NEW DEVELOPMENTS, YEAR END UPDATE

AND 1040 CONSIDERATIONS

JANUARY 2021

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AND 1040 CONSIDERATIONS
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TABLE OF CONTENTS

NEW DEVELOPMENTS, YEAR END UPDATE AND 1040 CONSIDERATIONS JANUARY 2021

V. Health Care Reform Changes

VI. 1040 and New York State Considerations

NEW DEVELOPMENTS, YEAR END UPDATE
AND 1040 CONSIDERATIONS
JANUARY 2021

I. SCHOOL DISTRICT AND LOCAL GOVERNMENT GUIDANCE

A. RESERVES AVAILABLE TO SCHOOL DISTRICTS AND LOCAL GOVERNMENTS

AS PERMITTED BY GENERAL MUNICIPAL LAW:

Capital Reserve

Capital reserves (GML §6-c, 6-g) available to counties, cities, villages, towns, fire districts, and town or county sewer and water improvement districts are used to finance all or part of the cost of construction, reconstruction or acquisition of a *specific* or *type* of capital improvement or the acquisition of a *specific* or a *type* of item of equipment. Creation and use of a capital reserve is as follows:

Specific Capital Reserve

The creation of a specific capital reserve requires Board resolution, which must state the estimated maximum cost of the item of equipment or improvement. The establishment of a specific capital reserve is subject to permissive referendum if the authorization to issue indebtedness for the same improvement or equipment is subject to either a permissive or mandatory referendum, except for fire districts. For fire districts, the qualified electors of the fire district must vote and approve the establishment of the specific capital reserve. Expenditures from a specific capital reserve must be authorized by the Board.

Type Capital Reserve

The creation of a type capital reserve should be authorized by the Board by formal resolution however, there is no requirement to state an estimated maximum cost of the equipment or improvement in the resolution. Except for fire districts, a referendum is not required when establishing a type capital reserve. For fire districts, the qualified electors of the fire district must vote and approve the establishment of the specific capital reserve. For certain municipalities, expenditures from a type capital reserve are subject to permissive referendum. If the authorization for the purchase of such improvement or equipment is subject to permissive or mandatory referendum, the expenditure for the same purpose is generally subject to permissive referendum.

The capital reserve is funded by budgetary appropriations and revenues not required by law to be paid into any other fund or account. After all outstanding claims have been satisfied, the Board may appropriate all or part of any unexpended balances remaining in a specific or type capital reserve to another capital reserve without referendum. If a specific capital reserve was established and the improvement or item of equipment was not acquired or completed, the transfer of funds is subject to permissive referendum if the authorization for the creation of the reserve was subject to permissive referendum. Additionally, while subject to a public hearing with fifteen days notice, the unexpended balance may be transferred to a retirement contribution reserve.

Employee Benefit Accrued Liability Reserve

Reserve for employee benefit accrued liability (GML §6-p) is used to reserve funds for the payment of accrued employee benefits due to an employee upon termination of the employee's service (long-term compensated absences liability). This reserve may be established by a majority vote of the Board, and is funded by budgetary appropriations, with funds from other reserves as authorized under Article 2 of the General Municipal Law, by resolution subject to permissive referendum and such funds that may be legally appropriated. General Municipal Law (GML) allows local governments and school districts to establish an Employee Benefit Accrued Liability Reserve (EBALR) for the purpose of paying only costs associated with compensated leave paid directly to or on behalf of employees upon separation from employment. Expenditures can be made without voter approval. The reserve is accounted for separate and apart from all other funds of the school district and local government. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

However, unlike the liability calculation for compensated absences under GASB Statement No. 16, school districts and local governments cannot legally accumulate funds in an EBALR for salary-related costs, such as Social Security and Medicare taxes. Also, Other Post Employment Benefit (OPEB) costs, employer retirement contributions and/or retirement incentives for employees cannot be funded by EBALR. Presently, there is no other reserve fund authorized by the GML, or any other law for these salary-related costs. Instead, the school districts and local governments must appropriate funds in each year's budget to pay for salary-related costs associated with separation from employment.

Insurance Reserve

The insurance reserve (GML §6-n) is used to pay liability, casualty and other types of losses. The reserve may also be utilized to pay for expert or professional services in connection with the investigation, adjustment, or settlement of claims, actions or judgments. It does not include accident, health, life or other specified losses. The reserve may be established by Board action and is funded by budgetary appropriations and such other funds as may be legally appropriated. The reserve is accounted for separate and apart from all other funds of the school district. Expenditures can be made without voter approval. The annual contribution to the reserve may not exceed the greater of $33,000 or 5 percent of the annual budget. If the Board decides it no longer needs an insurance reserve fund, it may transfer the monies remaining to any other reserve fund as authorized under Article 2 of the General Municipal Law or by Education Law Section 3651, subject to any liabilities incurred or accrued against the fund. Board members commit a misdemeanor if they authorize a withdrawal from or expend money withdrawn from the insurance reserve fund for any purpose not authorized by law. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Mandatory Reserve Fund

Mandatory reserve fund (GML §6-1) is required to be established to restrict the use of the proceeds of the cash sale of property or capital improvements and state and federal aid received for capital improvements, for the purpose of retiring the outstanding obligations that were issued to finance the improvements. The creation of the reserve is mandatory and voter approval is not required to expend monies from the reserve. Expenditures may only be made to retire the obligations issued to finance the capital improvement sold or for which federal or state aid is received. Board members commit a misdemeanor if they authorize a withdrawal from or expend money withdrawn from the reserve fund for any purpose not authorized by law. Excess funds that may remain in the reserve after all of the outstanding obligations have been retired may be used for any lawful purpose. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Repair Reserve

Repair reserve (GML §6-d) is used to pay the cost of repairs of capital improvements or equipment, which repairs are of a type not recurring annually or shorter intervals. The Board without voter approval may establish a repair reserve fund by a majority vote of its members. The reserve is accounted for separate and apart from all other funds of the school district and local government. Voter approval is required to fund this reserve (Opinion of the New York State Comptroller 81-401). Expenditures from this reserve may be made only after a public hearing has been held and at least five days has elapsed between the publication of the notice of hearing and the date specified for the hearing, except in emergency situations. If no hearing is held, the Board must pass a resolution that is approved by at least a two-thirds vote. Additionally, at least one half of the amount expended must be repaid to the reserve fund in the next fiscal year and the balance be repaid by the end of the following fiscal year. Board members commit a misdemeanor if they authorize a withdrawal from or expend money withdrawn from the repair reserve fund for any purpose not authorized by law. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Retirement Contribution Reserve

Retirement contribution reserve (GML §6-r) is used for the purpose of financing retirement contributions made to the New York State and Local Employees' Retirement System. The reserve may be established by Board action and is funded by budgetary appropriation, revenues that are not required to be paid into any other fund or account, transfers from other reserve funds within legal requirements, and such other funds as may be legally appropriated. Expenditures from this reserve may only be made after the Board has passed a resolution authorizing the financing of retirement contributions. The reserve must be accounted for separate and apart from all other funds and a detailed report of the operation and condition of the fund must be provided to the Board. If the Board decides it no longer needs a retirement contribution reserve fund, it may terminate the reserve fund by formal resolution and transfer the monies remaining to any other reserve fund as authorized under General Municipal Law or by Education Law Section 3651. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

A retirement contribution reserve (GML §6-r) subfund is used for the purpose of financing retirement contributions made to the New York State Teachers' Retirement System. The reserve subfund may be established by Board action and is funded by budgetary appropriation, revenues that are not required to be paid into any other fund or account, transfers from other reserve funds within legal requirements, and such other funds as may be legally appropriated. Funding during any fiscal year is limited to two percent of the total compensation of teachers employed by the District, who are members of the New York State Teachers' Retirement System, that was paid in the previous fiscal year. The overall balance of the reserve subfund is limited to ten percent of the total compensation of teachers employed by the District, who are members of the New York State Teachers' Retirement System, that was paid in the previous fiscal year. Expenditures from this reserve may only be made after the Board has passed a resolution authorizing the financing of retirement contributions. The reserve must be accounted for separate and apart from all other funds and a detailed report of the operation and condition of the fund must be provided to the Board. If the Board decides it no longer needs a retirement contribution reserve subfund, it may terminate the reserve fund by formal resolution and transfer the monies remaining to any other reserve fund as authorized under General Municipal Law or by Education Law Section 3651. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Unemployment Insurance Payment Reserve

Unemployment insurance payment reserve (GML §6-m) is used to pay the cost of reimbursement to the State Unemployment Insurance Fund for payments made to claimants where the employer has elected to use the benefit reimbursement method (instead of the contribution method). The reserve may be established by Board action and is funded by budgetary appropriations and such other funds as may be legally appropriated. Expenditures can be made without voter approval. Expenditures may be made only as required by law to pay into the Unemployment Insurance Fund in an amount that is equivalent to the amount of benefits paid to claimants. Within sixty days after the end of any fiscal year, excess amounts may either be transferred to another reserve or the excess applied to the appropriations of the next succeeding fiscal year's budget. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Workers' Compensation Reserve

Workers' compensation reserve (GML §6-j) is used to pay for compensation benefits and other expenses authorized by Article 2 of the Workers' Compensation Law, and for payment of expenses of administering this self-insurance program. The reserve may be established by Board action, and is funded by budgetary appropriations and such other funds as may be legally appropriated. The reserve is accounted for separate and apart from all other funds of the school district and local government. Expenditures can be made without voter approval. Within sixty days after the end of any fiscal year, excess amounts may either be transferred to another reserve or the excess applied to the appropriations of the next succeeding fiscal year's budget. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

AS PERMITTED BY EDUCATION LAW:

Capital Reserve

Capital reserves (Education Law §3651) available to school districts are used to pay the cost of any object or purpose for which bonds may be issued. The creation of a capital reserve fund requires authorization by a majority of the voters establishing the purpose of the reserve; the ultimate amount, its probable term and the source of the funds. Expenditures may be made from the reserve only for a specific purpose further authorized by the voters. The form for the required legal notice for the vote on establishing and funding the reserve and the form of the proposition to be placed on the ballot are set forth in §3651 of the Education Law. If the voters determine that the original purpose for which the reserve was established is no longer needed, the reserve may be liquidated, the proceeds first be applied to any outstanding indebtedness and the remaining balance, if any, be applied to reduce the annual tax levy subject to certain limitations set in the law. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Property Loss/Liability Reserve

The property loss/liability reserve (Education Law §1709(8-c)) is used to pay for property loss and liability claims incurred. The reserve may be established by Board action and is funded by budgetary appropriations and such other funds as may be legally appropriated. Separate reserve funds must be established for property loss and for liability claims. The separate identity of each fund must be maintained, whether its assets consist of cash or investments, or both. Expenditures can be made without voter approval. For school districts, each reserve may not exceed the greater of 3% of the annual budget or $15,000. For BOCES, the total amount of reserves cannot exceed 3% of the annual budget. Once the reserve is established, the reserve fund may not be reduced (other than by payments for losses for which the reserve was established) below the estimated amount necessary to cover unsettled claims or suits. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Reserve for Inventory

Reserve for inventory is used to restrict that portion of fund balance which is not available for appropriation. This reserve is classified as nonspendable fund balance as per GASB Statement No. 54.

Reserve for Tax Reduction

The reserve for tax reduction (Education Law, §1604 & §1709) is for the gradual use of the proceeds of the sale of school district real property where such proceeds are not required to be placed in a mandatory reserve for debt service. Specifically, the District is permitted to retain the proceeds of the sale for a period not to exceed ten years and to use them during that period for tax reduction. The reserve may be established by Board action and expenditures can be made without voter approval. This reserve is classified as unassigned fund balance as per GASB Statement No. 54.

Tax Certiorari Reserve

Chapter 588 of the laws of 1988 amended district real property §3651 of the Education Law to permit the establishment of a reserve fund for tax certiorari and to expend from the fund without voter approval of the qualified voters of the school district. The reserve is funded by budgetary appropriations.

The new Chapter further stipulates that the total of the monies held in the reserve fund shall not exceed the amount which might reasonably be deemed necessary to meet anticipated judgments and claims arising out of tax certiorari proceedings.

Any monies deposited to such a reserve fund which are not expended for tax certiorari proceedings in the year such monies are deposited must be returned to the general fund on or before the first day of the fourth fiscal year after deposit of these monies. This reserve is classified as restricted fund balance as per GASB Statement No. 54.

