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CERTIFIED PUBLIC ACCOUNTANTS

# CONNECTION

FALL 2015

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# Legislative Update

*By Bruce Berke, Legislative Consultant to the NHSCPA*

The 2015 legislative session has finally concluded. Generally, legislative sessions end in June but for the first time in 12 years, Governor Hassan vetoed a state budget sent to her by the House and Senate.

## **BPT & BET**

Business tax issues was one of the three reasons cited for the veto as the Governor did not believe the budget was in balance as a result of the two proposed cuts (BET & BPT) that if enacted would have taken place between tax years, 2016-19.

During the summer, Governor Hassan countered with a BPT decrease and increased exemptions for the BET along with other revenue enhancements but that effort fell flat with the Republican controlled legislature.

So on Veto Day, the Governor and legislators did reach agreement on the budget with some tweaks. The tweaks were effectively agreeing to the state employee pay raise that had been negotiated but left out of the Governor's budget and that the second tax decrease for both the BPT and BET would be contingent upon the state achieving certain revenue levels resulting from the first round of tax cuts (calendar year 2016) for the biennium ending June 30, 2017.

## **R&D and Amnesty**

Two other tax related matters had been stalled in the budget but have now become law. First, the research and development tax credit under the BPT is now increased from \$2m to \$7m. And second, a tax amnesty from the assessment or payment of all penalties and interest in excess of 50% of the applicable interest rate for the tax period shall apply with respect to unpaid taxes reported and paid in full between 12/1/15 and 2/15/16.

## **Planet Fitness Tax Proposal**

Another tax measure that did not find favor with and was vetoed by the Governor was the so called "Planet Fitness" legislation, relative to the sale or exchange of an interest in a business organization under the BPT. The Governor stated that such a bill could poke a hole in our state budget and before similar legislation is considered, the legislature must demonstrate that the impact is not negative to the state's coffers. The legislature failed to override her veto.

## **IRC in Sync?**

A bill that the NH Society of CPAs supported was Senate Bill 239, relative to the application of the Internal Revenue Code to provisions of the BPT. The bill did not pass this

CONTINUED ON PAGE 5 >

# Welcome to New Hampshire's Newest CPAs!

**Michael Baker, Mark Burger, Marcus Chase, Ashley Guion, Morgan Hilow, Laura Latti, Michael Regan, Jason Rifkin, Gabrielle Stanton, Aaron Telage**



CPA Inauguration Pledge Recipients with Secretary of State, the Honorable William M. Gardner; Kimberly Ellison-Taylor, CPA, CGMA, AICPA Vice Chair Nominee 2015-2016, Robert S. Smalley, CPA, NHSCPA President and Wayne B. Geher, CPA, Chairman of the NH Board of Accountancy

On September 24, 2015, the New Hampshire Society of Certified Public Accountants together with the New Hampshire Board of Accountancy hosted the 13th Annual CPA Inauguration. This prestigious event serves to officially welcome newly licensed CPAs into their professional community. One hundred and eighty people attended the event including guests of the recipients, CPAs, Educators and 74 students representing, New England College, Plymouth State University, Southern New Hampshire University, St. Anselms College, University of New Hampshire, and the Peter T. Paul School of Business & Economics.



Joel Olbricht, CPA, CGMA; Guest Speaker Kimberly Ellison-Taylor, CPA, CGMA; AICPA Vice Chair Nominee 2015-2016; Rob Smalley, CPA NHSCPA President

With much appreciation, "thank you" for sponsoring students at this event. "Thank you" for sponsoring the 2015 CPA Inauguration

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## Legislative Update

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year but there was agreement among Senators, the Department of Revenue and the Society that this issue should be studied further and brought back for further consideration in the 2016 session. The Society has had some initial conversations and work sessions with the DRA and hopes to have an agreed upon amendment to move forward in January. The Society will keep you abreast of developments on the study.

### RETT

The definition of “price or consideration” under the RETT was clarified through legislation to mean only that which are “contractual transfers”. Exceptions under the law were also clarified regarding a transfer involving a death of an owner.

A few human resource related issues that the Society was closely tracking are addressed below.

### Paid Sick Leave

On a vote of 219-122, the House killed [HB 600](#), which would have required employers to provide all full and part-time employees with paid sick leave. Under the bill, employees would have accrued 1 hour of paid leave for every 30 hours worked, and accrued up to 40 hours of paid sick leave in a calendar year.

### Workers' Compensation

Two separate efforts, one in the Senate and one in the

House, to bring reform to control workers compensation medical costs were attempted but at the end of the debate, there was little to show for the efforts that were heavily lobbied by the business, labor and medical communities. This effort came in this year as a follow-up to the Governor's task force last fall that reviewed this issue. It found that over 40 other states had some form of a medical fee schedule in place to control medical spending and thus have an impact on the cost of workers compensation premiums. And it was that very issue, medical fee schedules, that led to failure to bring about any significant reform to the high costs of workers compensation rates and premiums in NH.

