Reg.

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Situation 3: Mary's business is a business corporation, it is taxable under Subchapter S, it has one or more owners besides Mary, and Mary's taxable income does not exceed her threshold amount. In this situation:

- › The section 199A pass-through deduction computation rule applicable to Mary is section 199A(b)(2)(A); and
- › Mary should probably convert her business corporation to a multi-member LLC taxable as a partnership and should consider structuring her partnership to take advantage of the Prop. Reg.

Situation 4: Mary's business is an LLC, it has only one owner, it is taxable as a sole proprietorship, and Mary's taxable income exceeds her threshold amount but does not exceed her section 199A statutory phase-in range. In this situation:

- › The section 199A section that will often apply to Mary in this situation if her business is a QTOB will be the lesser of her deduction under section 199A(b)(2)(A) and under section 199A(b)(2)(B)(i); and
- › Mary should probably convert the federal tax structure of her business to that of a single-shareholder S corporation.

However, if her business is an SSTB, special rules will apply.

Situation 5: Mary's business is an LLC, it has two or more owners, it is taxable as a partnership, and Mary's taxable income exceeds her threshold amount but does not exceed her phase-in range. In this situation:

- › The section 199A pass-through deduction computation rule section that will often apply to Mary if her business is a QTOB will be the lesser of her deductions under section 199A(b)(2)(A) and under section 199A(b)(2)(B)(i); and
- › Mary should probably convert the federal tax structure of her business to that of a multi-shareholder S

corporation.

If her business is an SSTB, special rules will apply.

Situation 6: Mary's taxable income exceeds her phase-in range. In this situation, the applicable section 199A computation rule if Mary's business is a QTOB will be Section 199A(b)(2). However, if her business is an SSTB, she will receive no pass-through deduction.

V. THE ROLE OF LAWYERS IN SECTION 199A RESTRUCTURING

CPAs who have a detailed understanding of section 199A can handle all of the tax-related tasks necessary in section 199A restructuring, including the development of comprehensive restructuring plans. However, section 199A restructuring sometimes requires the performance of one or more of four principal types of legal tasks. To handle these tasks, lawyers will be necessary, and these lawyers will need expertise concerning LLC law and tax. However, they should also have at least a basic understanding of section 199A.

[The relevant legal tasks are listed in the attached Exhibit B.](#)

VI. SECTION 199A AND MALPRACTICE

Tax preparers arguably have a duty to advise their clients proactively about major new federal tax developments importantly affecting their federal tax liability. Whether they have a duty to proactively advise their business owner clients about their possible need for section 199A restructuring is unclear, and thus it is unclear whether their failure to do so could result in a malpractice claim. But if they do give this advice, they may be providing a major federal income tax benefit to many of these clients.

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AICPA Announces Annual Leadership Academy Graduates

The American Institute of CPAs (AICPA) is pleased to announce the 36 promising young CPAs from around the country graduated from the 2019 AICPA Leadership Academy, a rigorous program to inspire, nurture and empower the next generation of CPA leaders.

The AICPA Leadership Academy uses interactive workshops to give participants access to advanced leadership training, networking activities and presentations from some of the profession's top thought leaders. The four-day event was held in Durham, North Carolina. The 2019 class discussed key issues and interacted with influential leaders in the profession including Bill Reeb, CPA, CITP, CGMA, AICPA Chair, Barry Melancon, CPA, CGMA, President and CEO of the AICPA and CEO of the Association of International Certified Professional Accountants and Mark Koziel, CPA, CGMA, Executive Vice president of Firm Services for the Association of International Certified Professional Accountants.

"It's an exciting time to be a young leader in the accounting profession. This year's Leadership Academy class is an impressive group of diverse professionals who are well-positioned to take the next step in their careers," said Reeb. "New technology is disrupting the profession and creating new opportunities and chal-

lenges for CPAs. These talented CPAs are a great example of the forward-thinking leaders who will not only help steer us through this transition but lead us beyond it."

The AICPA Leadership Academy is meant to serve as a succession plan for the CPA profession, ensuring a strong base of competent and committed leaders who understand the legacy of the profession and have the passion and skills necessary to address the challenges of an ever-changing global business environment. The event also encourages self-reflection and a thoughtful exploration of how leadership impacts their personal and professional lives.

"This was a fantastic opportunity to meet and build understanding with a diverse group of young leaders from throughout the profession," said Shakor Jukes, CPA, 2019 AICPA Leadership Academy graduate and 2014 Accounting Scholars Leadership Workshop participant. "The profession is undergoing major change, from increased diversity to technology transforming the way services are delivered. The Academy has better prepared me to manage and lead through that change."