Excess Fund Balance – Creation of Reserves

If a District has excess fund balance, the District may utilize excess fund balance to establish reserve funds that do not require prior voter approval. The Commissioner has consistently ruled that school districts may utilize these reserves provided that such reserve funds are established and the excess fund balance is appropriated to the reserve prior to the issuance of the tax levy *(Appeal of Muench, 43 Ed. Dept. Rep. 419, Dec. No. 15,039 [2004]; Real Property Tax Law Section 1318 (1)).*

Allocation of Interest

Monies residing in reserves throughout the year must have interest allocated to them based on their respective balances.

Pandemic Related Use of Reserves

As a result of the COVID-19 health crisis, and to provide flexibility in response to the financial and budgetary burdens on local governments Chapter 157 of the Laws of 2020 was signed into law on August 24, 2020. This legislation allows school districts, towns, villages, counties, cities, water improvement districts, sewer improvement districts, and fire districts, by Board resolution and is not subject to referendum requirements, to authorize expenditures from capital reserve funds for capital costs attributable to the COVID-19 pandemic. These types of costs may include but are not limited to, building and workspace modifications incurred to mitigate the spread of COVID-19.

In addition, this legislation also allows local governments and school districts, by resolution, which is not subject to referendum requirements, to authorize temporary transfer from any reserve fund for operating or other costs attributable to the COVID-19 pandemic. These funds must be paid back from the reserve fund that received the transfer within five years starting with the year after the transfer. At least 20% is required to be paid back each fiscal year, with interest.

Local governments should internally account for costs associated with COVID-19 separately, as well as all funds that may be used to cover these costs, as described above, and ensure they are repaid as required. In addition, they should document the rationale for using funds and how they are related to COVID-19 if it is not apparent.

B. BOND ANTICIPATION NOTE RENEWAL AND INTERFUND ADVANCES

Chapter 157 of the Laws of 2020 also included two other provisions to assist local governments in dealing with the financial effects of the COVID-19 crisis. Bond anticipation notes ("BANS") (other than those issued for town water or sewer projects) were previously authorized to be renewed for up to five years after the original issuance date. At that time the BANS were required to be retired or converted to long-term debt. This legislation extends the renewal period to seven years for BANS issued originally during calendar years 2015 through 2021, thereby granting an additional two years.

This legislation also provides relief relating to the repayment of interfund advances for a municipal corporation, which under general municipal law are required to be repaid by the close of the fiscal year in which the advance was made. Interfund advances that are made from one fund to another, when the advance is made for costs attributable to the COVID-19 pandemic, can now be repaid by the close of the fiscal year following the advancement, thereby granting an additional year to repay the advance.

C. TAX SHELTER ANNUITIES – LIMITATIONS

	2021	**2020**	**2019**	**2018**	**2017**
Exclusion for elective deferrals [IRC §402(g)(1)]	$19,500	$19,500	$19,000	$18,500	$18,000
Limitation on total elective and non-elective contributions [IRC §415 (c)(1)(A)]	$58,000	$57,000	$56,000	$55,000	$54,000
Limitation on deferrals under government [IRC §457(b)(2), IRC §457(c)(1)]	$19,500	$19,500	$19,000	$18,500	$18,000
Age 50 catch-up contributions limit (non-SIMPLE plans)[IRC §414(v)(2)(B)(i)]	$6,500	$6,500	$6,000	$6,000	$6,000
15 years of service catch-up limit	$3,000	$3,000	$3,000	$3,000	$3,000

D. RETIREMENT CONTRIBUTION PLANS UPDATE

New Contribution Rates

The 2020-2021 Teachers' Retirement System (TRS) employer contribution rate is 9.53%. The 2021-2022 TRS rate is estimated to be between 9.50% and 10.00% of payroll based on the preliminary actuarial valuation. An administrative bulletin will be provided in February 2021 with a more precise estimate of the 2021-2022 TRS rate.

The 2020-2021 employer contribution rates for the Employees' Retirement System (ERS) are 21.4% for Tier 1, 19.6% for Tier 2, 16.1% for Tier 3 and Tier 4, 13.4% for Tier 5, and 9.6% for Tier 6. For Tiers 1 and 2, this includes Plan ID 75-i/75-h, and school service option for Tier 2. For Tiers 3 through 6, this includes Plan ID A14 and A15, and school service option. The 2021-2022 rates for ERS are 25.0% for Tier 1, 22.9% for Tier 2, 18.1% for Tier 3 and Tier 4, 15.1% for Tier 5, and 10.6% for Tier 6.

The Police and Fire Retirement System (PFRS) employer contribution rate ranges for 2020-2021 for Tier 1 are 12.7% to 26.7%, Tier 2 11.1% to 26.6%, Tier 3 11.1% to 25.7%, Tier 5 7.5% to 21.9% (contributory), and Tier 6 3.4% to 16.4% (contributory). Each percentage in the tier is determined based upon the various retirement plans related to that tier and does not include any additional plan options. The 2021-2022 rate ranges for Tier 1 are 13.5% to 31.6%, for Tier 2 11.4% to 31.1%, Tier 3 11.4% to 29.9%, Tier 5 7.1% to 25.9% (contributory), and Tier 6 2.7% to 20.2% (contributory).

E. GASB UPDATE

In May of 2020, GASB issued Statement No.95, *Postponement of the Effective Dates of Certain Authoritative Guidance* in response to the COVID-19 pandemic. This Statement provides for temporary relief of implementing certain standards and guidance by extending the implementation dates by one year to eighteen months, depending on the Statement. The effective dates disclosed below have been updated according to the new effective dates as listed in this Statement.

GASB Statement No. 84, *Fiduciary Activities*

This Statement is effective for reporting periods beginning after December 15, 2019, and provides guidance for identifying fiduciary activities and how these should be reported. The focus for determining fiduciary activities is primarily based on two factors, whether the government is controlling the assets of the fiduciary activity, and the beneficiaries with whom the fiduciary relationship exists. There are separate criteria outlined in the Statement to determine fiduciary component units and postemployment benefit plans that are fiduciary activities.

The criteria to be considered a fiduciary activity (excluding fiduciary component units and pension and OPEB arrangements) include:

- The assets associated with the activity are controlled by the government (including holding the assets, or having the ability to direct their use).
- The assets associated with the activity are **not** derived either solely from the government themselves, or from government–mandated nonexchange transactions or voluntary non-exchange transactions.
- The assets have one or more of the following characteristics:
    - Are administered through a trust in which the government itself is not a beneficiary, dedicated to providing benefits to recipients in accordance with the benefit terms, and legally protected from the creditors of the government.
    - The assets are for the benefit of individuals and the government does **not** have administrative involvement with the assets or direct financial involvement with the assets. In addition, the assets are **not** derived from the government’s provision of goods or services to those individuals.
    - The assets are for the benefit of organizations or other governments that are **not** part of the financial reporting entity. In addition, the assets are **not** derived from the government’s provision of goods or services to those organizations or other governments.

The Statement identifies four kinds of fiduciary funds that may be reported: pension (and other employee benefit) trust funds, investment trust funds, private-purpose trust funds, and custodial funds. In addition, a Statement of Fiduciary Net Position, as well as a Statement of Changes in

Fiduciary Net Position is required, for all of these funds. The Statement of Changes in Fiduciary Net Position should include additions and deductions by source/type with certain items required to be separately displayed such as investment earnings and administrative costs.

GASB Statement No. 87, *Leases*

This Statement is effective for reporting periods beginning after June 15, 2021 and establishes a single model for lease accounting based on the idea that leases are financings of the right-to-use an underlying asset. As such, under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and the lessor is required to recognize a lease receivable and a deferred inflow of resources.

A lease, as defined for purposes of this Statement, is a contract that conveys control of the right to use another entity's nonfinancial asset as specific in the contract for a period of time in an exchange or exchange-like transaction. Non-financial assets include buildings, land, vehicles, and equipment. This would not include leases for intangibles (except for a sublease of the intangible right-to-use leased tangible asset), leases for inventory, service concession agreements, power purchase agreements, short-term leases, or contracts that ultimately transfer ownership of the underlying asset to the lessee. Short-term leases are defined as those that, at the commencement of the lease term, have a maximum possible term under the lease contract of 12 months or less, including any options to extend, regardless of their probability of being exercised.

Under the economic resources measurement focus, the lessee would recognize a lease liability, which would be measured at the present value of payments expected to be made during the lease term (less any lease incentives). In addition, a lease asset would be recorded, and should be measured at the amount of the initial measurement of the lease liability, plus any payments made to the lessor at or before the commencement of the lease term and certain direct costs.

In subsequent periods, the lease liability would be reduced by the lease payments, and interest expense would be recognized for the interest payments. The lease asset would be amortized over the shorter of the lease term or useful life of the underlying asset. Note disclosures are required to include a description of the leasing arrangement, amount of lease assets recognized, and a schedule of future lease payments with principal and interest separately reported.

For the lessor, under the economic resources measurement focus, a lease receivable representing the present value of the lease payments expected to be received during the lease term would be recognized. The lessor should also continue to report the underlying asset. The lessor also recognizes a deferred inflow of resources measured at the value of the lease receivable plus any payments received at or before the commencement of the lease term that relate to future periods.

In subsequent periods, the lessor reduces the lease receivable for payments received, and records interest revenue for the interest received. The deferred inflow of resources is recorded as revenue in a systematic and rational manner over the term of the lease. The notes to the financial statements should include a description of the lease arrangement and the total amount of inflows recognized from leases.

The Statement also provides guidance on lease modifications and terminations, subleases and leaseback transaction, as well as contracts with multiple components and contract combinations.

GASB Statement No. 89, *Accounting for Interest Cost Incurred Before the End of a Construction Period*

This Statement is effective for financial statements for periods beginning after December 15, 2020, with earlier application encouraged, and should be applied prospectively. It provides that in financial statements prepared using the economic resources measurement focus, interest incurred before the end of the construction period should be expensed in the period the cost is incurred, and not capitalized as part of the historical cost of a capital asset. Previously, enterprise funds and business-type activities have capitalized these interest costs.

In addition, it reinforces that in financial statements prepared using the current financial resources measurement focus, interest costs incurred before the end of a construction period should be recognized as an expenditure, consistent with governmental fund accounting principles.

GASB Statement No. 90, *Majority Equity Interests –An Amendment of GASB Statements No. 14 and No. 61*

This Statement is effective for financial statements for periods beginning after December 15, 2019, earlier application is encouraged, and should be applied retrospectively with the exception of paragraphs 8 and 9 of the Statement. The Statement was issued in order to provide clarification on when a government should report a majority equity interest in a legally separate organization as either a component unit or an investment.

For purposes of applying this Statement, GASB defines an equity interest as a financial interest in a legally separate organization evidenced by the ownership of shares of the organization's stock or by otherwise having an explicit, measurable right to the net resources of the organization that is usually based on an investment of financial or capital resources by a government. An equity interest is explicit and measurable if the government has a present or future claim to the net resources of the entity and the method for measuring the government's share of the entity's net resources is determinable.

The Statement provides that if the majority equity interest meets the definition of an investment in paragraph 64 of GASB Statement No. 72, the government should report the majority equity interest as an investment and measure it using the equity method as described in paragraphs 205-209 of GASB Statement No. 62, as amended (and not reported as a component unit of the government). However, the fair value measurement method as described in paragraph 64 of GASB Statement No. 72 should be used to report the equity interest if the investment is held by any one of the following types of governments or funds:

- Special-purpose government engaged only in fiduciary activities
- Fiduciary Fund
- Endowment (including permanent and term endowments)
- Permanent Fund

If the equity interest does not meet the definition of an investment, then the government is financially accountable for the organization and should report the legally separate organization as a component unit, either as a blended or a discretely presented component unit, as applicable. It should be reported as an asset of the government or fund that holds the equity interest, measured using the equity method as discussed above. If reported as a blended component unit, the asset and net position of the equity interest should be eliminated in the blending process.

The Statement also provided guidance on how to report an acquisition of a 100% equity interest in a legally separate organization that is reported as a component unit.

GASB Statement No. 91, *Conduit Debt Obligations*

This Statement is effective for financial statements for periods beginning after December 15, 2021 with earlier application encouraged.

The Statement was issued due to the varying reporting practices that were seen involving conduit debt obligations, and provides a single reporting method for commitments extended by issuers, arrangements associated with conduit debt obligations, and related note disclosures. Some highlights are included below.