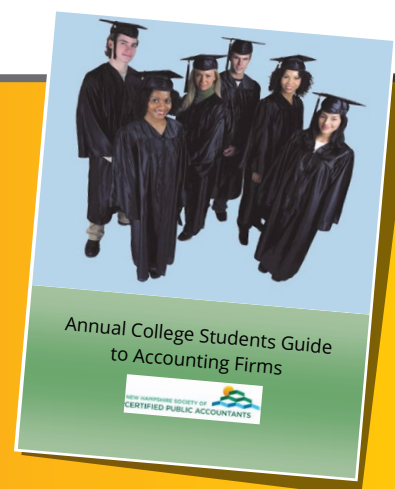
### EE's v. IC's

The definition of an employee versus that of an independent contractor continues to be vexing for the regulators and legislators. Under current law, you can be in compliance with one state agency but breaking the law in the eyes of another state agency. House Bill 450 sought to correct that issue after a non-legislative study last summer agreed on unifying the definitions for different sections of law and agencies. However, it failed to gain the support to pass the Senate after the House passed it earlier this year. We will now have a legislative study of the issue this fall with the hope that a bill may pass in 2016.

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# Highlights from the Career Fair

Thank you to the following CPA firms for participating in this year's fair and making it another great success with over 90 students participating!

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Nathan & Wechsler Co., PA (NH)

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# A Deeper Look into the Recent Report on the Quality of Employee Benefit Plan Audits

By Melissa Herbert, CPA and Heidi LaMarca, CPA

On May 28, 2015, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) released the results of its most recent study on the quality of employee benefit plan audits performed by Certified Public Accountants (CPA). The report titled "Assessing the Quality of Employee Benefit Plan Audits" outlines significant deficiencies in 39 percent of the audits reviewed.

The scope of the study included a review of the Form 5500 annual report filings and related audit reports for the 2011 filing year. The report notes that in 2011 there were approximately 81,100 filings which contained plan financial statements audited by 7,330 different CPA firms. The EBSA selected 400 plans audited by 232 different CPA firms and divided the firms into six strata based on the number of plan audits that the CPA firm performed.

EBSA's review found that 61 percent of audits fully complied with professional auditing standards or had only minor deficiencies under professional standards. The remaining 39 percent of the audits contained major deficiencies. Of the 39 percent, the results indicated that one or more relevant Generally Accepted Auditing Standard (GAAS) requirements were not met and, therefore, would lead to the rejection of the plan's Form 5500 filing, if not corrected.

## Who should be concerned with the results of this report?

The result of the study should be concerning to both CPA firms and plan sponsors. In the event a Form 5500 filing is rejected, the plan sponsor may be assessed a fine of up to \$1,100 per day. Plan sponsors should understand their fiduciary responsibility to the plan participants when selecting a CPA firm and ensure that such firm has the requisite depth and skills to conduct plan audits. In addition, CPA firms should consider the results of the study. Employee benefit plan audits are a specialized industry and CPA firms should ensure all team members who work on plan audits are well-trained and provided the necessary tools to conduct a quality audit.

## What were the significant findings and conclusions reached?

Based on the information in the report, EBSA reached the following findings and conclusions:

- The "smaller the firm's employee benefit plan audit practice, the greater the incidence of audit deficiencies." The report indicated that firms that audit 1 -2 plans had a deficiency rate of 76 percent; while those firms that audit over 100 plans had a deficiency rate of 12 percent;
- Audit areas unique to employee benefit plans, including contributions, benefit payments, participant data and party-in-interest/prohibited transactions were among the areas of highest audit deficiencies;
- Firms that were members of the AICPA's Employee Benefit Plan Audit Quality Center (EBPAQC) had fewer audits containing multiple GAAS deficiencies;
- Employee benefit plan industry specific training may contribute to better audit results. As the level of industry specific training increased, the number of audit deficiencies decreased. Firms who failed to comply with professional standards did so because they had insufficient information about employee benefit plan audits or did not adequately use available technical materials; and
- The accounting professions peer review efforts should be enhanced to improve the identification of deficient audit work. The AICPA is addressing this through their Six-Point Plan to Improve Audit Quality. Specifically as it relates to peer review, the AICPA is going to have an increased focus on risk areas, more significant remediation including pre-issuance reviews and aggressive follow-up; root cause analysis (for poor or good quality); and, termination from peer review after repeat quality issues.

## What questions should Plan Sponsors and CPA firms be asking as a result of this study?

Plan sponsors should perform the appropriate due diligence to assess whether the CPA firm that audits its benefit plans have the necessary skills and qualifications

CONTINUED ON PAGE 9 >



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## A Deeper Look...

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to perform a high-quality audit. Some questions to consider include:

- How many plan audits does the firm conduct on an annual basis?
- Is this a focus industry for the firm or is this an ancillary practice?
- Are they members of the AICPA Employee Benefit Plan Audit Quality Center (EBPAQC)?
- What are the firm's training requirements for practitioners that perform audits of employee benefit plans?
- What technical resources are made available to such practitioners?

### CPA firms should ask themselves similar questions:

- Is this a specialized industry to which the firm is committed?
- Do we have the necessary resources and technical capabilities to perform employee benefit plan audits?
- Do we have an appropriate level of training for our practitioners?
- Should we join the EBPAQC (if not already members)?

### What changes should we expect regarding the enforcement of employee benefit plan audit quality?

As a result of the study, the EBSA recommends a number of regulatory and legislative measures which it believes would contribute to enhanced audit quality, including:

- Continue and expand EBSA's outreach activities to plan sponsors and CPA firms to discuss results of this report;
- Amendment of the ERISA definition of "qualified public accountant" to include additional requirements and qualifications necessary to ensure the quality of plan audits;
- Amend ERISA to repeal the limited-scope audit exemption; and
- Amend ERISA to permit the Secretary of Labor to establish accounting principles and audit standards to protect the integrity of employee benefit plans and the benefit security of participants and beneficiaries.