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AICPA Announces Annual Leadership Academy Graduates

The program was designed to strengthen and expand the leadership skills of promising young professionals while they network with a peer group of talented and motivated CPAs. The 2019 participants comprised the eleventh graduating class, and nearly 400 CPAs have now graduated from the program.

The 2019 Leadership Academy attendees were recommended by their employers, state CPA societies or both. Candidates submitted resumes and a statement explaining how participating in the Leadership Academy would impact them personally and professionally. They also wrote an essay on the topic, "The future will bring significant changes to the accounting profession. What do leaders have to get right, in order to successfully lead?"

"The Leadership Academy really helped me identify what skills I need as I establish myself as a leader in the profession," said Brittany Cummings, CPA, 2019 Leadership Academy graduate. "The program has given me the tools and confidence to navigate our changing profession successfully and confirmed that I am steering my career in the direction I want it to go."

This year's class included representatives from 31 states. Participants were selected from public accounting firms of all sizes, business and industry, academia and consulting firms. The class contained a diverse range of ethnicities and was split nearly evenly between males and females. The average age of the attendees was 32. Details for the 2020 Leadership Academy are available online. The application period is now open.

The full 2019 Leadership Academy class is listed below in alphabetical order:

- › Lauren Aldrich, Heard, McElroy, & Vestal, LLC, Shreveport, La.
- › Robert Allen, The Allen CPA Firm, PLLC, Houston, Texas
- › Karen Bartlett, O'Brien Shortle Reynolds & Sabotka, Rutland, Vt.
- › Jose Borbon, Kearny Bank, Fairfield, N.J.
- › Chris Brown, Beall Barclay & Company, PLC, Fort Smith, Ark.
- › Clara Cohen, Bedrock Wealth Strategies, Elmsford, N.Y.
- › Kelly Crow, Reynolds, Bone & Griesbeck PLC, Memphis, Tenn.
- › Brittany Cummings, BKD, Springfield, Mo.
- › Sarah Flischel, Kunderling, Corder, & Engle, P.C., Denver
- › Jessica Foster, Cohen & Company, Youngstown, Ohio
- › Austin Foust, HoganTaylor, LLP, Tulsa, Okla.
- › Amanda Gessner, Schmitz-Holmstrom, LLP, Bismarck, N.D.
- › Matt Heo, Aronson LLC, Rockville, Md.
- › Michael Jamison, OnTarget CPA, Indianapolis

- › Andrew Jordan, Jordan CPA Services, Carthage, Mo.
- › Shakor Jukes, Target, Minneapolis
- › Brian Klintworth, HBE LLP, Lincoln, Neb.
- › Jennifer Koffman, Bellows Associates, PA, Plantation, Fla.
- › Ryan LaRue, StoneTurn, Boston
- › James McGettigan, Stoker Ostler, a part of BMO Financial Group, Scottsdale, Ariz.
- › Lacy McMoarn, Marcum LLP, Portland, Maine
- › Jessica Mytrohovich, Georgia Society of CPAs, Atlanta
- › Eugene Park, HeinfeldMeech Co. P.C., Phoenix
- › Becky Peterson, Woltman Group, Sioux Falls, S.D.
- › Colin Proctor, Marshall Retail Group, Las Vegas
- › Charlene Rhinehart, CEO Unlimited LLC, Chicago
- › Alexandria Romero, McPherson, Goodrich, Paolucci & Mihelich, PC, Pueblo, Colo.
- › Adam Schrom, Bloomberg BNA, Arlington, Va.
- › Navneet Sharma, KNAV P.A., Atlanta
- › Jordyn Sherman, Advantis Credit Union, Clackamas, Ore.
- › Ashley Sullivan, Haddox Reid Eubank Betts PLLC, Jackson, Miss.
- › Dalton Sweaney, Gray, Salt & Associates, LLP, Claremont, Calif.
- › Jana Walker, Northwestern Oklahoma State University, Alva, Okla.
- › Brittany Wilson, MHP, LLP, Cheyenne, Wyo.
- › Kendall Wilson, Dixon Hughes Goodman, Raleigh, N.C.
- › Samantha Young, Cohos Advisors, Lancaster, N.H.



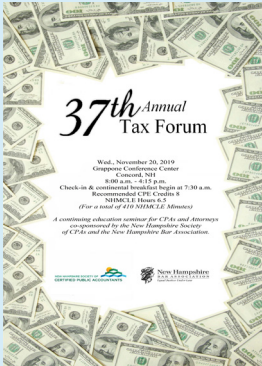
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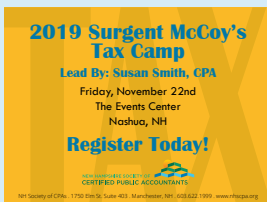


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