A conduit debt obligation is defined as a debt instrument that has all of the following:

- There are at least three parties involved: an issuer, a third-party obligor, and a debt holder or a debt trustee.
- The issuer and the third-party obligor are not within the same financial reporting entity.
- The debt obligation is not a parity bond of the issuer, nor is it cross-collateralized with other debt of the issuer.
- The third-party obligor or its agent, not the issuer, ultimately receives the proceeds from the debt issuance.
- The third-party obligor, not the issuer, is primarily obligated for the payment of all amounts associated with the debt obligation (debt service payments).

While all conduit debt involves the issuer making a limited commitment, Statement No. 91 states that this debt should not be recognized as a liability by the issuer. However, if an issuer extends additional commitments, the issuer should perform an annual evaluation of whether the recognition criteria, as described in the Statement, have been met, and record the transaction following the recognition and measurement provisions provided therein.

For limited commitments, the issuer should evaluate the likelihood that it will make a debt service payment due to a voluntary commitment when there is a circumstance or event that causes it to consider supporting debt service payments for that conduit debt obligation. If that event or circumstance occurs, the issuer should then apply the recognition and measurement criteria provided, and annually re-evaluate if those criteria continue to be met or not.

Statement No. 91 also establishes standards for accounting and financial reporting of arrangements associated with conduit debt obligations (often characterized as leases).

Notes to the financials statements should also include a general description of the issuer's conduit debt obligation, the issuer's limited liability, voluntary commitments, additional commitments (including the legal authority and limits for extending the commitment, the length of time of the commitment, and any arrangements for recovering payments from the third-party obligor), as well as the outstanding principal at the end of the reporting period, by type of commitment. For issuers that recognize a liability as discussed earlier, disclosure about the timing and measurement of the liability, as well as changes in the liability and amounts paid are required.

GASB Statement No. 92, *Omnibus*

This Statement has certain provisions that are effective for fiscal years beginning after, and certain provisions for reporting periods beginning after, June 15, 2021. This omnibus was issued to address several different areas that have been noted during application of already existing Statements and guidance, and was issued to enhance comparability of financial reporting and to improve consistency in the authoritative literature.

Topics covered by this Omnibus include but are not limited to:

- The effective date of Statement No. 87 and Implementation Guide No. 2019-3, *Leases*, for interim financial reports.
- Certain transfers of assets related to certain component unit pension and OPEB plans from a primary government employer.
- The applicability of Statement No.73 and Statement No.74 to reporting assets accumulated for postemployment benefits.
- The applicability of certain requirements of Statement No.84 to postemployment benefit arrangements.
- For asset retirement obligations, the measurement of certain assets and liabilities, in a government acquisition.
- Reporting by public entity risk pools for amounts that are recoverable from reinsurers or excess insurers.

GASB Statement No. 93, *Replacement of Interbank Offered Rates*

This Statement was issued to address issues relating to interbank offered rates (IBOR) such as the London Interbank Offered Rate (LIBOR), which will no longer exist in its current form after the end of 2021. As many governments enter into agreements that depend on LIBOR, changes were needed to address the various accounting and financial reporting matters that will result from the replacement of an IBOR. The removal of LIBOR as an appropriate benchmark interest rate is effective for reporting periods ending after December 31, 2021. The rest of the Statement is effective for reporting periods beginning after June 15, 2020, with the exception of paragraphs 13 and 14 relating to lease modifications, which are effective for reporting periods ending after June 15, 2021. Earlier application is encouraged.

GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Available Payment Arrangements*

This Statement is effective for fiscal years beginning after June 15, 2022, with earlier implementation encouraged. The Statement defines public-private and public-public partnership arrangements (PPPs) as "an arrangement in which a government transferor contracts with an operator to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset, for a period of time in an exchange or exchange-like transaction", and provides the accounting treatment for them, as well as the definition of service concession arrangements (SCA) as a type of PPP. PPPs that meet the definition of a lease are directed to apply the requirements of Statement No. 87, *Leases*. In addition, this Statement provides guidance for accounting and financial reporting for availability payment arrangements (APAs), which are defined as an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction.

GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*

This Statement is effective for fiscal years beginning after June 15, 2022, with earlier application encouraged. A subscription-based information technology arrangement (SBITA) is defined as a "contract that conveys control of the right to use another party's (a SBITA vendor's) information technology (IT) software, alone or combined with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction." The accounting treatment provided is based on the standards contained in Statement No.87, *Leases*, and generally requires recognition of a right-to-use subscription asset (an intangible asset) and a corresponding subscription liability. It also provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA, and requires disclosures regarding the amount of the subscription asset, accumulated amortization, other payments not included in the measurement of a subscription liability, principal and interest requirements for the subscription liability, and other essential information.

GASB Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*

This Statement clarifies how the absence of a governing board should be considered in determining whether a primary government is financially accountable for a potential component unit (except for certain OPEB, pension and employee benefit plan component units) by treating the absence of the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board would typically perform. The Statement also requires that the financial burden criterion in paragraph 7 of Statement No. 84 be applicable to only defined benefit pension plans and defined benefit OPEB plans that are administered through trusts that meet the criteria in paragraph 3 of Statement No. 67, *Financial Reporting for Pension Plans,* or paragraph 3 of Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, respectively. In addition, this Statement also requires that a Section 457 plan be classified as either a pension plan or an other employee benefit plan depending on whether the plan meets the definition of a pension, and clarifies that Statement No. 84, as amended, should be applied to all arrangements organized under IRC Section 457 to determine whether those arrangements should be reported as fiduciary activities. This Statement is effective for fiscal years beginning after June 15, 2021, except for certain paragraphs that are effective upon issuance.

Further detail regarding the GASB Statements can be viewed at http://gasb.org

F. OFFICE OF THE STATE COMPTROLLER BULLETIN UPDATE

The Office of the State Comptroller ("OSC") issued a bulletin titled "*Accounting and Financial Reporting for Fiduciary Activities as Required by GASB Statement 84*" in March 2020 which was subsequently updated in November 2020. This bulletin provides guidance on identifying fiduciary activities for financial reporting purposes, as well as how these activities should be reported in the Annual Update Document ("AUD") and the Annual Financial Statement Report ("ST3"). The bulletin provides a questionnaire for use in determining whether assets or entities should be reported in a fiduciary fund, in a governmental fund, as a business-type activity, or not reported at all. In addition, the bulletin identifies four categories of assets which were previously classified as fiduciary activities, but which may not qualify as fiduciary activities after implementation of GASB Statement No. 84. These categories include payroll clearing accounts which must be reported in a governmental fund or as a business-type activity, LOSAP assets which must be reported in the governmental funds, with the exception of non-employer contributions which must be reported as a fiduciary activity, property taxes collected for other governments which will vary based on the specific criteria in GASB Statement No. 84, but in most instances will qualify as a fiduciary activity, and student/extraclassroom activity funds which will vary depending on who had administrative or direct financial involvement with these funds, and on the policies and procedures in place over use of the funds.

In addition to the changes for which activities should be classified as fiduciary activities, the bulletin also explains how GASB Statement No. 84 also requires an additional financial statement for fiduciary activities. This Statement of Changes in Fiduciary Net Position will be reported for the private-purpose and custodial funds to present all additions and deductions. GASB Statement No. 84 is effective for financial statements for fiscal years beginning after December 15, 2019. Additional guidance, including examples of classification of various assets, can be found in the GASB Statement No. 84 implementation guide.

G. CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (CARES) ACT FUNDS

On March 27, 2020 the Federal Coronavirus Aid, Relief and Economic Security (CARES) Act (the "Act") was signed into law. In regards to local governments and school districts, the Act was passed to provide funding for unanticipated expenditures incurred due to the pandemic.

As outlined in an OSC accounting bulletin, the Act includes additional funding to some pre-existing programs that are under the Department of Justice, the Office of Community Planning and Development, and the Department of Health and Human Services. Funds received from these departments would be recorded in the same manner as previous programs, using the same revenue codes.

The Act also included three new funding sources:

- *Coronavirus Relief Fund* – aid to be paid directly from the U.S. Department of the Treasury, currently only six local governments in New York State are eligible (excluding New York City and counties within). Existing revenue code 4489 -Federal Aid, Other health should be used when filing annual update documents (and include in the description box that funds are from Coronavirus Relief Fund).
- *Provider Relief Fund* – Local governments that operate a hospital or Emergency Medical Services department that received Medicare fee-for-service reimbursements in 2019 may be eligible for this relief fund. Additional targeted funding to COVID-19 high impact and rural areas is also expected. Existing revenue code 4489 -Federal Aid, Other health should be used when filing annual update documents (and include in the description box that funds are from Provider Relief Fund).
- *Education Stabilization Fund* – Funds to be distributed to states, schools, and higher education institutions. The two funds that pertain to school districts under this fund (and discussed below) are as follows:
    - *Governor's Emergency Education Relief (GEER) Fund*
        - Districts have flexibility to determine how best to use the funds to prevent, prepare for, or respond to COVID-19 including but not limited to:
            - Provide high-speed internet by purchasing hotspots, wireless service plans, installation of community Wi-Fi.
            - Purchase hardware and software applications for students and teachers.
            - Cover costs with making materials accessible for students with disabilities or English learners.
            - Provide professional development and training for teachers on effective strategies for remote learning and teaching.
            - To provide child care and early childhood education, social and emotional support, and the protection of education-related jobs
        - Allocations to schools was based on the relative shares of grants awarded under Title I, Part A of the Elementary and Secondary Education Act ("ESEA") for the 2019-2020 fiscal year.
        - Districts are required to calculate the equitable share of funds, in accordance with section 1117 of the ESEA, for non-public school students.
        - Funds can be used to support any school in a district without regards to the Title I, Part A status.
        - The funding period is from March 13, 2020 to September 30, 2022. Funds must be liquidated by October 30, 2022.
        - Funds are subject to the Single Audit Act.

        - Salaries paid with these funds need to be supported by time and effort documentation required under the Federal Uniform Grant Guidance.
    - *Elementary and Secondary School Emergency Relief (ESSER) Fund*
        - Funds may be used for any activities that are necessary to maintain the operation of and continuity of services in local educational agencies and to continue to employ existing staff, including but not limited to:
            - Purchase educational technology such as hardware, software and connectivity.
            - Provide mental health services and support.
            - Coordinate the preparation and response efforts to COVID-19, including planning for long-term closures, how to provide meals, and how to provide technology.
            - Develop and implement procedures and systems to improve the preparedness and response of the District.
            - Train and professionally development staff on sanitization and minimizing the spread of infectious diseases.
            - Purchase supplies to sanitize and clean the facilities
        - Allocations to schools was based on the relative shares of grants awarded under Title I, Part A of the Elementary and Secondary Education Act for the 2019-2020 fiscal year.
        - Districts are required to calculate the equitable share of funds, in accordance with section 1117 of the ESEA, for non-public school students.
        - Funds can be used to support any school in a district without regard to the Title I, Part A status.
        - The funding period is from March 13, 2020 to September 30, 2022. Funds must be liquidated by October 30, 2022.
        - Funds are subject to the Single Audit Act.
        - Salaries paid with these funds need to be supported by time and effort documentation required under the Federal Uniform Grant Guidance.

These funds should be accounted for in the general fund, using new revenue code 4286 - Federal Aid, CARES Act Education Stabilization Fund. Expenditures should be recorded using the standard account codes already in existence. However, school districts may choose to add additional letters or numbers to signify they are pandemic related, or use a separate spreadsheet outside of the accounting system.

The New York State Education Department has issued guidance documents containing additional information, as well as application instructions and they are available at http://www.p12.nysed.gov/funding/cares-act/.

II. EMPLOYER TAX AND REPORTING GUIDANCE

A. NEW YORK STATE MINIMUM WAGE

The minimum wage rates for New York are scheduled to increase each year on December 31st until they ultimately reach $15.00 per hour. There are different minimum wage rates for different industries. Beginning with the 2021 calendar year, the annual increases to general minimum wage rates will be published by the Commissioner of Labor no later than October 1st of each year. Effective December 31, 2020, the New York State general minimum wage is increasing from $11.80 per hour to $12.50 per hour. The Long Island and Westchester general minimum wage rate will be $14.00 per hour. Additional information from New York State Department of Labor can be found at https://www.labor.ny.gov/home/

B. IRS FORM W-2 & FORM W-3 REPORTING

Form W-2 Reporting

Employee Copies – Must be postmarked by February 1, 2021.

Electronic Payee Statements – If employees give their consent, you may be able to furnish Copies B, C, and 2 of Form W-2 to your employees electronically. See Pub. 15-A, Employer's Supplemental Tax Guide, for additional information.