### Where does that leave CPA firms and Plan Sponsors today?

Based upon the results of this study, CPA firms and plan sponsors should expect continued scrutiny on employee benefit audits and, perhaps, greater regulatory oversight in the future. Certain things are, however, indisputable takeaways from this study. CPA firms that perform plan audits need to be committed to the employee benefit plan audit industry and provide the appropriate training, technical resources and tools to its practitioners. Plan sponsors need to critically evaluate the skills, qualifications and experience of the CPA firm that audits its plans. Both parties play an important role in protecting plan assets, plan participants and beneficiaries.

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Melissa Herbert, CPA is an audit partner in the Employee Benefit Services group at Babush, Neiman, Kornman & Johnson. She has performed and consulted on over 800 different employee benefit plans during her career. She has served on The Georgia Society of CPAs Employee Benefit Plan Conference Task Force and the Peer Review Committee.

Heidi LaMarca, CPA is the partner in charge of the employee benefit plan practice area for Windham Brannon, PC. She is currently the chair of the planning committee for the AICPA National Conference on Employee Benefit Plans and has recently completed a three year term on the executive committee of the Employee Benefit Plan Audit Quality Center.

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DATE	COURSE TITLE	VENDOR	LEVEL				CPE CREDIT				
			Basic	Inter	Adv	Update	AA	MG	Tax	Ethics	Other
11/16-18	Professional Staff Training - Level III	Jack Ellovich, CPA		✓							24
11/19/2015	Surgent's Federal Tax Camp	Surgent McCoy				✓			8		
11/20/2015	Business Communications	Loscalzo Assoc.	✓								8
11/30/2015	Pitfalls and Problems in Financial Statement Disclosures AM SESSION	Loscalzo Assoc.	✓				4				
11/30/2015	Lease Accounting in Transition PM SESSION	Loscalzo Assoc.				✓	4				
12/1/2015	Fraud for Industry	Loscalzo Assoc.	✓				8				
12/2/2015	Small Firms Conference: Issues of Today, Preparing for Tomorrow	NHSCPA				✓		8			
12/4/2015	The New Reporting Option: A Financial Reporting Framework for Small- and Medium-Sized Entities	Surgent McCoy	✓						8		
12/8/2015	Understanding New Hampshire Revised Uniform Securities Act of 2015	NHSCPA				✓			4		
12/9/2015	Getting Ready for Busy Season: A Guide to New Forms, Filing Issues, & Other Critical Developments	Surgent McCoy		✓					8		
12/10/2015	The Clarified SAS's - SAS 117 - 128	Paul Koehler, CPA		✓			8				
12/11/2015	Accounting & Auditing of States & Local Governments	Paul Koehler, CPA		✓			8				
12/14/2015	2015 FASB and AICPA Update	Loscalzo Assoc.				✓	8				
12/15/2015	Accounting for New Revenue Standard Workshop	Loscalzo Assoc.		✓			8				
12/16/2015	How to Settle An Estate for a Client from A to Z	Surgent McCoy	✓						8		
12/17/2015	Advanced Technical Tax Forms Training – LLCs, S Corporations & Partnerships	Surgent McCoy			✓				8		
12/18/2015	Advanced Technical Tax Forms Training – Form 1040 Issues	Surgent McCoy			✓				8		
12/21/2015	The Complete Guide to Payroll Taxes and 1099 Issues	Surgent McCoy	✓						8		
1/7/2016	Preparing Individual Tax Returns for New Staff & Para-Professionals	Surgent McCoy	✓						8		
1/8/2016	Tax Forms Boot Camp: LLCs, Partnerships, & S Corporations	Surgent McCoy				✓			8		
1/11/2016	New Hampshire State & Local Taxation - MANCHESTER	McLane Middleton				✓			4		
1/13/2016	1040 Workshop for Experienced Preparers	BTI				✓			8		
1/14/2016	New Hampshire State & Local Taxation - SEACOAST LOCATION	McLane Middleton				✓			4		



# CPE TRACKER

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## Thank You!

A big thanks to all those who attended and helped plan our first seacoast social event at the Redhook Brewery on October 1st. If you missed the event, we have one more event on the horizon before 2015 comes to a close!

The YP Committee had successful visits this fall to multiple New Hampshire colleges and universities including University of New Hampshire in Manchester, Southern New Hampshire University, St. Anselm College, and Plymouth State University. Thank you Kerrin Rounds for helping coordinate these visits and to the other Young Professionals who visited these schools on behalf of the YP Committee and the Society. Sharing our experience and knowledge is valuable to students – the feedback from students was positive, and shows that we have inspired accounting students to become successful CPAs!

## Upcoming Events

The Committee is currently planning the annual new hire networking event targeted to professionals with 3 or less years of experience at the Derryfield Country Club in mid-November. In the past, this event has included a panel discussion, and Becker raffling off a 50% discount for all four sections of the Becker review program, all four sections of the Final Review program as well as a set of flashcards! Stay tuned for more details to come on this exciting event!

## Interested in Joining?

Interested in learning more about what the YP Committee does? Do you have ideas for events and programs the YP Committee could plan? Email Jason Beiswenger, Committee Chair for more information [jason@hrhcpa.com](mailto:jason@hrhcpa.com).