Due Date for Electronic Filers – If you file your 2019 Form W-2 and Form W-3 with the Social Security Administration (SSA) electronically or in paper form, the due date is February 1, 2021. You must e-file if you are required to file 250 or more Forms W-2 or W-2c. A 30-day extension to file Form W-2 may be requested using Form 8809 and is no longer automatic. Even if you request and are granted an extension of time to file Forms W-2, you still must furnish Forms W-2 to your employees by February 1, 2021.

Form 944 – Use the "944" checkbox in **Box b** of Form W-3 if you filed Form 944, Employer's Annual Federal Tax Return.

Earned Income Credit (EIC) Notice – You must notify employees who have no income tax withheld that they may be able to claim an income tax refund because of the EIC. You can do this by using the official IRS Form W-2 with the EIC notice on the back of Copy B or a substitute Form W-2 with the same statement. You must give your employee Notice 797, *Possible Federal Tax Refund Due to the Earned Income Credit (EIC)*, or your own statement that contains the same wording, if certain conditions apply. For more information, see Section 10 in Pub. 15 (Circular E).

Election Workers - Report on Form W-2 payments of $600 or more to election workers for services performed in state, county, court and municipal elections. Do not report election worker payments on Form 1099-MISC. Mandatory Social Security and Medicare taxes apply to election workers not covered under a Section 218 Agreement in their State and who are paid $1,900 and $2,000 or more for 2020 and 2021, respectively. FICA is due on all wages, including the first $1,899 for 2020 and $1,999 for 2021 of the election workers wages if they exceed $1,900 for

2020 and $2,000 for 2021. If the employer anticipates the election worker exceeding the threshold, they may want to begin withholding FICA the first pay period.

Employment Tax Information – Detailed employment tax information (www.irs.gov) is provided in:

- Publication 15 (Circular E), Employer's Tax Guide
- Publication 15A, Employer's Supplemental Tax Guide
- Publication 15-B, Employer's Tax Guide to Fringe Benefits
- Publication 15-T, Federal Income Tax Withholding Methods

Household Workers – Social Security and Medicare taxes apply to wages of household workers who are paid $2,200 and $2,300 or more for 2020 and 2021, respectively.

Incorrect Address on Employee's Form W-2
Employers may reissue a Form W-2 to the employee by placing the Form W-2 with an incorrect employee address in an envelope with the correct address for mailing to employees.

Box 1 – Wages

- Include total taxable wages, bonuses (including signing bonuses), tips, prizes and awards paid to employees during the year. Also include noncash payments and certain fringe benefits including but not limited to:
    - Certain fringe benefits such as taxable cost of group-term life insurance in excess of $50,000.
    - Taxable benefits from a Section 125 Plan if the employee chooses cash.
    - Certain scholarships and fellowship grants.
    - Nonqualified moving expenses and expense reimbursements.
    - The cost of accident and health insurance premiums for 2% or more shareholder-employees paid by an S corporation.
    - Employee or employer (if includible) contributions to an Archer MSA.
    - Payments for non-job-related educational expenses, unless they are excludable under the educational assistance programs.
    - Employee or employer (if includible) contributions to a Health Savings Account.
    - Employer contributions for qualified long-term care services to the extent that such coverage is provided through a flexible spending or similar arrangement.
    - Certain employee business expense reimbursements – payments in excess of the amounts treated as substantiated under an accountable plan and all payments made under a non-accountable plan.
    - Cost of current insurance protection under a compensatory split-dollar life insurance arrangement.

Box 2 – Federal income tax withheld

Box 3 – Social Security Wages

- Total should not be more than $137,700 (for 2020).
- Total should not be more than $142,800 (for 2021).

Box 4 – Social security tax withheld

- 6.20% of amount reported in Box 3, not to exceed $8,537 for 2020 and $8,854 for 2021.

Box 5 – Medicare wages

- No wage base limit.

Box 6 – Medicare tax withheld

- 1.45% of amount reported in Box 5 (plus any additional Medicare tax).

Box 7 – Social security tips

Box 8 – Allocated tips

Box 10 – Dependent care benefits

- Include dependent care benefits under Section 125 and Section 129. Report all amounts paid or incurred including those in excess of the $5,000 exclusion in Boxes 1, 3 and 5 as income. If reimbursed in subsequent year for current year, it must be reported on Form W-2. The employer should report the *Fair Market Value* of the care in a daycare facility provided in kind or sponsored by the employer.

Box 11 – Non-qualified plans

- Show the amount of distributions to an employee from a non-qualified plan or a non-governmental Section 457(b) plan, also include these distributions in Box 1. Distributions from governmental Section 457(b) plans must be reported on form 1099-R, not in box 1 of Form W-2.

Box 12 – Benefits included in Box 1

- Report the total value of taxable fringe benefits included in Box 1. Do not include amounts reported in Box 10.
- Do not report in Box 12 any items that are not listed as Codes A-HH below. (Do not enter more than four codes on each Copy A, use a separate Form W-2).
- Do not report Section 414(h) (2) contributions in Box 12. Instead use Box 14 for these items, and any other information that you wish to give to your employee.

Applicable Reference Guide for Box 12 codes is as follows (enter codes using capital letter(s)):

A. Uncollected social security or RRTA tax on tips
B. Uncollected Medicare tax on tips
C. Taxable cost of group-term life insurance over $50,000
D. Elective deferrals under a Section 401(k) cash or deferred arrangement (including a SIMPLE 401 (k) arrangement) plan
E. Elective deferrals under a Section 403(b) salary reduction agreement
F. Elective deferrals under a Section 408(k)(6) salary reduction SEP
G. Elective deferrals and employer contributions (including non-elective deferrals) to any governmental or nongovernmental Section 457(b) deferred compensation plan
H. Elective deferrals to a Section 501(c)(18)(D) tax-exempt organization plan
J. Nontaxable sick pay
K. 20% excise tax on excess golden parachute payments
L. Substantiated employee business expense reimbursements (federal rate)
M. Uncollected social security or RRTA tax on taxable cost of group-term life insurance coverage over $50,000 (for former employees)
N. Uncollected Medicare tax on taxable cost of group-term life insurance coverage over $50,000 (for former employees)
P. Excludable moving expense reimbursements paid directly to a member of the U.S. Armed Forces
Q. Non-taxable combat pay
R. Employer contributions to an Archer MSA
S. Employee salary reduction contributions under a Section 408(p) SIMPLE plan
T. Adoption benefits. Also, include adoption benefits paid or reimbursed from the pre-tax contributions made by the employee under a section 125 plan.
V. Income from the exercise of nonstatutory stock options
W. Employer contributions (including employee contributions through a cafeteria plan) to an employee’s Health Savings Account (HSA)
Y. Deferrals under a section 409A nonqualified deferred compensation plan
Z. Income under a nonqualified deferred compensation plan that fails to satisfy section 409A
AA. Designated Roth Contributions under a section 401(k) plan
BB. Designated Roth Contributions under a section 403(b) plan
DD. Cost of employer-sponsored health coverage
EE. Designated Roth contributions under a governmental section 457(b) plan
FF. Permitted benefits under a qualified small employer health reimbursement arrangement
GG. Income from qualified equity grants under section 83(i)
HH. Aggregate deferrals under section 83(i) elections as of the close of the calendar year

Box 13 – Checkboxes

- Check all the boxes that apply.
  - Statutory employee
    Check this box for statutory employees whose earnings are subject to Social Security and Medicare taxes but not subject to Federal income tax withholding.

  - Retirement plan
    Check this box if the employee was an active participant (for any part of the year) in any of the following:
    1) A qualified pension, profit-sharing, or stock bonus plan described in Section 401(a) including a 401(k) plan;
    2) An annuity plan described in section 403(a);
    3) An annuity contract or custodial account described in Section 403(b);
    4) A simplified employee pension (SEP) plan described in Section 408(k);
    5) A SIMPLE retirement account described in Section 408(p);
    6) A trust described in section 501(c)(18);
    7) A plan for federal, state, or local government employees or by an agency or instrumentality thereof (other than a section 457(b) plan).

  - Third-party sick pay
    Check this box only if you are a third-party sick pay payer filing a Form W-2 for an insured's employee or are an employer reporting sick pay payments made by a third party. See Sick Pay Reporting in Section 6 of Pub. 15-A.

Box 14 – Other

- If you included 100% of a vehicle's annual lease value in the employee's income, it also must be reported here or on a separate statement to your employee. You may also use this box for any other information you want to give your employee and label each item. For example – Section 414(h) contributions (not taxable on federal, taxable on state and city), union dues and uniform payments.

- The Families First Coronavirus Response Act, P.L. 116-127 requires that Employers report the amount of qualified sick leave wages and qualified family leave wages paid to employees under the Act, on either 2020 Forms W-2, box 14, or on a separate statement. This provides employees who are also self-employed with amounts they may need in order to figure out their qualified sick leave equivalent or qualified family leave equivalent credits. See Notice 2020-54 for more information on how to report these amounts. In addition, refer to paragraph C below on The Families First Coronavirus Response Act for additional information on employer reporting requirements.

Box 15 through Box 20

- Use these boxes to report state and local income tax information.

Form W-3 Reporting

A Form W-3 must be transmitted with copies of Form W-2 and filed by February 1, 2021. A 30-day extension to file may be requested using Form 8809 and is no longer automatic. You may owe a penalty for each Form W-2 filed late. File the entire Copy A page of Form W-2 with the entire page of Form W-3 at the following address:

Social Security Administration
Direct Operations Center
Wilkes-Barre, PA 18769-0001

If you use "Certified Mail" to file, the zip code should be 18769-0002. If you use an IRS-approved private delivery service, add "Attn.: W-2 Process, 1150 E. Mountain Dr., and change the zip code to 18702-7997.

Amounts reported on related employment tax forms (for example Form W-2, Forms 941, 943, or 944) should agree with the amounts on Form W-3. If there are differences, you may be contacted by the IRS or SSA. You should retain a reconciliation for future reference.

Do not send undeliverable Form W-2s to the Social Security Administration. Keep undeliverable Form W-2s (employee copies) for four years demonstrating that you tried to deliver the Form W-2s, but could not. However, if the undelivered Form W-2 can be produced electronically through April 15th of the fourth year after the year of issue, you do not need to keep undeliverable employee copies.

C. THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Reporting Qualified Sick Leave Wages and Qualified Family Leave Wages Paid Pursuant to the Families First Coronavirus Response Act ("Families First Act"):

In response to the Coronavirus (COVID-19) pandemic, the Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020. Under this Act, certain covered employers with fewer than 500 employees must provide up to 80 hours of paid sick leave to eligible employees for specified reasons related to COVID-19. There are two separate sub provisions within the FFCRA, which are the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). Under the EPSLA, an employee qualifies for paid sick leave if the employee is unable to work (or telework) for any of the following reasons:

1. The employee is required to quarantine or isolate due to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to precautions related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

4. The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of the son or daughter is unavailable, due to COVID-19; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor.

The employee's rate of pay during the paid sick leave will vary depending on the specific reason for the leave, as follows:

For reasons 1, 2, and 3 described above, the employee shall be paid at either their regular rate of pay or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (for the two-week period).

For reasons 4 and 6 described above, the employee shall be paid at two-thirds their regular rate of pay or two-thirds the applicable minimum wage, whichever is higher, up to $200 per day and $2,000 in the aggregate (for the two-week period).

For reason 5 described above, the employee shall be paid at two-thirds their regular rate of pay or two-thirds the applicable minimum wage, whichever is higher, up to $200 per day and $10,000 in the aggregate (over a 12-week period). The 12-week period is broken down to two weeks of paid sick leave followed by an additional period of up to 10 weeks of paid expanded family and medical leave.

Employers will also be required to report the amount of qualified sick leave wages and qualified family leave wages paid to employees under the FFCRA starting on April 1, 2020. For 2020 tax year reporting, employers will be required to report these amounts either on Form W-2, Box 14, or on a separate statement.

A. <u>Qualified Sick Leave Wages:</u>

Qualified sick leave wages paid to employees under either sub provision of the FFCRA shall be reported in Boxes 1, 3, and 5 of Form W-2 as well as reporting in Box 14 of Form W-2, or on a separate statement, the following type and amount of wages paid:

- The total amount of qualified sick leave wages paid under the EPSLA provision for reasons 1, 2, and 3 described above must be labeled as the following (or similar language): "sick leave wages subject to the $511 per day limit."
- The total amount of qualified sick leave wages paid under the EPSLA provision for reasons 4, 5, and 6 described above must be labeled as the following (or similar language): "sick leave wages subject to the $200 per day limit."

B. Qualified Family Leave Wages:

Under the EFMLEA provision of the FFCRA, qualified family leave wages paid to employees must also be reported in Boxes 1, 3, and 5 of Form W-2 as well as reported in Box 14 of Form W-2, or on a separate statement. These qualified family leave wages must be reported separately from any qualified sick leave wages and be labeled as follows: "emergency family leave wages."

If the employer opts to report these paid sick leave and paid family leave wages to the employee on a separate statement then the statement must be provided to the employee in the same manner as their Form W-2 (whether that be mailed in paper form or electronically).

Refer to IRS Notice 2020-54 for additional guidance and information, which can be found at the following link:

Treasury, IRS issue guidance on reporting qualified sick and family leave wages paid | Internal Revenue Service

Tax Credits for Required Paid Leave Provided by Small and Midsize Employers:

Certain eligible employers subject to the EPSLA and EFMLEA provisions of the FFCRA are entitled to fully refundable tax credits to subsidize the costs paid by employers for qualified sick and family leave wages for employees unable to work or telework due to COVID-19 related reasons. Certain self-employed individuals may also be entitled to similar credits.

According to the FFCRA, eligible employers are defined as businesses and tax-exempt organizations with fewer than 500 employees that are required to provide paid sick leave under the EPSLA and to provide paid family leave under the EFMLEA. Additionally, even though the FFCRA requires most government employers to provide the COVID-19 related paid leave, these government employers are not eligible for the associated paid leave tax credits. Government employers per the FFCRA includes the Federal government, the government of any State or political subdivision, or any other agencies or instrumentalities of those governments.

For additional information, visit the IRS website at:

COVID-19 Related Tax Credits: What is an Eligible Employer FAQs | Internal Revenue Service (irs.gov)

D. IRS 1099 MISCELLANEOUS FORM REPORTING

In general, Form 1099-MISC must be issued to all persons where payments for rents or services (including parts and materials), prizes and awards, and other income payments are $600 or more. Generally, payments to a corporation do not have to be reported on Form 1099-MISC. Attorneys and medical and healthcare providers are issued a Form 1099-MISC regardless of the type of entity ($600 or more threshold still applies). Starting with calendar 2020, use Form 1099-NEC to report nonemployee compensation rather than Form 1099-MISC. Due to the creation of this new form, Form 1099-MISC has been redesigned with some changes in reporting of income and the form's box numbers.

The Form 1099-NEC must be filed with the IRS on or before February 1, 2021 using either paper or electronic filing procedures. Form 1099-MISC must be filed with the IRS by March 1, 2021, if you are a paper filer, or by March 31, 2021 if you are an electronic filer. The recipient's copy must be postmarked by January 31, 2021.

For entities located in New York State, the Internal Revenue Service Center paper filing address is:

Internal Revenue Service
Austin Submission Processing Center
P.O. Box 149213
Austin, TX 78741

E. PARTNERSHIPS AND CORPORATIONS

LLC Filing fee

For tax years ending 2020, the LLC filing fee, which is based on the amount of New York source gross income for the tax year immediately preceding the tax year for which the fee is due, is required to be filed or before the 15th day of the third month following the close of your tax year. There is no extension time to file Form IT-204-LL or pay the fee.

Partnership and Corporation Tax Return Due Dates for December 31 Year-End Filers

- Partnerships-March 15, 2021 with a possible six-month extension to September 15, 2021
- C Corporations-April 15, 2021 with a possible six-month extension to October 15, 2021
- S Corporations-March 15, 2021 with a possible six-month extension to September 15, 2021

F. FRINGE BENEFITS

All fringe benefits are taxable unless the law specifically excludes it. IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits* discusses these exclusions in detail. Below is a highlight of some of the more commonly encountered fringe benefits.

1. Group Term Life Insurance

   Under a group-term arrangement an employee may exclude from income the first $50,000 of coverage. If the employee receives more than $50,000 in group term life insurance, the following table should be used to determine the amount of taxable gross income:

Cost per $1,000 of coverage over $50,000 (for 1 month)	
Under age 25	$0.05
25 through 29	0.06
30 through 34	0.08
35 through 39	0.09
40 through 44	0.10
45 through 49	0.15
50 through 54	0.23
55 through 59	0.43
60 through 64	0.66
65 through 69	1.27
70 and older	2.06

   To calculate the total cost to include in the employee's wages, multiply the monthly cost by the number of full months' coverage at that cost.

2. Automobile Expense

   Employer-provided cars that are used exclusively for business purposes are excluded from an employee's income if the business use can be substantiated. The value of employer-provided cars used for personal purposes, such as commuting to and from work, is included in an employee's gross income.

   Annual Lease Value

   If an employer provides an employee with an automobile for personal use, the benefit provided may be calculated as the Fair Market Value of the Annual Lease of the automobile. For an automobile that is provided to an employee for less than an entire year, the value of the benefit provided is either a pro-rated Fair Market Value of the Annual Lease or the Daily Lease Fair Market Value, whichever is applicable. The amount of the Annual Lease value or a pro-rated Annual Lease Value or the Daily Lease Value, as applicable, is included in the gross income of the employee.

   The Annual Lease Value of a particular automobile is calculated as follows:

   - Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use.

   - Select the dollar range in column 1 of the Annual Lease Value Table (see IRS Publication 15-B) corresponding to the fair market value of the automobile. The

Annual Lease Value for each year of availability of the automobile is the corresponding amount in column 2 of the Table.

If substantiating records are maintained, the Annual Lease Value is then multiplied by the percentage of personal use. Percentage of personal use is calculated by dividing personal miles by total miles driven by the employee. This amount is included in the employee's gross income.

<u>Commuting Rule</u>

The fair market value of the use of employer-provided commuter vehicles is included in an employee's gross income and is subject to withholding and employment taxes. As per IRS rules an employer-provided vehicle is a vehicle provided to an employee for use in your trade or business, and for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. Under a special valuation rule, however, the commuting use of an employer-provided vehicle is valued at $1.50 per employee for each one-way commute. Use of the commuting rule requires that the vehicle is used solely for business and commuting purposes. A written policy must exist stating that the employee is not allowed to use the vehicle for personal purposes other than commuting or de minimis personal use. Also, the employee cannot be a control employee.

<u>Control Employee</u>

A control employee cannot use the commuting rules. A control employee is defined for government employees by the IRS as any elected official or any employee whose compensation equals or exceeds Federal Government Executive Level V. For 2020 the level is $160,100. An employer can choose an alternative definition of a control employee as any highly compensated employee. A highly compensated employee for 2020 is anyone who either received more than $125,000 in pay the previous year or who owns 5% of the entity at any time during the current or previous year. Also, you can choose to ignore the first criteria of a highly compensated employee test (receiving more than $125,000 in pay the preceding year) if the employee was not also in the top 20% of earners with the organization for the preceding year. If based on the criteria above the employee is considered a control employee, the government must calculate the auto fringe benefit using the annual lease value.

3. <u>Employee Benefits Accountable and Nonaccountable Plans (See IRS Publication 463)</u>

<u>Reimbursements</u>
A reimbursement or other expense allowance arrangement is a system or plan that an employer uses to pay, substantiate, and recover expenses, advances, reimbursements, and amounts charged to the employer for employee business expenses.

Reimbursement for the business use of a personal car by an employee can be based on the actual operating expenses of using a car or the standard mileage rate determined by the IRS.

<u>Accountable Plans</u>

To be an accountable plan, the employer's reimbursement or allowance arrangement must require the employee to meet all three of the following:

- There must be a business connection for the expenses – this is satisfied if the expenses have been paid or incurred in connection with the performance of services as an employee.

- The employee must adequately account to the employer for these expenses within a reasonable period of time - this is satisfied if enough information is submitted to the employer to enable the employer to identify the specific nature of each expense and conclude that the expense was attributable to the employee's business activities.

- The employee must return any excess reimbursement or allowance within a reasonable period of time.

If the employee meets these three rules for accountable plans, the employer should not include any reimbursements in gross income of the employee. In addition, if your expenses equal your reimbursements you don't complete Form 2106 as you have no allowable deduction as your expenses and reimbursements are equal.

<u>Nonaccountable Plans</u>

A nonaccountable plan is a reimbursement or expense allowance arrangement that does not meet one or more of the three rules listed above under Accountable Plans.

Furthermore, even if your employer has an accountable plan in place, the following types of payments will be treated as being paid under a nonaccountable plan:

- Excess reimbursements which are not returned to your employer.
- Reimbursement of nondeductible expenses related to your employer's business.

If you are unable to determine if the reimbursement or expense allowance arrangement is an accountable or nonaccountable plan, ask your employer to confirm this.

4. <u>Per Diem Allowance</u>

If the employee is reimbursed by a per diem allowance under an accountable plan and the per diem allowance is less than or equal to the federal rate, the allowance is not to be included in the employee's gross income. If the per diem allowance is more than the federal rate, your employer must include the allowance amount up to the federal rate under code L in box 12 of your Form W-2. This amount is not taxable. However, the excess allowance will be included in box 1 of your Form W-2, and is treated as if it were wage income.

5. <u>Cell Phones</u>

The value of the business use of an employer-provided cell phone will be considered a working condition benefit if the cell phone was provided primarily for non-compensatory business reasons, and therefore, excludable from the gross income of the employee. Non-compensatory business reasons include:

- The need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when they are away from the office,
- The need to speak with clients in another time zone at times outside of the employee's normal workday.

If you meet the non-compensatory business reason for providing the cell phone, any personal use of the cell phone will be deemed a De Minimis (minimal) fringe benefit, also excludable from the income of the employee. If the cell phone is provided as a way to attract new employees, boost morale or goodwill, or to increase compensation to employees, you cannot exclude the value of the cell phone from gross wages.

III. <u>IRS MILEAGE RATES</u>

The amounts for the various deductible costs for use of a car will be effective January 1, 2021 and are as follows:

- The standard mileage rate for the cost of operating a car will decrease to 56 cents per mile for all business miles driven. The previous rate was 57.5 cents for 2020.
- The standard mileage rate for the use of a car when giving services to a charitable organization remains at 14 cents per mile.
- The standard mileage rate for use of your car for medical reasons will decrease to 16 cents per mile. The previous rate was 17 cents for 2020.

The moving expense deduction is available only to active-duty members of the Armed Forces, at 16 cents per mile for 2021. The previous rate was 17 cents per mile for 2020.

IV. <u>NOT-FOR-PROFIT UPDATE</u>

In June 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2020-05, *Revenue from Contracts with Customers* (codified as Accounting Standards Codification ("ASC") Topic 606) and *Leases* (codified as Accounting Standards Codification ("ASC") Topic 842) to defer the effective dates of these two Updates.

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02, *Leases* (codified as Accounting Standards Codification ("ASC") Topic 842). The FASB issued this update to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. It was believed by many that previous lease accounting failed to meet the needs of users of financial statements because it did not always provide a faithful representation of leasing transactions. Topic 842 defines a lease as a contract, or part of a contract, that conveys the right to control the use of identified property, plant, or equipment (an identified asset) for a period of time in exchange for consideration. Control over the use of the identified asset means that the customer has both

1) the right to obtain substantially all of the economic benefits from the use of the asset and 2) the right to direct the use of the asset.

One major change that Topic 842 has brought is that most operating leases will now be shown on the lessee balance sheet. Under previous guidance, only capital leases, which are now referred to as "finance leases", were shown on the lessee balance sheet. The classification criteria for distinguishing between finance leases and operating leases are considerably similar to the classification criteria for distinguishing between capital and operating leases under the previous lease guidance. Because of this, the effect of leases in the Statement of Comprehensive Income and the Statement of Cash Flows is largely unchanged from previous GAAP.

Lessees will report a lease obligation and a corresponding right-of-use asset for both operating and finance leases, measured at the present value of lease payments. For finance leases, the lessee will also recognize interest on the lease liability separately from amortization of the right-of-use asset in the Statement of Comprehensive Income and classify repayments of the principal portion of the lease liability within financing activities and payments of interest on the lease liability and variable lease payments within operating activities in the Statement of Cash Flows. For operating leases, the lessee will also recognize a single lease cost, calculated so that the cost of the lease is allocated over the lease term on a generally straight-line basis and classify all cash payments within operating activities in the Statement of Cash Flows. For short term leases (12 months or less), a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If this election is made, the lease expense for such leases should generally be recognized on a straight-line basis over the lease term. However, if an entity is reasonably certain that they will exercise renewal options, they may not qualify for the short-term lease exception.