Join us on



September 9, 2015

## United Way Day of Caring at the Silverthorne Adult Day Center in Salem, NH.



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# Making a Statement

## *Applying SSARS 21 to Your Practice*

By Mark E. Dauberman, CPA, EMBA

With Statement on Standards for Accounting and Review No. 21 (SSARS 21) going into effect for periods ending on or after Dec. 15, there are some new alternatives to choose from when associated with a client's financial statements.

### The Report

Before SSARS 21, if the accountant was not engaged to perform an audit or a review, a compilation was required when the accountant was engaged to report on compiled statements or when submitting financial statements to a client or third parties.

Under SSARS 21, the accountant will perform a review or a compilation only when engaged to do so, and each of these engagements will result in the issuance of a report. Neither of these engagements was changed in a substantive manner with the most significant changes affecting the reports.

The compilation report is a single paragraph with no headings, requiring an additional paragraph when:

- Financial statements are prepared in accordance with a special purpose framework;
- Substantially all disclosures are omitted;
- Independence is impaired;
- The financial statements are known to contain a departure from the applicable framework; or
- The financial statements are accompanied by supplementary information.

The review report now includes headings to indicate management's responsibilities and the accountant's responsibilities and conclusions. Along with the accountant's signature, the report will include the accountant's city and state. In addition, an emphasis-of-matter or other-matter paragraph is required when:

- Financial statements are prepared in accordance with a special purpose framework;
- A reference to a departure from the applicable framework on comparative statements is required to be changed;
- Prior period financial statements that were audited are being presented on a comparative basis;
- The financial statements are known to contain a material departure from the applicable framework;
- The financial statements were revised by management due to a subsequently discovered fact that became known to the accountant after the report release date resulting in a revised report that differs from the original;
- The financial statements are accompanied by supplementary information; or
- The applicable framework calls for required supplementary information.

### Preparation Engagement

The most significant change to SSARS is the introduction of the preparation engagement, performed when the accountant prepares financial statements for a client. A preparation engagement performed in accordance with SSARS is a nonattest engagement. The accountant is not required to be independent and no report is issued.

Not all engagements in which the accountant prepares the client's financial statements, or assists in their preparation, are considered SSARS preparation engagements. The accountant is not required to follow SSARS when preparing client financial statements that:

- The accountant is engaged to audit, review or compile;

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## Making a Statement

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- Will be used solely for submission to taxing authorities;
- Are personal financial statements to be included in a written personal financial plan being prepared by the accountant; or
- Will be used for litigation or business valuation services.

Other services that contribute to the preparation of financial statements are not SSARS preparation engagements. These include maintaining depreciation schedules; preparing or proposing adjusting entries for deferred income taxes, depreciation, leases or other items; drafting notes to the financial statements; and general bookkeeping.

Other engagements in which the accountant is preparing the client's financial statements are considered preparation engagements subject to SSARS requirements. The accountant is required to obtain an understanding of the financial reporting framework to be applied in the preparation of the financial statements and to obtain the client's agreement that each page of the financial statements will be clearly marked to indicate that no assurance is provided on the financial statements.

If such a legend cannot be placed on each page of the financial statements, the accountant will either issue a disclaimer to accompany the financial statements indicating the lack of assurance, or will be precluded from performing a preparation engagement and will perform a compilation.

When an accountant performs nonattest services, including the preparation of financial statements under SSARS 21, and also performs a service requiring the accountant to be independent, the accountant should make certain independence is not impaired under ET 1.295. Amongst other considerations, the accountant should evaluate whether:

- The cumulative effect of all nonattest services performed for the client does not raise threats to independence to an unacceptable level; and

- The general requirements for performing nonattest services at ET 1.295.040 have been complied with.

In addition to the specific requirements related to reviews, compilations and preparation engagements, the accountant is required to document an understanding with the client in an engagement letter signed by both the client and the accountant for all reviews, compilations and preparation engagements.

For more information, refer to the AICPA's *Preparation, Compilation, and Review Engagements Guide and to Developments in Review, Compilation, and Financial Statement Preparation Engagements—2014/2015 AICPA Alert*.

---

CalCPA Education Foundation instructor Mark Dauberman, CPA, EMBA, provides CPE and technical staff training for CPA firms, private industry employers of accountants and government organizations. You can reach him at [mark@markdauberman.com](mailto:mark@markdauberman.com). Reprinted with permission from the California Society of CPAs. This article originally appeared in the October 2015 issue of California CPA.

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## ARMAND R. GENEST, CPA (1934 - 2015)

It is with great sadness that we inform you of the passing of Past President, Armand Genest of Manchester, NH. Armand served as President of the New Hampshire Society of CPAs from 1992-1993. He also served on many committees and was the Chair of the

Professional Ethics Committee.

## FIRM NEWS

**Baker Newman Noyes (BNN)**, recently announced that Portsmouth, NH-based accounting CPA firm **Albert Stowe, CPA, PLLC** has joined the firm effective November 1, 2015. All employees will be relocating to BNN's new office at Pease International Tradeport in Portsmouth. With this new addition, BNN will have approximately 75 employees in New Hampshire.

The Law firm of **McLane, Graf, Raulerson & Middleton Professional Association** has changed its legal name to **McLane Middleton, Professional Association**.

## NEW HIRES

Fellow Member, **Sandra G. Nedeau, CPA, MBA** of Manchester, New Hampshire has joined the firm of Mason + Rich, CPAs as a Senior Accountant.

## FIND A CPA

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The Find a CPA database is a complimentary member service, but only on an opt-in basis. Signing up is simple, so don't miss out on this opportunity to market yourself or your firm!



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The firm of Leone, McDonnell & Roberts, Professional Association, recently announced the addition of Associate Member, **Kimberly McLaughlin** to their Dover, NH office and Student Member, **Derek Barton** to their Wolfeboro Office.

## PROMOTIONS

Fellow Members, **Kimberly Pecora, CPA & Deirdre Goodrich, CPA** of Nathan Wechsler & Company have both been promoted to Principals of the firm.

## RECOGNITIONS

Fellow Member, **Tricia Bouchard, CPA** of Nathan Wechsler & Company was recently elected as treasurer of the McAuliffe-Shepard Discovery Center.

Associate Member, **Cyndi Livermore** of the firm Howell & Livermore (H&L) has been appointed as Chair of the NHSCPA Business Valuation Committee. Cyndi replaces Bill Howell, who has served as chair since its inception in 2011.

Fellow Member, **Kathleen O'Sullivan, CPA** of the firm BerryDunn recently participated in the American Institutes of CPAs Leadership Academy in Durham, N.C. This year's group is the seventh Leadership Academy class, marking more than 200 graduates since the Academy's inception.

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## **Does your investment professional look at your tax return?**

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**Please answer **Yes** or **No** to all of the following questions.**

- |    |  |            |           |
|----|--|------------|-----------|
| 1. | Is the tax basis for all of your existing investments listed on your statements?.....  | <b>YES</b> | <b>NO</b> |
| 2. | Did your investment professional prepare a full listing for your accountant of all of your completed transactions this past year along with the tax loss or gain?.....                   | <b>YES</b> | <b>NO</b> |
| 3. | Did your investment professional do a full review of your tax forms and show you how your investments are impacting your tax forms?.....   | <b>YES</b> | <b>NO</b> |
| 4. | Did your investment professional review your retirement withdrawal to see if the amount you are taking is appropriate for you?.....  | <b>YES</b> | <b>NO</b> |
| 5. | Did your investment professional review any interest you earned this year and the sources of that interest to see whether or not this is the most appropriate place for that money?..... | <b>YES</b> | <b>NO</b> |
| 6. | Did your investment professional take a look at all of your dividends this year and review the appropriateness of those?.....  | <b>YES</b> | <b>NO</b> |
| 7. | Did your investment professional offer you a report on the steps investors can take to reduce their taxes?.....  | <b>YES</b> | <b>NO</b> |
| 8. | Did your investment professional review item by item your tax returns and your investment statements to determine if your tax plan is coordinated with your investment plan?.....        | <b>YES</b> | <b>NO</b> |
| 9. | Does your investment professional consider tax consequences and tax alternatives each and every time they make a recommendation?.....  | <b>YES</b> | <b>NO</b> |

**If you answered NO to three or more of these questions, then you may not be maximizing your tax strategies and you could be a candidate for a **TAX HEADACHE!****



How would your investment professional even know what tax impact there might be on any investment recommendations if they don't even look at your tax return? Our goal is to always review and consider tax implications when making decisions for our clients. Visit us at [www.gsrpnh.com](http://www.gsrpnh.com) or

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*This questionnaire or any information provided after it is not to be taken as tax advice. We are financial advisors who review tax forms on a regular basis and work with licensed tax professionals who can offer tax advice. Any and all information shared or discussed should be reviewed by a licensed tax professional prior to making any investment decisions. Securities offered through Triad Advisors, a registered broker-dealer and member FINRA & SIPC. Advisory services offered through Granite State Retirement Planning, Inc., a Registered Investment Advisor. Clearing, custody or other brokerage services may be provided by National Financial Services LLC or Fidelity Brokerage Services, LLC.*



# Highlights from the 1<sup>st</sup> Annual Women's Golf Outing



I would like to thank all of our sponsors and players for participating in the first annual NHSCPA Women's Golf Outing & Networking Event. Your support made for a very successful inaugural tournament. Thank you again for your contributions and I hope to see you at next year's tournament.

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Women's Golf Outing



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# Ongoing Duty of Retirement Plan Fiduciaries to Monitor Plan Investments

## *Confirmed by the United States Supreme Court*

By John E. Rich, Jr., Esq.

On May 18, 2015, the United States Supreme Court ruled unanimously in *Tibble v. Edison International* that retirement plan fiduciaries have an ongoing duty to monitor plan investments. The ruling came in a case involving several challenges to retirement plan investment decisions made more than six years before suit was filed which the lower courts had ruled was barred by the statute of limitations. Although not unexpected, the decision reaffirms that retirement plan fiduciaries must have a vigorous investment monitoring program in place to meet their responsibilities under the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"). Although not subject to ERISA, fiduciaries of governmental plans have similar responsibilities under state law. *Tibble* illustrates that even when employers use outside consultants to help them oversee retirement plans, they can still face liability associated with their retirement plans.