The lessor accounting guidance is largely unchanged from previous guidance. Leases will remain to be classified as either sales-type, direct financing or operating leases for lessors. Key aspects of the lessor accounting are in line with the revenue recognition guidance in Topic 606, *Revenue from Contracts with Customers.*

While under previous guidance it was required for an entity to separate the lease components from the non-lease components, Topic 842 now provides more guidance on how to identify and separate components.

There are both qualitative and quantitative disclosures required by lessees and lessors to meet the objective of enabling users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases.

The amendments in ASU No. 2016-02, *Leases* has been postponed for private companies and private not-for-profit until fiscal years beginning after December 15, 2021, and interim periods within the fiscal year beginning after December 15, 2022. Early application is permitted for all entities.

In May 2014, FASB issued ASU No. 2014-09, which was deferred by ASU No. 2015-14 *Revenue from Contracts with Customers* (Topic 606): *Deferral of Effective Date* for all entities for one year. ASU No. 2020-05 deferred the effective date for certain entities, including private not-for-profits entities, that had not yet issued their financial statements (or made them available for issuance) reflecting the adoption of Revenue as of June 3, 2020, the date ASU no. 2020-05 was issued for another year. *Revenue from*

Contracts with Customers (Topic 606) for these entities is now effective for the annual reporting periods beginning after December 15, 2019, and interim periods within annual period beginning after December 15, 2020.

The guidance affects any not-for-profit that either enters into contracts with customers to transfer goods or services or enters into contracts for the transfer of nonfinancial assets unless those contracts are covered by other standards. The guidance provides principles to report useful information to the users of the financial statements about the nature, timing, and uncertainty of revenue from contracts with customers.

In November 2016, FASB issued ASU No. 2016-18, *Restricted Cash* which addresses the diversity that exists in the classification and presentation of changes in restricted cash on the Statement of Cash Flows under Topic 230, *Statement of Cash Flows*. The amendments in ASU No. 2016-18 apply to all entities that have restricted cash or cash equivalents and are required to present a Statement of Cash Flows under Topic 230. The amendments are effective for public business entities for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, and for all other entities for fiscal years beginning December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019.

ASU No. 2016-18 requires that a Statement of Cash Flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. Amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning and end of period total amounts presented on the Statement of Cash Flows. ASU No. 2016-18 does not provide a definition of restricted cash or restricted cash equivalents.

In June 2018, FASB issued ASU No. 2018-08, *Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made.* The amendments in this Update should assist entities in (1) evaluating whether transactions should be accounted for as contributions within the scope of Topic 958, Not-for-Profit Entities, or as exchange transactions subject to other guidance and (2) determining whether a contribution is conditional. Distinguishing between contributions and exchange transactions determines which guidance the entity will apply. Guidance in Subtopic 958-605 should be followed for contributions. For exchange transactions, other guidance should be followed such as Topic 606, Revenue from Contracts with Customers.

This Update clarifies how an entity can determine whether a resource provider is participating in an exchange transaction by evaluating whether the resource provider is receiving value in return for the resources transferred based on the following:

1. A resource provider (including a foundation, a government agency, or other) is not synonymous with the general public. A benefit received by the public as a result of the assets transferred is not equivalent to commensurate value received by the resource provider.

2. Execution of a resource provider's mission or the positive sentiment from acting as a donor does not constitute commensurate value received by a resource provider for purposes of determining whether a transfer of assets is a contribution or an exchange.

There may also be instances in which the resource provider is not itself receiving commensurate value for the resources provided. An organization would determine whether a transfer of assets represents a payment from a third-party payer on behalf of an existing exchange transaction between the recipient and an identified customer, and if so, other guidance (such as Topic 606, Revenue from Contracts with Customers) would apply.

ASU No. 2018-08 also distinguishes between conditional and unconditional contributions. Under this ASU, a conditional contribution would arise if an agreement includes a barrier that must be overcome and either a right of return of assets transferred or a right of release of a promisor's obligation to transfer assets. These improved guidelines could result in more grants and contracts being accounted for as contributions than under current GAAP.

This Update includes a useful diagram which illustrates the process for determining whether a transfer of assets to a recipient is a contribution, an exchange transaction, or another type of transaction and whether a contribution is conditional.

In September 2020, FASB issued ASU No. 2020-07, "*Not-For-Profit Entities: Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets* (Topic 958) which will further improve the presentation and disclosures required on contributed nonfinancial assets for not-for-profit entities. The term nonfinancial asset derives its value from its physical traits and includes fixed assets, use of fixed assets or utilities, materials and supplies, intangible assets, services, and unconditional promises of those assets."

The Update requires that a not-for-profit entity present as a separate line item contributed nonfinancial assets in the Statement of Activities. The Update also requires the following disclosures:

1. Contributed nonfinancial assets recognized within the Statement of Activities broken down by category of the type of nonfinancial asset contributed.
2. Qualitative information about whether those assets were either utilized during the period and by what program or activity or converted to cash and the policy followed for the conversion instead of utilizing the nonfinancial asset, if any.
3. Donor-imposed restrictions associated with the nonfinancial asset.
4. Description of the valuation techniques and inputs used to arrive at the fair value, in accordance with Topic 820.
5. The principal or most advantageous market used to arrive at the fair value measurement if it is a market in which the recipient not-for-profit is prohibited by a donor-imposed restriction from selling or using the contributed nonfinancial asset.

The effective date for reporting ASU No. 2020-07, *Not-For-Profit Entities: Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets* (Topic 958) is for reporting periods beginning after June 15, 2021, and interim periods within the annual periods beginning after June 15, 2022. Early adoption is permitted.

For more information, visit the FASB's website at www.fasb.org.

Taxpayer Certainty and Disaster Tax Relief Act

Per the Tax Cuts and Jobs Act of 2017 (the TCJA), beginning January 1, 2018, certain employee benefits which were previously provided to employees' tax-free were considered taxable. Those benefits included expenses paid by an organization that were considered qualified transportation fringe benefits, expenses associated with any parking facility used to provide employee parking and expenses associated with an on-premises athletic facility. However, on December 20, 2019, the "parking tax" imposed under IRC Section 512(a)(7) upon enactment of the 2017 Tax Cuts and Jobs Act has been retroactively repealed under the Taxpayer Certainty and Disaster Tax Relief Act. This Act repeals the unrelated business income tax on tax-exempt organization disallowed fringe benefits as if it never existed. Not-for-profits no longer owe this tax, and they will be owed a refund for amounts related to this tax that were reported and paid on Form 990-T over the past two years. In order to receive a refund an amended Form 9900T needs to be filed with the time allowed.

This Act also replaces the private foundation excise tax on investment income, which was a two-tier system of 1% and 2% with a flat rate of 1.39%, effective for tax years beginning after December 20, 2019.

Taxpayer First Act

The Taxpayer First Act, which was enacted July 1, 2019, requires tax-exempt organizations to electronically file information returns and related forms in tax years beginning after July 1, 2019. The IRS forms that are included in this mandate are, Form 990, *Return of Organization Exempt from Income Tax*; Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation;* Form 8872, *Political Organization Report of Contributions and Expenditures* and Form 1065, *U.S. Return of Partnership Income* (if filed by a Section 501(d) apostolic organization).

The legislation provided relief for small organizations allowing paper or electronic filing of Form 990-EZ for tax years ending before July 31, 2021. Electronic filing is required for tax years ending after July 31, 2021.

Tax-exempt organizations that have previously paper-filed will receive a letter from the IRS informing them of the change. Filing deadlines vary by each form type.

In 2020, the IRS will continue to accept paper forms of Form 990-T and Form 4720 that are pending conversion into electronic format.

Coronavirus Aid, Relief, and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) contains several provisions that are applicable to not-for-profit organizations. Obtaining relief will depend on your tax classification under Section 501(a) of the Internal Revenue Code.

For 501(c)(3) and 501(c)(19) organizations with 500 or fewer employees in existence on March 1, 2020 and certifies that current economic uncertainty makes the loan necessary to continue operations may apply for a forgivable SBA-backed loan called the Paycheck Protection Program (PPP). This loan may be used to cover eight weeks of payroll and certain operating expenses during the COVID-19 pandemic.

All other types of not-for-profit organizations, such as 501(c)(4) and 501(c)(6) with 500 or fewer employees, are provided emergency financial relief under the Economic Injury Disaster Loan (EIDL) program.

501(c)(3) or 501(c)(19) not-for-profit organizations may also apply for an EIDL grant in addition to a loan under the PPP. A not-for-profit may apply for both loans as long the funding is not used for the same purpose. The EIDL grant allows for a $10,000 emergency advance.

All not-for-profit entities are allowed a refundable payroll tax credit under the Employee Retention Credit of up to $5,000 for each eligible employee on the payroll between the period March 12, 2020 and January 1, 2021, as long as they carried on a trade or business during the 2020 calendar year, and satisfy one of the following two tests:

- Had business operations suspended, either fully or partially, during any calendar quarter by order of a government authority limiting commerce, travel, or group meetings due to the COVID-19 pandemic.
- Had a significant decline in revenue. The gross receipts are 50% or lower as compared to the same quarter of the prior year.

V. HEALTH CARE REFORM CHANGES

The Patient Protection and Affordable Care Act is designed to ensure that all Americans have access to quality affordable health care, and is intended to create transformation within the health care system necessary to contain costs in the future. Under the law, a new "Patient's Bill of Rights" will give Americans the ability to make informed choices.

A. <u>INDIVIDUALS AND FAMILIES</u>

1. Open Enrollment for the Health Insurance Marketplace began in 2013. The enrollment period for 2021 remains the same as in previous years and is from November 1, 2020 through December 15, 2020. Eligible individuals and families can enroll or gather information at www.HealthCare.gov.

2. If you itemize your deductions on Form 1040, Schedule A, *Itemized Deductions*, you are able to deduct certain medical and dental care expenses for yourself, spouse and dependents. As part of the Taxpayer Certainty & Disaster Tax Relief Act of 2019, for tax years beginning after December 31, 2018 and before January 1, 2021, taxpayers may deduct certain medical and dental care expenses that exceed 7.5% of their adjusted gross income. Starting with the 2021 tax year taxpayers will only be allowed deduct certain medical and dental care expenses that exceed 10% of their adjusted gross income.

3. Remaining in 2020 there is the premium tax credit for the insurance premiums obtained through the Health Insurance Marketplace. This tax credit was designed to make health insurance more affordable. There are income limitations on qualifying for the credit. Your household income must be between 100% - 400% of the Federal Poverty Level ("FPL") in order to qualify for the credit. The credit

can be claimed in advance or with your filed tax return. If an advanced payment is received you are required to file Form 1040 in order to reconcile the advanced payment with the credit that you are actually entitled to, and this may result in having to pay back part of or all of the advanced payment received. This credit remains for 2021 with indexing adjustments made by the IRS.

4. Starting in 2014 and continuing to 2018, you and your family were required to have minimum essential health care coverage or had an exemption for coverage. If one did not have either, a penalty payment was required to be made with your tax return. For tax years 2019 and beyond, the penalty no longer applies as Section 11081 of the Tax Cuts and Jobs Act of 2017 sets the penalty at $0 for tax years 2019 and beyond. However, some states have their own individual health insurance mandates which still require you to have qualifying health coverage or pay a penalty fee with your state taxes. For tax year 2020 and beyond, these states are California, Vermont, Massachusetts, New Jersey, Rhode Island and the District of Columbia.

5. The IRS has issued the following forms that taxpayers need to maintain for their records or file with their tax returns:

   a. Form 1095-A – Health Insurance Marketplace Statement: Marketplaces must provide this form to all enrollees by February 1, 2021, for coverage in calendar year 2020.
   b. Form 1095-B – Health Coverage: Insurers and self-funded plans must provide this form to each enrollee by January 31st following the year of coverage. However, for the 2020 tax year, the due date was extended to March 2, 2021.
   c. Form 1095-C – Employer-Provided Health Insurance Offer and Coverage: Applicable large employees must provide this form to each enrollee by January 31st following the year of coverage. However, for the 2020 tax year, the due date was extended to March 2, 2021.
   d. Form 8962 – Premium Tax Credit
   e. Form 8965 – Health Coverage Exemptions

6. Health Reimbursement Arrangement (“HRA”)

   a. For plan years beginning on or after January 1, 2020, employers may offer HRAs combined with individual health insurance coverage or Medicare. In general, HRAs are employer-sponsored plans used to reimburse some out-of-pocket medical expenses.
   b. For HRAs, a new code has been added on Form 1095-B, line 8, to identify an individual coverage HRA.