In a 2007 lawsuit, participants in the Edison 401(k) Savings Plan sued various Edison International entities and the plan fiduciaries alleging numerous ERISA claims. The claims included that the plan fiduciaries should have offered identical lower-cost institutional shares instead of the more expensive investment options selected in 1999 and 2002. The plaintiffs argued that losses were suffered because the inclusion of the higher priced funds resulted in greater expenses that lowered potential returns. The 2007 lawsuit was one of several largely unsuccessful lawsuits brought on behalf of retirement plan participants by plaintiffs' law firms against major corporate retirement plans. In *Tibble*, the lower courts ruled that the Plan fiduciaries had violated ERISA's duty of prudence by failing to investigate the possibility of offering the institutional share class funds with lower fees. Although the expense ratios of the mutual funds selected were in line with expected ratios for a plan of its size, the lower courts

held that the defendants had failed to undertake the procedural prudence required by ERISA. Edison had argued that it based its decision to offer the retail-class funds on advice from its investment consultant Hewitt. The Court rejected this argument, stating that independent expert advice does not absolve a fiduciary of responsibility and that there was no evidence in the record that Edison ever considered the possibility of using the institutional class.

Although ruling in favor of the plaintiffs, the lower courts limited the damages to only claims based on the 2002 investments. All claims relating to the 1999 investments were statutorily barred by the ERISA Section 413 six year limitations period as the lower courts found that there had not been any change in circumstances that would trigger an obligation to conduct a full due diligence review of the 1999 funds within the 6-year statutory period.

The Supreme Court reversed the lower courts' ruling that ERISA's six-year limitations period barred plaintiff's claims that the 1999 mutual fund investments were imprudent. Although the Supreme Court stated that the lower courts correctly asked whether the last action which constituted a part of the breach or violation of the duty of prudence occurred within the relevant 6-year period, the lower court was incorrect to focus on the act of designating an investment for inclusion in the plan to start the six-year period. Instead, the lower courts should have recognized that a fiduciary is required to conduct a regular review of its investments with the nature and timing of the review contingent on the circumstances.

Although sending the case back to the lower courts to decide whether or not Edison and the fiduciaries had breached their fiduciary duty in connection with the 1999 investments, the Supreme Court ruled that ERISA

CONTINUED ON PAGE 24 >



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## Ongoing Duty of Retirement...

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imposes an ongoing duty to monitor investments and remove imprudent ones. The continuing duty exists separate and apart from the duty to exercise prudence in selecting investments at the outset of inclusion in the plan. The Court stated that a fiduciary should not assume that investments that were legal and proper for retention when purchased remain so indefinitely. In light of the continuing duty to monitor investments and remove imprudent ones, so long as the alleged breach of the continuing duty occurs within six years of suit, a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones. Such a case could be filed years after the date the investments were added to the plan.

In light of the Supreme Court's ruling, employers and fiduciaries should not assume that a detailed review of plan investments upon the initial inclusion will suffice to protect against liability indefinitely. This would be the case regardless if the review is done by the employer, a committee or by an outside consultant that has assumed some level of fiduciary responsibility. Following the initial investment selection, fiduciaries must constantly monitor whether or not the initial investment decisions remain prudent ones.

Fiduciaries should establish written procedures for the periodic monitoring of all plan investments and have a written investment policy statement to set forth review criteria. If the employer delegates authority for the oversight to a committee, the delegation needs to be documented in writing. The committee should consider whether to adopt a committee charter or bylaws to formalize committee operation. In order to prove that monitoring activities are ongoing, written records of all monitoring activities should be created and retained indefinitely in case a claim is brought by participants. In the event that the plan is audited by the United States Department of Labor, the auditor will ask for records of investment monitoring.

Employers frequently engage financial professionals to assist them with their investment reviews and to provide investment support. Employers often assume that retaining an investment professional, either as a so-called ERISA 3(21) or a 3(38) fiduciary, will completely remove any responsibility for retirement plan oversight. Employers also assume that should any liability result, the financial professional and his or her firm will be responsible. Neither is a correct assumption. Even if the professional assumes fiduciary responsibility pursuant to a written contract, the employer still must select the 3(21) or 3(38) fiduciary using a prudent process and must monitor the performance of the financial professional. In addition, in most cases the contract between the employer and the financial professional will require the employer to indemnify the financial professional for any liability that could result, including the cost of defending the financial professional in any lawsuit arising out of the services to the retirement plan. As a result, when financial professionals are engaged to assist with retirement plan investment reviews, employers would be well advised to have ERISA counsel review the contract so that the employer understand exactly the scope of the services being performed and the degree of responsibility being assumed by the financial professional.

In summary, the *Tibble* decision has confirmed that retirement plan fiduciaries must have an investment monitoring program in place providing for the periodic review of all plan investments. Tibble also confirms that employers need to engage in an active fiduciary process even if outside independent professionals are retained to assist with plan investments since independent investment advice will not protect a fiduciary in all instances.

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John E. Rich, Jr., Esq. is a Director at McLane, Graf, Raulerson & Middleton, Professional Association who specializes in employee benefits, pension, ERISA and tax-related matters. He can be contacted directly at (603) 628-1438, or by email at [john.rich@mcclane.com](mailto:john.rich@mcclane.com).



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# New Tax Due Dates Create More Logical Information Flows

By The AICPA

On July 31, President Obama signed into law a short-term highway funding extension that contained important due date modifications for several common tax returns, including partnerships and C corporations. PL 114-41 is the culmination of a longstanding effort by the AICPA and state CPA societies to eliminate the awkward chronology for many returns.

Under the prior due dates, taxpayers and practitioners often had insufficient time to prepare returns because required information from a flow-through business was not available before the taxpayer's income tax return was due. The idea behind the changes is to have flow-through returns completed before the returns in which the flow-through information is reported for the recipients – in forms 1040 and 1120, for example. Taxpayers and their preparers will now have time to receive and analyze the flow-through information before reporting it in other filings.

Most of these changes are ones that the AICPA and state CPA societies have been advocating for several years. The effort centered on urging a more logical flow of information that would help taxpayers and tax professionals file timely, more accurate returns. In articles, social media posts and personal appeals to other members, about 200 AICPA and state society members volunteered their time to communicate the profession's concerns. Discussions also were held between representatives of the profession and officials

from the Internal Revenue Service and Treasury.

Among the changes, the new due date for C corporations generally will be the 15th day of the fourth month following the close of the corporation's year (i.e., April 15th for calendar year C corporations). Currently, these returns are due on the 15th day of the third month following the close of the corporation's year.

In some cases, due dates have been moved up. For partnership returns, the new due date will be the 15th day of the third month following the close of the taxable year (i.e., March 15 for calendar year partnerships). Currently, these returns are due on April 15 for calendar-year partnerships.

It's important for practitioners to note that the new law generally provides 6-month extensions (five and a half months for trusts), mitigating possible disruptions from the new due dates. The new law also provides for additional extensions not previously allowed. The due date for FinCEN Form 114, for example, will change from June 30 to April 15 to align with Form 1040 filings, and under the new law, Form 114 taxpayers will be allowed an extension, which was not previously permitted. That extended date, October 15, is also aligned with the Form 1040 extension.

For a complete list of the recent due date changes, download [this chart](#).

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## 2017 CPA Exam Changes - How will it affect you?

By Becker Professional Education

The American Institute of Certified Public Accountants (AICPA) announced that it will be launching a new version of the Uniform CPA Exam on either April 1 or July 1, 2017. According to the AICPA's proposed exam: professional content knowledge will remain fundamental to protecting the public interest, but newly licensed CPAs must also possess:

- Higher-order cognitive skills, including critical thinking, problem solving and analytical ability
- Professional skepticism
- A thorough understanding of professional and ethical responsibilities
- A strong understanding of the business environment and processes
- Effective communication skills

In addition to these changes, the proposed CPA Exam will get longer, increasing from 14 to 16 hours to complete, and will be slightly more expensive. If you qualify to [sit prior to the 2017 changes](#), we encourage you to do so.

### Why The Changes?

In early 2014, the AICPA launched a research project to identify the knowledge and skills required of newly licensed CPAs for the next version of the Exam. The AICPA found that in order to protect the public interest, those seeking licensure as a CPA must demonstrate the following:

- Have the knowledge and skills necessary to perform more advanced tasks
- The ability to contribute to complex accounting projects early in their careers
- Possess higher order cognitive skills and professional skepticism

### Why Sit Before 2017?

Proposed changes to the 2017 CPA Exam may make it more difficult than the current exam, with more Task-Based Simulations (TBS) and a focus

on higher-order cognitive skills, including critical thinking, problem solving and analytical ability.

If possible, you should plan to take and pass all four parts of the CPA Exam in 2015, 2016, or early 2017, especially the BEC Exam given the addition of TBS to the BEC section in 2017. Find out if you are [eligible to sit for the CPA Exam in your state](#) during these time frames.

In addition to these changes, the proposed CPA Exam will get longer, increasing from 14 to 16 hours to complete. The AICPA believes this shift in what the Exam will test and the method of testing will keep the next version of the Exam aligned with the knowledge and skills required for initial licensure.

If you do not pass all four parts of the CPA Exam before the launch of the 2017 CPA Exam, you will be able to keep your passing scores on all sections of the Exam that you have passed (unless your 18 month window has expired).

### Let Your Voice Be Heard

The AICPA has invited commentary on the proposed approach for the next Exam and/or to identify any critical issues that may not have been addressed in their Exposure Draft for changes in the Uniform CPA Exam that will take place in 2017. Detailed and specific feedback will enable the AICPA to better evaluate responses. Feedback to this [Exposure Draft](#) will help finalize the development of the next Exam's content, structure and design.

The AICPA will consider all responses received on or before November 30, 2015 by emailing your submission to [ExposureDraft@aicpa.org](mailto:ExposureDraft@aicpa.org).

For more information, and to sign up for updates, visit <http://www.becker.com/cpa-review/resources/about-exam/2017-cpa-exam-changes/>

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# Maximizing Tech ROI

## Four Tech Questions Every Organization Should Address

By Thomas G. Stephens, Jr., CPA, CITP, CGMA

Technology permeates virtually everything we do in our jobs. As such, when we utilize technology as a strategic asset, it can provide a substantial return on investment. On the other hand, when we fail to update our technology or to train our team members on how to utilize it effectively, results suffer. To help ensure that your organization is maximizing its technology ROI, consider the following:

1. How can you use Excel more efficiently, while simultaneously reducing the threat of spreadsheet errors?

2. Do you want to minimize internal and external threats to sensitive information?
3. Should you migrate to Windows 10?
4. What are the best collaboration tools for your organization?