7. Health Savings Account (“HSA”)

   a. The annual contribution limit for HSA plans for 2020 is $3,550 for individuals and $7,100 for an individual with family coverage. These contributions are not subject to tax. The contribution limits will be increasing for 2021 to $3,600 for individuals and $7,200 for an individual with family coverage.

b. HSA holders 55 and older, can save an additional $1,000 catch-up contribution limit, bringing the single amount to $4,550 and $8,100 for a family in 2020.

c. High deductible health plans allow for an annual deductible that is no less than $1,400 (an increase of $50 from 2019) for self-only coverage or $2,800 (an increase of $100 from 2019) for family coverage for 2020. Annual out of pocket costs cannot exceed $6,900 for self-only coverage (an increase of $150 from 2019) or $13,800 for family coverage (an increase of $300 from 2019).

8. Flexible Spending Arrangement ("FSA")

   a. The annual contribution limit for an FSA for 2020 is $2,750 and remains at $2,750 in 2021. Any contribution to the health FSA plan by an employer is in addition to the amount elected by the employee.

   b. If there is a balance in your FSA plan at the end of the year, your plan may have one of the following features:

      1. Grace period extension - FSA plans are permitted to allow for a maximum grace period of 2 months and 15 days following the end of the plan year for unused contributions to be used against expenses incurred in the subsequent plan year. Any funds remaining after the grace period extension will be forfeited.

      2. Carryover – FSA plans can allow participants to roll forward up to $500 for the tax year 2020 and $550 for the tax year 2021 of amounts not utilized to the subsequent year. This rollover will not affect the annual contribution limit described above. Any remaining funds in excess of the $500 will be forfeited.

   c. Please note that the FSA Plan can have only have one of the features above and not both. The FSA Plan is not required to offer either one.

B. <u>EMPLOYERS</u>

1. In 2016, the Protecting Affordable Coverage for Employees (PACE) Act gave states the ability to define "small-group employer" as either less than 51 employees or less than 101 employees. Back in January of 2016, New York State chose to define small employers as 100 or fewer full-time equivalent employees which will make them eligible to purchase affordable insurance through the Small Business Health Options Program ("SHOP").

2. Employers are required to report the value of coverage under an employer-sponsored group health plan on box 12 of the W-2 with a code of "DD". Employers that provide "applicable employer-sponsored coverage" under a group health plan are subject to the reporting requirements. The Internal Revenue Service has stated

that any expansion of the reporting rules or ending of the transitional relief which continues for the 2020 tax year will only apply for calendar years that start at least six months after the new rules are issued. See http://www.irs.gov/uac/Form-W-2-Reporting-of-Employer-Sponsored-Health-Coverage for more information.

3. Small business owners could be eligible for the Small Business Health Care Tax Credit if they purchased coverage through SHOP and pay at least 50% of the full-time premiums on behalf of employees enrolled in a qualified health plan and have less than 25 full-time equivalent employees with average wages of $50,000 (adjusted for inflation) or less. An employer may claim the credit for no more than two consecutive taxable years, beginning with the first taxable year in or after 2014 in which the eligible small employer attaches a Form 8941, *Credit for Small employer Health Insurance Premiums,* to its income tax return.

4. On December 20, 2019, the Further Consolidated Appropriations Act of 2020 became effective, which extends the IRS's Patient-Centered Outcomes Research Trust Fund fee for an additional 10 years (effective through 2029). Certain employers that self-insure may be required to pay this fee. For more information refer to the following link at the IRS website: https://www.irs.gov/affordable-care-act/patient-centered-outcomes-research-trust-fund-fee-questions-and-answers

5. Continuing in 2020, all employers, regardless of size, that provide self-insured health coverage to employees must file an annual return reporting certain information for each employee covered.

6. If you have 50 or more full-time employees, including full-time equivalent employees, you are considered an applicable full-time employer and need to issue statements to employees and file an *annual information return* reporting whether or not you offered health insurance to employees and if so, what health insurance options were offered.

7. Employers with 50 or more full time employees (including full-time equivalents) could be subject to a penalty fee if adequate affordable coverage is not offered to full time employees and one or more of these employees get a premium tax credit.

For more information, visit https://www.healthcare.gov

VI. 1040 AND NEW YORK STATE CONSIDERATIONS

The following is a summary of the new tax law changes:

A. TAX RATE BRACKETS

In 2020 the 37% tax bracket applies to taxable income that exceeds $518,400 for single and head of household ("HOH") taxpayers, $622,050 for married individuals filing jointly ("MFJ") and surviving spouse, and $311,025 for married individuals filing separate ("MFS"). All of the other tax brackets have been adjusted for inflation.

Individuals with wages and other compensation in excess of $250,000 for MFJ, $125,000 for MFS, and $200,000 for all others are subject to the additional Medicare tax of .9%. Employers are obligated to withhold the additional tax beginning in the pay period when wages exceed $200,000 for the calendar year. The employer is obligated regardless of the filing status or income from other sources. If the taxpayer does not owe the additional withholding for Medicare, they can claim a credit on their 2020 income tax return.

B. PREFERENTIAL RATES FOR CAPITAL GAINS AND QUALIFIED DIVIDENDS

Unchanged for 2020, qualified dividends and long-term capital gains can avoid tax totally under the 0% capital gains rate, or be subject to capital gains rates of 15% or 20%. The capital gains rate depends on taxable income, how much of the taxable income consists of qualified dividends and eligible long-term gains, and filing status. The 20% capital gain rate applies to single taxpayers with taxable income over $441,450, MFJ taxpayers with taxable income over $496,600, and for head of household taxpayers with income over $469,050.

C. NET INVESTMENT INCOME TAX

The net investment income tax (“NIIT”) is still applicable for 2020. This affects income tax returns of taxpayers who have net investment income and have modified adjusted gross income (“MAGI”) over the following thresholds: $250,000 for MFJ or surviving spouse, $125,000 for MFS, $200,000 for single, and $200,000 for head of household.

If modified adjusted gross income (“MAGI”) exceeds the threshold, a 3.8% tax applies to the lesser of the net investment income or the excess of MAGI over the threshold.

D. REQUIRED MINIMUM DISTRIBUTION

Under the CARES Act, the required minimum distribution for 2020 has been suspended.

E. RETIREMENT PLAN DISTRIBUTIONS AND LOANS

If the taxpayer is impacted by COVID-19, they may take a distribution of up to $100,000 and not be subject to the 10% early withdrawal penalty. The taxpayer can elect to include the distribution in income over a 3-year period. The taxpayer can also contribute the money back to a retirement plan within three years of the withdrawal and treat it as a rollover with no tax consequence once paid back.

Under the CARES Act, taxpayers impacted by COVID-19, may have taken a loan of up to the lesser of $100,000 less any outstanding loans, or 100% of their non-forfeited account balance from a qualified plan between March 27, 2020 and September 23, 2020.

F. CHARITABLE CONTRIBUTIONS

The CARES Act in 2020 allows taxpayers who don't itemize deductions to take a charitable deduction of up to $300 for cash contributions made to qualifying organizations.

G. PERSONAL EXEMPTIONS AND ITEMIZED DEDUCTIONS

The personal exemption continues to be eliminated for 2020. This elimination modifies the level of income which a taxpayer must file a return. Also continuing for 2020 for most taxpayers, the filing requirement will be based solely upon the standard deduction available to them.

We have outlined the itemized deductions continuing to be available for 2020 as follows:

- Deduction for state and local income taxes, personal property taxes and real estate taxes will be limited to $10,000 in total.
- Mortgage interest up to $750,000 is allowed on new mortgages entered into on or after December 15, 2017. Interest on the portion of the mortgage not used to buy, build or remodel your personal residence is not allowed.
- Mortgage insurance premiums paid or accrued in connection with debt that qualifies as acquisition indebtedness is deductible for 2020 as qualified residence interest.
- Charitable donations of cash that are limited to 60% of AGI will have no limitations in 2020 due to the CARES Act.
- All miscellaneous deductions formerly subject to the 2% threshold are still no longer available on your federal tax return. Some examples of these expenses are employee business expenses, tax preparation fees, investment expenses. However, these expenses may be available on your state tax return.
- Casualty losses will now only be allowed for presidentially declared disaster areas.
- Gambling losses remain deductible as a miscellaneous itemized deduction not subject to the 2% limitation. The IRS has determined that an entry fee paid by individuals to participate in a fantasy sports contest is a wagering transaction and therefore subject to the gambling loss limitation.
- The overall itemized deduction limitation of 3% of the excess of adjusted gross income over the threshold amount is still suspended.

H. PATIENT PROTECTION AND AFFORDABLE CARE ACT

Still in effect for 2020, the Tax Cuts & Jobs Act repealed the tax on individuals that fail to carry minimum health coverage for themselves and their dependents, although there are still some states (such as MA, NJ and DC) that still have health insurance mandates and may apply penalties for not having coverage. Individuals and families are still able to acquire coverage through the Patient Protection and Affordable Care Act market place. Individuals with marketplace coverage may be entitled to the §36B premium assistance tax credit when filing their 2020 tax return. If a taxpayer received an advanced payment of the credit, they are required to file a 2020 Form 1040.

For 2020 the §36B premium assistance tax credit is available for taxpayers who meet certain household income criteria.

Taxpayers should receive one of the following forms which pertain to healthcare coverage and these forms should be utilized when filing your 2020 returns:

- Form 1095-A Health Insurance Marketplace Statement
- Form 1095-B Health Coverage (sent out on or before March 2, 2021)
- Form 1095-C Employer-Provided Health Insurance Offer and Coverage

NEW DEVELOPMENTS, YEAR END UPDATE AND 1040 CONSIDERATIONS JANUARY 2021

I. STANDARD DEDUCTIONS

The standard deduction for 2020 increases to $24,800 for MFJ and surviving spouse, $18,650 for head of household, or $12,400 for all other taxpayers. The additional standard deduction for being 65 or older or blind is $1,650 if single or head of household ($3,300 if 65 and blind). If MFJ, the additional standard deduction is $1,300 if one spouse is 65 or older or blind, $2,600 if both spouses are at least 65 (or one is 65 and blind).

J. DEDUCTION FLOOR FOR MEDICAL EXPENSES

Remaining for 2020, the floor for deducting medical expenses as an itemized deduction is 7.5% of AGI for all taxpayers.

K. SOCIAL SECURITY WAGE BASE

For 2020, the tax rate on the employee portion of social security is 6.2% on wages up to $137,700; therefore, social security tax withholdings will not top $8,537. Medicare tax of 1.45% is withheld from all wages regardless of amount.

Self-employment taxes of 15.3% apply to earnings up to $137,700 after the earnings are decreased by 7.65%. The 15.3% rate equals 12.4% for social security plus 2.9% for Medicare. If net earnings are in excess of $137,700, the 2.9% Medicare rate applies to the total amount. One half of the self-employment tax may be taken as an above the line deduction. The maximum self-employment social security tax is reached at $17,075.

It should be noted, that if earnings exceed the applicable threshold, net self-employment earnings could be subject to the .9% additional Medicare Tax.

L. IRA AND ROTH IRA CONTRIBUTION PHASE-OUT

For 2020, the contribution limit for traditional IRAs and Roth IRAs is $6,000 or $7,000 for those age 50 or older. For 2021, the contribution limit will remain the same with an additional $1,000 if you are age 50 or older. The contribution deduction for traditional IRAs is phased-out for active plan participants with MAGI between $65,000 and $74,999 for a single person or head of household, or between $104,000 and $123,999 for MFJ. The phase-out range is $196,000-$205,999 for a spouse who is not an active plan participant and who files jointly with a spouse who is an active plan participant.

Under the SECURE Act for contributions made in 2020, taxpayers of any age including those over 70 ½ can contribute to a traditional IRA.

IRA CHARITABLE CONTRIBUTION

The IRA charitable contribution gives the taxpayer the ability to distribute to a charity directly from an IRA for an individual over the age of 70½ without including the distribution in income or deducting the amount as a charitable contribution. This distribution is taken into account when determining the taxpayers required minimum distribution and is a permanent rule by the IRS.

M. 529 PLANS

Continuing for 2020, all 529 plan savings may be used toward elementary or secondary public, private or religious school tuition. There is a $10,000 limitation for elementary, middle or high school expenses.