### Using Excel Efficiently & Effectively

Excel is one of the most-used applications by accounting and financial professionals. Yet, most users receive little, if any, formal training on how to take full advantage of this ubiquitous tool. Consequently, productivity suffers because users remain unaware of new and improved features and advancements available with the more recent versions of the application.

To obtain a greater ROI from Excel, consider to what extent you use features such as Tables, PivotTables and Data Queries. These three tools can help you to automate many of your reporting processes, which means spending less time on mundane tasks such as creating formulas.

Also, don't overlook opportunities to extend the functionality of tried-and-true features, such as "layering" multiple levels of calculations with Excel's Subtotal feature and using array formulas to solve simple rounding issues, along with generating advanced summaries of data. Additionally, explore how the new Power BI features can help you create meaningful business intelligence applications by building on your existing knowledge of Excel.

One often-overlooked issue with spreadsheets is the error rate. Many estimates peg the error rate at approximately 90 percent of all spreadsheets in use. How can we reduce spreadsheet errors without compromising functionality? Consider taking advantage of features such as Excel's Inquire tools, IFERROR function and the Analysis Toolpak to help you prevent and detect spreadsheet errors.

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# Maximizing Tech ROI

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Of course, with the release of Office 2016, Microsoft will introduce new features in Excel and the rest of the applications in the Office suite. As you upgrade to Office 2016, carefully review and consider how you and your team can benefit from using each of these tools.

## Minimizing Threats to Sensitive Information

Just as we must address the error rate in Excel spreadsheets, also we must minimize threats to sensitive information stored by our organizations. Doing so requires a well-planned strategy that encompasses protecting data stored on PCs, laptops, servers, tablets, smartphones and in the ever-growing cloud. Key internal controls that you should consider implementing to minimize the threat of compromising sensitive data include:

- 1. Control access with strong user authentication measures.** This includes user IDs and passwords, but for a growing number of organizations, it should include password management tools, biometrics and multi-factor authentication.
- 2. Restricting the assignment of administrative rights on end-user computers.** Doing so will prevent users from implementing changes that potentially compromise data.

**3. Block USB ports from transferring data.** Sensitive data stored on uncontrolled and unencrypted USB drives represents a tremendous risk to organizations when those devices are lost or stolen.

**4. Encrypt all disks so if a device is lost or stolen, the likelihood of compromising data is minimal.** For many, simply using Windows BitLocker encryption tool will suffice here.

**5. Implement a whitelist approach to managing applications.** Instead of blocking the bad things on a computer—an endless list of malware—use a whitelist approach that blocks everything on a computer except the applications to which you grant specific rights allowing them to run.

## Migrating to Windows 10

With the July 29 release of Windows 10, Microsoft has once again altered how the majority of the world's computers will operate.

Windows 10 will be a major consideration for organizations and individuals alike for various reasons, including the fact that a large number of organizations continue to run the outdated and unsupported Windows XP operating system. Another driving factor behind the expected high adoption rate of Windows 10 is the fact that it's a free upgrade for Windows 7 and Windows 8 users.

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# Maximizing Tech ROI

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From a feature perspective, Windows 10 offers a great deal of improved functionality to users of Windows 7, Vista and XP. Most will find Windows 10 to be substantially faster than prior versions of Windows. Further, Microsoft improved security in Windows 10, adding increased protection of sensitive data.

For all users, including existing Windows 8 users, Windows 10 offers an improved Start menu that allows users to work in a more “traditional” environment. Additionally, Windows 10 includes Cortana, a voice-activated personal assistant similar to Apple’s Siri, and Continuum, a feature that adjusts your operating environment on the fly as you change from tablet mode to desktop mode on a convertible device such as a Surface Pro 3.

As you consider upgrading—particularly from Windows XP—carefully research and confirm that your existing applications will run on Windows 10 and that peripheral devices such as printers will work with Windows 10. The general rule-of-thumb here is that if your applications and devices work with Windows 7, they will work with Windows 10. However, just in case, be sure to confirm.

## Collaboration Tools for Your Organization

The emergence of collaboration tools is one of the more significant trends in technology. As the lines blur between departments—and even companies—more people find the need to collaborate in real-time with colleagues, both inside and outside the organization, to be critical in getting their jobs done. More than just simple file sharing, real collaboration means voice communication, instant messaging, whiteboards, video chats and potentially social media interaction.

Microsoft Office 365, Zoho and Google Apps for Work are among the more widely known collaboration tools available to businesses today. Each of these provides exceptional functionality and affordability to their target markets.

Additionally, niche players such as Citrix, Colligo and

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Basecamp offer solutions such as secure file transfer, synchronizing SharePoint data and project management tools you can use to address specific needs. Regardless of the size of your organization, do not overlook the need for collaboration tools when considering how to ramp up productivity.

## Summary

Technology is evolving and to ensure that we maximize our return on our investment, we must stay abreast of relevant changes that impact us as individuals and as information workers. During the coming months, invest the time necessary to address the questions and issues outlined here so you and your team will be well on your way to maximizing your technology ROI.

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Thomas G. Stephens Jr., CPA, CITP, CGMA is a shareholder in K2 Enterprises, where he develops and presents CPE to accounting, financial and other business professionals across North America. He will be presenting at CalCPA’s Technology for Professionals Conference Nov. 9-10 in Sacramento. You can reach him at [tommy@k2e.com](mailto:tommy@k2e.com). Reprinted with permission from the California Society of CPAs. This article originally appeared in the October 2015 issue of California CPA.



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