N. DEPRECIATION

The maximum §179 deduction allowed is $1,040,000 for qualifying property placed in service in 2020, subject to a limitation based upon the qualified assets placed into service. For 2020, this threshold amount is $2,590,000. The §179 deduction also imposes an income limitation upon the deduction.

Bonus depreciation remains at 100% for 2020 through 2022. Bonus depreciation allows a taxpayer to take a deduction in the year that the acquired asset is placed in service. Continuing for 2020, property eligible for bonus depreciation was expanded to include used property. Bonus depreciation is mandatory unless you elect out of it.

O. IRS MILEAGE ALLOWANCE

The IRS standard business mileage rate for 2020 is 57.5 cents a mile. The medical and moving expense mileage rate deduction is 17 cents a mile. For charitable volunteers, the mileage rate is 14 cents a mile. The deduction for moving expenses is only available for active-duty members of the Armed Forces.

P. ALTERNATIVE MINIMUM TAX

The 2020 alternative minimum tax (“AMT”) exemptions are increased to $113,400 for MFJ and surviving spouse, $72,900 for single and head of household, $25,400 for estates and trusts, and $56,700 for MFS. The 2020 AMT exemptions phase-out begins at $1,036,800 for MFJ and surviving spouse, $518,400 for all others. The AMT exemption amount is reduce one dollar for every four dollars of AMT income above the threshold amount for the taxpayer’s filing status.

Q. ELIGIBILTIY FOR SAVER’S CREDIT

The saver’s credit is 50%, 20% or 10% of your retirement plan or IRA or ABLE account contributions depending on your adjusted gross income. The maximum amount of the credit is $1,000 for single taxpayers and $2,000 for married filing joint taxpayers. Credits are not allowed when AGI reaches $32,500 for single taxpayers, $48,750 for head of household and $65,000 for MFJ and surviving spouse.

R. ADOPTION CREDIT

For adoptions finalized in 2020, taxpayers will see an increase in the credit and exclusion amounts for the adoption credit. The amount in 2020 will be increased to $14,300.

S. DEDUCTION LIMITS FOR LONG-TERM CARE PREMIUMS

The maximum amount of age-based long-term care premiums that can be included as deductible medical expenses for 2020 (subject to the 7.5% of AGI floor) is $430 if you are age 40 or younger at the end of 2020; $810 for those age 41 through 50; $1,630 for those age 51 through 60; $4,350 for those age 61 through 70; and $5,430 for those over age 70.

T. FOREIGN EARNED INCOME AND HOUSING EXCLUSIONS

The foreign earned income exclusion for 2020 is $107,600. In addition, the housing expense limitation to use in calculating your maximum housing exclusion is generally $32,280. However, the housing expense exclusion is based on locality, so in some cases there will be adjustments to the $32,280 used to calculate the final housing exclusion. Due to the COVID-19 pandemic, the IRS is providing a waiver for 2020 of the time requirements that allow a qualified individual to exclude foreign earned income and the housing cost amounts from income. If the taxpayer reasonably expected and can establish that they would meet either the bona fide residence test or physical presence test if it had not been for the pandemic they may be entitled to this waiver.

U. REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS ("FBAR")

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 provides, for tax years beginning after December 31, 2015, the TD-F-90-22.1 (Fin Cen Report 114) "Report of Foreign Bank and Financial Accounts (FBAR)" is usually electronically filed to the Treasury Department on or before April 15th with an automatic extension of six months. All US persons who have a financial interest in or signature authority over at least one foreign account and the aggregate value of all accounts exceeds $10,000 at any time during the year must file a FBAR. They are filed separate from your income tax return. The willful failure to file a FBAR can carry a penalty equal to the greater of $100,000 or 50% of the highest balance in the account, for each violation.

V. ANNUAL EXCLUSION FOR GIFTS

With regards to gift taxes, the per-donee exclusion for gifts of present interest is $15,000, for 2020 and 2021.

W. CHILD TAX CREDIT

The child tax credit remains the same for 2020 at $2,000 per child and the level the credit begins to phase-out for MFJ is $400,000 and $200,000 for all others. Of this amount up to $1,400 is refundable.

X. DEPENDENT CREDIT

Continuing for 2020, taxpayers are eligible for a non-refundable $500 credit for each dependent who is not a qualifying child under age 17. The credit begins to phase out when your income is more than $200,000 for a single taxpayer and $400,000 for a married taxpayer.

Y. GIFT TAX AND ESTATE TAX EXEMPTION

For 2020 gift tax and estate tax purposes, the basic exemption amount is $11,580,000 for federal taxes which will increase to $11,700,000 for 2021. The top rate remains at 40% for 2020.

Z. EDUCATION CREDITS

The maximum credit allowed under the American Opportunity Credit is $2,500 per student for all taxpayers except MFS, who do not qualify for the credit. For 2020, the credit starts to phase out at $160,000 for MFJ filers and $80,000 for all other qualifying taxpayers.

The maximum credit allowed under the Lifetime Learning Credit is $2,000 per tax return for all taxpayers except MFS, who do not qualify for the credit. For 2020, the credit starts to phase out at $118,000 for MFJ filers and $59,000 for all other qualifying taxpayers.

For 2020, the above-the-line $4,000 maximum deduction for qualified tuition and related expenses for higher education continues and goes through January 1, 2021.

AA. SOLAR CREDITS

For 2020, the federal tax credit for solar installations prior to December 31, 2020 decreases to 26%. For 2021, the federal tax credit decreases again to 22%. If you purchase or lease solar energy system equipment you are also eligible for a New York State credit equal to 25% of your qualified solar energy system equipment expenditures with a maximum amount of $5,000.

BB. THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ("SECURE") ACT AND ITS IMPACT ON RETIREMENT PLAN PROVISIONS

The SECURE Act passed in December 2019 and includes many reforms that are designed to increase access to workplace retirement plans and expand retirement savings. The legislation includes policy changes that impact defined contribution plans, defined benefit plans, as well as individual retirement accounts and 529 plans, many of which took effect January 1, 2020. Below are some of the key changes incorporated in the SECURE Act and how they will affect both individuals, employers, and plan sponsors.

Individuals:

- The age at which participants must begin taking required minimum distributions (RMDs) has been increased to 72 (previously was 70 ½). This applies to participants whom will attain age 72 after December 31, 2019.

- Effective for taxable years beginning after December 31, 2019, individuals can now contribute to an IRA at any age. Previously, individuals were prohibited from contributing after age 70 1/2.

- During a one-year period following the birth or adoption of a child, individuals may withdraw up to $5,000 from a retirement program, penalty free. This includes IRAs, 403(b) plans, 457 plans and 401(a) plans and is effective for plan years beginning after December 31, 2019.

- Individuals who participate in 529 Plans may withdraw up to $10,000 annually, tax-free, for the repayment of student loans.

Employers and Plan Sponsors:

- Small employers who start a tax-qualified retirement plan are eligible for a tax credit up to a maximum of $5,000 (previous maximum was $500) depending on the number of employees. This change is effective for employer taxable years beginning after December 31, 2019.

- Small employers who create a 401(k) plan or SIMPLE IRA plan and utilize automatic participant enrollment will be eligible for an annual tax credit up to $500. This provision is effective for employer taxable years beginning after December 31, 2019.

It is important to note that employers may have to make amendments to their current plan documents to allow their plan participants to take advantage of these changes in 2020.

CC. THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (CARES) ACT

The CARES Act was passed in March 2020 and provides aid packages to families and businesses impacted by the COVID-19 pandemic. Below are some of the key changes incorporated in the CARES Act and how they will affect both individuals and employers.

Individuals:

Recovery Rebate Credit/Economic Impact Payment

- The CARES Act provided an advance of the Recovery Rebate Credit in 2020 equal to $1,200 per eligible individual and $500 per eligible child subject to AGI limitations. Any amounts over the limitation were reduced by 5% of the excess.
- Receipt of the advance was based on information filed with the taxpayer's last 2019 or 2018 income tax return.
- The advanced payment received by a taxpayer is not considered taxable income for 2020.
- Taxpayers who received an advance payment but are not eligible for the credit based upon their 2020 income tax return, will not have to return the payment received. However, if the advanced payment received was lower than what the taxpayer was entitled based on their 2020 income tax filing the taxpayer will be allowed to claim the additional credit on their 2020 income tax return.
- Taxpayers who received an advanced payment for a deceased individual will have to pay back that advanced payment.

Employers:

- As part of the overall $5,250 cap for tax-free educational assistance programs for employees, an employer can make student loan payments on behalf of an employee in 2020.
- Amounts received under the CARES Act Paycheck Protection Program (PPP) will be forgiven by the lender/SBA if expended as per provisions.
- The CARES Act provides an exception and exempts from taxation any amount forgiven under the PPP loan. Accordingly, disallowed is any expense otherwise allowed to be deducted for the amount forgiven or expected to be forgiven under the PPP loan forgiveness program.

Corporations:

- The CARES Act allows the carryback of losses for 5 previous years preceding the year of loss that arose in the years ending after December 31, 2017 and before January 1, 2021.

- Any net operating loss created in 2018 through 2020 can be used to offset 100% if taxable income (previously 80% imposed by the Tax Cuts and Jobs Act ("TCJA").

- The TCJA provision limiting the current deduction of net business losses has been suspended for 2018 through 2020.

- For 2019 and 2020, every business is subject to a limited deduction for interest expense equal to the sum of the taxpayer's business interest income, 50% of the adjusted taxable income of the business, and the taxpayer's floor plan financing interest (otherwise it is 30% enacted under the TCJA). As an added benefit, taxpayers may elect to use 2019 taxable income to calculate the deductible interest in 2020.

CORPORATE TAXES:

Corporate tax changes that took effect for years beginning on or after January 1, 2019, continue through December 31, 2020. The following is a summary of some of the key changes that will continue:

- C-Corporations will continue to have a flat tax rate of 21% on all taxable income.
- The use of business losses of noncorporate taxpayers is restricted to $259,000 for unmarried taxpayers and $518,000 for married taxpayers.
- The deduction for employer provided meals that were previously 100% deductible under the de minimis rules are now subject to the 50% limitation.
- For 2020 there is no deduction allowed for amounts paid for entertainment expenses. On September 30, 2020, the IRS issued final regulations on deducting certain meal and travel expenses. The regulations make it clear that a food or beverage deduction can be available for the cost of the food or beverage consumed by the taxpayer if it is separately stated from the cost of the entertainment.
- Eligible employers are entitled to a credit for paid family and medical leave ranging from 12.5% to 25% of wages paid to qualifying employees while on family or medical leave and are being paid at least 50% of their regular wage amount. The Department of Labor implemented health emergency leave under Title I of the Family and Medical Leave Act. Employers temporarily are required to provide up to 10 weeks of paid and 2 weeks unpaid emergency family and medical leave to eligible employees for reasons related to COVID-19. The leave provision is set to expire December 31, 2020 and is effective from April 2, 2020 and December 31, 2020.
- Small and midsize employers with fewer than 500 employees are eligible for refundable tax credits that are a dollar-for- dollar reimbursement, for the cost of providing paid sick and

family leave wages to their employees for leave related to COVID-19 under the Families First Coronavirus Response Act.

- The Emergency Paid Sick Leave Act entitles workers up to 80 hours of paid sick time if they are unable to work due to COVID-19 related reason.
- The alternative minimum tax no longer applies to corporations.
- There is an executive order for the optional postponement of the certain employee's share of only the Social Security portion of FICA tax on wages and compensation paid from September 1, 2020 through December 31, 2020. These deferred taxes are to be withheld from the employees' wages and remitted ratably beginning January 1, 2021 through April 30, 2021. The employer is responsible for the deferred taxes liability.
- <u>Qualified Business Income Deduction (199A Deduction):</u>
    - A special 20% deduction will apply for certain business income reported on a person's individual return. This includes income from qualified businesses.
    - This deduction is available to sole proprietors (Schedule C), real estate rental income (Schedule E), Trust and Estates, Partnerships and S-Corporations.
    - The deduction is subject to some limitation rules and in general will not be allowed for most professions or consulting businesses, unless the taxpayer's total income is under $163,300 for single and $326,600 for MFJ taxpayers.

Feel free to contact our Suffolk County office at (631) 234-4444 or you can e-mail us at mvanduyne@rsabrams.com if you have any questions. You can also visit our website at www.rsabrams.com for updated information and to obtain additional copies of our annual New Developments, Year End Update and 1040 Considerations. We suggest you share this update with your Board.